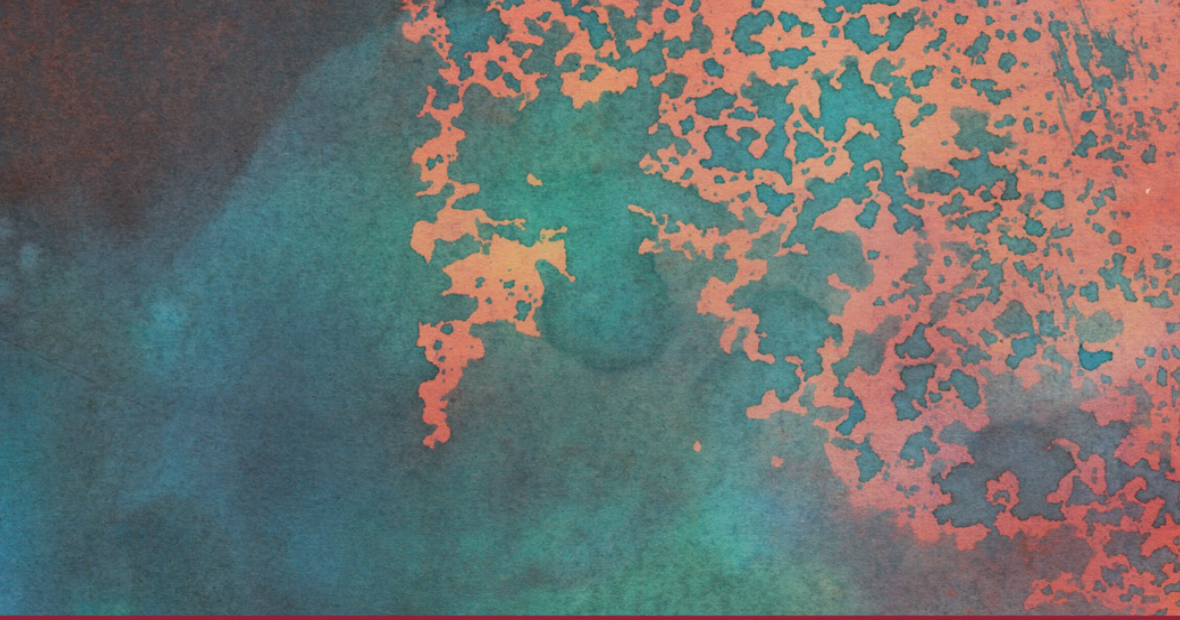
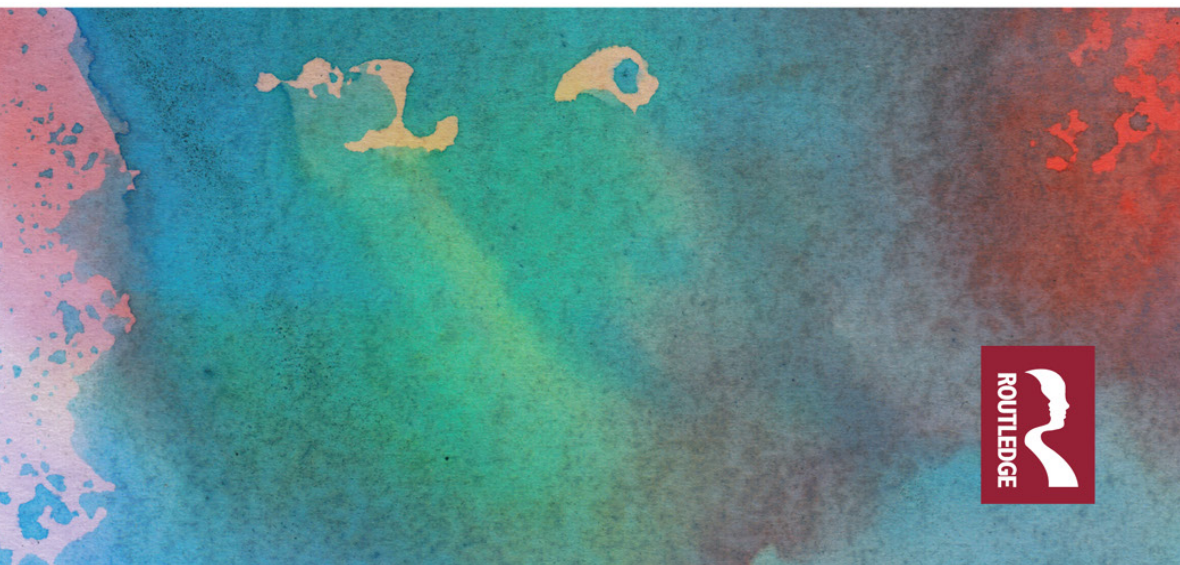


Routledge Series on the Indian Ocean and Trans-Asia

ISLAMIC LAW IN THE INDIAN OCEAN WORLD

TEXTS, IDEAS AND PRACTICES

Edited by
Mahmood Kooria and Sanne Ravensbergen



Islamic Law in the Indian Ocean World

This book explores the ways in which Muslim communities across the Indian Ocean world shaped Islamic law and its texts, ideas and practices in their local, regional, imperial, national and transregional contexts.

With a focus on the production and transmission of Islamic law in the Indian Ocean, the chapters in this book draw from and add to recent discourses on the legal histories and anthropologies of the Indian Ocean rim as well as to the conversations on global Islamic circulations. By doing so, this book argues for the importance of Islamic legal thoughts and practices of the so-called "peripheries" to kernel of Islamic traditions and the urgency of addressing their long-existing role in the making of the historical and human experience of the religion. Islamic law was and is not merely brought to, but also produced in the Indian Ocean world through constant and critical engagements. The book takes a long-term and transregional perspective for a better understanding of the ways in which the oceanic Muslims have historically developed their religious, juridical and intellectual traditions and continue to shape their lives within the frameworks of their religion.

Transregional and transdisciplinary in its approach, this book will be of interest to scholars of Islamic Studies, Indian Ocean Studies, Legal History and Legal Anthropology, Area Studies of South and Southeast Asia and East Africa.

Mahmood Kooria is affiliated with Leiden University, the Netherlands, and Ashoka University, India. He read his PhD at the Leiden University Institute for History in 2016 and is the author of *Islamic Law in Circulation: Shāfiʿī Texts across the Indian Ocean and the Mediterranean* (forthcoming) and co-editor of *Malabar in the Indian Ocean World* (2018).

Sanne Ravensbergen is a cultural historian of law and colonialism. She is a postdoctoral researcher at the Institute for History at Leiden University, the Netherlands. Her research focuses on mixed courts and the material culture of law making in nineteenth and twentieth century Indonesia.

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Islamic Law in the Indian Ocean World
Texts, Ideas and Practices
Edited by Mahmood Kooria and Sanne Ravensbergen

Islamic Law in the Indian Ocean World

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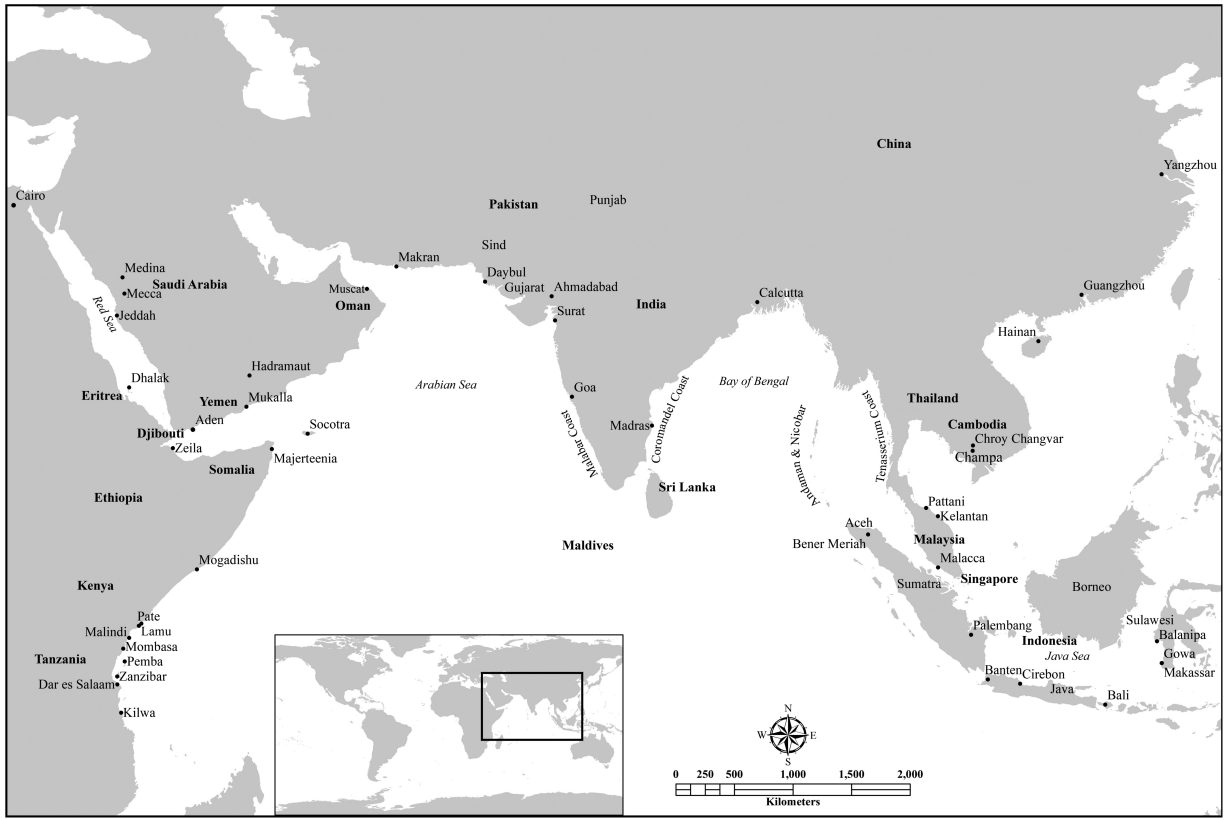

Map 1 Map of the Indian Ocean world

Introduction

Islamic law in the Indian Ocean world

Mahmood Kooria and Sanne Ravensbergen

The Indian Ocean region is home to the largest Muslim populations in the world. From Cape Town to Canton, Mogadishu to Maguindanao, Zanzibar to Malabar, Makassar to Mombasa and Surat to Sulu, Islamic communities have developed since the rise of Islam until the present day. They have been constantly exchanging ideas, texts and practices through networks of scholars, institutions, documents, traders and preachers. This book is about some of them and about how *they* defined, used, adapted and formulated law in the specific local, regional, imperial, national and transregional contexts in which *they* lived.

In the interactions between Arabs, Asians and Africans, Islamic law provided a shared vocabulary across the Indian Ocean world. Islamic law was not merely brought there, but has been produced *in* that world through constant and critical engagements. While the legal and theological scaffolds supporting Islamic practices were circulating, Indian Ocean Muslims reformulated, produced and transmitted them in their own individual ways. Rather than describing a purely cosmopolitan perspective of these connections blown across waves and through sails, we ask what other insights this oceanic world can give us on the ideas, practices and texts of Islamic law. We engage with questions of production and circulation, and simultaneously emphasise the importance of local dynamics and modes of placemaking. Through these questions, this volume moves away from a Middle Eastern centred analysis of Islamic law and productively complicates an understanding of the Indian Ocean region as a legal space with a pre-defined Islamic legal repertoire, language and practice.

Arab, Asian and African intellectual and religious communities and the circulations of Islamic teaching in the oceanic world have been central to the field of Indian Ocean studies.[1] Building on this scholarship is a growing body of literature which has emphasised the importance of Islamic law in shaping the communities in the Indian Ocean region.[2] Recently several scholars have taken more of a transregional and transimperial view to trace legalistic developments in Muslim communities across the Indian Ocean, revealing layered and complex legal histories.[3] We build on the diverse ideas of this scholarship to show how the inter-Asian movements, Afro-Eurasian connections and the exchange of ideas across borders, as well as layered networks of knowledge exchange and

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local histories, are all essential for understanding Islamic law. The chapters are organised chronologically to follow a thread of discourses over a long stretch of time, from the seventh century till the present day. We have especially aimed to assemble scholarly voices from regions that have been less prominent in the existing historiography on Islamic law.

We offer four suggestions for the study of Islamic law in the Indian Ocean world. First, we place Islamic legal practice, ideas and texts firmly at the centre of our analysis, thereby bringing together into one framework local, regional and transregional aspects, as well as imperial, national and postcolonial ones. Second, we stress the importance of language and law, arising from translations of legal texts and the use of other sources than those written in Arabic and European languages. Third, connected to that, we recognise that the stratified interactions, hierarchies and exchanges of Islamic ideas within the Indian Ocean region are essential to understand the histories of law and legal pluralities. These are evident, for example, in the Islamic legal connections between India and Indonesia, and between Malaysia and Cambodia. Fourth, we argue for moving beyond the tripartite division of Indian Ocean studies into maritime histories, terrestrial studies of land and empire, and area studies because we find the arms of the sea reaching far inland. Thinking oceanically relates to what happens on ships and in ports, but also among inland Islamic communities that are nonetheless connected by the sea to other Muslims and their Islamic texts, ideas and practices relating to law.

Away from the "heartlands"

Law has been a defining dimension in transregional, transcultural and transoceanic exchanges. As people from various backgrounds interacted in unfamiliar localities for trade, diplomacy and religion, several shared ideas of justice and injustice governed their transactions, both tangible and intangible. Because Islam had come with its own legal apparatus, which conflicted with many pre-existing norms but undergirded others, its juridical framework commanded its own role as it circulated across the Indian Ocean.

The trajectories of Islam and its laws in the Indian Ocean provided a framework for those within and beyond the Muslim communities to protect their mobilities and navigate their interests across wide stretches of land and water. The certainties surrounding law and a faith in justice, even if the results were unpredictable, affixed transregional exchanges in the Indian Ocean. The substance of Islamic law was therefore an important stimulus for Indian Ocean communities. K.N. Chaudhuri, trailblazer of Indian Ocean studies, has signposted this for such issues as contractual sales (*salam*), *commenda* and money-changing.[4] While utilising various legal provisions prescribed by their religion yet finding innovative ways to interpret or circumvent their limitations, Muslims endeavoured to sustain an Islamic legal order even when living as a small minority. They were shaping and practising Islamic laws in China, in the port of Guangzhou, as early as the ninth century.[5]

Centring the focus on the Middle East and silencing local histories and traditions of Islam in Indian Ocean communities is a long-standing phenomenon, which reproduced the interests of European colonialism and the hegemony of Arab elites. In nineteenth-century Java, Dutch lawyers were thoroughly unimpressed by Javanese knowledge of Islamic law. They often argued that Javanese Muslims did not have a full grasp of their own religion and mocked the *penghulu* (the highest-ranking Islamic official in nineteenth-century Java) for not being able to read Arabic. Thereby, they positioned what they understood as "Middle Eastern Islam" as the true Islam and Arabic legal texts as the legitimate Islamic law. A few centuries before this the Arab navigator Aḥmad bin Mājid al-Saʿdī, (d. c. 1498) also made disparaging comments on Southeast Asian Muslims. He wrote,

> They have no culture at all. The infidel marries Muslim women while the Muslim takes pagans to wife. You do not know whether they are Muslim or not. They are thieves, for theft is rife among them and they do not mind. The Muslim eats dogs for meat, for there are no food laws.[6]

In fact Southeast Asian islands had had rich Islamic traditions for several centuries before this, as attested even in Arabic sources such as the fourteenth century writings of the North African traveller Ibn Baṭṭūṭa (d. 1369) and his chronicles of visiting the Samudra Pasai kingdom of Sumatra.[7] The profession of the Javanese *penghulu* had been established for centuries to hold various responsibilities in religious administration. The *penghulu* was often someone who had mastered the Arabic language even if that may not have been central to their idea and practice of Islam. More importantly, Islamic texts circulated in Javanese and other local languages, and were integral to Javanese Islam and its legal culture.[8]

People from diverse ethnic, regional and even religious backgrounds have contributed to the making of Islamic law in the Indian Ocean world. Not only Arabs and Persians, but also Indians, Malays, Javanese, Chinese, Acehnese, Makassaris, Abyssinians and the Swahili were all part of an oceanic world underwriting juridical developments in particular ways. Beyond these prominent regional ethnic groups there were numerous religious, linguistic, political and imperial actors, who also engaged with interpretations and expansions of Islamic law. Such processes happened in the Middle East, and across the Indian Ocean world as Iza Hussin's work on the prominent role local elites played in shaping legal regimes in nineteenth and twentieth century colonial and postcolonial Malaysia, Egypt and India has shown.[9]

The existing historiography of premodern Islamic law, however, largely focuses on the Middle East, the "heartlands" of Islam. Only very rarely does it acknowledge even the presence of Islamic law in areas such as South Asia, Southeast Asia and East Africa, especially in the periods prior to European colonial expansion and their "invention" of customary laws and regulations.[10] Stories of formative and post-formative phases of Islamic law have been very much centred on the

Middle East with marginal inputs from the larger Muslim world.[11] In the first chapter, therefore, Mahmood Kooria proposes a new division of the premodern Indian Ocean into five zones. Moving away from the old geoclimatic divisions prevalent in premodern Islamic geographical literature and reproduced in early modern European philosophical writings, his analysis leads him to recommend a division "based on the early Muslim settlements and writings around them with important political, cultural and linguistic features". He argues that these zones (Arabo-Persian, African, Indic, Malay and Chinese) help us focus on specific features which are neglected in the existing historiography of Islam and Islamic law.

The scholarly networks central to a number of chapters in this volume show that the mobility of legal ideas, texts, scholars and institutions was not only *betwee*n the Middle East and Indian Ocean regions, but also *within* Indian Ocean regions. The production of legal knowledge in various languages, and legal translations through qāḍīs, jurists, courts, litigants and prosecutors, developed in specific local contexts. In the second chapter, Tom Hoogervorst presents the telling example of the "Tamil-mediated route" to Java and Sumatra, and sees connections between Malabar and the Indonesian islands. Philipp Bruckmayr emphasizes similar existing networks in early twentieth-century Cambodia and Malaysia. He demonstrates the multi-layered example of *fatwas* produced for Cambodian Muslims, issued by Malay muftis in Mecca and Kelantan as well as under a French colonial government. He traces the Islamic legal connections across these regions where Malay scholars produced Islamic texts in *jawi* and Arabic and taught in Islamic schools in Cambodia. In these multi-layered oceanic connections, Phnom Penh was more connected to the Malay Peninsula than to Mecca or Cairo.

A history of Islamic law in the Indian Ocean cannot be written without including such contacts and communication, with and among Islamic legal cultures that did not directly arrive from the Middle East, but originated from and spread along numerous regional and transregional routes. Within a local context they were subject to constant negotiations, arguments and exchanges, within or without an Afro-Arab-Asian triangle.

Cosmopoleis of Languages

The Indian Ocean has historically been a world where many languages mingle together, facilitated by interactions between communities from distant lands and different backgrounds. The long histories of Islamic law have reflected that situation, benefiting from and contributing to this linguistic polyphony. Of the many legal streams first circulating that of Shāfiʿīsm eventually survived in the oceanic littoral from Southeast Africa to Southeast Asia, because it continuously accommodated to the changing range of languages, both at macro and micro levels.[12] Therefore, we move away from an exclusively Arabo-Persian narrative, in which Arabs and Persians exported Islamic law and shaped its trajectories in the larger Muslim world. The largest Muslim populations had a very nominal Arabo-Persian presence across the centuries. A number of chapters in this volume foreground the specific roles language played in the transregional mobility of law within and

beyond the Indian Ocean. Instead of assuming that a single language was dominating the entire scenario of exchanges, the authors demonstrate the historical existence of multiple lingua franca and cosmopoleis of languages. Accordingly, this volume identifies at least five such cosmopoleis: Sanskrit, Arabic, Jāwī, Swahili and a multiglossia. Their related linguistic umbrellas feed into the legal trajectories of Islam.

Sheldon Pollock had initially suggested a Sanskrit cosmopolis across South and Southeast Asia, and Ronit Ricci then furthered the idea with a suggestion of an Arabic cosmopolis in the same literary sphere. But Hoogervorst, in this volume, questions this notion of Arabic replacing the Sanskrit cosmopolis. Instead, he suggests that there was a "legal multiglossia", in which Sanskrit, Arabic, Tamil and Urdu operated gradually and even simultaneously.[13] He shows how the contributions of Indian Ocean networks to linguistic and legal events in the Indonesian Archipelago are evident in a palimpsest of influences from Indic, Middle Eastern, Hindu, Muslim, precolonial and colonial networks. He shows that a legal multiglossia evolved in the archipelago from the fourteenth to the eighteenth centuries, where South Asian languages functioned as mediators in the transition from Hindu to Islamic law. Although lexical borrowing from foreign powers was used as a sign of decorum by local elites to strengthen their position, and so in itself does not necessarily point to changes in the content of customary law, it does show clearly how cultural contact with the Indian subcontinent and Indic languages enabled the Arabic language to travel to the archipelago. He argues that "lexical inferences are crucial to the study of Indian Ocean networks and the concomitant diffusion of concepts, ideas and institutions".

Nandini Chatterjee here adds a Persian cosmopolis that stretched beyond the Indian Ocean yet influenced its undercurrents.[14] She postulates the language dynamics in the context of Persian, a language for literature and administration from Bengal to Bosnia, including the northern Indian Ocean. In this Persian cosmopolis South Asian law practitioners and local scribes were more familiar with Persian than Arabic or Sanskrit. Therefore, the English East India Company was compelled to enter this Persianate legal landscape and rely on its documentary regime in order to gain a stronghold over South Asia in the eighteenth century. Looking at the Persian legal documents produced for British colonial courts, Chatterjee unravels a whole range of "British-Persian" entanglements in a remarkable collection of documents that have continued to be overlooked. Chatterjee argues that early modern Indian notions of law should be derived from the totality of the Persian, British, Indo-Persian and Islamic "documentary clusters, in which empire is inseparable from Islam".

This complexity of the intersections of Islamic law, language and empire is the concern of Felicitas Becker and Shabani Mwakalinga's explorations of the "Swahili-language public sphere" in the context of colonial and postcolonial Tanzania. They relate the interconnectedness of language and state to the ways in which the scholarly analyses are drafted in specific tones, and to the account of colonial-era ossification feeding into post-colonial Islamist political contestations.

They argue that "scholarship based heavily on written, English or Arabic-language, sources tends to emphasise cosmopolitan networking and inclusiveness within the Western Indian Ocean, while more fieldwork-based scholarship, drawing on Swahili oral sources, sees ruptures and place-boundedness". They also note that studies on the history of Islamic law based on Arabic sources focused much "on colonialism catalysing greater rigidity", while studies on the basis of Swahili sources emphasised a "continuing fluidity and accommodation". These contrasting results presented after consulting a variety of sources shows the importance of utilising multiple sources and languages relevant to the Indian Ocean context.

Borrowing from Michael Laffan's work on Islam in the Indonesian Archipelago, Bruckmayr engages with the Jawi ecumene for the exchanges between Cambodian and Malay worlds.[15] He focuses on the nuances of a *jawi* ecumene in adjacent regions within Muslim Southeast Asia, where people adopted the *jawi* language and the Arabic script "as prime vehicles of religious scholarship and instruction as well as for networking and scholarly exchanges across the Indian Ocean and neighbouring regions". Within the larger ecumene of Jawi appear smaller languages, such as Acehnese and Gayonese in North Sumatra, where an understanding of the key legal conceptualization is the core of legal discussions, especially in the context of the ongoing implementation of Sharia. A. Arfiansyah argues that conceptualisations of morality (*sumang*) among Gayonese and their incorporation into local legal codes are a form of resenting the universalisation of Acehnese culture and identity, which in turn responds to the universalisation of Indonesian culture and identity. In contrast to this, the Mandarese manuscripts and scripts discussed in Muhammad Buana's chapter did converse with the idioms of Islamic law, but not necessarily with the script and scribal praxis, for its own *lontara* writing systems were maintained, resonating as regional variants of the Makassarese and Bugis in South and West Sulawesi. Differing from the broader trends of Arabic in the Indian Ocean and that of Malay and Jawi in the archipelago, the Sulawesi communities found their own scribal and literary ecumene.

The diversity of languages contributed to the making and sustaining of Islamic law in the region, and the languages themselves influenced the outcomes of both historical actors as well as contemporary scholarship. Beyond the hegemonic languages of legal history at large and Islamic law in particular, these chapters show the wider implications of multiple languages in law prevailing in the Indian Ocean and acting as historical catalysts, primary sources, and mirrors of the past and the present. Nicholas W. Stephenson Smith challenges the notion of the romanticised Swahili speaking world in the Indian Ocean, because that led to a neglect of other regions, such as the Somali coast of the Red Sea and the Indian Ocean where "violence, strategising, and cosmopolitan lawmaking went hand-in-hand", resonant of historical processes across the Indian Ocean world.

This oceanic polyglossia reveals a world incarnating law outside the elite Arabic and Sanskrit spheres and the Swahili networks, where local users and contacts enlivened a completely different and diverse linguistic legal terrain. Through perceptive utilisation of materials in Javanese, Persian, Makassarese, Malay, Gayonese, Acehnese, Sanskrit, along with several European languages, the

chapters in this volume challenge the dominance of Arabic texts for Islamic legal historiography. Aditionally, Kooria and Bruckmayr show how Arabic sources can be studied in novel ways to explore the traces of Islamic law into the Indian Ocean context. These multiple approaches rooted in distinctive philological potentials untangle the different occurrences and survivals of Islamic laws across time and place, and they validate distinctive ways of imagining the Indian Ocean Muslim legal cultures in particular and Islamic history in general.

Legal pluralities and the Islamic Indian Ocean

Muslims in the Indian Ocean region, from South and Southeast Asia to Eastern and South Africa, have developed creative ways to formulate and negotiate the perceived contradictions in local practices with Islam and its law. This volume acknowledges the importance of Islamic legal practices outside the Middle East, but it also advances our understanding of the specific modes and ways Islamic law spread and evolved in the region through interactions between people from diverse regional, ethnic, linguistic and religious backgrounds. From a long historical perspective, various cases in this volume demonstrate how the oceanic Muslims developed norms and laws related to their everyday religious, social, cultural, political and ethical realms in conversation with the scriptural traditions of law, while also paying attention to specific spatial and temporal demands of their Indian Ocean contexts, thus producing legal pluralities.

The indigenous production of Islamic law is most explicitly found in discussions on customary laws, as they demonstrate crucial moments of exchange between laws and customs. Buana focuses on Mandarese records from Mandar in West Sulawesi to see various indigenous narratives on the origins of customs long before Europeans appeared on the scene. His investigation into the *lontara* (sacred manuscripts) of the Mandar elites leads him to argue that *adat*-borrowing and Islamic influences from outside struck a balance between *saraq* (Sharīʿa) and *adaq* (*adat*, customary law). He further argues that the records assert a distinct local legal culture, although its formation itself was highly indebted to influences from Gowa, Makassar and Java, as well as legal exchanges from the larger Indian Ocean.

Investigations into Islamic law and its textual traditions led colonial administrators and scholars to the realisation that normative orders and praxis among Muslims were different from textual prescriptions, and therefore should be identified differently. There was not necessarily a "putative opposition of colonialism to Islamic law", as Nurfadzilah Yahaya has shown in her work on Arabs in Southeast Asia and their intricate legal strategies under British and Dutch imperial rule.[16] Gradations of this interplay between Islamic/Muslim law and European/colonial interpositions are also evident in studies in the British Indian and French Cambodian contexts in this volume. Chatterjee shows how the Persian-Islamic documentary culture and juridical praxis provided a documentation momentum for the British colonial institutions and personnel to an extent that we might wonder "whether the British Empire was another Persianate empire into which *sharīʿa* had been translated".

The archives and documents the British produced in Persian continued to appear in the Indian courts well into the twentieth century. In the case of French involvement in the legal administration of Cambodian Muslims, Bruckmayr argues that only when local mechanisms of arbitration within the community had failed was the way paved for the Khmer and French authorities to intervene.

To the long histories of Islamic law in the Indian Ocean the European colonial states added their versions of Muslim customs and praxis. This had contrasting consequences in the postcolonial world, as is evident in a comparative reading of experiments in Indonesia and debates in Tanzania. Arfiansyah studies conversations among three legal traditions within a micro-community of the Gayonese in Central Aceh. Through a combination of historical research of precolonial manuscripts of the Linge Kingdom and anthropological fieldwork in Gayo he nuances the co-existence of *edet* (*adat*) and State Sharia (Islamic law imposed by the postcolonial state) in contemporary Aceh, and demonstrates the complementary role of *edet* to State Sharia regarding cases of public morality and *zina* (adultery). Although both have their origins in Islamic legal traditions, *edet* and State Sharia differ in their assessment of *zina*. The Gayonese *edet*, for example, makes a distinction between premarital and extramarital sexual intercourse, whereas State Sharia does not. Yet Arfiansyah shows how in practice the two legal systems complement each other and are combined in a state programme at the village level.

Becker and Mwakalinga assess a recent discussion in Tanzania on the reintroduction of kadhis' courts, first introduced and maintained by colonial powers. After drawing attention to discontinuities between precolonial and colonial courts and to the contemporary discussions on the reintroduction of these courts, they show that the question of Islamic courts invokes an uneasy quiescence among Muslim-Christian citizenry with mingled colonial nostalgia, conspiracy theories and a sensitivity (or insensitivity) to the colonial politics behind those courts. An interplay between customary, Islamic and various Western imperial taxonomies of law, justice and order become engendered into the long histories of Islamic law in the Indian Ocean with repercussions for postcolonial societies.

Practising Islamic law: Rethinking borders and depth

The local production of Islamic law in the Indian Ocean contexts occurred through multi-layered transregional interactions among scholars, commercial actors, jurists, adherents, litigants, teachers and students. Fahad Bishara evocatively described in his work on legal documents how *waraqa* (deeds) that connected commercial actors across the Western Indian Ocean also offered opportunities for disconnection and conflict: "In the Indian Ocean, law was both everywhere and nowhere. It was hardly ever visible, but it left its mark on every actor, artifact and action."[17] This rings very true for many empirical contexts in this volume, as it explores both how far Islamic law in the Indian Ocean world stretched, northwestwards and southeastwards, and from coastlines to inland communities, as well as how deep an imprint Islamic law left on communities and their texts, practices, ideas and objects.

The chapters here challenge notions, which are so often taken for granted, concerning Islamic law with regard to the oceanic littoral. The historiography of Islam

in the basin is often entirely traced through oceanic exchanges, or oblivious about this maritime world.[18] The contributors here expose these predicaments and challenge the notion that the internal diversities of this maritime world are to be narrated in the existing framework of area-studies. Jeremy Prestholdt has pointed out that "the effective ends of the Indian Ocean region have been in great flux for centuries and people along the Indian Ocean rim have remained resolutely multifocal." A constant redefining has been ongoing to imagine what the Indian Ocean region was and where its borders were under the influence of postcolonial nation-building, the rise of the oil economy, and the introduction of steamships and air travel.[19] This process of re-imagining and redefining its own place within the Indian Ocean world can be found across this volume. Smith, Becker and Mwakalinga add to the revival of scholarly efforts to read the Eastern African coast into narratives of the Indian Ocean, as much as Hoogervorst, Bruckmayr, Buana and Arfiansyah do for both the mainland and the island communities of Southeast Asia. They all show how Islamic law developed in regions that constantly navigate between coastal and highland cultures of religion, tradition and governance.

Attentiveness to aspects of violence and exclusion in the Indian Ocean sphere is important in considering different patterns of engagement with an international legal order outside the usual narratives of a cosmopolitan oceanic world. Rooted in the history of piracy, diplomacy, confrontations and conflicts between African, European and Asian actors, Smith enriches our understanding of the maritime littoral as a historical and legal space in which we can discern "the boundaries between legal cultures, the limits of commensurability, both within the Indian Ocean and between Indian Ocean cultures of law and outsiders". Resonating with this, Becker and Mwakalinga emphasise that the cosmopolitan oceanic world also tended to create its own exclusions. In coastal and island areas of Tanzania, notions of an Indian Ocean homeland were implicitly maritime, but it did not have a defined place for African mainlanders. For Becker and Mwakalinga the oceanic past is a problematic territory as it directly interlinks to an existing debate between coastal-hinterland and island-mainland oppositions that are incisive in postcolonial Tanzania. Both transregionality and transtemporality come as sources of predicaments, where both the space of the Indian Ocean sphere and such a past are problematic.

Imaginative and actual borders are reflected in the depth with which Islamic law stimulated placemaking, what Smriti Srinivas, Bettina Ng'weno and Neelima Jeychandran have called the study of "cultural values" that reflect how the communities saw their place in the larger Indian Ocean world. They aim to change the emphasis from the mobile aspects to "place, placemaking and quotidian practices as valuable frames for the study of Indian Ocean Worlds".[20] The peculiar oceanic context and diversity of languages necessitated and facilitated the creation of specific regional adaptations of Islamic law that benefited the preferences of local communities. While the oceanic littoral was in constant flux, necessitated by its changes of mobility and various intersections of ethnic, religious and linguistic elements at crossroads, the oceanic polyglossia provided a toolkit to cater for the vernacularisation of Islam and its laws. The historical making of Islamic law in the Indian Ocean world is a story of innovative

engagements with local contexts and interests, instead of passively receiving from the wider world.

We take what Hafeez Ahmed Jamali has coined a "seaward perspective"[21] and include littoral communities that have been neglected in Indian Ocean scholarship, as well as inland communities into our explorations of Islamic legal interchanges in the broader Indian Ocean world. Attentiveness to cultural values, form, performance, ritual and documents reveals hidden histories and contemporary experiences of Islamic Indian Ocean communities. Chatterjee emphasises the role of paper and the forms of legal documents in the broader Indian subcontinent, while both Arfiansyah and Buana mention the sacred nature of legal documents with notions of adverse consequences if one attempts to open the old preserved manuscripts in the coastal and mainland contexts.[22] Smith argues for a focus on "legal acts" instead of documents to reveal various legal strategies.

Additionally, exploring physical and social legal spaces provides us with an understanding of daily law making and legal experiences in the oceanic region.[23] Kooria demonstrates how in the social institutions of marriage and religious institutions of mosques the Indian Ocean Muslims found creative ways to negotiate with unprecedented predicaments. The local legal dynamics also ensured a transtemporal exchange. Communities utilised their own past going back to the earlier centuries and generations, but they also contributed to and borrowed from the past traditions of a larger Muslim world and Islamic history. The construction and utilisation of what was perceived as "tradition", custom and *adat* is a good repertoire for a transtemporal utilisation and production of Islamic legal histories.

The long histories and contemporary implications of legal texts and documents, ideas and practices in local contexts of legal pluralism complicate our understanding of Islamic law and its importance to the Indian Ocean world. They at once challenge its exclusive focus on the Middle East or as an Arabo-Persian export to the rest of the Muslim world. Centring Islamic law within Indian Ocean communities at sea and inland, while thinking oceanically as an incentive for research, makes the trails of Islam and its laws, legal practices, institutions, documents, acts and ideas in the Indian Ocean world fascinating for further investigation. It provides a reflective framework, extending its geographical limits and encompassing forgotten patches of related knowledge systems and networks. It also emphasises the urgency of exploring local contexts, nuances of multi-linguistic and transregional exchanges, and sensitivities about the long-term historical processes and the encounters between various legal cultures.

Acknowledgements

Our journey towards a larger research agenda of a more interdisciplinary and transregional legal studies of the Indian Ocean world began in 2015, when we organised an international conference at Leiden University on law around the Indian Ocean. This culminated in a special issue in *Itinerario: Journal of Imperial and Global Interactions*, with contributions by Fahad Bishara, Mahmood Kooria, Elisabeth Lhost, Nathan Perl-Rosenthal, Sanne Ravensbergen, Nadeera

Rupesinghe and Byapti Sur. In that issue we focused on legal spaces and their hybrid characters. It was our aim to centre legal practice outside the framework of area studies, one country or one empire.

The idea for this volume on Islamic law originated from a follow-up conference we organised in 2016. This meeting brought together legal historians, anthropologists and linguists working on regions throughout the Indian Ocean, both in Asia and Africa. Its aim was to advance the scholarship by bringing together historical, linguistic and ethnographic studies of Islamic law and Islamic legal practices in premodern, early modern and modern Indian Ocean communities. The conference was an invitation to scholars of Islam to talk about Islamic law across temporal and spatial borders, and to start this conversation from what has been called the "peripheries" of Islam instead of the "heartlands" in the Middle East.

Over the years, we have been fortunate to engage closely with a burgeoning field of scholarship, involving legal studies of the Indian Ocean world. We would like to thank the keynote speakers of both the "Ocean of Law" conferences: Engseng Ho, Paul Halliday, Ronit Ricci, Iza Hussin and Léon Buskens. Over the years many interlocutors, speakers, participants, readers and anonymous reviewers have been invaluable in this process. We are specifically grateful to Fahad Bishara, Jatin Dua, Hassan Khalilieh and Nurfadzilah Yahaya, who have provided constant support, and we are immensely thankful to all the contributors to this volume, who have stayed with us throughout our long journey.

We are delighted that this book will find a home in a series that conceptualises Indian Ocean studies in innovative ways. We are grateful to the editors, Smriti Srinivas and Neelima Jeychandran, for their critical input, as well as to Alexandra de Brauw and Dorothea Schaefter at Routledge. We thank the Leiden University Centre for Islam Studies (LUCIS) and the Institute for History for funding the conference in 2016. We have also valued help from Mervyn and Helen Richardson for carefully copyediting parts of the book.

Notes

1 For example, see Sebastian Prange, *Monsoon Islam*; Anne K. Bang, *Islamic Sufi Networks in the Western Indian Ocean (c.1880-1940): Ripples of Reform* (Leiden: Brill, 2014); Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011); R. Michael Feener and Terenjit Sevea, eds. *Islamic Connections: Studies of South and Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 2009); Engseng Ho, *The Graves of Tarim Genealogy and Mobility across the Indian Ocean* (California: University of California Press, 2006); Eric Tagliacozzo, *Secret Trades, Porous Borders, Smuggling and States Along a Southeast Asian Frontier, 1865–1915* (New Haven: Yale University Press, 2005); Azyumardi Azra, *The Origins of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern Ulama in the Seventeenth and Eighteenth Centuries* (Honolulu: University of Hawai'i Press, 2004).

2 The workshops "Sharia in Motion" held in Yale and Cambridge in 2016 and 2017 respectively and the special issue entitled "The Travels of Law: Indian Ocean Itineraries" in the *Law and History Review* 32, no. 4 (2014) are important collective initiatives in this regard. See the introductory essay by Renisa Mawani and Iza Hussin, "The Travels of Law: Indian Ocean Itineraries," *Law and History Review* 32, no. 4 (2014): 733–747. See also: Jatin Dua, *Captured at Sea: Piracy and Protection in the Indian Ocean* (Oakland:

University of California Press, 2019); Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge: Cambridge University Press, 2018); Elizabeth Lhost, "Writing Law at the Edge of Empire: Evidence from the Qazis of Bharuch (1799–1864)," *Itinerario* 42, no. 2 (2018): 256–278; Scott, S. Reese, *Imperial Muslims. Islam, Community and Authority in the Indian Ocean* (Edinburgh University Press, 2017); Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton: Princeton University Press, 2015); Mohammad Hannan Hassan, "Islamic Legal Thought and Practices of Seventeenth Century Aceh: Treating the Others," (PhD diss., McGill University, 2014); R. Michael Feener, *Muslim Legal Thought in Modern Indonesia* (Cambridge: Cambridge University Press, 2007); Noor Aisha Abdul Rahman, *Colonial Image of Malay Adat Laws: A Critical Appraisal of Studies on Adat Laws in the Malay Peninsula during the Colonial Era and Some Continuities* (Leiden: Brill, 2006).

3 Nurfadzilah Yahaya, *Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia* (New York: Cornell University Press, 2020); Fahad Ahmad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017); Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The Chicago University Press, 2016).

4 K.N. Chaudhuri, *Trade and Civilisation in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (Cambridge: Cambridge University Press, 1987), 202–211; cf. S.D. Goitein, *India Traders of the Middle Ages: Documents from the Cairo Geniza: India Book* (Leiden: Brill, 2008), 65, 346–347.

5 See the first chapter in this volume.

6 Aḥmad ibn Mājid al-Saʿdī, *Kitāb al-fawāʾid fī maʿrifat ʿilm al-baḥr wa-al-qawāʿid* (also known as Kitāb al-Fawāʾid fī uṣūl ʿilm al-baḥr wa-al-qawāʾid), trans. G.R. Tibbetts, *A Study of the Arabic Texts Containing Material on South-East Asia* (Leiden: Brill, 1979), 206

7 Abū ʿAbd Allāh Muḥammad bin ʿAbd Allāh Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa: Tuḥfat al-nuẓẓār fī gharāʾib al-amṣār wa-ʿajāʾib al-asfār*, ed. Muḥammad ʿAbd al-Munʿim al-ʿUryān and Muṣṭafā al-Qaṣṣāṣ (Beirut: Dār Ihyāʾ al-ʿUlūm, 1987), 631–632.

8 Sanne Ravensbergen, "Anchors of Colonial Rule: Pluralistic Courts in Java, ca.1803–1848," *Itinerario* 42, no. 2, 238–255. Muhammad Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882–1942* (Jakarta: Indonesian-Netherlands Cooperation in Islamic Studies), 2001.

9 Hussin, *Politics of Islamic Law.*

10 For example, see Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005); Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2005).

11 An exception to this is the work by Hassan Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge: Cambridge University Press, 2019).

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13 Sheldon Pollock, *The Language of the Gods in the World of Men: Sanskrit, Culture and Power in Premodern India* (Berkeley: University of California Press, 2006); Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011).

14 Abbas Amanat and Assef Ashraf eds., *The Persianate World: Rethinking a Shared Sphere* (Leiden: Brill, 2018); Nile Green ed. *The Persianate World: The Frontiers of a Eurasian Lingua Franca* (Oakland: University of California Press, 2019); Tomáš Petrů, "'Lands below the Winds' as Part of the Persian Cosmopolis: An Inquiry into

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15 Michael Francis Laffan, *Islamic Nationhood and Colonial Indonesia: The Umma Below the Winds* (London: RoutledgeCurzon, 2003), 11–27.

16 Yahaya, *Fluid Jurisdictions*, 169.

17 Fahad Ahmad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017), 9.

18 On the limits and delimits of the Indian Ocean as a field of study, see Jos Gommans, "Continuity and Change in the Indian Ocean Basin," in *The Cambridge World History,* vol.6: *The Construction of a Global World, 1400–1800 CE*, eds. Jerry H Bentley, Sanjay Subrahmanyam and Merry E Wiesner (Cambridge: Cambridge University Press, 2015), 182–209; Markus P. M. Vink, "Indian Ocean Studies and the 'New Thalassology'," *Journal of Global History* 2, no. 1 (2007): 41–62; André Wink, "From the Mediterranean to the Indian Ocean: Medieval History in Geographic Perspective," *Comparative Studies in Society and History* 44, no. 3 (2002): 416–445.

19 Jeremy Prestholdt, "The Ends of the Indian Ocean. Notes on boundaries and affinities across time." In: *Reimagining Indian Ocean Worlds*, ed. Smriti Srinivas, Bettina Ng'weno and Neelima Jeychandran (New York: Routledge, 2020), 37.

20 Smriti Srinivas, Bettina Ng'weno, and Neelima Jeychandran, "Introduction: Many Worlds, Many Oceans," in *Reimagining Indian Ocean Worlds*, ed. Smriti Srinivas, Bettina Ng'weno and Neelima Jeychandran (New York: Routledge, 2020), 15.

21 Hafeez Ahmed Jamali, "Shorelines of Memory and Ports of Desire: Geography, Identity, and the Memory of Oceanic Trade in Mekran Coast (Balochistan)," in *Reimagining Indian Ocean Worlds*, ed. Srinivas, Ng'weno and Jeychandran (New York: Routledge, 2020), 165–179.

22 See also, for example: Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India* (Chicago: University of Chicago Press, 2012).

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1 Zones of origins

The formation of Islamic law in the Indian Ocean littoral, c. 615–1000 CE

Mahmood Kooria

Introduction

In the early centuries of Islamic history, between the seventh and the tenth, there was already a significant population of Muslims living in the Indian Ocean world, ranging from eastern Africa to eastern Asia. As traders, travellers, sailors, scholars and exiles, they travelled and settled in the maritime littoral, actively contributing to the making of Islam and its laws. Islam's frontiers ran across trade routes, deserts, mountains and seas, and its world and message constituted "more than an area of spiritual unification".[1] Nodal points of Islamic economic and cultural developments were formed within a hundred years after the death of the Prophet Muhammad in 632. Most of these Muslims adhered heartily to their religion, so that it became an important element in the reciprocity of legal obligations and rights when dealing with each other and other communities. The spiritual contacts between widely separated areas were "often astonishingly close" for the Islamic communities through the idea of a common geographical space.[2] Even though they were living far away from contemporary discussions about Islamic law and theology in the Islamic heartlands in Arabia, they shaped their own methods and practices.

Despite the fact that a large portion of the Muslim community were already living outside the Middle East in the early centuries of Islamic history, and that Islam was a prominent socio-cultural and doctrinal praxis in these "peripheries", not many historians have endeavoured to take into consideration the religious and juridical complexities of Islam there. Islamic (legal) historians keep a Middle-East-centric narrative and impose that framework onto "the peripheral Muslims".[3] More specification of Islamic legal traditions outside the Middle East is, therefore, long overdue, and this chapter takes a preliminary step in that direction with an investigation into the formative periods.

Once we read the evidence from or on the Muslims of the Indian Ocean littoral, the internal dynamics and trajectories of a long history of Islamic law become apparent. The sources show how the communities from the littoral contributed to innovative developments, facilitated by the spread of Islamic networks that connected a wide variety of regions, ethnicities and backgrounds. These communities were not a small rudimentary collective of believers: they

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were demographically as significant as many of their Middle Eastern parallels. They had their own leaders to administer law and justice, and the individual authorities, such as *qāḍī*s and *shaykh*s, and their institutions, such as mosques, were considerable. What were the characteristics of those Islamic institutions and spaces, and how did individuals function within these physical and social structures, with or without following a particular legal paradigm? Did Muslims manage their own laws in those places? How did Islamic law appear there to administer a partly mobile and partly sedentary community?

To address these questions I shall investigate sources roughly from the seventh till the tenth centuries, the timespan generally perceived as the formative and classical period of Islamic law. In Middle Eastern contexts researchers have the luxury of directly related legal materials, but the sources for the history of the oceanic Muslims are comparatively marginal. I shall utilise a variety of fragmentary materials, such as travellers' accounts, geographical literature, *futūḥāt* works (narratives of Islamic expansion), along with archaeological findings and epigraphic data in Arabic, Persian, Chinese, Tamil, Malayalam and Sanskrit. Most of these sources have already been edited and published more than once, although they have rarely been used in legal historiography. Almost all the Arabic and Persian travel and geographical literature in this timeframe have been translated into European languages from the late nineteenth century onwards, while most *futūḥāt* works and material evidence have come to light only recently. Because these sources are not necessarily concerned with law *per se* it is difficult to reconstruct a full picture of the legal engagements of the early Muslims in the oceanic rim, yet we can discern whatever insights they give.

I shall start with a geographical description of the Indian Ocean by dividing it into five zones in order to illustrate the presence of Muslims in each zone between the seventh and tenth centuries. Consequently, I shall analyse five major Muslim groups on the basis of their potential motivations and occupations in the context of questions of Islamic law. The next section engages with the existing claim that the Islamic legal schools, such as Shāfiʿīsm and Ḥanafīsm, played important roles in the oceanic littoral. The problems I raise here argue for a more nuanced and intermixed legal scape of early Islam. The last two sections analyse the important venues of legal formations that facilitated and impacted the early interactions, and I take a closer look at physical and social institutions, such as mosques and marriages. I argue that Islam and its different institutions functioned in the maritime zones by constantly negotiating with the various dominant non-Muslim socio-political entities, and therefore produced diverse juridical experiences.

Early maritime zones of Islam

The Indian Ocean littoral has been categorised, described and perceived in the early Muslim literature through different prisms and taxonomies.[4] What is today generally seen as the "Indian" Ocean littoral was more fluid in the geographical

and travel literature in the ninth and tenth centuries. It was not only an "Indian" Ocean (Baḥr al-Hind), but it was also called *inter alia* the Persian Ocean (Baḥr Fāris) and the African Ocean (Baḥr al-Zanj). The latter name was often used to designate its western part, along with the name Baḥr al-Ḥabashī ("Abyssinian Ocean"), as distinct from the eastern part with its boundary at the Chinese Ocean (Baḥr al-Ṣīn). The northern boundaries were given other names, such as the Yemeni Ocean (Baḥr al-Yaman). These geographical identifications changed over time, depending on the geographers, travellers and writers. Other terms occur, such as Baḥr al-Qulzum, Baḥr Lārawī, Baḥr Harkand, Baḥr Shalāhiṭ, Baḥr Kalah, Baḥr Kardānj, Baḥr Ṣanf and Baḥr Ṣankhay to denote different areas and seas which are now all considered parts of the Indian Ocean world.[5]

For the sake of clarifying the purpose of this chapter, I divide the ocean into five major cultural zones based on the early Muslim settlements and written records following important political, cultural and linguistic features: 1. The Arab-Persian zone, covering the northern and eastern coasts of the Red Sea and the coasts up to Makrān on the east, including many islands in the vicinity, such as Khuriya Muriya, Socotra and Maṣīra; 2. The African zone, covering the western coast of the Red Sea, from Sudan through the strait of Bab al-Mandab down to Qanbalū, Sufāla and Wāqwāq (Madagascar) and several islands in between; 3. The Indic zone, from Makrān to Kūlam Malī (Quilon) on the western and southern sides of the subcontinent, and from Bengal to Sri Lanka on the east to the south; 4. The Malay zone, from the islands of Lanḳabālūs or Lanjabālūs (the Andaman and Nicobar Islands) to Java (Jāba) in the south and Qimār (Khmer = Cambodia) and Thailand in the north and Sulu Sea in the east; 5. The Chinese zone, with Khānfū as the most important emporium and attaching some significance to Shīlā (Korea) and the Wāqwāq islands (Japan).

In the four maritime zones beyond the Arab-Persian zone, the arrival of Islam, not to speak of its law, has been very contentious in the historiography.[6] But what is certainly true is that most of these places had been actively participating in the Indian Ocean trade long before the rise of Islam, and that they will all have been connected with the mercantile and mobile communities of the Arab-Persian zone. Many of these places from eastern Africa to eastern Asia had some sort of Persian or Arab settlements in the sixth and seventh centuries, if not earlier.[7] Once Islam dominated the religious and political landscape of the Middle East by the mid-seventh century, these pre-existing Arab-Persian communes could well have been influenced by this new religion, but we do not know whether or not they converted to it or cared at all about its rise and spread.

We have some limited sources specifically concerning Muslims' lives in the zones, from the seventh century. The earliest and most widely cited reference comes from East Africa with regard to the first Islamic migrants to Abyssinia, who fled there in 615 to escape the persecution of the Quraysh tribe in Mecca. The first group consisted of 11 men and four women, including the would-be-third-caliph ʿUthmān and his wife Ruqayya (daughter of the Prophet Muhammad), while the second group had 83 men and 18 women.[8] Most of them returned to Arabia when the situation became convivial, yet only after leaving behind some

traces of early practices of Islam and its laws, such as the establishment of a place of worship at Massawa (later called Masjid al-Ṣaḥāba, in present-day Eritrea) and a burial ground. A few who had remained behind developed these structures and practices and married into local elites, but at least one of them converted to Christianity.[9] Within a few years after these early migrations, an inscription from Māṭāyi in Malabar and oral tradition in Ghogha in Gujarat in the Indic zone claim that mosques were established there in the first decades of Islam.[10] That inscription dates to the fifth year after Hijra (i.e. 627). However, the credibility of both these sources needs to be further substantiated.

Apart from these few instances, solid textual, epigraphic, archaeological or architectural sources are rare for this century. Some Chinese accounts mention a strong Arab presence in the Malay zone in the late seventh century, to such an extent that the writers often confused Sumatra in Southeast Asia for Arabia because so many Arabs were there, whom they denoted with the term Dashi or Tazi. According to one narrative, the Arab chieftain (of Sumatra, possibly) interacted with the kingdom of Java after Queen Si-ma became its ruler in 674. The Queen was known for her valour, honesty and ensuring safety and protection in her kingdom. This made "the prince of Tazi" afraid of her and he "dared not attack her".[11] Yijing (635–713), a Chinese monk who visited Sumatra in 671, wrote about the island's connections with the Middle East.[12] We do not know if the Arabs mentioned in these instances were Muslims. If they were indeed Muslims, they may have embraced Islam in the Middle East and travelled to the Malay zone, or they may have been residents of the existing settlements who converted to the new religion. In his *Dong xi yang kao* (Research on the Eastern and Western Ocean), Zhang Xie (1574–1640), a later Chinese author, narrates the whole history of Muhammad as something that had happened in western Sumatra. This indicates a historical consciousness among the Chinese people about this island as being predominantly Islamic.[13]

There are related oral histories and written narratives of kings converting to Islam at the hand of the Prophet or in front of his companions, who visited distant places, such as India and China. Textual and epigraphic narratives on the early arrivals of Islam in these regions were written or copied in later periods. There are inscriptions in the Ding Zhou Mosque (dated to 1348), in Qing Jing Si Mosque of Quanzhou (1350), and in Huai Sheng Si of Guangzhou (1350). There are also texts, such as the Ming official history *Da Ming yi tong zhi*, the *Qiṣṣat Shakarwatī Farmāḍ*, the *Kēraḷōtpatti* narratives of Malabar, *Futūḥāt al-jazāʾir* of the Lakshadweep Islands, the manuscript of Said Husayni of the Comoros.[14] All these sources talk about events happening during the rise of Islam in the seventh century or immediately afterwards, but they were written and/or copied many centuries later. Authenticating their claims is hard without corroborating evidence from the period itself. However, one important series of interactions between these regions and the central Islamic world in the seventh century were the diplomatic missions, especially to China. These initiatives are fascinating in their own right as they contain fragmentary information on Islamic (and Islamic legal) interactions with these regions, as I shall infer below from some Chinese episodes.

By the eighth century there is solid historical proof of the existence of active Islamic communities in all five zones of the Indian Ocean region, as settlers, soldiers, migrants, exiles and converts, along with references to infrequent itinerants, such as traders, diplomats and missionaries. The expeditions of Muḥammad bin Qāsim (d. 715) to Sind and the consequent Muslim settlements there is the most interesting episode of this century. Obeying the command of the Iraqi governor of the Umayyad dynasty Ḥajjāj bin Yūsuf (d. 714), Ibn Qāsim conquered several regions of the Indic zone, from Makrān to Daybul. According to the narrative a few Muslims coming from Sri Lanka, who were attacked by pirates off the coast of the western Indian subcontinent, the conquest of Ibn Qāsim was motivated by a maritime skirmish in the Arabian Sea. In that account, Ḥajjāj asked the local ruler to help the captives against the pirates, but the ruler said that he could not meddle with Midi pirates. Angry with this response, Ḥajjāj sent two commanders to Sind, who both were defeated and killed. Eventually a strong army under the command of Ibn Qāsim conquered the land, rescued the Muslim detainees, and advanced to conquer more lands.[15] Whatever may have been the initial motivation, through these conquests several new lands were added to the Islamic empire, opening new vistas for administering Islamic law and justice through taxation, civil and criminal legal proceedings and ritual prescriptions.

The Chinese zone witnessed two remarkable events in this period. In 758 a group of Arabs and Persians raided Guangzhou and burnt its storehouses, forcing its prefect Wei Lijian to abandon the city and go into hiding. The *Jiu Tangshu* (Old Tang History) specifically identifies the group as "soldiers from the countries of Arabia and Persia", but historians have disagreed on whether they were traders or troops sent by the Abbasid Caliph.[16] Two years later, in 760, many Persians and Arabs were massacred in Yangzhou when the government troops marched in to oppress a local rebellion. In this tumult, "several thousand Arab and Persian merchants were killed", according to the *Old* and the *New Tang History* for the period.[17] These episodes demonstrate the presence of an Islamic community in the Chinese zone with a potential for juridical engagements.

In the African zone the most important event in the eighth century was the conquest of the Dahlak Archipelago during the reign of the Umayyad caliph Sulaymān bin ʿAbd al-Malik (r. 715–17). This led not only to the establishment of a Muslim settlement there, but also to the conversion of the majority of the archipelago to Islam. Further south along the eastern African coast, the Umayyad caliph ʿAbd al-Malik bin Marwān (695–705) is said to have sent Syrians to expand his Islamic kingdom there, according to the Swahili chronicle *History of Pate*. The Syrians thus established the cities of Pate, Malindi, Zanzibar, Mombasa, Lamu and Kilwa.[18] Similarly, a few decades later, the caliph Hārūn al-Rashīd (r. 786–801) is supposed to have sent Persians to the region, who established a number of other coastal towns. The reliability of this account is doubtful, but some numismatic and architectural evidences hint that there was a significant Muslim community present in Pemba (or Ḳanbalū in the chronicles, which there most likely refers to Ras Mkumbuu) and Shanga in the Lamu Archipelago.[19] Archaeological excavations have unearthed several mosques in these areas, most of which were

established above the ruins of previous mosques. For example, below a tenth-century congregational mosque in Shanga, seven timber mosques and one stone mosque were excavated, all from a period between 750 and 900.[20] In addition, a significant cache of more than 2000 coins was found in Kilwa and Unguja Ukuu in Zanzibar, with some of the coins dating to the late eighth century. All these archaeological, architectural and numismatic data clearly demonstrate a strong presence of an Islamic community in the African zone. Many members are likely to have been exiles and refugees, escaping the persecutions of the Umayyads and Abbasids by local rulers, a common phenomenon at various Indian Ocean ports in this period.

Once we come to the ninth and tenth centuries the evidence for Muslim communities thickens with travel accounts, geographical literature and material evidence from all over the Indian Ocean littoral. In the ninth century, the anonymous *Accounts of China and India*, the *Book of Roads and Kingdoms* of Ibn Khurradāḏbih (c. 820–c. 911) and Yaʿqūbī's *Book of Countries* all talk about these zones in varying detail. The same or similar narratives were produced in the tenth century by Ibn al-Faqīh (*fl.* 903), Ibn Rusta (*fl.* 913), Abū Zayd al-Ṣirāfī (*fl.* 916), Abū Dulaf (*fl.* 952), Buzurg bin Shahriyār (d. 953) and Masʿūdī (d. 956).[21]

A significant development in the African zone in this period was the establishment of the Sultanate of Showa under the Makhzūmīs in 896–97 CE and the arrival of the Shirazis.[22] Although situated inland in the northern Hararghe region in present-day Ethiopia, this sultanate had considerable influence over the coastal belt, especially over the port of Zaylaʿ. Muslims already had a strong presence on the coasts of the Horn of Africa, but the rise of the Makhzūmīs coincided with the maritime collapse of the Aksumite Empire, and this provided better economic and political prospects for the new Muslim polity.[23] Masʿūdī, who travelled further south in the zone in the early tenth century, wrote about Ḳanbalū as a place that had a significant Muslim population. About Pemba, he noted that it had a mixed population of merchants from Siraf and Oman, local Muslims, and "the Zanj idolaters", who also worshipped their ancestors and did not follow religious law.[24] Arab traders and travellers and African scholars spread Islam along the coasts as well as in the western and central Sudan. Many foundations of mosques have been excavated along the Swahili coast which contained gold, silver and copper coins dating back to the ninth and tenth centuries. In Dahlak alone 23 inscribed tombstones dating to the tenth century have been discovered.[25]

In the Chinese zone, in mid-ninth-century Guangzhou, the number of Muslims was so impressive that there was an organised and systematic Islamic legal system. In the year when the rebel leader Huang Chao captured the city his forces massacred around 120,000 Muslims, Christians, Jews and Zoroastrians.[26] Even if this number is exaggerated, and we assume that only one-tenth of these inhabitants were Muslims, it represents a considerable community for that time. In the city Muslims were free to conduct their religious activities and had their own leader to administer law and justice. Islamic judges (*qāḍī*s) and scholars (*shaykh*s) and mosques were spread across other Chinese cities as well, including Ts'uan-chou, Hang-chou, and elsewhere in the maritime littoral.[27] Ibn Khurradāḏbih

wrote about the settlement of Muslim traders in Korea under the Silla Dynasty: "al-Shīlā is a country abounding in gold. Muslims who advanced there, captivated by its congenial surroundings, tend to settle there for good and do not think of leaving the place."[28] Similarly, the Muslims who settled in Chinese ports established themselves as reputed traders and intermediaries. The revolt against foreign merchants in 879 in Guangzhou led to the downfall of Muslim mercantile activities in the region, in the late ninth century through the mid-tenth century,[29] but the situation was restored by the late tenth century.

The Malay zone gained significantly from the disruptions in the Chinese ports, since the West and South Asian merchants now navigated no further than the Straits of Malacca. This resulted in a commercial boom in several old and new ports in the Straits, and in the expansion of Muslim communities there. Kalāh (Kedah or the Tenasserim coast) was one of the ports where Muslim trade flourished in the late ninth century.[30] Masʿūdī specifically mentions that many Muslim merchants had migrated from the Chinese ports to Kalāh following the massacre in Guangzhou.[31] In the Malay zone, the Buddhist Malay maritime empires, Srivijaya in Sumatra and Sailendra in Java, dominated political scenarios and maritime trade. The Abbasid Empire to the west of the Indian Ocean and the Tang Empire to the east were connected through their dominions despite of the formidable presence or later interventions of the Cholas in peninsular India. The Arab-Persian geographers and authors of the time say much about these Southeast Asian kingdoms, identified as the lands of Zābaj with "vast territories and large islands, abundant spices and gold, a dense population, fertile soil, a mighty army and navy, Buddhist temples with golden statues as well as busy markets, settlements of foreign merchants and trade with China and the Persian Gulf".[32] Although most of these were non-Muslim jurisdictions in the ninth and tenth centuries they will have become acquainted with the significant presence of Muslim residents in the period before the emergence of Muslim political and juridical institutions in the regions in the following centuries.[33]

Major groups of maritime Muslims

The early mobile Muslims of the Indian Ocean can be grouped into five major functional groups on the basis of direct or indirect implications in Islamic law: exiles or refugees; traders; scholars; soldiers; and diplomats. These categories are based on an analysis of the primary motivations or roles they would address in their transregional journeys. These groups are neither exclusive nor exhaustive as they emerged and existed as such. I shall elaborate on each in turn.

First, the variation in the connotations of exile and refugee is based on individual or collective mobility. But both terms stand for forced and voluntary migrants who left their homeland in fear of their life. The history of Muslim exiles in the Indian Ocean starts with the early history of Islam itself. As I mentioned above, within a few years after the declaration of Islam in Mecca a cluster of believers had migrated to Abyssinia seeking refuge from the persecutions in Mecca. They were 116 refugees in total, many of whom returned eventually to Mecca and then migrated to Medina.

Besides them we find recurrent references to Ibāḍīs, Shīʿīs, ʿAlawīs, and even to Sunnīs seeking refuge around the Indian Ocean rim in the early centuries. After fleeing persecution under the Umayyads, a group of ʿAlawīs sought refuge in the Korean peninsula and on the southeastern coast of China.[34] A similar narrative is presented in a twelfth-century account by the Arab geographer Sharaf al-Zamān al-Marwazī (d. 1120), who wrote that many Shīʿīs fled persecution in Khurasan under the Umayyads in the 740s. They settled on an island off the coast, near the port of Guangzhou.[35] Some Muslims in Malabar claimed to have escaped the persecution of Ḥajjāj bin Yūsuf. In Multan there was a strong presence of Shīʿī-Ismāʿīlīs, who eventually made allegiance to the Fāṭimids in the tenth century.[36] The African shores accommodated a large number of Ibāḍī and Zaydī exiles and their descendants, and on these the Fāṭimids also had an influence.[37] The Dahlak Archipelago and neighbouring areas around the Red Sea was "a place of exile for delinquent officials" from the Umayyad and Abbasid regimes, while some Shīʿīs or ʿAlids chose to go to southern Arabia as governors and officials according to their sectarian inclinations.[38] Ghaznawid and Ghūrid rulers, such as Maḥmūd Ghaznī (r. 998–1030) and Muḥammad Ghūrī (r. 1163–1206), suppressed the Ismāʿīlīs, who had sought refuge in the Indic zone, because the Ghaznawids stood as protectors of Sunnī Islam against the Shīʿī Buyids and the Ismāʿīlīs of Sind. The Shīʿīs regained strength between these two rulers but could not sustain their momentum.[39]

Some exiles returned to their homelands when an opportunity presented itself, as the migrants to Abyssinia did, but many of them remained in their new homelands.[40] Their journeys and refugee lives coexisted with their developments of Islamic law, as they built up their own religious, social and economic lives in the littoral. They observed their own individual Islamic regulations with local inputs. Intermarriage with local communities, affiliations with existing political entities, and interactions for commercial and everyday needs all necessitated a continuous engagement with their conceptions of Islam and their self-identification as Muslims, and more specifically as Ibāḍī, Shīʿī, ʿAlawī or Sunnī Muslims.

The second group, the traders, is the predominant group in the littoral, for they moved across existing trading networks and explored new routes, lands, merchandise and communities, as they settled between the Chinese and African zones. Arabs and Persians were the dominant mercantile groups, but they were not the only ones.[41] In the African zone, for example, some of the first converts to Islam were Sudanese merchants, who themselves participated in the Red Sea trade as well as the wider Indian Ocean trade.[42] Similarly, more converts from other zones and Muslims born to foreign and local parents took part in the trade.

Traders depended on the monsoon winds for their travels, often staying in port for months waiting for the wind to change. During their long stays they interacted with the local communities, established themselves socially, culturally and commercially, and asserted their religious and linguistic identities. Although most of them were highly mobile, they also settled down in places if they found them more suitable and favourable commercially and politically. This pattern is reflected in Ibn Khurradāḏbih's statement cited above on the Muslims who settled

in Korea for its "congenial surroundings".[43] The political situation had a direct influence on the traders' decisions to settle in certain places. For example, following the revolt in Guangzhou against foreign merchants in 879, the Muslim traders avoided Chinese ports until the late tenth century.[44] Instead, they settled in ports in the Malay and Indic zones. Depending on the changing moods of politics, trade and environment, many traders thus became permanent residents in the littoral and contributed to its Islamic juridical complexities.

The largest numbers of the third group, the soldiers, came from the Indic and African zones between the eighth and tenth centuries. Before that there were some unsuccessful attempts at migration, such as the Arab raiders trying to enter Makrān from Kirmān during the reigns of ʿUmar bin al-Khaṭṭāb (d. 644) and Muʿāwiya bin Abī Sufyān (d. 680), but they had to withdraw because of unfavourable geographical conditions.[45] The early-eighth-century large-scale conquests of Sind under Muḥammad bin Qāsim, of the Dahlak Archipelago by order of Sulaymān bin ʿAbd al-Malik, and of Showa under the Makhzūmīs in the late ninth century, as well as the attacks of Maḥmūd Ghazni on Indic kingdoms in the late tenth and early eleventh centuries, all brought several Muslim soldiers to these regions.

After the conquests many of them returned to where they had come from, as Ibn Qāsim and Maḥmūd Ghazni themselves did, but they also left behind garrisons and permanent settlements. They also appointed representatives to look after the newly conquered subjects, settlements, lands and armies. These Muslim governors and soldiers eventually contributed to the making of a Muslim community in these places. In certain northern and north-western regions in the Indic zone they were the politically dominant community, controlling a large non-Muslim population of Hindus and Buddhists, while Dahlak embraced Islam almost entirely. Therefore, in these Indic and African regions, the engagements of the Muslim administrators with the larger society and the implications of Islamic law were quite different from the rest of the zones. For example, in his letters to Ibn Qāsim, Ḥajjāj constantly emphasised the role and rule of Islamic law in the new lands.[46] The Muslim rulers, soldiers and political representatives found sexual and social partners through *mawālī*, and as captives, slaves and concubines, but intermarriage with the local population was limited. At the same time, the ethos of Islam and its perceived conceptions of law and justice were crucial to the everyday maintenance of their society.

The fourth group were the scholars.[47] Many early Arab and Persian Muslim scholars are said to have travelled to distant lands and communities over all the Indian Ocean maritime zones and disseminated Islam and its laws. Local records exist about the arrival of the companions of the Prophet and their missionary activities in the Chinese, Malay, Indic and African zones. One Indic chronicle, for example, lists more than ten *qāḍī*s appointed by a companion of the Prophet in the seventh century across the Malabar Coast, and all of them were his relatives, who came with him from Arabia.[48] A similar narrative from China tells about the arrival of the Prophet's uncle and companion Saʿd bin Abī Waqqās (594–674) in Guangzhou, and his audience with the Emperor Gaozong of Tang (r. 649–83), which led to the establishment of the first mosque in China.[49] These narratives

cannot be taken at their face value, but they provide some hints on potential scholarly and missionary activity on the Indian Ocean rim. A reliable historical account from the mid-ninth century confirms that one Ibn Wahab al-Qurashī travelled in China propagating Islam and managing to meet the Tang emperor to whom he made several petitions. His claim to a lineage from the Prophet Muhammad the emperor verified by investigation before granting him an audience. After the meeting the emperor presented him with gifts and gave orders to ensure his smooth return from the capital to Guangzhou and then to Arabia.[50]

From the eighth to the tenth centuries maritime cities in Sind, such as Daybul and Manṣūra, welcomed and produced several scholars of Islam. Yazīd bin Abī Kabsha al-Saksakī, ʿAmr bin Muslim al-Bāhilī (who also were both appointed as governors of the region), Mufaḍḍal bin al-Muhallab bin Abī Ṣufra and Abī Ḥafṣ al-Asadī of Basra (d. 780) were all known as transmitters of *ḥadīth* and were some of the earliest scholars to arrive in the region from Iraq and Khurasan.[51] Although their impact on the growth of Islamic learning in Sind in the eighth century has been questioned, they do represent the larger pattern of scholarly mobilities in the littoral.[52] Sind, Daybul and Manṣūra also have produced several renowned scholars within the two centuries after Islam arrived there. Many of them found successful careers as judges, lecturers and religious leaders. Similarly, Somali traditions mention one Shaykh Darod Ismāʿīl and one Shaykh Isḥāq, who both came from Arabia, settled among the local community, and married Dir women. This led to the establishment of two huge clans named after them, the Darod and the Isḥāq. Historiographical consensus has it that this happened in the tenth century or later.[53] Mogadishu, Brava and Merca have similar trajectories and their own shares of scholars.[54] Such scholars and preachers must have been catalysts in establishing and spreading Islam and its laws across the world of the Indian Ocean.

Diplomats, the fifth group, were officials with special duties, who did not stay for long in the oceanic littoral. Therefore, their impact on Islamic legal praxis in the zones was limited. Even so, some sources talk about their practices of law and etiquette as being different from those of the local communities. Chinese accounts mention some Islamic diplomatic visits to the Chinese courts from the time of the third caliph ʿUthmān. Between 651 and 750 the Umayyad dynasty sent 33 diplomatic missions to Chang'an, some of which even demanded that the Tang submit to the caliphate.[55] But most of these were standard tribute missions. After the fall of the Umayyads the Abbasids sent at least 20 diplomatic missions within five decades between 751 and 798.[56] The Korean histories record the arrival of at least three Muslim merchants who came to the Korean court with presents to the king in the tenth century.[57]

One visit to China in the eighth century is noteworthy for its remarks on the notions of diplomatic differences. In 713 an Arab envoy came to the Tang court with beautiful horses and a magnificent girdle as presents. This unnamed diplomat refused to perform the prescribed obeisance during his audience with the Emperor, saying, "In my country we only bow to God, never to a Prince." The Chinese courtiers wanted to kill him, but one minister prevented them by saying that the differences in court etiquette should not be considered a crime. However,

this diplomat's reluctance to bow to the ruler should not be taken as part of a larger Islamic pattern, because another envoy called Su-li-man (Sulaymān) who visited the Chinese court in 726 did make obeisance to the Emperor and received a robe and girdle as presents.[58] These envoys continued to arrive in the Chinese courts through the period under discussion and in the following period of the Sung dynasty (960–1280). Their visits were often noted in some detail in the Chinese accounts.[59]

Some actors in these five functional and occupational groups had overlapping responsibilities and identities. Some exiles or soldiers were also scholars or traders. We should also keep in mind that these mobile groups were not a unidirectional, monolithic bunch of people travelling from the Arab-Persian zone eastwards. It was a complex web of migration in which many local Muslims, such as converts and descendants from intermarriages, also participated and advanced the religious and juridical realms of Islam. An important example is a narrative on the tumultuous journeys of the king of Sufāla (Mozambique), who was enslaved treacherously by a group of traders, taken to the Middle East, and sold at a slave market in Oman. Gradually, through his adventurous journeys, he converted to Islam, studied its rituals and laws, performed hajj pilgrimage, and managed to return home successfully. He went on to teach Islam to his subjects, convert them to the new religion, and adjudicate on the basis of his learning of Islamic law.[60] This account opens up a larger scenario of the mobility of Indian Ocean people to the central Islamic lands and brings together different terrains of their journeys as converts, forced migrants, slaves, students, scholars, preachers and pilgrims.

Legal schools

From the eighth to the tenth centuries was a time in which the renowned Sunnī, Shīʿī and Khārijī schools of law evolved into doctrinal forms in the Middle East. It is in the main understood as the formative and classical period of Islamic law. All the major legal schools, started as personal schools of prominent jurist-scholars in the eighth and ninth centuries, had developed into doctrinal schools by the late-ninth century with authoritative forms and structures.[61] Among Sunnīs a few major schools that emerged and became standardised in this period were Ḥanafism, named after Abū Ḥanīfa (699–767); Awzāʿism, after ʿAbd al-Raḥmān al-Awzāʿī (d. 774); Thawrism, after Sufyān al-Thawrī (d. 778); Laythism, after Layth bin Saʿd (d. 791); Mālikism, after Mālik bin Anas (711–795); Shāfiʿism, after al-Shāfiʿī (767–820); Ḥanbalism, after Aḥmad bin Ḥanbal (780–855); and Zāhirism/Dāwūdism, after Dāwūd bin ʿAlī al-Iṣfahānī (d. 884). Among Shīʿīs there were two prominent schools: Zaydism, named after Zayd bin ʿAlī (d. 740), and Jaʿfarism, after Jaʿfar al-Ṣādiq (d. 765). Among the Khārijīs it was Ibāḍism, named after ʿAbd Allāh bin ʿIbāḍ al-Tamīmī (d. 708). The timeframe for the formation of the schools and their consequent appeal to the larger Muslim followers are controversial scholarly subjects, but it is generally agreed that by the tenth

century in the Middle East individual Muslims began to follow one of the prominent schools.[62]

Did the Indian Ocean Muslims follow one of these doctrinal schools in the ninth to tenth centuries or did they infer their own judgements from the scriptures? Before adherence to any specific school became common, Muslims had choices. They could depend on an individual's own personal investigations, or adhere to a local scholar who had his or her own juridical inferences, or affiliate with any one of the schools that were evolving. In the Indian Ocean rim, most Muslims chose the first two options. As we shall see below in a case in China, the leader of the Muslim quarter there followed the Qurʾān, Islamic decrees, and his own independent investigation. He was contemporaneous to al-Shāfiʿī and Aḥmad bin Ḥanbal, the founders of Shāfiʿism and Ḥanbalism. As with this Chinese *shaykh*, many more *shaykh*s on the Indian Ocean shorelines inferred their own interpretations and rulings of Islam.[63]

Many Muslims in the littoral were religious and political exiles as I mentioned above and they had been forced to leave their homelands where the rules and rulings of law in the Middle East prevailed. In their new surroundings they asserted their sectarian identities more than any other group whenever they had a chance to express themselves and to make alliances on sectarian lines. We see this in the collaborations of Shīʿī and Ibāḍī communities in the Indic and African zones, particularly during and after the Fāṭimid dynasty. For example, the Shīʿī Ismaʿīlī groups in Sind strongly supported and preached the sectarian propaganda in the region and collaborated with the Fāṭimid rulers to gain favour for their religio-political agenda.[64]

Apart from the independent investigations of individual scholars and the sectarian assertions of the exiles, did the Sunnī schools, such as Shāfiʿism, maintain any prominence in the littoral in the ninth and tenth centuries? Some scholars have argued that this was the case, but I disagree. The oceanic rim had a mixed practice of Islamic law, in which different personal and doctrinal schools coexisted with each other. They were witnessing the birth and spread of new doctrines, synthesising an Arab, Persian, Indic, African, Chinese and/or Malay understanding of Islam and its laws. Instead of framing them as Shāfiʿī and Ḥanafī, the complexities in the practice of Islam, in the makings of its frameworks, its family and community, should be understood as the local sites in which those laws were made.[65] The prominence of a specific school, such as we see today across the oceanic world, happened only much later, in the sixteenth century.

Between the late tenth and twelfth centuries we see some marginal references to Shāfiʿism, as the Ghaznawid rulers in South Asia followed that school: Maḥmūd Ghaznī converted from Ḥanafism to Shāfiʿism; his successor Muḥammad bin Sām (r. 1030, 1040–41) continued following Shāfiʿism.[66] The rulers who succeeded them from the Ghūrid Dynasty also followed similar trajectories. Ghiyāth al-Dīn Ghūrī (r. 1163–1203) converted from the Karrāmiyya sect (founded in Sijistān by Abū ʿAbd Allāh Muḥammad bin Karrām, d. 869) to Shāfiʿism in 1199 at the hand of Qāḍī Waḥīd al-Dīn (or Wajīh al-Dīn) Muḥammad al-Marwazī. This conversion is said to have happened following a night when both the sultan and the

qāḍī dreamt of al-Shāfiʿī, the founder of the school. Ghiyāth al-Dīn is also said to have extended his patronage to Shāfiʿism against Karrāmism, and the great Shāfiʿī scholar Fakhr al-Dīn al-Rāzī (d. 1209) is one of the intellectuals who received his patronage to fight the Karrāmi preachers.[67] These episodes do not seem to have created any long-term ruptures in these regions, certainly not in the wider littoral, for their dominions eventually became the hotbeds of Ḥanafism.

Venues of legal formations

Early expressions of Islam and its laws in the Indian Ocean zones were connected to several nodal points, corresponding to spaces, institutions and practices. Unlike their co-believers in the Middle East, most Muslims were a minority in the population and they had to negotiate a place for Islamic law without offending the prevalent local customs and norms. Muslim settlements found themselves almost entirely within non-Muslim kingdoms, whether it was in Malabar, Ceylon, Silla, Guangzhou, Hainan, Pate, Lamu or Kedah, all of which were prominently affiliated to Taoist, Hindu, Buddhist, Christian, or some other faith system. Muslim kingdoms like Dahlak, Sind and Showa were exceptions. The most powerful political entities of this period were the Taoist Tang and Buddhist Silla dynasties in the Chinese zone, the Buddhist maritime empires of the Sailendras and Srivijayas in the Malay zone, the Hindu/Buddhist/Jain Chalukyas, Pallavas, Cholas, Cheras and Pandyas in the Indic zone, and the Christian Aksumites in the African zone. Except in Dahlak, Showa and Sind, most of the Islamic expansion in the littoral occurred not with soldiers and political conquests, but with merchants, scholars, preachers and political-religious exiles, whose practices and negotiations arose from different social, political and cultural concerns. Most Muslims lived in their own settlements, practising Islamic law (*aḥkām al-Islam*, as one contemporary observer notes specifically with regard to Guangzhou in Tang China) without much interference from local laws and cultures.[68]

The minority Muslim groups generally established their social and religious borders through legal activity. They acquired lands and places of worship from the local authorities and contributed in return to the economic and cultural realms of the regions.[69] The Kollam Copperplates Inscription from 849 provides insights in this regard. It is a grant for land and mercantile activity from the local chieftain on the Malabar Coast to Nestorian Christians, for which Muslims, Hindus, Jews, Zoroastrians and Christians all signed as witnesses.[70] A similar deed of appreciation was given to the Jewish community of Malabar in 1000. Although these instances are related to the Jewish and Christian mercantile communities, the experiences of Muslims in the region may not have been different. From the adjacent Coromandel Coast, a Tamil copperplate inscription from 875 shows how the king of Mathura provided refuge for a group of Muslim immigrants.[71] Later inscriptions from thirteenth-century Veraval in Gujarat and the Muccunti Mosque of Calicut give further support for this.[72] In all these instances land was given by Hindu kings to Muslim, Christian or Jewish traders or mercantile groups in their region along with facilities, resources and protection for lives and property.

The Muslim population of the African, Indic, Malay and Chinese zones was partly mobile and partly sedentary. As the travellers, traders and diplomats depended on monsoon seasons to schedule their mobility, they remained in these places only temporarily. They resorted to the existing arrangements or settlements of Muslims there. In contrast, the sedentary exiles, migrants, soldiers, traders and missionaries established permanent settlements as long as the local establishment allowed them. In either scenario, Islamic law appeared in the temporary or permanent settlements of Muslims in different degrees administering their mobile and sedentary members in their everyday interactions among themselves as well as with other communities.

In the *Akhbār al-Ṣīn wa al-Hind*, a travel account written in 851 on the commercial situation and socio-economic opportunities on the route from India to China, its anonymous author quotes a merchant Sulaymān. He said that the Muslims in the Chinese port Guangzhou had a head to arbitrate disputes within the community, permission to deliver sermons on Fridays, and to lead the prayer on *ʿīd* festival days. The Iraqi merchants sometimes did not agree with his rulings. We also read further that he acted according to the truth, the Qurʾān and the commandments (*aḥkām*) of Islam.[73] A century later, in *Kitāb ʿAjāʾib al-Hind*, Buzurg bin Shahriyār said that the Indic rulers allowed Muslims to execute Islamic law if any problems arose. He wrote, "If the thief is a Muslim, he is judged before the *hunarman* of the Muslims, who sentences him in accordance with Islamic law. This *hunarman* is like a *qāḍī* in a Muslim country. He can only be chosen from amongst Muslims."[74] Both these references shed some light on the legal administration within Muslim quarters and on the Muslim interactions with the wider community, even in criminal cases. We get similar narratives from other parts of the littoral.[75]

The intertwined concepts of *jihād* (holy war), *jizya* (poll tax) and justice are other vital elements in early formations of Islamic law in some of the maritime zones. When political conquests functioned as an effective method in the expansion of Islamic polities in some oceanic regions from the early eighth century up until the late tenth and early eleventh centuries, the principal motivations of the conquerors or of the rulers who ordered the campaigns were not necessarily religious. Still, the notions of *jihād* functioned as a legal paradigm for them to justify their expeditions and as a sanctified obligation for some participants, as we do see many *ghāzī*s volunteering for *jihād* in Maḥmūd Ghaznī's campaigns in the Indic zone.[76] The intertwined connotations of *ghazwa* (from which the verbal noun *ghāzī* emerges) and *jihād* for the wars against the infidels were substantiated concepts in Islamic legal literature early on. The wandering bands of warriors who assisted the political expansions were legally entitled to portions of the booty as their revenue. In such legally sanctioned *jihād*s various notions of law and justice were invoked, as we see in Ḥajjāj's letters to Ibn Qāsim in Sind.[77] To what extent their ideas and initiatives of *jihād* against a Hindu and Buddhist population differed from or converged with the legal paradigms of *jihād* in the Middle East is a different question. The same goes for the imposition of *jizya* on the majority non-Muslim population of newly conquered lands. Even so, many of

these Muslim rulers and subjects had some understanding of Islamic law, and that is what must have motivated "the greatest among Indian kings" to approach the ruler of Manṣūra requesting a translation of Islamic law into his own language, as Buzurg bin Shahriyār records in the tenth century.[78] As a result a scholar was sent to his kingdom with a poetic version of Islamic law and Qurʾān exegesis, and it arguably led to his secret conversion to Islam.

Physical institutions: mosques

In the Indian Ocean littoral many early Muslims had enclaves which were not fully walled or closed settlements. Their settlements were loosely connected residences in which other foreigners, including Nestorian Christians, Jews, Hindus, Zoroastrians and local inhabitants also lived. Only in some places and at some points were Muslims forced to live in separate quarters. This happened, for example, in Guangzhou in the early ninth century, when a new prefect and governor forced all foreigners to live in a segregated area.[79] In the conquered lands of Makrān, Manṣūra, Daybul and Maḥfūẓa, the Muslims chose to have their own enclaves separating them from the larger community. But mosques were always an important space for the existence of a Muslim community. It was not only a community building for obligatory prayers and rituals, but also for the administration of law. As we saw above, numerous mosques were founded in the Indic and African zones. An inscription in Māṭāyi in northern Malabar claims the establishment of a mosque there in the early seventh century. Furthermore, archaeological excavations in Lamu and Pate in East Africa have unearthed several mosques, all dating to a period between 750 and 1000.[80] The legal issues of endowments (*waqf*) and property ownership with regard to these mosques are not yet known.

Apart from permanent buildings for mosques there were also temporary places of worship, without purpose-built physical structures, where the community gathered daily or weekly for the congregational prayers. When political and religious circumstances were not favourable to the Muslim minorities they performed prayers secretly. One reference to this comes from Buzurg bin Shahriyār in the story he collected from the Muslim maritime town of Manṣūra in Sind. According to the story, the aforementioned king of Ra, "the greatest among Indian kings", embraced Islam through his interaction with the Muslim ruler of Manṣūra. Fearing a backlash from his people, he kept his conversion secret, but built a worship place where he prayed covertly.[81] We cannot validate the truth of this story, but it could represent a wider pattern of religious life in an unfavourable context. The situation of course changed when the majority of the population was Muslim, as happened in Dahlak and some eastern African coastal townships, or where the rulers were openly Muslim, such as in Makrān, Manṣūra, Multan and Showa. In all other places, Muslims had to establish a favourable point of contact from the political and social authorities to establish mosques and to conduct their prayers without disruption.

Friday prayers and sermons were important occasions for Islamic legal expressions. The whole community assembled on a weekly basis, and this helped the

community to assert their connections with the larger Muslim world, both politically and physically. It brought together the residents in the area along with temporary visitors from elsewhere into the same space, giving opportunities for them all to interact, renew old connections or build up new networks. Norman Calder has analysed the significance of Friday prayers with regard to the political power in the Islamic legal tradition by looking at the writings of three eleventh-century jurists, while Elizabeth Lambourn has analysed the sermon's importance for the Indian Ocean Muslims in the thirteenth century and later.[82] In a similar vein, the Friday prayers and sermons were important also for the earlier Muslim communities in the littoral. In the ninth century, the Muslims in Guangzhou named the caliph and prayed for him in the *khuṭba* (sermon).[83] In the tenth century, Ibn Ḥawqal talks about a Friday sermon in Sind in which the ʿAbbāsid caliph's name was mentioned.[84] Similarly, during the reign of the Fāṭimid caliph al-Muʿizz (r. 953–7), the Ismāʿīlīs in Sind and Multān mentioned the Fāṭimid ruler in their sermons.[85]

Naming the caliph and praying for him towards the end of the sermon was important to enable these communities to feel united with the larger Islamic world and to be recognised under the caliphate, even if they had protested against or escaped from it. The case of the Mutaghalliba in Makrān is a telling example in this regard. They had rebelled against the caliphate in the ninth century, yet they continued to name and pray for the caliph in their Friday sermons. The existence of congregational prayers and the naming of the caliph in the sermons were also equally significant for the visiting travellers, scholars and traders for they too felt connected with the local communities as part of a larger Islamic commune.[86]

Social institutions: marriage

While the homes and mosques provided physical spaces for penal and ritual observations of Islamic law, the institution of marriage was another significant legal realm in the lives of Muslims. Many exiles, itinerants, traders and scholars married local people (Muslim or non-Muslim) which involved different juridical and social implications. Most travelling Muslims were men, but a significant number of women accompanied those men and others travelled in their own right.

Some scholars note that "Muslim law was not strictly respected, still less so the rules of marriage" in these communities until the eleventh century. Others endeavour to justify these marriages, looking at them through legal prisms, such as *mutʿa* (a marriage contracted for a fixed period by paying *mahr* to the woman), or by arguing that such marriages enabled Shāfiʿī Muslims to prefer Shāfiʿī Muslims in distant lands over neighbouring Ḥanafī Muslims.[87] However, such arguments are rather anachronistic. "Muslim law" was still in a state of gestation, and people everywhere, including in the Middle East, were exploring ways in which their everyday lives should follow and interpret the prescriptions of Islam. The Indian Ocean Muslims were also exploring these nuances and contributed to its formation in the process. In marriages, religious and legal boundaries were fluid, not only in the oceanic littoral but across the early Islamic world. The Qurʾān (5:5)

did not require a believer's marriage to be endogamous. It allowed marriages with Jewish and Christian women, and arguably with Sabaeans, Zoroastrians, Magians and Samaritans. In that respect, the religious identities of non-Muslim communities on the Indian Ocean rim was a dubious category for the spouse of an itinerant Muslim. The people in the Malay, Chinese, Indic and African zones had not yet been defined as within or beyond the fixed legal identities of *ahl al-kitāb* ("people of the book") or *ahl al-dhimma* ("Protected Persons") allowed in the scriptures. Such detailed categorisations and identifications of those who should be rejected occurred mainly in the second millennium.[88] Therefore, the Muslims in the littoral had an independence to enter a marriage without transgressing any known proscriptions of Islam.[89] It was more complex when the local spouse did not want to convert, but many of them did convert to Islam and hence avoided the juridical complexities. The situation changed over time with the expansion of Muslim populations with more potential spouses available from within the community, and endogamous marriages became the norm.[90]

The *mutʿa* marriage and the marital preferences of the legal schools would not go hand in hand, at least as a valid argument. If one agreed that the affiliations of the school mattered in the marital choices of the early Muslims, one would not marry through the *mutʿa* system because it was prohibited, not only in Shāfiʿī law but in all the prominent Sunnī schools. In his *Umm*, al-Shāfiʿī rejects the *mutʿa* as a legitimate form of marriage.[91] The same opinion was furthered by other jurists from the same school, such as his commentator-jurists Muzanī (d. 878) and Juwaynī (d. 1085).[92] Other Sunnī schools also expressed the same opinion and it became the commonly agreed view among them from the eighth century onwards. The Shīʿī schools generally permitted the practice, but not the Zaydī school.[93] Thus, the Muslims on the littoral will have had to depend on a Shīʿī ruling to conduct *mutʿa* marriages. But this seems to be injudicious if we correlate an existing argument, that the same Muslims followed the Shāfiʿī school and preferred to marry within the school rather than outside, such as marrying neighbouring Ḥanafīs.[94] How could they go deliberately and collectively against their Sunnī coreligionists by adhering to a Shīʿī praxis?

Maritime Muslims across the Indian Ocean might have engaged in temporary marriages, for that was convenient for their constant mobility. But, from a legal perspective, temporary marriages are quite different from the *mutʿa* marriage, although both essentially serve the same purposes. The central legal constituents of the *mutʿa* marriage are the time constraints and the specification of a reward for the bride. In addition, unlike a normal marriage, it is irrevocable and unextendible, it does not require witnesses and *qāḍī*, divorce is impossible, and there is no obligation on the husband to provide a home and food for the wife. Al-Shāfiʿī and his followers denounced the *mutʿa* as a forbidden practice, but allowed temporary marriages provided no defined period was specified in the contract. For them, and for other Sunnīs and for Zaydī Shīʿīs, such a temporary marriage is a proper marriage. The temporariness comes from the personal choices of the couple to sustain it or to annul it after a year, a month, or even after a day. There are several conditions: witnesses and a *qāḍī* have to be present; the spouses can divorce each other; the

husband has to provide maintenance for the wife. Yet again, all these nuances matter only if the Shāfiʿī school mattered for the early Muslims of the Indian Ocean.

As I discussed previously, we have references to adherents of Shāfiʿism in the Indic zone from the period under discussion on the mainland of South Asia and Central Asia, but not from the southern Indic coasts. This fact complicates any existing suggestion that the Shāfiʿīs on the southern coasts preferred to marry Shāfiʿīs from Southeast Asia rather than Ḥanafīs resident in adjacent areas and in northern India. If the southern Indians at that time were also Shāfiʿīs they would have married the northern Indian Shāfiʿīs, for they were known to be following the Shāfiʿī school at that time. Otherwise they would have to rely on a Shīʿī ruling. I would say that the school affiliation is nowhere considered as a rational justification for marital preferences, at least for the period in our present focus. The motivations for later maritime Muslims from Indic zone preferring to marry coreligionists from the Malay zone rather than mainland Indian Muslims will thus need a different explanation.

Conclusion

In this chapter I have directed the attention of scholarship to the relevance of Islamic law among the cultures and practices of early Muslims who lived in the Indian Ocean world, well beyond the central Islamic lands. The Arab-Persian zone has been the centre of studies in the existing literature, but the African, Indic, Chinese and Malay zones had similar religious and juridical trajectories with various political, scholarly and social entanglements. Islamic law existed and evolved there through exiles, traders, scholars, soldiers and diplomats. The intermarriages, conversions and propagations provided initial and intimate spectrum of familiarity with Islam, which eventually facilitated the emergence of advanced juridical engagements from the ports of Guangzhou and Kedah to Sind, Malabar, Kilwa and Pate.

In contrast to the Arab-Persian zone, Islam and its institutions functioned in most of these maritime zones through a constant negotiation with the non-Muslim political majorities from the seventh to tenth centuries. This facilitated or brokered their social, religious, economic and legal lives through intermarriage, establishing residences and mosques, and permission to administer their own laws. Physical institutions, such as mosques and homes, along with social institutions, such as marriages, illustrate significant elements of these legal negotiations. The strict boundaries of the legal schools did not yet influence the social relations, as the boundaries were fluid for most Muslims. This does not mean that they were less Islamic or less law-abiding than their co-believers in the Islamic heartlands. At that time they all were in the process of figuring out what was and what was not Islam, that is Islamic law, beliefs, practices, ethics and rituals, and thus they contributed to the process of actual formulations of Islam. This process involved diverse techniques of negotiation with both internal and external bodies, with the dominant socio-political regimes as much as with the known and unknown parameters of Islam.

In the period on which I have focussed, no one legal school or stream dominated the entire spectrum of the Indian Ocean. There were several schools within

and outside the Sunnī, Shīʿī and Ibāḍī traditions. All those legal streams made their presence felt in the littoral, and extended it well beyond the ninth and tenth centuries with ups and downs in the African, Indic, Malay and Chinese zones. In addition, there were several individual jurists, contemporary with the founding jurists of the major Islamic legal schools, who found their own ways and methods to interpret Islamic scriptures for the solution of the problems in their immediate contexts and for overseeing their concerns. Their individual contributions to Islamic law, developing from personal schools to regional and doctrinal schools, deserve further investigation.

From the end of the tenth century and the beginning of the eleventh century Islamic legalistic engagements were to intensify in the oceanic littoral, especially after the establishment of new Islamic kingdoms, such as in Mtanby (Mtambwe), Mkanbalū (Mkumbuu), Ghazna, Lahore, Delhi and Pasai. These polities, along with those existing ones in the Indic and African zones, and new communities of locally grown and educated Muslim scholars and jurists, would intensify the ways in which Islamic law was conceptualised and practised in the littoral even further.[95] Through interactions between an Asian-African-Arab triangle of scholars, the Indian Ocean Muslims generated their own networks of knowledge, among themselves as well as with the wider Islamic world, with unique but shared vocabularies. The following chapters in this volume will address these trajectories in the later centuries.

Notes

1 K.N. Chaudhuri, *Trade and Civilisation in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (Cambridge: Cambridge University Press, 1985), 21.
2 S.D. Goitein, "Mediterranean Trade Preceding the Crusades: Some Facts and Problems," *Diogenes* 15 (1967): 61–2; Chaudhuri, *Trade and Civilisation*, 13, 21.
3 For example, compare the treatment of peripheral regions in the classic text of Joseph Schacht, *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964) with Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005).
4 Gerald R. Tibbetts, *Arab Navigation in the Indian Ocean before the Coming of the Portuguese being a Translation of* Kitāb al-fawāʾid fī uṣūl al-baḥr wa-l-qawāʿid *of Aḥmad b. Mājid al-Najdī*, trans. with notes (London: Royal Asiatic Society, 1971); George Hourani, *Arab Seafaring in the Indian Ocean in Ancient and Early Medieval Times* (Princeton, NJ: Princeton University Press, 1995); Dionisius Agius, *Classic Ships of Islam: From Mesopotamia to the Indian Ocean* (Leiden: Brill, 2008).
5 For an overview of these names and usages, see *Encyclopedia of Islam*, second edition, s.v. "Baḥr al-Hind".
6 For a recent engagement with such narratives, see Scott Kugle and Roxani Eleni Margariti, "Narrating Community: the *Qiṣṣat Shakarwatī Farmāḍ* and Accounts of Origin in Kerala and around the Indian Ocean," *Journal of the Economic and Social History of the Orient* 60 no. 4 (2017): 337–80.
7 Gerald R. Tibbetts says that there is no evidence of a direct Arab presence in the Southeast Asian archipelago before the sixth or seventh century, although there must have been indirect connections through merchants, markets and merchandise of India and Sri Lanka. Gerald R. Tibbetts, "Pre-Islamic Arabia and South-East Asia," *Journal of the Malayan Branch of the Royal Asiatic Society* 29 (1956): 204–7. Cf. Aglaia

Iankovskaia, "At the Edge of the World of Islam: Maritime Southeast Asia in the Eyes of Ibn Battutta" (MA thesis, Central European University, 2017), 9–11.

8 Abū ʿAbd Allāh Muḥammad bin Saʿd kātib al-Wāqidī, *Kitāb al-Ṭabaqāt al-Kabīr* [aka *al-Kubrā*), ed. ʿAlī Muḥammad ʿUmar (Cairo: Maktabat al-Khānjī, 2001), Vol. 1: 172–4 (on the first batch), 176–7 (on the second batch); see Ibn Hishām, *al-Sīrat al-Nabawiyya*, ed. ʿUmar ʿAbd al-Salām Tadmurī (Beirut: Dār al-Kutub al-ʿArabī, 1990), Vol. 1: 349–67.

9 Wāqidī, *Kitāb al-Ṭabaqāt al-Kabīr*, Vol. 1: 177; Ibn Hishām, *al-Sīrat al-Nabawiyya*, Vol. 1: 361–7.

10 Abdulla Anjillath, "Madayi Mosque Inscriptions: The Key to Socio-Cultural Crossing through Indian Ocean Trade," Unpublished Paper; Mehboob Desai, "Port Town of Gujarat Ghogha," and "Oldest Mosque of India: Village Ghogha, Dist. Bhavnagar, Gujarat, India," http://mehboobdesai.blogspot.com/2012/05/oldest-masjit-of-india-village-gogha.html and https://mehboobudesai.wordpress.com/2016/06/14/port-town-of-gujarat-ghogha-prof-mehboob-desai/ (both links accessed on 9 September 2019)

11 Willem Pieter Groeneveldt, *Notes on the Malay Archipelago and Malacca Compiled from Chinese Sources* (Batavia: W. Bruining and The Hague: M. Nijhoff, 1876), 14, 15, 101.

12 Uka Tjandrasasmita, "The Sea Trade of the Moslems to the Eastern Countries and the Rise of Islam in Indonesia," in *Studies in Asian History, Proceeding of the Asian History Congress*, ed. Kishori Saran Lal (London: Asia Publishing House, 1961), 93.

13 Groeneveldt, *Notes on the Malay*, 14, 101.

14 Anonymous, *Futūḥāt al-jazāʾir* (Amini: no publisher, no date); Anonymous, *Qiṣṣat Shakarwatī Farmāḍ*, British Library Ms. Or. 1738; Said Husayni, *Bughyat al-Talib fi dhikr awlad 'Ali bin Abi Talib* (typed file at the CNDRS collection, Moroni); cf. Kugle and Margariti, "Narrating Community".

15 Aḥmad bin Yaḥyā Balādhuri, *Futūḥ al-Buldān* (Beirut: Maktabat al-Hilal, 1988), 420–7; Mirza Kalichbeg Fredunbeg, *The Chachnamah, An Ancient History of Sind* (Karachi: Commissioner's Press, 1900), 69–88. For a critical assessment of these narratives, see Manan Ahmed Asif, *A Book of Conquest: The* Chachnama *and Muslim Origins in South Asia* (Cambridge, MA: Harvard University Press, 2016).

16 Liu Xu 劉煦, *Jiu Tangshu* 舊唐書 (Old Tang History) (Beijing: Zhonghua shuju, 1987) 10, p. 253 as cited by John W. Chaffee, *The Muslim Merchants of Premodern China: The History of a Maritime Asian Trade Diaspora, 750–1400* (Cambridge: Cambridge University Press, 2018), 43–4. He rejects both arguments and suggests that they were most probably "followers of the piratical strongman of southern Hainan, Feng Roufang".

17 Xu, *Jiu Tangshu*, 110, p. 3313 and Ouyang Xiu 歐陽修, *Xin Tangshu* 新唐書 (New Tang History) (Beijing: Zhonghua shuju, 1975) 141, p. 4655 and 144, p. 4702 as cited by Chaffee, *Muslim Merchants*, 42–3.

18 Muhammad bin Fumo Omari al-Nabhani *alias* Bwana Kitini, *Akhbar Pate: Habari za Pate* as published, edited and translated by Alice Werner, "A Swahili History of Pate," *Journal of the Royal African Society* 14, no. 54 (1915): 148–61; Captain C.H. Stigand, *The Land of Zinj: Being an Account of British East Africa, its Ancient History and Present Inhabitants* (London: Constable & Company, 1913), 6, 29–30; also see Anonymous, "Die Rechte der Nabahaniten," *Deutsche Kolonialzeitung* no. 2 (1890): 22–3.

19 Mark Horton, *Zanzibar and Pemba: The Archaeology of an Indian Ocean Archipelago* (London: British Institute in Eastern Africa, 2017).

20 Mark Horton, "Primitive Islam and Architecture in East Africa," *Muqarnas* 8 (1991): 103–16.

21 For surveys of this corpus from the perspectives of different zones, see Sayyid Sulaiman Nadwi, *Arab o Hind ke Ta'alluqat* (Allahabad, 1930); Muḥammad Ḥusayn Nainar, *Arab*

Geographers' Knowledge of Southern India (Madras: University of Madras, 1942); G.R. Tibbetts*, Study of the Arabic Texts Containing Material on South-East Asia* (Leiden and London, E.J. Brill for the Royal Asiatic Society, 1979); Tibbetts, *Arab Navigation*.

22 Neville Chittick, "The 'Shirazi' Colonization of East Africa," *The Journal of African History* 6, no. 3 (1965): 275–94.

23 Yaḥyā Naṣr Allāh, *Legende und Geschichte der Fatḥ madīnat Harar*, ed. and trans. Ewald Wagner (Wiesbaden: Franz Steiner, 1978); Enrico Cerulli, "Il Sultanato dello Scioa nel secolo XIII secondo un nuovo documento storico," *Rassegna di Studi Etiopici* 1, no. 1 (1941): 5–42.

24 Masʿūdī, *Murūj al-Dhahab*: *Les Prairies d'Or,* ed. and trans. into French C. de Meynard and P. de. Courteille (Paris: Société asiatique, 1861).

25 Giovanni Oman, "The Islamic Necropolis of Dahlak Kebīr in the Red Sea: Report on a Preliminary Survey Carried out in April 1972," *East and West* 24, nos. 3/4 (1974): 249–95.

26 Hourani, *Arab Seafaring in the Indian Ocean*, 68.

27 Chau Ju-kua, *Chu-fan-chï*, trans. Friedrich Hirth and W.W. Rockhill (St. Petersberg: Printing Office of the Imperial Academy of Sciences, 1911), introduction: 16

28 Ibn Khurdādbih. *Kitāb al-Masālik wa al-Mamālik,* ed. M.J. de Goeje (Leiden: Brill, 1889), 70, 170. In the tenth century, Masʿūdī also wrote about the Muslim settlement in Korea. Masʿūdī, *Murūj al-Dhahab*, Vol. 1: 346, cf. Kei Won Chung and George F. Hourani, "Arab Geographers on Korea," *Journal of the American Oriental Society* 58, no. 4 (1938): 658–61.

29 Masʿūdī, *Murūj al-Dhahab*, Vol. 1: 307–8; Abū Zayd al-Sīrāfī, "Accounts of China and India," in *Two Arabic Travel Books: Accounts of China and India by Abū Zayd al-Sīrāfī and Mission to the Volga by Ibn Fadlan*, ed. and trans. T. Mackintosh-Smith (New York: New York University Press, 2014), 66–71, 88–9.

30 On the scholarly debates on the exact location of Kalāh in the present-day Malay world, see Paul Wheatly, *The Golden Khersonese: Studies in the Historical Geography of the Malay Peninsula before A.D. 1500* (Kuala Lumpur: University of Malaya Press, 1961), 224; S.Q. Fatimi, "In Quest of Kalah," *Journal of Southeast Asian History* 1, no. 2 (1960): 62–101; Tibbetts, *A Study of the Arabic Texts*, 122–8.

31 Masʿūdī, *Murūj al-Dhahab*.

32 Iankovskaia, "At the Edge of the World of Islam," 11–14.

33 G.W.J. Drewes, "New Light on the Coming of Islam to Indonesia," *Bijdragen tot de Taal-, Land- en Volkenkunde* 124 (1968): 433–59; Bertram Schrieke, "Javanese Trade and the Rise of Islam in the Archipelago," in *Indonesian Sociological Studies* (The Hague: W. van Hoeve, 1955); G.R. Tibbetts, "Early Muslim Traders in South-East Asia," *Journal of the Malaysian Branch of the Royal Asiatic Society* 30 (1957): 1–45.

34 Ibn Khurdādbih, *Kitāb al-Masālik wa al-Mamālik,* 70, 170. Cf. Chung and Hourani, "Arab Geographers on Korea" and Hee Soo Lee, "Islam in Korea: History, Present Situation and Future Prospect," *Korea Journal of Islamic Culture* 1, no. 1 (1997). The latter quotes Nūr al-Dīn Muhammad al-Awfī (*fl.* seventh century) who says that "a great number of Shi'a formed their own community in allegiance to Ali on Hainan Island, located south of China".

35 Hourani, *Arab Seafaring*, 63; Edward Schafer, *The Golden Peaches of Samarkand: A Study of T'ang Exotics* (Berkeley, CA: University of California Press, 1963), 15.

36 Andre Wink, *Al-Hind: The Making of the Indo-Islamic World*, vol. 1*: Early Medieval India and the Expansion of Islam, 7th-11th Centuries* (Leiden: Brill, 1996), 88–9, 94.

37 Molly Benjamin Patterson, "South Arabian Maritime Expansion and the Origins of East African Islam: 1200–1500" (PhD diss., University of Wisconsin-Madison, 2009), 2–3.

38 Some Abbasid governors in Sanaa were Shīʿīs, for they wanted to be sent to Yemen or the Hijaz at large. I am grateful to Eirik Hovden for this reference. Also, see Taddesse Tamrat, "Ethiopia, the Red Sea and the Horn," *The Cambridge History of Africa*, Vol.

3: *c. 1050–c.1600*, ed. Roland Oliver (Cambridge: Cambridge University Press, 2001 [1977]), 118.

39 Muḥammad Nāẓim, *The Life and Times of Sulṭān Maḥmūd of Ghazna* (Cambridge: Cambridge University Press, 1931), 96–7; Mohammad Habib, *Sultan Mahmud of Ghaznin* (Aligarh: Cosmopolitan Publishers, 1951), 34–6; C.E. Bosworth, *The Ghaznavids: Their Empire in Afghanistan and Eastern Iran* (Edinburgh: Edinburgh University Press, 1963), 76.

40 Some later groups in Abyssinia, Malabar, etc. traced their ancestry to these initial refugees, but it is difficult to validate their claims or to construct a continuity based on solid evidences on the migrants who lived there later.

41 Although the Chinese sources generally use the term Tazi to denote Arabs, the term also occasionally referred to the Persians.

42 As can be inferred from Ahmad bin ʿAlī al-Maqrīzī, *Kitāb al-Khiṭaṭ al-Maqrīziyya* (Cairo: General Organization for Cultural Centres, 2002), Vol. 1: 323–5.

43 Ibn Khurdādbih, *Kitāb al-Masālik wa al-Mamālik,* 70, 170; Masʿūdī, *Murūj al-Dhahab*, Vol. 1: 346.

44 Chaffee, *Muslim Merchants*, 51–65.

45 Aḥmad bin Yaḥyā al-Balādhurī, *Futūḥ al-Buldān*, ed. M.J. de Goeje (Leiden: Brill, 1866), 433–4; Shihāb al-Dīn Abū ʿAbd Allāh Yāqūt al-Ḥamawī, *Kitāb Muʿjam al-buldān* (Beirut: Dār Ṣādir, 1977), Vol. 5: 179–80

46 Ahmed, *Book of Conquest*.

47 The preachers can also be considered as part this functional group, for both scholars and preachers capitalised on their knowledge of religion and had similar objectives in the circulation of Islamic ideas. This is not to forget that, in a closer scrutiny, there are differences in the functions of Muslim missionaries and scholars in the oceanic littoral as elsewhere.

48 This tradition is narrated by Aḥmad Zayn al-Dīn al-Malaybārī in the sixteenth century, but he suspects claims for the arrival of Islam there in the seventh century itself. His dating of the ninth century also cannot be validated without other historical evidence, and this issue and the arrival of Islam on the coast have been widely contested by historians.

49 Donald Leslie, *Islam in Traditional China* (Canberra: Canberra College of Advanced Education, 1986), 70–5; Hyunhee Park, *Mapping the Chinese and Islamic Worlds: Cross-Cultural Exchange in Premodern Asia* (Cambridge: Cambridge University Press, 2012), 120–1.

50 al-Sīrāfī, *Ancient Accounts of India and China by Two Mohammedan Travellers who Went to those Parts in the 9th Century*, trans. Eusèbe Renaudot (London: S. Harding, 1733), 51–9.

51 On the first two governor-cum-scholars, see Yazīd b. Abī Kabsha al-Saksakī in Balādhurī, *Futūḥ al-Buldān*, 441; on Mufaḍḍal bin al-Muhallab bin Abī Ṣufra, see Ṭabarī, *Tārīkh*, ed. M.J. de Goeje (Leiden : Brill, 1901), Vol. II: 1410–13.

52 For a critical approach on the emergence of Islamic learning in the region, see Yohanan Friedmann, "The Beginnings of Islamic Learning in Sind: A Reconsideration," *Bulletin of the School of Oriental and African Studies* 37, no. 3 (1974): 659–64.

53 Taddesse Tamrat, "Ethiopia, the Red Sea and the Horn," in *The Cambridge History of Africa*, Vol. 3: *from c. 1050 to c. 1600*, ed. Roland Oliver (Cambridge: Cambridge University Press, 2007 [1977]), 137.

54 Patterson, "South Arabian Maritime Expansion"; H. Neville Chittick, "The East Coast, Madagascar and the Indian Ocean," in *The Cambridge History of Africa*, Vol. 3: *from c. 1050 to c. 1600*, ed. Roland Oliver (Cambridge: Cambridge University Press, 2007), 192–201.

55 Leslie, *Islam in Traditional China*, 31.

56 Park, *Mapping the Chinese and Islamic Worlds*, 6; Leslie, *Islam in Traditional China*; Drake, "Mohammedanism in the T'ang Dynasty," *Monumenta Serica* 7 (1943): 6–9; Chaffee, *Muslim Merchants,* 17.
57 Chung and Hourani, "Arab Geographers on Korea," 661.
58 E. Bretschneider, *On the Knowledge Possessed by the Ancient Chinese on the Arabs and Arabian Colonies* (London: Trubner & Co., 1871), 8.
59 Bretschneider, *On the Knowledge*, 13–14. For example, the arrival of an envoy from Arabia with a black slave in 976 created some sensation in the court. The slave was from K'un lun or the Malay Archipelago, not from Africa or Central Asia. In the Chinese accounts of the time, K'un lun refers to the Island Pulu Condore near Cambodia.
60 Buzurg bin Shahriyār al-Rāmhurmuzi, *Kitāb ʿAjāʾib al-Hind* (*Livre des merveilles de l'Inde*), Arabic text ed. P.A. Van der Lith and trans. L. Marcel Devic (Leiden: E. J. Brill, 1883–1886), 43–52; Buzurg bin Shahriyār al-Rāmhurmuzi, *The Book of the Wonders of India*, ed. and trans. G.S.P. Freeman-Grenville (London, The Hague: East-West Publications, 1981), 31–6.
61 Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden and New York: E.J. Brill, 1997); Nurit Tsafrir, *The History of an Islamic School of Law: The Early Spread of Hanafism* (Cambridge, MA: Islamic Legal Studies Program and Harvard University Press, 2004); Wael B. Hallaq, "From Regional to Personal Schools of Law? A Reevaluation," *Islamic Law and Society* 8 (2001): 1–26.
62 For the tenth-century view, see Roy Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton, NJ: Princeton University Press, 1980), 25; Richard Bulliet, *Patricians of Nishapur* (Cambridge, MA: Harvard University Press, 1972), 31; Ira Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 1988), 167. On the ninth century, see Nurit Tsafrir, "The Beginnings of the Hanafi School in Isfahan," *Islamic Law and Society* 5, no. 1 (1998): 1. For the eighth-century view, see Wilferd Madelung, *Religious Trends in Early Islamic Iran* (Albany: State University of New York, 1988), 18, 26; M.G.S. Hodgson, *The Venture of Islam* (Chicago: University of Chicago Press, 1974), Vol: 1: 535.
63 For example, see Abū Isḥāq Ibrāhīm al-Iṣṭakhrī, *Kitāb al-Aqālīm,* in *Bibliotheca geographorum Arabicorum*, ed. M.J. de Goeje (Leiden: Brill, 1870); selected English trans. H M Elliot and John Dowson, *The History of India, as Told by its Own Historians: The Muhammadan Period* (Cambridge: Cambridge University Press, 2013), Vol. 1: 27; Anonymous, *Ḥudūd al-Alam: The Regions of the World: A Persian Geography, 372 A.H.–982 A.D*, trans. Vladimir Minorsky (London: Luzac, 1937), 89: 32.
64 S.M. Stern, "Ismāʿīlī Propaganda and Fatimid Rule in Sind," *Islamic Culture* 23 (1949): 298–307.
65 S.Q. Fatimi, "Two Letters from the Mahārājā to the Khalīfah: A Study in the Early History of Islam in the East," *Islamic Studies* 2, no. 1 (1963): 121–4.
66 On the conversion of Maḥmūd Ghaznī, see Tāj al-Dīn ʿAbd al-Wahhāb ibn ʿAlī al-Subkī, *Ṭabaqāt al-Shāfiʿīyyat al-kubrā*, eds. Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Maṭbaʿat ʿĪsā al-Bābī al-Ḥalabī), Vol. 5: 316; on Muḥammad bin Sām's affiliation with the school, see Subkī, *Ṭabaqāt al-Shāfiʿīyya*, Vol. 8: 60–1.
67 Abū ʿUmar Minhāj al-Dīn ʿUthmān Jūzjānī, *Ṭabaqāt-i Nāṣirī*, ed. W. Nassau Lees, Mawlawī Khadim Hosain and ʿAbd al-Hayy (Culcutta: College Press, 1864), 77–8, for a translation, see Abū ʿUmar Minhāj al-Dīn ʿUthmān Jūzjānī , *Ṭabaqāt-i Nāṣirī: A General History of the Muhammadan Dynasties of Asia, Including Hindustān, from A.H. 194 (810 A.D.) to A.H. 658 (1260 A.D.) and the Irruption of the Infidel Mughals into Islām*, trans. Henry George Raverty (London: Gilbert & Rivington, 1881), Vol. 1: 384–5; cf. Edmund Bosworth, "The Rise of the Karamiyyah in Khurasan," *The Muslim World* 50, no. 1 (1960): 5–14.

68 al-Sīrāfī, *Ancient Accounts of India and China*, 7, 12. For the Arabic, see Jean Sauvaget, *'Ahbār aṣ-ṣīn wa l-hind. Relation de la Chine et de l'Inde, rédigée en 851* (Paris : Belles Lettres, 1948), 7.

69 For example, see the inscriptions in Mehrdad Shokoohy, "Sources for Malabar Muslim Inscriptions," in *Malabar in the Indian Ocean: Cosmopolitanism in a Maritime Historical Region*, eds. Mahmood Kooria and Michael Pearson (New Delhi: Oxford University Press, 2018): 1–63; Alka Patel, "Transcending Religion: Socio-linguistic Evidence from Somnatha-Veraval Inscription," in *Ancient India in its Wider World*, eds. Grant Parker and Carla Sinopoli (Ann Arbor: University of Michigan Press, 2008), 143–64; M.G.S. Narayanan, *Cultural Symbiosis in Kerala* (Trivandrum: Kerala Historical Society, 1972).

70 M.R. Raghava Varier and Kesavan Veluthat, *Tarissāppaḷḷippaṭṭayam* (Kottayam: National Book Stall, 2013); Narayanan, *Cultural Symbiosis*.

71 Muḥammad Yūsuf Kūkan, *Arabic and Persian in Carnatic, 1710–1960* (Madras: Hafiza House, 1974), 53.

72 Z.A. Desai, "Arabic Inscriptions of the Rajput Period from Gujarat," *Epigraphia Indica Arabic and Persian Supplement* (1961): 1–24; E. Hultzsch, "A Grant of Arjunadeva of Gujarat, Dated 1264 AD," *Indian Antiquary* (1882): 241–5; D.C. Sircar, "Veraval Inscription of Chaulukya-Vaghela Arjuna, 1264 AD," *Epigraphia Indica*, XXXIV (1961–62): 141–50; *Annual Report on Indian Epigraphy* 1947–8, B 94; *Annual Report on Indian Epigraphy* 1965–6, D 58; Z.A. Desai, *A Topographical List of Arabic, Persian and Urdu Inscriptions of South India* (New Delhi: Indian Council of Historical Research, 1989), no. 1059, 101–2.

73 al-Sīrāfī, *Ancient Accounts of India and China*, 7, 12. For the Arabic original, Sauvaget, *'Ahbār aṣ-ṣīn wa l-hind*, 7.

74 Buzurg bin Shahriyār al-Rāmhurmuzi, *Kitāb ʿAjāʾib al-Hind* (Livre des merveilles de l'Inde), Arabic text ed. P.A. Van der Lith and trans. L. Marcel Devic (Leiden: E. J. Brill, 1883–1886), 161; Buzurg bin Shahriyār al-Rāmhurmuzi, *The Book of the Wonders of India*, ed. and trans. G.S.P. Freeman-Grenville (London and The Hague: East-West Publications, 1981), 94.

75 One telling example would be the comments by local and foreign authors on the Muslim settlements in Calicut and Cochin in the fifteenth and sixteenth centuries.

76 Andre Wink, "The Early Expansion of Islam in India," in *The New Cambridge History of Islam*, Vol. 3: *The Eastern Islamic World, Eleventh to Eighteenth Centuries*, eds. David O. Morgan and Anthony Reid (Cambridge: Cambridge University Press, 2010), 95.

77 ʿAlī bin Ḥāmid bin Abī Bakr al-Kūfī, *Fatḥnāma-i Sind al-maʿrūf bi Chachnāma*, ed. ʿUmar b. Muḥammad Dāʾūdpota (Hyderabad Deccan: Majlis Makhṭūṭāt-i Fārsiya, 1939), 10–11, 248. Cf. Manan Ahmed Asif, *A Book of Conquest: The* Chachnama *and Muslim Origins in South Asia* (Cambridge, MA: Harvard University Press, 2016).

78 Rāmhurmuzi, *Kitāb ʿAjāʾib al-Hind*, 2–4; Rāmhurmuzi, *The Book of the Wonders of India*, 2–3.

79 Chaffee, *Muslim Merchants*, 36, citing JTS 177, 591–2 and XTS 182, 5367.

80 On these mosques, see Mark Horton, "Islam and Architecture in East Africa," *Muqarnas* 8, no. 1 (1991): 103–16.

81 Rāmhurmuzi, *ʿAjāʾib al-Hind*, 2–4; Rāmhurmuzi, *Wonders of India*, 2–3

82 Norman Calder, "Friday Prayer and the Juristic Theory of Government: Sarakhsī, Shīrāzī, Māwardī," *Bulletin of the School of Oriental and African Studies* 49 (1986): 35–47; Elizabeth Lambourn, "India from Aden: Khutba and Muslim Urban Networks in Late Thirteenth-Century India," in *Secondary Cities and Urban Networking in the Indian Ocean Realm, c. 1000–1800*, ed. Kenneth Hall (Lanham, MD: Lexington Books, 2008), 55–97; Elizabeth Lambourn, "Khutba and Muslim Networks in the Indian Ocean (Part II) – Timurid and Ottoman Engagements," in *The Growth of Non-*

Western Cities: Primary and Secondary Urban Networking, C. 900–1900, ed. Kenneth Hall (Lanham, MD: Lexington Books, 2011), 131–58.

83 See the descriptions of Sulaymān the Merchant in al-Sīrāfī, *Ancient Accounts of India and China*, 7–8. For the Arabic original, see Sauvaget, *'Ahbār aṣ-ṣīn wa l-hind*, 7.

84 Muḥammad Abū al-Qāsim bin Ḥawqal [Ibn Haugal], *Configuration de la terre (Kitāb sūrat al-ard)*, trans. J.H. Kramers and G. Wiet (Beyrouth: Commission Internationale pour la Traduction des Chefs-d'Oeuvre; Paris: Maisonneuve et Larose, 1965), 313.

85 Stern, "Ismāʿīlī Propaganda and Fatimid Rule in Sind," 298–307.

86 Al-Baladhuri, *Futuh al-buldan*, p. 432

87 The quoted sentence is from Z. Dramani-Issifou, "Islam as a Social System in Africa since the Seventh Century," in *General History of* Africa, Vol. 3: *Africa from the Seventh to the Eleventh Century*, eds. M. Elfasi and I. Hrbek (Paris: UNESCO/Berkeley: University of California Press, 1988), 100; on the substantiation of these marriages as *mutʿa* and marital preference on the basis of the school, see Wink, *Al-Hind*, Vol. 1: 79; ibid., "Early Expansion of Islam," 80–1; Edward A. Alpers, *The Indian Ocean in World History* (New York: Oxford University Press, 2014), 60; Susan Bayly, *Saints, Goddesses and Kings: Muslims and Christians in South Indian Society, 1700–1900* (Cambridge: Cambridge University Press, 1989), 80.

88 For example, see the Islamic discussions on the Indians in Yohanan Friedmann, "Medieval Muslim Views of Indian Religions," *Journal of the American Oriental Society* 95, no. 2 (1975): 214–21.

89 A telling example comes from ninth-century China when Lu Jun, who became the prefect and military governor of Guangzhou in 836, forbade the foreigners from marrying the Chinese women. Until then, the foreigners were allowed to marry Chinese (Han) women according to an edict from Zhenguan 2 in 628. Chaffee, *Muslim Merchants*, 36.

90 The best exemplification for this change is the discussions in the legal texts produced in the littoral, such as *Qayd al-jāmiʿ* by a certain Faqīh Ḥusayn bin Aḥmad in the mid-fourteenth century and *Fatḥ al-muʿīn* by Zayn al-Dīn al-Malaybārī in the sixteenth century.

91 al-Shāfiʿī, *Umm*, 8: 653, 728; 10: 207–9.

92 Abū Ibrāhīm Ismāʿīl Yaḥyā al-Muzanī, *Mukhtaṣar fī furūʿ al-Shāfiʿīyya*, ed. Muhammad ʿAbd al-Qādir Shāhīn (Beirut: Dār al-Kutub al-ʿIlmiyya, 1998), 235; ʿAbd al-Malik al-Juwaynī, *Nihāyat al-maṭlab fī dirāyat al-madhhab*, ed. ʿAbd al-ʿAẓīm al-Dayyib (Jeddah: Dar al-Minhaj, 2007), Vol. 12: 400–1.

93 For a long a history of the early debates on this practice, see *Encyclopedia of Islam*, second edn, s.v. "Mutʿa"; Khalid Sindawi, *Temporary Marriage in Sunni and Shiʿite Islam: A Comparative Study* (Wiesbaden: Harrassowitz Verlag, 2013); Shahla Haeri, *Law of Desire: Temporary Marriage in Shi'i Iran* (New York: Syracuse University Press, 2014 [1989]).

94 Wink, "The Early Expansion of Islam in India," 81. Wink follows Susan Bayly's statement in this regard. She has studied the South Indian Muslims in a much later period, and in turn she cites an archival document from the late eighteenth century: Moses, "The Muhammadans of Pulicat". Letters to BOR 16 May 1796/BOR vol. 3553/pp. 89–91/TNA. Bayly, *Saints, Goddesses and Kings*, 80.

95 Muhammad Qasim Zaman, "Transmitters of Authority and Ideas across Cultural Boundaries, Eleventh to Eighteenth Centuries," in *The New Cambridge History of Islam*, Vol. 3: *The Eastern Islamic World, Eleventh to Eighteenth Centuries*, eds. David O. Morgan and Anthony Reid (Cambridge: Cambridge University Press, 2010), 582–610; Michael Laffan and Michael Feener, "Sufi Scents across the Indian Ocean: Yemeni Hagiography and the Earliest History of Southeast Asian Islam," *Archipel* 70, no. 1 (2005): 185–208; Tamrat, "Ethiopia, the Red Sea and the Horn"; Chittick, "The East Coast, Madagascar."

2 Legal diglossia, lexical borrowing and mixed juridical systems in early Islamic Java and Sumatra

Tom Hoogervorst[1]

Introduction

This study offers a historical linguistic perspective on the transition from Hindu to Islamic law in early-modern Java and Sumatra. As Ayman Daher observes, "law, much like language, is an ever-evolving body closely linked to the culture and society".[2] Language obviously differs from law in some crucial ways. For one thing, in pre-modern times, the former was rarely forced onto people outside the realm of education. Nevertheless, a language-centric approach enables a fuller understanding of legal history through its focus on loanwords and other linguistic phenomena.[3] For example, Latin prevails in Europe's juridical prose and classical Chinese played a comparable role in East Asia, testifying to the lasting impact of respectively the Roman and the Confucianist understanding of law.[4] The Indonesian archipelago constitutes a palimpsest of influences from Indic, Middle Eastern and European languages, corresponding to the so-called Hindu, Muslim and colonial episodes of the region's past. The present study examines the legal landscapes of Java and Sumatra between the fourteenth and eighteenth centuries – when Hindu influence was waning and Islam became increasingly dominant – and analyses them in conjunction with broader developments in the Indian Ocean world. It highlights, through lexical and sociolinguistic inferences, the continuities and changes that characterise this slow-paced transition.

In the western parts of the Indonesian archipelago, the shift from Hinduism – or, more accurately, Śaivist and Tantric doctrines – to Islam took place relatively smoothly and fragmentarily. In the realm of law in particular, the oft-envisioned idea of a Hindu period followed by a Muslim period must be considered overly simplistic and burdened by outdated paradigms of civilisation.[5] In reality, both religions diffused as part of similar, enduring Indian Ocean networks. Java occupied the crossroads between Hinduism and Islam during the fourteenth and fifteenth centuries,[6] while Aceh in northern Sumatra developed a synthesis of Sufism and Tantrism in the sixteenth century, which was instrumental in the region's peaceful Islamisation.[7] Nevertheless,

> it is precisely at the beginning of [the sixteenth century] that the majority of the historians of South-East Asia turn away from India with the excuse

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> that its cultural influence had disappeared in favour of an international Islam which had progressively established itself in the great maritime commercial networks of the Indian Ocean.[8]

The scholarly dismissal of these prolonged connections with South Asia is unwarranted, especially since Islam reached South-East Asia at least in part through the filter of the Indian subcontinent.[9] The notion of an Indian-introduced Islam was ingrained in the wider literature by Christiaan Snouck Hurgronje and drew support from later European scholars and some Indonesian scholars.[10] Many connections, however, were severed by the mid-eighteenth century, when the Dutch East India Company (VOC) drastically reduced the commercial activities of Indian merchants in Indonesia.[11] In the centuries afterwards, more direct contacts with the Arab heartlands redirected the focus of most Indonesian Muslims to the Ḥijāz and Cairo.[12] The rise of Islam undeniably brought structural changes in the domain of Indonesia's legal institutions, yet it is equally relevant that multiple juridical traditions interacted and intermingled over the centuries.[13] Of equal historical importance is South-East Asia's trademark habit of selectively adopting and adapting external concepts as the local context demands. As will be highlighted in this study, both the changes and the continuities left their imprint on legal terminology and sociolinguistic practices.

Much academic work on the history of Indonesian law relies on colonial-era scholarship, which started at the very dawn of Dutch expansion when different communities increasingly encountered each other in courtrooms. From the early seventeenth century onwards, the VOC controlled the juridical administration of Java's coastal sultanates, particularly Cirebon, Demak and Banten.[14] The Dutch were aware of pre-existing legal traditions and lawbooks, yet invoked tropes of "indigenous despotism" and its alleged dangers to trade as reasons to interfere with the island's courts.[15] Similar verdicts were reached by British colonial officials with regard to the Malay Peninsula;

> Malay laws were never committed to writing; they were constantly overridden by autocratic chiefs and unjust judges; they varied in each State; they did not harmonise with the doctrines of Islam that they professed to follow; they were often expressed in metaphors or proverbs that seem to baffle interpretation.[16]

Whatever the effect of such floating remarks, the colonial project laid the foundations of a fluctuating interest in the archipelago's inherited legal systems, albeit chiefly out of self-interest.[17] From the nineteenth century, the laws, regulations, and treaties upheld by the courts of Central Java and Bali ended up among the first topics of systematic study.[18] Collecting, examining, translating, and publishing legal texts was crucial to this effort. Not only did these sources cast light on idealised behaviour within Indonesian societies, they also revealed social tensions; the long lists of transgressions they typically juxtaposed – followed by the commensurate punishments – spoke volumes about the specific areas in which authority was habitually challenged.[19]

Colonial control over Indonesia's legal systems tightened in the early nineteenth century, even though the courts remained largely run by local functionaries and advisers, and partly within pre-existing structures. Proceedings from the *landraad*, a state court for indigenous populations, reveal that justice was administered in a highly multilingual fashion, including in Javanese, Malay, Dutch and Madurese. With Dutch rule firmly established, interest in Java's numerous lawbooks became confined to the realm of philology.[20] On a practical level, it was realised that the *lex non scripta* prevailed over the *lex scripta* throughout the colony. The uncodified and orally transmitted customs of the archipelago's diverse populations – commonly known as *adat*, a term further discussed below – became the subject of intensive study with the ultimate goal of improving colonial governance. As a consequence, the majority of Javanese, Malay and other textual sources on law have neither been published nor translated,[21] rendering it somewhat premature to describe in great depths the nature of pre-modern law in this region. The scope of this chapter is therefore limited to law-related vocabulary and sociolinguistic practices.

I focus specifically on the origins of words (etymology), sociolinguistic considerations, and a close reading of some relevant primary sources. I am aware of what is perhaps the most common caveat in the study of lexical borrowing: the misguided assumption that the external provenance of a word "proves" the external provenance of the concept it designates. Island South-East Asia shows a more complex picture, in which loanwords from high-status languages often act as a substitute for pre-existing vocabulary. In the case of early Islam, for instance, we see a replacement of Sanskrit loanwords by their Arabic equivalents, including in the legal domain. As the work of Timothy Lubin on South-East Asian law systems demonstrates, the legal traditions of ancient Java (as well as Cambodia and South India) exhibited a phenomenon called legal diglossia.[22] Diglossia refers to the co-existence of two separate language varieties within a speech community; the high-status language is typically used for formal occasions and the vernacular language for informal occasions.[23] In the legal domain, Sanskrit – or Sanskritised formal registers (acrolects) of local languages – were indeed employed to provide otherwise profane statements with a prestigious and authoritative cachet.[24] The cosmopolitan, in other words, was used to validate the local, not unlike the position of Latin in medieval Europe.[25] As will be demonstrated below, this sociolinguistic practice persisted in Islamic milieus.

The first section of this chapter examines the impact of Indic notions of law on the societies of Java and Sumatra, sketching the legal landscape encountered by the archipelago's first Muslims. The second section discusses the introduction of Islam and the associated legal changes, as well as evidence for sustained contacts with the Indian subcontinent under Muslim rulers. The third section delves deeper into the magico-religious power of language through a case study on the typology of oaths and curses, substantiating the idea that legal diglossia persisted under Islam. Most words discussed here are taken from Van Hinloopen Labberton's unique colonial-era dictionary of legal terms, as later dictionaries include Sanskrit-inspired neologisms that are irrelevant to this study.[26]

Integrating the dharma

Any understanding of South-East Asia's legal landscapes prior to "Indianisation" remains by definition hypothetical and has in part been reconstructed on the basis of historical linguistics and cross-regional comparisons.[27] By the second half of the first millennium CE, the epigraphic record and monumental architecture show traces of a Brahmanical cultural outlook across pockets of what is now Western Indonesia. Among the "Hindu" elements adopted in this process were notions of religion, law, ethics and royal power. Over time, the local elites of Java, Sumatra and other parts of the archipelago became part of what Sheldon Pollock terms the Sanskrit Cosmopolis.[28] Across this imagined space stretching from Central and South to South-East Asia, conceptualisations of law, notions of ritual obligation, legitimisation of sovereignty, state philosophy, religious authority and morality started to converge. It should be reiterated that South-East Asian elites were selective about the Indic elements they accepted and translated into local languages. In the written domain, most priority was given to texts – legal or otherwise – that were in popular demand in India at the time of contact, rather than the canonical classics.[29] In Java and Bali, we see that India's codified legal literature often served as a framework to validate local customary norms, yielding a substantial body of Sanskrit-inspired yet locally authored juridical literature in Old Javanese.[30] These included Hindu-inspired (Śāstric) lawbooks, didactic and moralistic texts, records of (legal) victories (*jayapattra*), political treatises (*nīti*), royal decrees (*pihagem*), courtly regulations (*pranatan*) and several other categories.[31] The only known pre-Islamic lawbook from Sumatra is the *Nītisārasamuccaya*, of which we will read more below. In addition, there were pre-existing village customs (*deśadṛṣṭa*), which were orally transmitted rather than written down.

Colonial studies on "Hindu Law", both in India and Indonesia, largely focus on two Sanskrit genres of literature: *Dharmasūtra* and *Dharmaśāstra*.[32] By far the best known legal text was the Laws of Manu (*Manusmṛti* or *Mānava-Dharmaśāstra*), associated with Manu, the Hindu progenitor of humankind. It was studied intensively by British and French scholars to understand better the legal systems they encountered in India. This text was also known and reproduced in ancient Java, alongside other books on common and penal law.[33] A fourteenth-century Indian commentary of the Laws of Manu, the *Manvarthavivṛti* by Nārāyaṇa Sarvajña, is likely to have influenced contemporaneous Javanese lawbooks.[34] This implies that contacts between India's legal scholars and their Javanese apprentices were still regular when Islam expanded its influence in the Western Indonesian archipelago. It is tempting to speculate that these overseas experts on Hindu law enjoyed a similar status to India's Islamic theologians (*ʿulamāʾ*) of later centuries, such as the Gujarat-born Nūr al-Dīn al-Rānīrī in seventeenth-century Aceh. India's more recent legal institutions, such as the legislative council (*Vidhān Pariṣad*) and village self-government (*Grām Pancāyat*), are unknown under those names in the Indonesian archipelago.[35]

Most of Indonesia's Śāstric lawbooks were not intensively studied by outsiders. In Java, the genre gradually fell into disuse when the island's Sanskrit-literate

ecclesiastical class lost their prominence. In Bali, which was never Islamised, the lawbooks continued to play a role in society.[36] They were written and re-written on palm leaves (*lontar*); in fact, most colonial-era transliterations of Old Javanese originals go back to Balinese copies. One of the core legal documents of ancient Java was a locally authored composite text known as *Kuṭāra-Mānawa*. This book is not attested anywhere in India, although the second element of its name makes clear that it is inspired by the Laws of Manu. It is listed in a ninth-century inscription as obligatory reading for aspiring legal scholars.[37] The book is also mentioned in the Old Javanese *Rāmāyaṇa*,[38] as well as later literary works such as the *Ślokāntara* and *Bhomāntaka*.[39] Later Javanese (and Balinese) lawbooks, such as the thirteenth-century *Pūrwādhigama*, also refer to the *Kuṭāra-Mānawa* as a standard work to be known by legal experts.[40] Other important lawbooks include the *Āgama* – a mid-sixteenth-century legal text based on the *Kuṭāra-Mānawa*[41] – and the *Swara Jambu*, which is patterned after the eighth book of the Laws of Manu.[42] The name *Swara Jambu* appears to be a corruption of – or a pun on – Sanskrit *Svayambhu*, one of the names for Manu.

It is difficult to envisage how these pre-modern lawbooks were used in real life. The Indic source texts focused on the lives of Brahmins, who would have been spatially clustered and socially distinct from the majority of Island South-East Asians. In this regard, Javanese and Balinese legal codes have been characterised as "aspiring to be Dharmaśāstras but reflecting much more directly the 'common law'".[43] It may be added that some parts of Indic source texts were deliberately preserved even though they were clearly disconnected from daily life. A section of the aforementioned *Āgama*, for example, mentions camels, which never historically inhabited the Indonesian archipelago (except possibly as courtly curiosities): "When hitting an ox, horse or camel, if the struck animal dies, the wagon-driver will be fined with 10,000 [coins] and must compensate the value of the dead animal."[44] Along the same lines, we may ask ourselves whether the Sanskrit names for different types of enslaved people in the *Kuṭāra-Mānawa* – *bhaktadāsa* 'a slave who serves for his food', *daṇḍadāsa* 'enslaved for non-payment of a fine', *dhwajahṛta* 'captured in battle' and *gṛhaja* 'born in the house'[45] – reflect actual social practice or merely a diglossia-driven genuflection to the Language of the Gods. The reliance on external elements in texts of local significance is emblematic for South-East Asia's legal landscapes, as will be revisited in the next section. It should be stressed, however, that ostensibly cosmopolitan Śāstric texts were equally prone to incorporate distinctly local or regional elements. The *Āgama*, for example, features the term *pisis* in the context of obligatory payment, which strikes me as a borrowing from Persian *pishīz* 'a small piece of money'.

Moving now to the etymological origins of Indonesia's legal terms, it has long been known that several words pertaining to law, religion, state philosophy and politics go back to Sanskrit.[46] The very titles denoting positions of power, such as Malay *menteri* 'minister', *patih* 'chief minister' and *raja* 'king', are Sanskrit-derived: *mantrī*, *pati* and *rāja*. The influence of India's vernacular languages ("Prakrit"), conversely, is rarely mentioned in scholarship on pre-modern South-East Asia.[47] The same holds true for Indonesia's important and often overlooked connections

Table 2.1 Indic origins of Malay legal terms

Malay	*Etymology*		
	Sanskrit	*Prakrit*	*Tamil*
bati ‘interest (on money)’			vaṭṭi
bendara ‘treasurer, state official’		bhāṇḍāra	
beniaga ‘commerce, trade’		vāṇiyaga	
biaya ‘wealth, money’	vyaya		
cengkeram ‘earnest money’			accakāram
cukai ‘passage money’			cukkai
curi ‘theft’		curi	
dehaga ‘insubordination against a ruler’		ḍohaga	
denda ‘punishment’	daṇḍa		
dosa ‘serious offence, crime’	doṣa		
durjana ‘criminal’	durjana		
dusta ‘false, guilty’	duṣṭa		
gadai ‘pawn contract’			kaṭai
harga ‘value, price’	argha		
istri ‘wife’	strī		
jaksa ‘prosecutor’	adhyakṣa		
janda ‘widow’	raṇḍā		
laba ‘profit’	lābha		
mempelai ‘(bride)groom’			māppiḷḷai
perkara ‘affair’	prakāra		
saksi ‘witness’	sākṣī		
(se)kutu ‘accomplice’			kūṭṭu
suami ‘husband’	svāmī		
undi ‘divine judgment through lottery’			uṇṭai
upeti ‘obligatory payment’		uppatti	

with South India. The wider literature on credit, debt and other financial matters in Indonesia remains silent about the fact that much of the vocabulary in this domain can be traced to Tamil.[48] Table 2.1 lists some Indic loanwords in the legal sphere that found their way into Island South-East Asia.[49] One should bear in mind that these borrowings did not necessarily have juridical connotations in South Asia, yet, as one scholar put it, “what had once been foreign ultimately acquired its own characteristics and significance although its Indian origins remained unmistakable”.[50]

These lexical transmissions compel us to envision multiple directions from which Hindu-inspired notions of law, morality, political organisation and related phenomena spread eastwards. The broad contours of these processes remained intact under Islamic rule, as will be argued next.

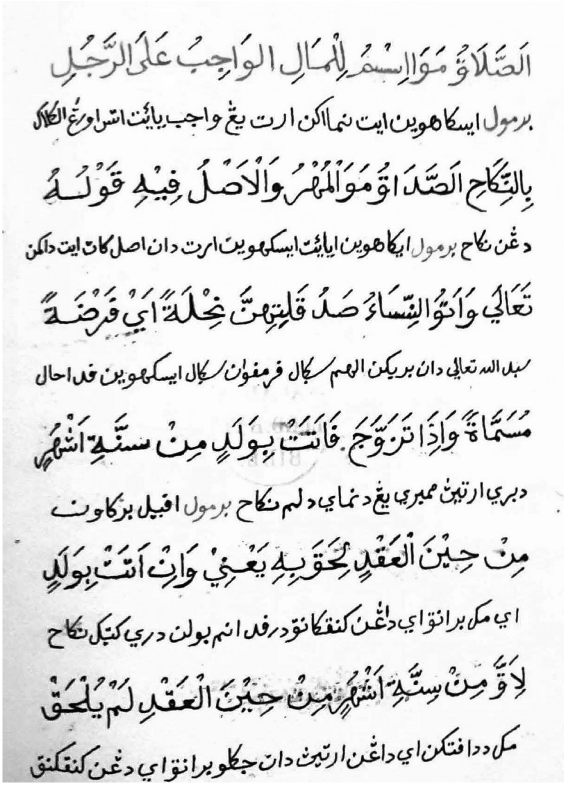
The heirs of Manu

The first European visitors to Java encountered legal traditions that were partly Islamised, yet continued to draw from Hindu conceptualisations of law. Indeed, the two religions intermingled for centuries. As late as the fifteenth century, when

Islam had gained dominance across much of the island's north coast and coexisted with Hinduism in the interior,[51] the South Indian *Śivarātri* ritual attracted the dedicated interest of a Javanese scholar.[52] A century later, the Portuguese encountered amidst Java's Muslim kingdoms a Hindu dynasty in Banten and "heathen" rulers in the interior.[53] Meanwhile, in the coastal polities, local, Indic, and Islamic law had been brought together under the one roof of the so-called *jaksa* courts.[54] The etymology of the term *jaksa* itself exemplifies the fluid transition between Hindu-inspired and Islamic-inspired notions of legal authority. Borrowed from Sanskrit *adhyakṣa* 'eye-witness, inspector, superintendent', the word features in Old Javanese as *dhyakṣa*, denoting a Śivaite spiritual lord in service of the court.[55] In Bali the *dyaksa* continues to serve as a religious official.[56] Yet with the rise of Islam in Java, the *jaksa* saw himself reduced to a functionary responsible for theft, robbery and other mundane crimes, while legally complex matters such as marriage, divorce and inheritance shifted to Muslim officials.[57] Eventually, the *jaksa* turned into a prosecutor in late-colonial times.

While many of the pre-existing juridical structures remained in place, the idiom through which legal authority was expressed shifted – gradually and incompletely – from Sanskrit to Arabic. This supports the theory that, in many parts of South and South-East Asia, the aforementioned Sanskrit Cosmopolis was replaced by an Arabic one after the introduction of Islam.[58] Legal texts continued to derive their authority from high-status languages, complementing and validating orally transmitted customary norms. Islamic jurisprudence became known under its Malay name *fikih* (Javanese: *pekih*, both from Arabic *fiqh*), whereas local customs were re-categorised as *adat* (Arabic *ʿāda*) and continued to govern the secular spheres of life. The latter term is typically translated as 'customary law' in an Indonesian context, although – like Hindustani *ādat* – it also denotes more individual habits, practices and traditions.[59] As such, *adat* has often been interpreted as a system that is mutually exclusive to Islamic Law, although such generalisations hardly do justice to the complexity of the matter.[60] In an Indonesian context, *adat* is used much more frequently than *uruf* (Arabic *ʿurf*), another word normally translated as 'customary law'.[61]

In early Islamic Java, pre-existing legal systems were often studied side-by-side with *fiqh*. Old Javanese lawbooks, for example, were given in Islamic compendiums,[62] whereas Arabic books on law and theology – such as the *Tuḥfat al-Muḥtāj* and *al-Ghāya wa al-Taqrīb* – were copied and adapted into local languages (see Figure 2.1).[63] It made sense for Java's first indigenous Muslims to embrace pre-Islamic literature, since they saw themselves as the proud heirs to this literary tradition. As a result, many of the juridical proclamations (*uṇḍang-uṇḍang*) issued in early-Islamic Java, Sumatra and the Malay world incorporated significantly more *adat* laws than direct citations from *fiqh* literature. The popular Malay expression "religious law is level, customary law is flat" (*hukum yang rata, adat yang datar*) came to symbolise two similar things that are equally desirable. This co-constitutiveness of different legal practices also led to attempts to combine Hindu and Islamic principles, for example in the Javanese lawbooks *Surya Ngalam* (also known as *Adilulah*)[64] and *Pepakem Cerbon*. The latter, which was partly based on


الصداق وهو اسم للمال الواجب على الرجل

بالنكاح الصداق وهو المهر والأصل فيه قوله

تعالى وآتوا النساء صدقاتهن نحلة أي فريضة

مسماة وإذا تزوج فأتت بولد من ستة أشهر

من حين العقد لحق به يعني وإن أتت بولد

لأقل من ستة أشهر من حين العقد لم يلحق

Figure 2.1 Arabic lawbook with Malay translations (UB Leiden, Cod.Or. 1969.1)

the former, was eventually codified by the Dutch in the mid-eighteenth century to strengthen their influence on the VOC-controlled court of Cirebon.[65] While it was written in a Sanskritised register of Javanese, a number of Arabic loanwords surface throughout this legal code, including *kisas* 'retaliation' (Arabic *qiṣāṣ*), *kukum* 'ruling' (*ḥukm*), and *warangi* 'piousness' (*waraʿ*). A related development took place in the domain of writing more broadly. In the Malay world, an Arabic-derived script (*Jawi*) largely replaced Indic scripts, although the latter remained in use for some time after Islamisation.[66] In Java, Indic-derived (*Hanacaraka*) and Arabic-derived (*Pegon*) scripts coexisted.

At this point we return to the lexical evidence. The linguistic implications of Islamisation become evident from some of the most basic legal terms in Malay (Table 2.2). Most of these Arabic-derived words are also common elsewhere in the Indian Ocean world, as well as parts of Central Asia, the Mediterranean and Atlantic Africa.

Islamisation also came with a new range of administrative titles across the archipelago. In charge of Islamic legal matters was the so-called *penghulu*, Malay

Table 2.2 Arabic origins of Malay legal terms

Malay	*Arabic*
dakwa ‘accusation, lawsuit’	daʿwā
diat ‘blood money’	diya
fatwa ‘formal legal opinion’	fatwā
hak ‘truth, rightness’	ḥaqq
hakim ‘judge, arbitrator’	ḥākim
hasil ‘result, outcome, product’	ḥāṣil
hukum ‘ruling’	ḥukm
ingkar ‘denial, contestation’	inkār
izin ‘permission, authorisation’	idhn
kadi ‘judge of religious affairs’	qāḍī
kanun ‘regulations’	qānūn
korban ‘victim’	qurbān
mahkamah ‘legal court’	maḥkama
nasab ‘biological descent’	nasab
risalah ‘(legal) digest’	risāla
sah ‘lawful’	ṣaḥḥ
sahih ‘legally valid’	ṣaḥīḥ
siasat ‘administration of justice’	siyāsa
sijil ‘scroll, written record’	sijill
syarat ‘proviso, term’	sharṭ
yakin ‘certitude, conviction’	yaqīn
yatim ‘orphan’	yatīm
wakaf ‘mortmain, religious endowment’	waqf
wasiat ‘will’	waṣiyya
zina ‘adultery’	zināʾ

for ‘headman’.[67] A common title given in early-colonial times to a clergyman was *padri*. Derived from Portuguese *padre* ‘father’, the word initially denoted a Christian priest or missionary (cf. Hindustani *pādrī*, Tamil *pātiri*), yet this meaning was soon extended to non-Christian men of the cloth. In Malay correspondence to Europeans, for example, it was used in the meaning of *imām*.[68] By the mid-eighteenth century, the word was also used on Java’s north coast, where three kinds were distinguished: *padri yang adil* ‘priests who commit neither great nor small sins, and do not neglect communal worship nor prayers, but are devout’, *padri yang salih* ‘priests who uphold all ordinances great and small: the great are prayer, fasting, becoming haji, reading the Marriage Law, and giving tithes, the small deal with unclean food’, and *padri yang warangi* ‘priests who do not eat nor do anything unclean, and avoid not just evil, but also the appearance of evil’, reflecting the Arabic terms *ʿādil* ‘just, fair’, *ṣāliḥ* ‘good, right’ and *waraʿ* ‘piousness’.[69]

In addition to these generic terms for Islamic functionaries, a wide variety of nomenclature for lower officials and mosque attendants emerged in Island South-East Asia. The person in charge of the call to prayer was typically referred to as *bilal* (named after Bilāl bin Rabāḥ, the first muezzin). Other titles for clerics,

whose precise responsibilities differed from one region to another, included *garim*, *kalipah*, *katib*, *kaum*, *merbot*, *modin*, *mufti*, *naib*, *pakih*, *takmir* and *wazir*.[70] Interestingly, some Islamic titles came from South India rather than directly from the Middle East. The official in charge at the local level of Islamic affairs known in Sumatra as *lebai* can be traced back to the Muslim-Tamil *labbai*, the name of a functionary and, by extension, a specific ethno-religious community.[71] Along similar lines, the religious scholar known in Java as *santri* reflects Tamil *sāttiri* 'learned man'.[72] In a Tamil Hindu context, this word refers to an astrologer who advises couples facing infertility or decides on the proper location of a new well.[73] Many Indonesianists will have learned this term from Clifford Geertz's standard work on Javanese religion, where it is used to designate adherents of a more orthodox Islam.[74] In earlier times, however, *santri* could also refer to pre-Islamic religious teachers and was associated with ascetic lifestyles.[75] Somewhat surprisingly, the South Indian etymology of the word is rarely mentioned in the wider literature.[76]

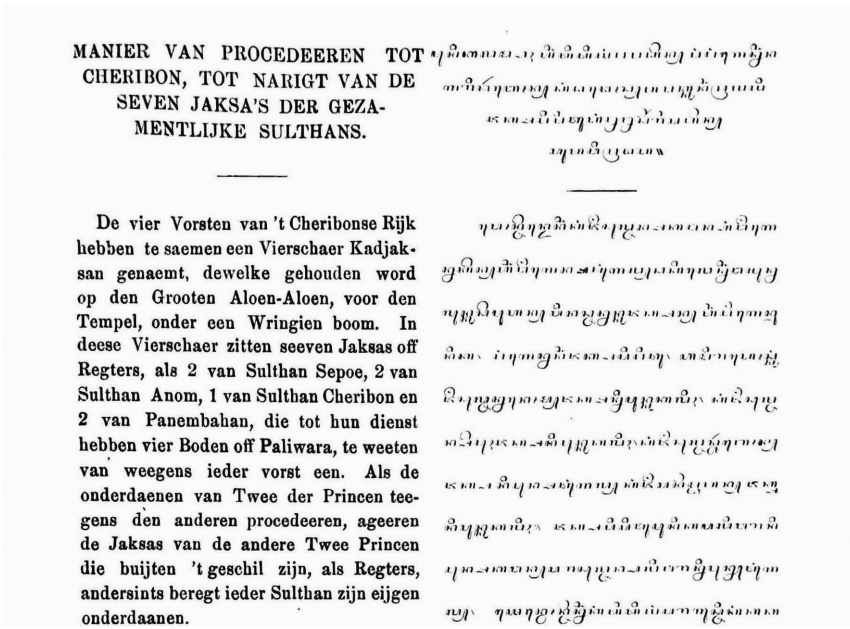
The fact that Sumatra and Java exhibit Tamil words to denote experts on Islam matches the broader context of Indian Ocean connections. Shāfiʿī scholarly networks radiated across the Bay of Bengal from at least the sixteenth century, as transpires from the eastward dispersal of a religious commentary known as *Fatḥ al-Muʿīn* by Zayn al-Dīn al-Malaybārī.[77] South Indian influence manifested itself even earlier in Aceh, where the name Nainā – used by a community of Muslims descended from the Nāyaṉār caste[78] – features on a number of thirteenth- and fourteenth-century tombstones.[79] Archaeological evidence from North Sumatra suggests that Islam entered that region around the same time, through the same Tamil-speaking communities that also introduced Hinduism and Buddhism in the ninth century.[80] In the sixteenth and seventeenth centuries, Muslim merchant-missionaries from South India regularly visited Sri Lanka, the Maldives, Burma, Malaya and Sumatra. The scholars Kāṭṭaṉai Walī, Shaykh Ṣadaq Ibrāhīm Maraikāyar, and Sayyid ʿAbdul Qādir Vaḷḷal Sītakkāti are remembered by Tamil-speaking Muslims for their contributions to the eastward spread of Islam.[81] Aceh in particular seems to have been a popular destination for Sufi ascetics (*qalandar*) from South India.[82] Additional links between the Islamic practices of South India and Indonesia have been identified in the realm of mosque architecture and religious literature,[83] many of which were obscured by later, more direct contacts with the Arab heartlands. Tamil influence is also found in classical Malay tales (*hikayat*), such as *Hikayat Hang Tuah*, *Hikayat Raja-Raja Pasai*, and *Hikayat Seri Rama*.[84]

Linguistic findings corroborate these links and support the transmission of an early layer of Arabic loanwords entering Island South-East Asia through Tamil. The phonological evidence for this route is the presence of a paragogic vowel in some borrowings, such as Malay and Javanese *perlu* 'duty' (Tamil *paṟuḷu*, *paṟulu* from Arabic *farḍ*) and *napsu* 'desire' (Tamil *napucu* from Arabic *nafs*).[85] Some semantic shifts also point to South Indian influence. Arabic *khamīs*, denoting the fifth day of the week (Thursday), gained connotations among Tamil-speaking Muslims of collecting donations for the Friday service,[86] and in Malay

and Javanese this meaning expanded to *kemis* 'begging' in general. It is of additional relevance that the Javanese legal term *pakem* or *pepakem* 'handbook' (as in the aforementioned lawbook *Pepakem Cerbon*, see Figure 2.2) in all probability reflects Tamil *pakkam* 'treatise' (ultimately from Sanskrit *pakṣa* 'a thesis, an argument'), which to my knowledge no scholar has pointed out. The Javanese word *surambi*, a small pavilion next to a mosque often used as a court, is presumably from Malayalam[87] – a South Indian language closely related to Tamil – substantiating the connections in mosque architecture mentioned previously. The rice flour pancakes (*apam*), offered and distributed in honour of the spirits during Islamic ritual meals across Island South-East Asia, are also of South Indian origin.[88]

In addition to this South Indian layer, the Islamic cultures of Sumatra and Java also display some evident North Indian influence. Particularly in the domains of literature and grave memorials, this element was highly Persianised.[89] For relatively many loanwords in the legal and ceremonial sphere, we cannot determine whether they entered the Malay language from Farsi, Indian Persian, or Persianised Hindustani (Table 2.3).[90] Direct influence from North India is plausible given that Hindustani speakers also influenced Malay literature, music genres and theatre.[91] In addition, several (Perso-)Arabic terms appear to have reached South-East Asia through the filter of North India judged from their specific pronunciation.[92]

Such lexical inferences are crucial to the study of Indian Ocean networks and the concomitant diffusion of concepts, ideas and institutions. At the same time, the linguistic impact of Hinduism and Islam extended beyond loanwords and into



MANIER VAN PROCEDEEREN TOT CHERIBON, TOT NARIGT VAN DE SEVEN JAKSA'S DER GEZAMENTLIJKE SULTHANS.

De vier Vorsten van 't Cheribonse Rijk hebben te saemen een Vierschaer Kadjaksan genaemt, dewelke gehouden word op den Grooten Aloen-Aloen, voor den Tempel, onder een Wringien boom. In deese Vierschaer zitten seeven Jaksas off Regters, als 2 van Sulthan Sepoe, 2 van Sulthan Anom, 1 van Sulthan Cheribon en 2 van Panembahan, die tot hun dienst hebben vier Boden off Paliwara, te weeten van weegens ieder vorst een. Als de onderdaenen van Twee der Princen teegens den anderen procedeeren, ageeren de Jaksas van de andere Twee Princen die buijten 't geschil zijn, als Regters, andersints beregt ieder Sulthan zijn eijgen onderdaanen.

Figure 2.2 Part of the Dutch translation of the Pepakem Cerbon (Hazeu, 1905)

Table 2.3 Indo-Persian origins of Malay legal and ceremonial terms

Hindustani and Persian	*Malay*
kābīn 'matrimony'	kawin 'quickly arranged marriage'[93]
kandūrī 'a religious feast'	kenduri 'a religious feast'
nāk̲h̲udā 'captain'	nakhoda 'captain'
sunnat (+ verb) 'to circumcise'	sunat 'to circumcise'
shāh 'king'	syah 'ruler (royal title)'
shāh-bandar 'port master'	syahbandar 'port master'

the domain of sociolinguistic practices. The next section, therefore, highlights some instances of diglossia and language-mixing in the legal contexts of Java and Sumatra.

Heaven-sent retribution

The previous sections have underlined the importance of high-prestige languages – whether Sanskrit, Arabic or local acrolects such as literary Javanese – to the localisation of external ideas. One particular domain associated with the administration of justice illuminates the punitive faculties of language: the overlapping practices of swearing, cursing and oath-taking (Malay and Javanese: *sumpah*). The use of formulaic preludes to oaths and curses (*simsalabim*, *hocus pocus*, *abracadabra*, etc.) are by no means unique to Indonesia. In Java and Sumatra, these elements are predictably from Sanskrit and Arabic. Not much has been written on the linguistic typology of oath-taking and cursing in this part of the world, even though it was historically pervasive. Christiaan Hooykaas briefly discusses Balinese curses and counter-curses (*balik sumpah*).[94] Helen Creese mentions some examples of Balinese curses awaiting those who bear false witness: "being trapped in dense forest, wandering through deep ravines, being struck by lightning, being eaten by crocodiles, felled by a mortal illness, and devoured by worms and insects, and that all these penalties would befall the offender and his descendants down to three or four generations".[95] A similar imprecatory landscape is found in pre-Islamic Java. Willem van der Molen observes that Old Javanese curses (*śāpa*) are unconditional and irrevocable.[96] Depending on the transgression committed, they commonly involve diseases, premature death, childlessness and changing into a low-status animal. In Old Javanese literature, it is not uncommon for these curses to reflect Indic prototypes. For instance, the Brahmin Uttaŋka in the Old Javanese *Ādiparwa* – based on the first book of the Indic *Mahābhārata* – famously cursed King Poṣya for serving him a cold meal. The king in turn accused the sage of falsehood and cursed him back. Of interest here is the introduction of the curse using Sanskrit, followed by an explanation in Old Javanese.

> *Yasmād aśucy annan dadāsi.* You have awfully little respect, King Poṣya. Because you give unclean food, therefore, you will be blind.

> *Yasmād annaṁ dūṣayasi, tasmād anapatyo bhaviṣyasi*, you consider the rice I gave you to be unclean; what you say is not true; therefore, you will be childless.[97]

Aside from literary works, curses also occur in the inscriptional record. The second charter of the eighth-century Central Javanese *Sri Kahulunan* inscription, for example, announces that those who pull out the sacred stone will end up like a crushed egg. In addition, the following ordeal awaits them: "If they enter a forest, may a tiger devour them; if they walk through a field, may a viper bite them; […] if they enter a river, may a crocodile devour them".[98] Later curses, documented in Javanese royal inscriptions of the Singhasari-Majapahit period (1222–1486), have been described by Jan van den Veerdonk.[99] We see similar practices on the South-East Asian mainland. The 890 CE *Bo-mưng* stele inscription of Indravarman II features a highly Sanskritised register of the Cham language, which is closely related to Malay; it again involves a powerful curse to punish those who dare to desacralise a monument:

> If any man destroys the goods of the god Mahāliṅga or has it destroyed by somebody else, the Mother of this man will be haunted by multitude [sic!] of dogs, and after his death he will live in the dark hell and remain there till the end of the *yuga* and the destruction of the world.[100]

A similar belief in deadly curses existed in Sumatra and elsewhere in the Malay World, as the work of Leonard Andaya has brought to broader academic attention.[101] The most lethal imprecations typically fell upon those who disobeyed royal authority. Malay curses were propagated as capable of killing instantaneously the perpetrators of a series of meticulously listed crimes. Some pre-Islamic Malay inscriptions repeat the phrase *nivunuḥ kāmu sumpaḥ* 'you will be killed by the curse' after each individual transgression. The *Bukit Seguntang* inscription warns that the disloyal will be swallowed by a river (*prajā ini muara ya umaŋgap*).[102] The inscriptions found at Kota Kapur, Sabokingking Naga, and a small number of other places contain a thus far unsuccessfully translated introductory formula, which could either be a magical formula or a curse in an unidentified language directed against non-Malay communities operating under Malay patronage.[103]

Cursing as a means of enforcing loyalty persisted in Islamic times. Two recurrent punishments in the classical Malay and Minangkabau literature were *bisa kawi* and *besi kawi*, the second part of which seems to reflect Arabic *qawīy* 'powerful'. The former was a potent supernatural poison (*bisa*) in which all diseases were united.[104] In classical Malay literature such as the *Hikayat Negeri Johor* and the *Hikayat Siak*,[105] this royal poison was said to strike all Minangkabau subjects who neglected to follow their sworn ruler into battle. The *besi kawi* was a talismanic piece of iron (*besi*) in the possession of Sumatran kings. It was used to authenticate oaths of allegiance (*sumpah setia*) by soaking it in water and having those who pledged their loyalty to the ruler drink that water.[106] This might reflect a wider Indian Ocean tradition; a curse was also "drunk" (*niminumāmu*)

in pre-Islamic Malay inscriptions and in their Khmer equivalents, while similar practices feature in the Indian lawbooks *Yājñavalkyasmṛti* and *Nāradasmṛti*, and in colonial-era descriptions of Ambon and Laos.[107] Although the *besi kawi* was predominantly associated with Sumatra's Minangkabau community,[108] the *Salasilah Melayu dan Bugis* informs us that it was also used in Bugis circles.[109] The implications of this curse are listed in the *Tuḥfat al-Nafīs*, a Malay chronicle written from the vantage point of the Bugis community.

> Any Minangkabau subject under Johor rule is to abide by Johor rule. Anyone who does not do so, will be consumed by the *besi kawi* curse, misfortune will be upon him, down to his grandchildren and great-grandchildren, every activity he desires will be cursed by God the Most High […] If he aspires to do wrong and goes to battle against his Highness Sultan Sulaiman and the King's Viceroy, it is he who will be unsafe for the rest of his life, down to the destruction of his grandchildren and great-grandchildren and the loss of his kingly authority, like a *nipah* fruit cleft asunder, while he will be consumed by the *besi kawi*.[110]

Like the Sanskrit elements mentioned previously, Arabic phrases such as *Allāh ta'ālā* served to authorise the curse that was being invoked. This transition from one high-status language to another is compellingly revealed by two versions of the Malay *Nītisārasamuccaya*, a pre-Islamic legal codex. The original text, associated with the fourteenth-century Dharmāśraya kingdom of Sumatra, has a seventeenth-century Jawi interpolation.[111] The earlier version opens with a Sanskrit section and ends with a heavily Sanskritised closing formula.[112] The later version, however, starts with *Bismillāh al-raḥmān al-raḥīm* and ends with *wa Allāh* 'by God'.[113] Parallels can be found elsewhere in Sumatra. Uli Kozok points out that the Hindu sacred syllable *om* was used interchangeably with *basurmila* (from Arabic *bismillāh*) in the Batak divinatory texts of North Sumatra, given that both "formulae were merely devices to infuse the text with a powerful element from the outside world". We find the same phenomenon in a number of Balinese mantras from the Karangasem region, which occasionally contain the phrase *bismillāh*.[114]

The prestige language could also hail from within the archipelago. Javanese and Malay in particular were deemed more cosmopolitan than (other) local languages. In colonial times, Javanese served as a medium of education in Islamic boarding schools (*pesantren*), including occasionally in regions where Sundanese and Madurese were spoken natively.[115] For similar reasons, some early nineteenth-century Sumatran legal codes such as *Undang-undang Palembang* were written in the more prestigious Javanese language, yet exhibit Malay clarifications in Jawi script (Figure 2.3).

More recent practices of oath-taking in the Malay world confirm the power attributed to foreign-language phrases, chiefly taken from Arabic as the new language of religious sanctity. As a 1920s observer pointed out, Malay oaths carried the most weight when taken in a mosque or near the tomb of a saint (*keramat*).[116] He cited the following formula as common on Sumatra's west coast: "*Wallahi, Billahi, Tallahi.* I will clarify straightforwardly whatever the judge asks me,

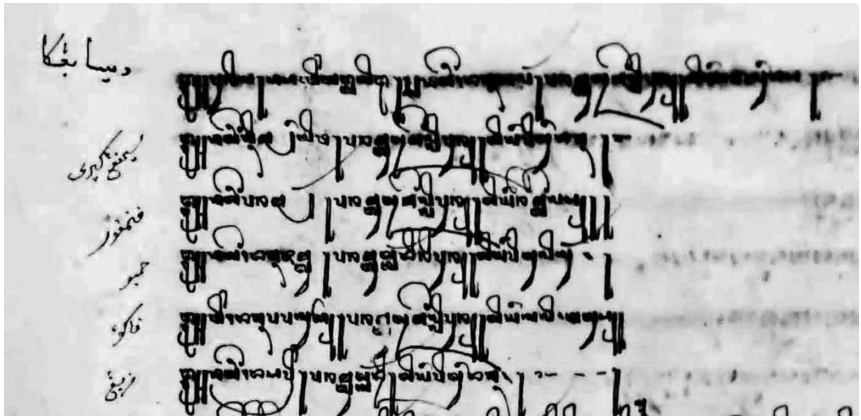


Figure 2.3 Fragment of the Undang-undang Palembang (UB Leiden, Cod. CB 146)

without exaggerating or mitigating. If I am untruthful, I shall be consumed by the thirty Parts of the Qurʾān."[117] The Arabic phrase *Wallāhi, Billāhi, Tallāhi* 'by God' is a common prelude for oaths across the Islamic world. In the Malay tradition, Arabic phrases likewise played a role in the invocation of spirits. The following excerpt, from the book of an anonymous nineteenth-century magician (*pawang*), illustrates that angels, the Kaaba, and the Qurʾān occur side-by-side among the punishments awaiting the disloyal.

> Do not withdraw your loyalty to me. You will die struck by the kingly power of the four corners of the earth. Die struck by forty-four angels. Die struck by a pillar from the Kaaba. Die pierced by the *besi kawi*. Die shot by a thunderbolt. Die seized by lightning at dusk. Die struck by the thirty Parts of the Qurʾān. Die struck by the Declaration [of Islam].[118]

In light of the above examples, it would be fair to infer that Indonesian curses directed towards oath-breakers and otherwise disloyal individuals show little typological change that can be attributed to the transition from Hinduism to Islam. In both contexts, external elements primarily added a dimension of power to the text. This, then, corresponds to the broader tendency of substituting Sanskrit for Arabic, while leaving the underlying structures largely intact. Needless to say, an Islamic oath (*qasam*) could also be taken wholesale from the Qurʾān, but this falls outside the scope of the present study.

A hybrid cosmopolis of law?

Although this study was conducted in the absence of a readily available corpus of ancient Indonesian lawbooks, let alone a vibrant academic debate on the linguistic aspects of these sources, some tentative conclusions can be offered on

the ways language and law intersected in pre-modern Sumatra and Java. While it is not entirely clear how lawbooks were utilised in local juridical settings, we know that they were copied, translated, and rearranged to make cultural sense in their recipient societies. The introduction of codified law was a matter of negotiation between the global, regional and local. This gave rise to two interrelated processes: the expression of vernacular legality in a cosmopolitan idiom and the expression of cosmopolitan legality in a vernacular one. Under Hindu and Muslim rulers alike, lexical borrowing and legal diglossia provided the sociolinguistic tools to validate local leadership and indigenous customs and equip them with a more global cachet. This legal decorum of words, idioms and scripts changed only superficially, and rarely at the cost of customary law. For this reason, it is risky to assume a one-to-one correspondence between lexical borrowing from Arabic and an Islamic provenance of legal concepts. In Malay, Javanese and other Indonesian languages, pre-existing Sanskrit equivalents are likely to have been used in pre-Islamic times. Table 2.4 lists a small quantity of examples I encountered while writing this article, but more will certainly be found upon further research.

The linguistic observations made in this chapter also hint at the persistence of cultural exchange between Java, Sumatra and the Indian subcontinent under Muslim rulers up to the eighteenth century. Both North and South India played substantial and insufficiently understood roles in the eastward transmission of Islamic culture and vocabulary, even though these networks were reduced by the VOC. While these continuities are acknowledged and substantiated in Ronit Ricci's proposal of an Arabic Cosmopolis of South and Southeast Asia,[119] the role of Persian and Hindustani remains to be examined in equal detail as Arabic. Some connections persisted into colonial times, for example in the form of Islamic intellectual networks or popular theatre groups and printing companies with connections across the Bay of Bengal.[120] A number of Islamic movements with subcontinental origins also spread to Indonesia in late-colonial times, including the

Table 2.4 Sanskrit vs. Arabic legal terms in Indonesian languages

Sanskrit	*Arabic*	*Meaning*
agarbhiṇi	ḥāmil	'pregnant'
anugraha	hadya	'(to bestow) a grant'
bhāga	warīth	'share (of inheritance)'
cihnabhūta	muḥallil	'legaliser (of remarriage)'
dāsa	ʿabd	'slave'
dharma	ʿādil	'just, according to the law'
dravya	milk	'legal possession'
doṣa	maʿṣiya	'immoral act, sin'
kṣama	muʿāf	'forgiveness'
pustaka	kitāb	'book'
rāja	sulṭān	'king'
upapatti	ḥākim	'judge'
vaṁśa	silsila	'lineage, genealogy'

Tablīghī Jamāʿat and the Qādiyānī and Lāhorī factions of Ahmadiyya.[121] In re-appreciating these networks, language is of course not the only source of interest. Further research on literary connections and scholarly exchanges will certainly continue to broaden our perspectives on the dispersal of Islamic legal practices across the wider Indian Ocean world.

Notes

1 I am indebted to Nico Kaptein, Jiří Jákl and Mahmood Kooria for their valuable comments on an earlier draft of this chapter.

2 Ayman Daher, "The Sharīʿa: Roman Law Wearing an Islamic Veil?" *Hirundo* 3 (2004): 91.

3 Cf. Heikki Mattila, *Comparative Legal Linguistics* (Aldershot, Hampshire, UK/ Burlington, VT: Ashgate, 2006); Deborah Cao, *Translating Law* (Clevedon: Multilingual Matters, 2007).

4 Heukki Mattila, "Comparative Jurilinguistics: A Discipline in statu nascendi," in *Multilingualism and the Harmonisation of European Law*, eds. B. Pozzo and V. Jacometti (Alphen aan den Rijn: Kluwer Law International, 2006), 21–32; Christopher K. Schmidt, "Loanwords in Japanese," in *Loanwords in the World's Languages: A Comparative Handbook*, eds. Martin Haspelmath and Uri Tadmor (Berlin: Mouton de Gruyter, 2009), 545–74.

5 Cf. David Ludden, "History Outside Civilisation and the Mobility of South Asia," *South Asia* 17, no. 1 (1994): 1–23; Daud Ali, "Connected Histories? Regional Historiography and Theories of Cultural Contact between Early South and Southeast Asia," in *Islamic Connections: Muslim Societies in South and Southeast Asia*, eds. R. Michael Feener and Terenjit Sevea (Singapore: Institute of Southeast Asian Studies, 2009), 1–24.

6 Stuart Robson, "Java at the Crossroads: Aspects of Javanese Cultural History in the 14th and 15th Centuries," *Bijdragen tot de Taal-, Land- en Volkenkunde* 137, nos. 2–3 (1981): 259–92. See also Bernard Arps, "The Power of the Heart That Blazes in the World," *Indonesia and the Malay World* 47, no. 139 (2019): 308–34 on the interplay between Islamic and Hindu-Buddhist texts in Java during the eighteenth and nineteenth centuries.

7 Vladimir Braginsky, "The Manner of the Prophet – Concealed, Found and Regained," *Indonesia and the Malay World* 45, no. 132 (2017): 250–91.

8 Claude Guillot, "Banten and the Bay of Bengal during the Sixteenth and Seventeenth Centuries," in *Commerce and Culture in the Bay of Bengal, 1500–1800*, eds. Om Prakash and Denys Lombard (New Delhi: Manohar, 1999), 163.

9 More Arab-centric narratives started to prevail in post-independence Indonesia and Malaysia; cf. K.A. Steenbrink, "Indian Teachers and Their Indonesian Pupils: On Intellectual Relations between India and Indonesia, 1600–1800," *Itinerario* 12, no. 1 (1988): 130, 139 n. 5; Syed Naguib al-Attas, "A General Theory of the Islamization of the Malay-Indonesian Archipelago," in *Profiles of Malay Culture: Historiography, Religion and Politics*, ed. Sartono Kartodirdjo (Jakarta: Ministry of Education and Culture, 1976), 73–84. Kumar and Wain give overviews of debates on Chinese-introduced elements of Islam and Njoto adds new information on Chinese and/or Vietnamese iconographic influence on early Javanese mosque architecture. Ann L. Kumar, "Islam, the Chinese, and Indonesian Historiography – A Review Article," *The Journal of Asian Studies* 46, no. 3 (1987): 603–16; Alexander Wain, "The Two *Kronik Tionghua* of Semarang and Cirebon: A Note on Provenance and Reliability," *Journal of Southeast Asian Studies* 48, no. 2 (2017): 179–95, Hélène Njoto, "Mythical Feline Figures in Java's Early Islamisation Period (Fifteenth to the Early Seventeenth Centuries): Sinitic and Vietnamese Imprints in Pasisir Art," *Arts Asiatiques* 73 (2018): 41–60.

10 Snouck Hurgronje, *De Islam in Nederlandsch-Indië* (Baarn: Hollandia-drukkerij, 1913); R.A. Kern, "De verbreiding van den Islam," in *Geschiedenis van Nederlandsch Indië: Deel 1* (Amsterdam: Joost van den Vondel, 1938); R.O. Winstedt, "Indian Influence in the Malay World," *The Journal of the Royal Asiatic Society of Great Britain and Ireland* 2 (1944): 186–96; G.E. Marrison, "Persian Influences in Malay Life (1280–1650)," *Journal of the Malayan Branch of the Royal Asiatic Society* 28, no. 1 (1955): 51–69; M.D. Mansoer, "Beberapa tjatatan tentang masuk dan perkembangannja agama Islam didaerah pesisir utara Sumatera," *Gema Islam* 16 (1962): 20–2; G.W.J. Drewes, "New Light on the Coming of Islam to Indonesia?" *Bijdragen tot de Taal-, Land- en Volkenkunde* 124, no. 4 (1968): 433–59.

11 Ashin das Gupta, *Indian Merchants and the Decline of Surat, c. 1700 – 1750* (Wiesbaden: Franz Steiner, 1979).

12 M. van Bruinessen, "The Origins and Development of Sufi Orders (*tarekat*) in Southeast Asia," *Studia Islamika* 1, no. 1 (1994): 1–23; Michael F. Laffan, *Islamic Nationhood and Colonial Indonesia: The Umma below the Winds* (London and New York: RoutledgeCurzon, 2003).

13 See, for example, R.A. Kern, "Javaansche rechtsbedeeling: Een bijdrage tot de kennis der geschiedenis van Java," *Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië* 83, nos. 2–3 (1927): 316–445; M.C. Hoadley and M.B. Hooker, *An Introduction to Javanese law: A Translation of and Commentary on the Agama* (Tucson, AZ: University of Arizona Press, 1981); and Mason C. Hoadley, *The Javanese Way of Law: Early Modern Sloka Phenomena* (Amsterdam: Amsterdam University Press, 2019) on the pluriformity of Javanese law in early modern times. On legal pluralism in colonial times, see Sanne Ravensbergen, "Anchors of Colonial Rule: Pluralistic Courts in Java, ca. 1803–1848," *Itinerario* 42, no. 2 (2018): 238–55.

14 See John Ball, *Indonesian Legal History, 1602–1848* (Sydney: Oughtershaw Press, 1982), and Mason C. Hoadley, *Selective Judicial Competence: The Cirebon-Priangan Legal Administration, 1680–1792* (Ithaca, NY: Southeast Asia Program, Cornell University, 1994); Hoadley, *The Javanese*. The situation was not too different in Dutch-controlled Ceylon. One outstanding example is the so-called *Thesawaleme* (Tamil *Tēcavaḻamai*), a Dutch treatise on Tamil customary law published in 1707. T. Nadaraja, *The Legal System of Ceylon in its Historical Setting* (Leiden: E.J. Brill, 1972).

15 For example, see G.A.J. Hazeu, *Tjeribonsch wetboek (Pěpakěm Tjěrbon) van het jaar 1768* (Batavia: Albrecht and The Hague: M. Nijhoff, 1905), 199.

16 R.J. Wilkinson, *Law. Part I: Introductory Sketch* (Kuala Lumpur: F.M.S. Government Press, 1908), 1.

17 Ball, *Indonesian Legal History.*

18 Cf. Johann Christoph Gerhard Jonker, *Over Javaansch strafrecht* (Amsterdam: De Roever-Kröber-Bakels, 1882); Johann Christoph Gerhard Jonker, *Een Oud-Javaansch wetboek vergeleken met Indische rechtsbronnen* (Leiden: E.J. Brill, 1885).

19 Nico Kaptein, "Meccan *Fatwâh*s from the End of the Nineteenth Century on Indonesian Affairs," *Studia Islamika* 2, no. 4 (1999): 141–59 makes a similar case with regard to the historical importance of Meccan *fatwā*s on Indonesian affairs.

20 Cf. Hazeu, *Tjeribonsch wetboek*; Kern, "Javaansche rechtsbedeeling."

21 Cf. T.C. Lekkerkerker, *Hindoe-recht in Indonesië* (Amsterdam: J.H. de Bussy, 1918); Theodore G. Th. Pigeaud, *Literature of Java. Volume I: Synopsis of Javanese Literature 900–1900 A.D.* (Leiden: Leiden University Library, 1967); Helen Creese, "Old Javanese Legal Traditions in Pre-Colonial Bali," *Bijdragen tot de Taal-, Land- en Volkenkunde* 165, nos. 2–3 (2009a): 241–90.

22 Timothy Lubin, "Legal Diglossia: Modeling Discursive Practices in Premodern Indic Law," in *Bilingual Discourse and Cross-Cultural Fertilisation: Sanskrit and Tamil in Medieval India*, eds. Whitney Cox and Vincenzo Vergiani (Paris: École française d'Extrême-Orient, 2012), 411–55.

23 Charles Ferguson, "Diglossia," *Word* 15, no. 2 (1959): 325–40.
24 Some of these points have also been made with regard to Old Javanese in Mason C. Hoadley, "Sanskritic Continuity in Southeast Asia: The *Ṣaḍātatāyī* and *Aṣṭacora* in Javanese Law," in *The Art and Culture of South-East Asia*, ed. Lokesh Chandra (New Delhi: International Academy of Indian Culture/Aditya Prakashan, 1991), 111–24.
25 I am aware that the distinction between cosmopolitan vis-à-vis local and/or vernacular has a degree of arbitrariness to it, as Indian Ocean societies were often plural on multiple levels. However, in the legal as well as linguistic domain, it suffices as an explanatory framework to understand the value attributed to cultural flows associated with elites from abroad.
26 D. van Hinloopen Labberton, *Dictionnaire de termes de droit coutumier Indonésien* (Amsterdam: Académie Royale des Sciences, 1933). Cf. modern Indonesian *perdata* 'civil', *pidana* 'criminal, penal', and *warga* 'citizen, resident', ultimately from Sanskrit *pradatta* 'to bring forward', *pīḍana* 'torture, oppressing', and *varga* 'class, group'.
27 Alexandra Landmann, "Can we Reconstruct a 'Malayo-Javanic' Law Area?" in *Spirits and Ships: Cultural Transfers in Early Monsoon Asia*, eds. Andrea Acri, Roger Blench and Alexandra Landmann (Singapore: ISEAS/Yusof Ishak Institute, 2017), 145–206.
28 Sheldon Pollock, *The Language of the Gods in the World of Men: Sanskrit, Culture, and Power in Premodern India* (Berkeley: University of California Press, 2006).
29 The same point has been made about Persian literature in the early-Islamic Malay World (Steenbrink, "Indian Teachers," 132).
30 Timothy Lubin, "Writing and the Recognition of Customary Law in Premodern India and Java," *Journal of the American Oriental Society* 135, no. 2 (2015): 251–5.
31 See Mason C. Hoadley, "Continuity and Change in Javanese Legal Tradition: The Evidence of the Jayapattra," *Indonesia* 11 (1971): 95–109 for more information on ancient Java and Creese, "Legal Traditions," on pre-colonial Bali.
32 These genres are analysed in detail by Lekkerkerker, *Hindoe-recht*, and Robert Lingat, *The Classical Law of India*, trans. with additions by J. Duncan M. Derrett (Berkeley: University of California Press, 1973). *Dharmaśāstra*-inspired legal traditions continue to be used in Mainland South-East Asia. Sachchidanand Sahai, "The Judicial System in Ancient Cambodia," *The South East Asian Review* 1, no. 1 (1976): 79–100; Hoadley and Hooker, *An Introduction*; D. Christian Lammerts, *Buddhist Law in Burma: A History of Dhammasattha Texts and Jurisprudence, 1250–1850* (Honolulu: University of Hawai`i Press, 2018).
33 Pigeaud, *Literature of Java*, 304–7; Hoadley and Hooker, *An Introduction*; Creese, "Legal Traditions."
34 F.H. van Naerssen, "De Aṣṭadaçawyawahāra in het Oudjavaansch," *Bijdragen tot de Taal-, Land- en Volkenkunde* 100 (1941): 357–76.
35 The derivation of Javanese *mancapat* 'villages around one's own village' from *pancāyat* (Kern, "Javaansche rechtsbedeeling," 407–9) strikes me as far-fetched and etymologically implausible.
36 Creese, "Legal Traditions."
37 A.B. Cohen Stuart, *Kawi oorkonden in facsimile, met inleiding en transscriptie* (Leiden: E.J. Brill, 1875), 26.
38 Stuart Robson, *The Old Javanese Rāmāyaṇa: A New English Translation with an Introduction and Notes* (Tokyo: Tokyo University of Foreign Studies, 2015), 673.
39 Sharada Rani, *Ślokāntara: An Old Javanese didactic text*. [s.l.:] (International Academy of Indian Culture, 1957), 120; A. Teeuw and Stuart O. Robson, *Bhomāntaka: The Death of Bhoma* (Leiden: KITLV Press, 2005), 72–3.
40 van Naerssen, "Aṣṭadaçawyawahāra."
41 Jonker, *Oud-Javaansch wetboek*; Hoadley and Hooker, *An Introduction*.

42 van Naerssen, "Aṣṭadaçawyawahāra," 363–70; Pigeaud, *Literature of Java*, 308.
43 Lubin, "Writing," 255.
44 My translation of *Yen aŋidek sapi, yen aŋideki ajaran, yen uṣṭra māti den-ideki ikā, kaŋ asarathi ḍeṇḍanen salakṣa tur aŋelenana saregane, samajanane kaŋ mati ikā* (Jonker, *Oud-Javaansch wetboek*, 84). This excerpt can be traced back to the Laws of Manu (VIII, 296): "If a man is killed, his guilt will be at once the same as (that of) a thief; for large animals such as cows, elephants, camels or horses, half of that." Georg Bühler ed. *The Laws of Manu* (New York: Dover Publications, 1969), 306.
45 J. Gonda, *Sanskrit in Indonesia* (Nagpur: International Academy of Indian Culture, 1952), 181.
46 Gonda, *Sanskrit in Indonesia.*
47 Tom G. Hoogervorst, "The Role of 'Prakrit' in Nusantara through 101 Etymologies," in *Cultural Transfer in Early Maritime Asia*, eds. Andrea Acri and Alexandra Landmann (Singapore: Institute of Southeast Asian Studies, 2017), 375–440.
48 E.g. David Henley and Peter Boomgaard eds., *Credit and Debt in Indonesia, 860–1930: From Peonage to Pawnshop, from Kongsi to Cooperative* (Leiden: KITLV Press/Singapore: Institute of Southeast Asian Studies, 2009).
49 The translations are mine. For purposes of space, I only cite the Malay forms as given in Van Hinloopen Labberton, *Dictionnaire*. For Sanskrit-derived legal terms in Javanese and Balinese, see Gonda, *Sanskrit in Indonesia*; Hoadley and Hooker, *An Introduction*; Hoadley, "Sanskritic Continuity"; Hoadley, *The Javanese*; Creese, "Legal Traditions"; and Lubin "Legal Diglossia."
50 Ball, *Indonesian Legal History*, 39.
51 Robson, "Java at the Crossroads."
52 A. Teeuw, S.O. Robson, Th.P. Galestin and P.J. Worsley, *Śiwarātrikalpa of Mpu Tanakuṅ: An Old Javanese Poem, Its Indian Source and Balinese Illustrations* (The Hague: Martinus Nijhoff, 1969).
53 Armando Cortesão ed., *The Suma Oriental of Tomé Pires and the Book of Francisco Rodrigues* (London: The Hakluyt Society, 1944), Vol. 1, 174; cf. M.C. Ricklefs, "Six Centuries of Islamization in Java," in *Conversion to Islam*, ed. Nehemia Levtzion (New York/London: Holmes & Meier, 1979), 103.
54 Ball, *Indonesian Legal History*; Stijn Cornelis van Huis, "Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba" (PhD Diss., University of Leiden, 2015).
55 See Theodore G. Th. Pigeaud, *Java in the 14th Century: A Study in Cultural History. The Nāgara-Kĕrtāgama by Rakawi Prapanca of Majapahit, 1365 A.D.: IV. Commentaries and Recapitulation* (Dordrecht: Springer, 1962), 76, 353, who translates 'Chief Justice'. The author draws from descriptions of the *dhyakṣa* in the *Nawanatya*, an Old Javanese compilation on courtly etiquette.
56 Adrian Vickers, *Journeys of Desire: A Study of the Balinese Text Malat* (Leiden: KITLV Press, 2005), 258.
57 In the words of Thomas Stamford Raffles, *The History of Java* (London: Black, Parbury and Allen/John Murray, 1817), vol. 1: 269, "although the power of the *Jáksa*, or law officer, is essentially reduced since the establishment of Mahometanism, and a great part of his authority transferred to the *Panghúlu* or Mahometan priest, he is still efficient, as far as concerns the police and minor transactions".
58 Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago and London: University of Chicago Press, 2011).
59 In Bali, equivalent terms include *dresta* (from Sanskrit *dṛṣṭa* 'manifested') and *kerta* (from an earlier meaning of 'priest, judge' and ultimately from Sanskrit *kartā* 'doer, performer, creator').
60 cf. Abdul Majeed Mohamed Mackeen, *Contemporary Islamic Legal Organization in Malaya* (New Haven, CT: Yale University Southeast Asian Studies, 1969), 10; Mahmood Kooria, "Cosmopolis of Law: Islamic Legal Ideas and Texts across the

Indian Ocean and Eastern Mediterranean Worlds" (PhD Diss., University of Leiden, 2016), 271–2.

61 According to Georges-Henri Bousquet, "ʿĀda – Custom, Customary Law," in *Judicial Practice: Institutions and Agents in the Islamic World*, ed. Boğaç A. Ergene (Leiden: Brill, 2009), 1, *ʿāda* and *ʿurf* are used more or less identically in Arabic. In South-East Asia, however, *uruf* refers to conventions, customs, or traditions shared on a society-wide level; the term is used primarily within the domain of Islamic law.

62 Pigeaud, *Literature of Java*, 312–14.

63 L.W.C. van den Berg, "Het Mohammedaansche godsdienstonderwijs op Java en Madoera en de daarbij gebruikte Arabische boeken," *Tijdschrift voor Indische Taal-, Land- en Volkenkunde* 31 (1886): 518–55; Ph. S. van Ronkel, *Supplement to the Catalogue of the Arabic Manuscripts preserved in the Museum of the Batavia Society of Arts and Sciences* (Batavia: Albrecht/The Hague: M. Nijhoff, 1913); M. van Bruinessen, "*Pesantren* and *Kitab Kuning*: Continuity and Change in a Tradition of Religious Learning," in *Texts from the Islands: Oral and Written Traditions of Indonesia and the Malay World*, ed. Wolfgang Marschall (Berne: University of Berne, 1988), 121–45; M. van Bruinessen, "Kitab Kuning," and Kooria, "Cosmopolis of Law," discuss the books used in Java's Islamic schools. Since its publication in the Netherlands in 1853, the Javanese version of the *Tuḥfat al-Muḥtāj* was among Indonesia's first legal texts studied by European academics. S. Keijzer, *Kitab Toehpah: Javaansch-Mohammedaansch Wetboek* (The Hague: K. Fuhri, 1853).

64 Both are names of semi-mythological rulers. Surya Ngalam consists of the Sanskrit element *sūrya* 'sun' followed by Arabic *ʿālam* 'world', whereas Adilulah appears to reflect the Indo-Persian name ʿĀdil Ullāh.

65 Hazeu, *Tjeribonsch wetboek*.

66 J.G. de Casparis, "Ahmat Majanu's Tombstone at Pengkalan Kempas and its Kawi Inscription," *Journal of the Malaysian Branch of the Royal Asiatic Society* 53, no. 1 (1980): 1–22; Willem van der Molen, "The Syair of Minye Tujuh," *Bijdragen tot de Taal-, Land- en Volkenkunde* 163, nos. 2–3 (2007): 356–75; Arlo Griffiths, "Inscriptions of Sumatra, IV: An Epitaph from Pananggahan (Barus, North Sumatra) and a Poem from Lubuk Layang (Pasaman, West Sumatra)," *Archipel* 100 (2020): 55–68.

67 See Ball, *Indonesian Legal History*; Muhamad Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882–1942* (Jakarta: INIS, 2001); Ravensbergen, "Anchors."

68 For example in a 1786 letter from a Sultan of Selangor to the founder of the British colony of Penang, cf. Annabel Teh Gallop, *The Legacy of the Malay Written Letter* (London: British Library, 1994), 203. Similarly, the Dutch usage of the word *priester* 'priest' also extended to Islamic functionaries. In Sumatra, the word *padri* became specifically associated with Islamic reformist movements from the early eighteenth century. G.W.J. Drewes, "De etymologie van padri," *Bijdragen tot de Taal-, Land- en Volkenkunde* 138, nos. 2–3 (1982): 346–50; J. Kathirithamby-Wells, "The Origin of the Term Padri: Some Historical Evidence," *Indonesia Circle* 14, no. 41 (1986): 3–9.

69 Descriptions taken from the Dutch translation of *Pepakem Cerbon*; "Priesters die groot nog kleine zonden begaen, en geen Godsdienst off Bedestonden versuimen maar devoot zijn," "die alle Godsordonnantiën onderhoud grooten en kleinen: de groote zijn Sambaijang, Poeassa, Hadjie te zijn, de Huwelijkswet te leesen, en tienden te geeven, de kleine zien op onreine Spijzen," and "die niets onreijns eet off doet, en niet alleen 't Quaad, maer ook den Schijn des kwaads vermijt" (Hazeu, *Tjeribonsch wetboek*, 56–7). The *Pepakem Cerbon* itself refers to the earlier text *Raja Niscaya* as the source for this particular passage.

70 Respectively from Arabic *karīm* 'merciful', *khalīfa* 'caliph', *kātib* 'writer', *qaum* 'community', *marbūṭ* 'appointed', *muʾadhdhin* 'one who calls the prayer', *muftī* 'expounder of Islamic law', *nāʾib* 'representative', *faqīh* 'expert of *fiqh*', *taʿmīr* 'granting long life', and *wazīr* 'minister'. In addition, some Arabic-derived titles became

common (elements of) male names, including *Amir*, *Haji*, *Makhudum*, *Mulana*, *Said*, *Sarip* and *Syekh* from *amīr* 'commander', *ḥājjī* 'one who has performed the pilgrimage to Mecca', *makhdūm* 'master', *maulānā* 'lord', *sayyid* 'descendant of Muḥammad', *sharīf* 'eminent', and *shaykh* 'venerable gentleman'.

71 Ph.S. van Ronkel, "Maleisch labai: Een Moslimsch-Indische term," *Tijdschrift voor Indische Taal-, Land- en Volkenkunde* 56 (1914): 137–41; Tayka Shuʿayb ʿĀlim, *Arabic, Arwi, and Persian in Sarandib and Tamil Nadu: A Study of the Contributions of Sri Lanka and Tamil Nadu to Arabic, Arwi, Persian, and Urdu Languages, Literature, and Education* (Madras: Imāmul ʿArūs Trust, 1993), 536–9; Torsten Tschacher, "Circulating Islam: Understanding Convergence and Divergence in the Islamic Traditions of Maʿbar and Nusantara," in *Islamic Connections*, eds. Feener and Sevea, 52; Tom G. Hoogervorst, "Tracing the Linguistic Crossroads between Malay and Tamil," *Wacana* 16, no. 2 (2015a): 252.

72 Ultimately from Sanskrit *śāstrī* 'a teacher of sacred books or science' (Zoetmulder, "Die hochreligionen," 293), but borrowed into Javanese through Tamil. Hoogervorst, "Detecting Pre-modern Lexical Influence from South India in Maritime Southeast Asia," *Archipel* 89 (2015b): 83. The first to rediscover this etymology was the Dutch linguist Hermanus Neubronner van der Tuuk. H. von de Wall, *Maleisch-Nederlandsch woordenboek* (Batavia: Landsdrukkerij, 1877), 288.

73 Bryan Louis Pfaffenberger, "Pilgrimage and Traditional Authority in Tamil Sri Lanka" (PhD diss., University of California, 1977), 80–1, 164–5.

74 Clifford Geertz, *The Religion of Java* (Glencoe, IL: The Free Press, 1960).

75 Ricklefs, "Six Centuries," 111; Marcel Bonneff, "Piété et trivialité: Le singulier des *santri*," in *Texts from the Islands: Oral and Written Traditions of Indonesia and the Malay World*, ed. Wolfgang Marschall (Berne: University of Berne, 1989), 147–58.

76 But see Robson, "Java at the Crossroads," 275.

77 See Kooria, "Cosmopolis of Law" on these connections. Apart from this text and the *Tuḥfat al-Mursala ilā Rūḥ al-Nabī* – written by the Indian scholar Muḥammad bin Faḍlallāh al-Burhānpūrī and of influence to the Acehnese scholar Shams al-Dīn al-Samaṭrānī (A.H. Johns, *The Gift Addressed to the Spirit of the Prophet* (Canberra: Australian National University, 1965); Steenbrink, "Indian Teachers") – there is little to suggest that South-East Asia's early canon of Islamic texts exhibits a specifically Indian character. Most subsequent Indian connections, such as the influential Shaṭṭāriyya and Naqshbandiyya orders, reached Java and Sumatra by way of the Ḥijāz. van Bruinessen, "The Origins"; Michael F. Laffan, "A Sufi Century? The Modern Spread of the Sufi Orders in Southeast Asia," in *Global Muslims in the Age of Steam and Print*, eds. James L. Gelvin and Nile Green (Berkeley: University of California Press, 2013), 25–39.

78 Roland E. Miller, *Mappila Muslim Culture: How a Historic Muslim Community in India has Blended Tradition and Modernity* (Albany, NY: State University of New York Press, 2015), 210.

79 A. Hasjmy, *Sejarah kebudayaan Islam di Indonesia* (Jakarta: Bulan Bintang, 1987), 9; Elizabeth Lambourn, "The Formation of the Batu Aceh Tradition in Fifteenth-Century Samudera-Pasai," *Indonesia and the Malay World* 32, no. 93 (2004): 219–20.

80 E. Edwards McKinnon, "Continuity and Change in South Indian Involvement in Northern Sumatra: The Inferences of Archaeological Evidence from Kota Cina and Lamreh," in *Early Interactions between South and Southeast Asia: Reflections on Cross-Cultural Exchange*, eds. Pierre-Yves Manguin, A. Mani and Geoff Wade (Singapore: ISEAS/New Delhi: Manohar, 2011), 137–60.

81 ʿĀlim, *Arabic, Arwi*, 496, 508–10, 516.

82 Susan Bayly, "Islam and State Power in Pre-colonial South India," in *India and Indonesia during the Ancien Regime* (Leiden: E.J. Brill, 1989), 154–5.

83 Mark R. Woodward, *Islam in Java: Normative Piety and Mysticism in the Sultanate of Yogyakarta* (Tucson, AZ: The University of Arizona Press, 1989), 55–6; Mehrdad

Shokoohy, *Muslim Architecture of South India: The Sultanate of Maʿbar and the Traditions of Maritime Settlers on the Malabar and Coromandel Coasts (Tamil Nadu, Kerala and Goa)* (London: RoutledgeCurzon, 2003), 247–52; Tschacher, "Circulating Islam"; Ricci, *Islam Translated.*

84 Winstedt, "Indian Influence"; R. Roolvink, "Hikajat Radja-Radja Pasai," *Bahasa dan Budaja* 2, no. 3 (1954): 3–44; Drewes, "New Light"; Hoogervorst, "Tracing." For example, the name Ahmad Perumudal Perumal, a ruler mentioned in the *Hikayat Raja-Raja Pasai*, contains the Tamil element Perumāḷ. Roolvink, "Hikajat Radja-Radja Pasai," 15–16, n. 15.

85 Torsten Tschacher, "Tamil," in *Encyclopedia of Arabic Language and Linguistics. Volume IV: Q-Z*, ed. Kees Versteegh (Leiden/Boston: Brill, 2009), 433–6; Tom G. Hoogervorst, "Non-Areal Contact," in *The Oxford Guide to the Malayo-Polynesian Languages of Asia and Madagascar*, eds. Alexander Adelaar and Antoinette Schapper (Oxford: Oxford University Press, 2021). We may add *ilmu* 'knowledge' (Tamil *ilumu* from Arabic *ʿilm*), *sabtu* 'Saturday' (Tamil *captu* from Arabic *sabt*), and *waktu* 'time' (Tamil *vaktu* from Arabic *waqt*).

86 ʿĀlim, *Arabic, Arwi*, 55.

87 R.O. Winstedt, "Some More Malay Words," *Journal of the Straits Branch of the Royal Asiatic Society* 80 (1919): 135–7; Hoogervorst, "Detecting Pre-modern," 77.

88 Woodward, *Islam in Java*, 57; Hoogervorst, "Detecting Pre-modern," 78.

89 Marrison, "Persian Influences"; Robson, "Java at the Crossroads"; Elizabeth Lambourn, "From Cambay to Samudera-Pasai and Gresik: The Export of Gujarati Grave Memorials to Sumatra and Java in the Fifteenth Century C.E.," *Indonesia and the Malay World* 31, no. 90 (2003): 221–89.

90 See Alessandro Bausani, *Note sui vocaboli Persiani in Malese-Indonesiano* (Naples: Istituto Universitario Orientale, 1964) on the lexical influence of Persian on Malay more generally.

91 Ph.S. van Ronkel, "Hindoēstānī en Maleisch," *Tijdschrift voor Indische Taal-, Land- en Volkenkunde* 43 (1901): 583–8; Vladimir Braginsky, "Structure, Date and Sources of Hikayat Aceh Revisited: The Problem of Mughal-Malay Literary Ties," *Bijdragen tot de Taal-, Land- en Volkenkunde* 162, no. 4 (2006): 441–67; Vladimir Braginsky and Anna Suvorova, "A New Wave of Indian Inspiration: Translations from Urdu in Malay Traditional Literature and Theatre," *Indonesia and the Malay World* 36, no. 104 (2008): 115–53; Jan van der Putten, "Wayang Parsi, Bangsawan and Printing: Commercial Cultural Exchange between South Asia and the Malay World," in *Islamic Connections*, eds. Feener and Sevea, 86–108; Chinthaka Prageeth Meddegoda and Gisa Jähnichen, *Hindustani Traces in Malay Ghazal: 'A Song, So Old and Yet Still Famous'* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2016).

92 Hoogervorst, "Non-Areal Contact."

93 A type of marriage that is deemed less honourable than *nikah* 'formal marriage', from Arabic *nikāḥ*.

94 Christiaan Hooykaas, *Religion in Bali* (Leiden: Brill, 1973), 10.

95 Helen Creese, "Judicial Processes and Legal Authority in Pre-Colonial Bali," *Bijdragen tot de Taal-, Land- en Volkenkunde* 165, no. 4 (2009b): 531.

96 Willem van der Molen, "Curses in the Ādiparwa," Paper presented at the *International Workshop on South-East Asian Studies 13: The Study of Old Javanese Texts*, 7 December 1998, Leiden.

97 The original reads: *Yasmād aśucy annan dadāsi. Atiśayāśrādhanta mahārāja Poṣya, apan aweh bhojana tan śuci, mataŋ yan wutā ta kita / Yasmād annaṁ dūṣayasi, tasmād anapatyo bhaviṣyasi, ikiŋ sekul pawehni ŋhulun bhojana ri kita sinaŋguhta tan śuci; tan tuhu pwa lwingta; jwah tasmāt anapatyā ta kita* (text and translation from van der Molen, "Curses," 16–18). Compare Vyāsa's *Mahābhārata*: *Yasmān me aśucy annaṁ dadāsi* (1.3, 126) 'Thou givest me food that is unclean'; *Yasmāt tvam apy aduṣṭam annaṁ dūṣayasi tasmād anapatyo bhaviṣyasīti* (1.3, 127) 'And because

dost thou impute uncleanliness to food that is clean, therefore shalt thou be without issue.' Translation from K.M. Ganguli, see Protap Chandra Roy, *The Mahabharata of Krishna-Dvaipayana Vyasa translated into English prose: Adi Parva* (Calcutta: Bharata Press, 1884), 54–5.

98 My translation of *Ya samaŋkana yan pasukka iŋ alas moŋ umaŋŋana; ya samaŋkana yan para iŋ tgal ulā matukka; […] ya samaŋkana yan para iŋ luah wuhaya umaŋŋana*. J.G. de Casparis, *Prasasti Indonesia I* (Bandung: A.C. Nix, 1950), 87.

99 van den Veerdonk, "Curses."

100 *Siy vṛliy urāṅ mandop sarvākarādāna di yāṅ pov mahāliṅga mapamataḥ matandāḥ niy matop vriy gṛhasthā kluñ asov vañak ndoy inā urāṅ nan kā ñu matai nau dauk di yop naraka tauṅ yugāntaḥ pralaya*. Text and translation from *Inscriptions of Campā based on the Editions and Translations of Abel Bergaigne, Étienne Aymonnier, Louis Finot, Édouard Huber and other French Scholars and of the Work of R.C. Majumdar,* ed. Karl-Heinz Golzio (Aachen: Shaker, 2004), 73–6.

101 Leonard Y. Andaya, *Leaves of the Same Tree: Trade and Ethnicity in the Straits of Melaka* (Honolulu: University of Hawai'i Press, 2008).

102 J.G. de Casparis, *Prasasti Indonesia II* (Bandung: Masa Baru, 1956), 5.

103 de Casparis, *Prasasti Indonesia II*, 28.

104 von de Wall, *Maleisch-Nederlandsch woordenboek*, 311–12.

105 Ismail Hussein, "Hikayat Negeri Johor: A Nineteenth Century Bugis History Relating to Events in Riau and Selangor," *JMBRAS Reprint* 6 (1979): 195; Muhammad Yusoff Hashim ed., *Hikayat Siak: Dirawikan oleh Tengku Said* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992), 123.

106 von de Wall, *Maleisch-Nederlandsch woordenboek*, 231, 485.

107 George Coedès, "Études cambodgiennes," *Bulletin de l'École française d'Extrême-Orient* 13 (1913): 16; Santosh Kumar Das, *The Economic History of India* (Calcutta: Mitra Press, 1925), 283; Pierre Nginn, "La Cérémonie du Serment," *France-Asie* 66–7 (1925): 567–9; de Casparis, *Prasasti Indonesia II*, 29; Gerrit Knaap, "Kora-kora en kruitdamp: De Verenigde Oost-Indische Compagnie in oorlog en vrede in Ambon," in *De Verenigde Oost-Indische Compagnie: Tussen oorlog en diplomatie*, eds. Gerrit Knaap and Jan Teitler (Leiden: KITLV, 2002), 264.

108 Cf. Jane Drakard, *A Kingdom of Words: Language and Power in Sumatra* (Oxford: Oxford University Press, 1999).

109 Mohd Yusof Md. Nor, ed. *Salasilah Melayu dan Bugis* (Shah Alam: Fajar Bakti, 1997), 163.

110 My translation of *Barang siapa anak Minangkabau yang di dalam perintahan Johor hendaklah mengikut perintahan Johor. Barang siapa tidak mengikut, dimakan sumpah besi kawi tiada selamat sampai kepada anak cucu-cicitnya, tiap-tiap suatu pekerjaannya yang dicitanya dikutuki Allah Taala. […] Apabila ia berniat salah lagi membuat perkelahian dengan Baginda Sultan Sulaiman serta Yang Dipertuan Muda, melainkan ia tiada mendapat selamat seumur hidupnya, sampai kepada anak cucu-cicitnya binasa hilang daulat kerajaan, seperti tembatu dibelah, serta dimakan besi kawi*. Virginia Matheson Hooker, *Tuhfat al-Nafis: Sejarah Melayu-Islam* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1991), 225–6.

111 Both texts are transliterated, translated, and discussed in detail in Uli Kozok, *A 14th Century Malay Code of Laws: The Nītisārasamuccaya* (Singapore: Institute of Southeast Asian Studies, 2015). The *Nītisārasamuccaya* is not to be confused with the unrelated Old Javanese *Sārasamuccaya*, cf. Raghu Vira, *Sāra-Samuccaya (A classical Indonesian compendium of high ideals).* (New Delhi: Arya Bharati Mudranalaya, 1962).

112 Thomas Hunter reconstructs this part as *[auṁ] svasti śrī śakavarśātīta māsa vaiśākha oṁ jyaiṣṭhāmāsa tithi kṛṣṇapakṣa* 'Aum. Hail, in the Śaka year … the month Vaiśākha … Om. In the month of Jyaiṣṭhā, during the waning cycle of the moon' (Kozok, *A 14th Century*, 73, 292).

113 Kozok, *A 14th Century*, 236, 242.
114 Hedi Hinzler, email to author, 13 December 2016
115 M. van Bruinessen, "Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu; Comments on a New Collection in the KITLV Library," *Bijdragen tot de Taal-, Land- en Volkenkunde* 146, nos. 2–3 (1990): 226–69.
116 P.J.H., "De eed in den Ned.-Indischen archipel," *Indologenblad* 7 (1920): 70. On oath-taking in Islamic courts in the Netherlands Indies, also see Halim, Fachrizal A., "Contestation of the Oath Procedure in Colonial Indonesia's Islamic Court," *Indonesia and the Malay World* 41/119 (2013): 14-28. The author gives no examples of actual oaths.
117 My translation of *Wallahi, Billahi, Tallahi. Hamba mau menerangkan dengan lurus, apa hakim tanya kepada hamba, tiada hamba melebih, atau mengurangi. Kalau hamba berduta dimakan Koran tiga puluh juz* (P.J.H., "De eed" 70, spelling adjusted).
118 My translation of *Janganlah engkau mungkir setia kepadaku. Matilah engkau ditimpa daulat empat penjuru ʿalam. Mati ditimpa malaikat yang empat puluh empat. Mati ditimpa tiang Kaʿbah. Mati disula Besi Kawi. Mati dipanah halilintar. Mati disambar kilat senja. Mati ditimpa Kuran tiga puluh juz. Mati ditimpa Kalimah*. Walter William Skeat, *Malay Magic: Being an Introduction to the Folklore and Popular Religion of the Malay Peninsula* (London: Macmillan, 1900), 592, spelling adjusted.
119 Ricci, *Islam Translated.*
120 Terenjit Sevea, "Making Medinas in the East: Islamist Connections and Progressive Islam," in *Islamic Connections*, eds. Feener and Sevea, 149–74; van der Putten, "Wayang Parsi."
121 Iskandar Zulkarnain, *Gerakan Ahmadiyah di Indonesia* (Yogyakarta: LKiS Yogyakarta, 2005); Farish A Noor, "The Tablighi Jamaʿat as Vehicle of (Re)discovery: Conversion Narratives and the Appropriation of India in the Southeast Asian Tablighi Movement," in *Islamic Connections*, eds. Feener and Sevea, 195–218.

3 Borrowing *adat* and bargaining Islam

The creation and Islamisation of customary law in Mandar

Muhammad Buana

Introduction

Mandar is an ethnic group in West Sulawesi, Indonesia. The Mandarese live on the coast of Teluk Mandar (Gulf of Mandar) into which rivers from the surrounding highlands flow. Linguistically and culturally the Mandarese belong to the same branch of the South Sulawesi ethnic family, as do the Torajanese, Bugis and Makassarese.[1] Located between Kalimantan, the Sulu Archipelago and the Spice Islands, the waterways around the homeland of the Mandarese were filled with roaming merchants, diplomatic envoys, pirates and fishers. Due to the barren condition of their lands, the Mandarese relied more on the sea and developed advanced skills in their maritime tradition, making them some of the finest sailors in the Indonesian archipelago.[2]

The Mandarese way of life is fundamentally attached to the oceanic network. According to their folklore, their ancestress was a stranger from the sea, who arrived by boat and married a man from the highlands.[3] The sea is symbolically perceived as the mother who brings life, an open vista where the Mandarese can interact with players and events from distant realms. The sea allows them to adapt and evolve through changes brought by oceanic networks. Some of these innovations are not always obvious. They adopted a European sailing mast for their typical Austronesian boat only after Mandarese sailors had inspected this unique type of sailing mast through contacts with European vessels in Makassar, Java and Singapore. They saw they would enhance their maritime performance. The same process led to the invention of the *sandeq* fishing boat.[4] Nowadays the *sandeq* is regarded as the peak of the development of traditional Mandarese maritime expertise. On the surface the *sandeq* looks local and indigenous, but in fact it is a cross-cultural product. Similar traces of oceanic interactions can be seen in traditional Mandarese beliefs, cosmology, society, law and even culinary delights.

This chapter will analyse the development of customary law, known as *adat*, and the adoption of the Islamic legal tradition in Mandar. Local Mandarese texts reveal certain historical developments in the sixteenth and seventeenth centuries in the Indian Ocean littoral which led to the birth of *adat*. My research aims to answer different questions: How was the Mandarese legal culture linked to the broader political and economic activities in the Indian Ocean? How did the

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ʿulamāʾ network from the Middle East and around the Java Sea influence local customary law? What can we learn from the fluid transregional interactions at Mandar about our current understanding of *adat* as a concept of customary law for an indigenous population? By widening our focus beyond the locality of *adat*, I shall explore a new approach to understand customary law as a phenomenon built up through a long process, with an input from both local and external sources.

Adat and Islamic law in the Indonesian Archipelago

When foreign merchants, missionaries, diplomatic envoys, adventurers or fugitives arrived on the shores of the Indonesian Archipelago in pre-modern centuries they naturally found the customs and habits of the indigenous inhabitants strange.[5] Among their observations they described the practices of justice and customary law. In the twelfth century the Chinese officer Chau Ju Kua wrote that the people of San-fo-ts'i (Srivijaya) enforced laws strictly, applying the death penalty for men and women caught in adultery. They also noted that it was lawful for the followers of the king to kill themselves by leaping into the blazing pyre at a royal cremation.[6] In the fifteenth century the Chinese traveller-*cum*-translator Ma Huan noted in the Majapahit Empire judicial executions and punishing by branding or impalement were frequent.[7] Such reports give us some idea of the earliest administration of indigenous law in the Indonesian Archipelago.

Islam arrived in the region when these were the pre-existing norms and customs. New sets of laws based on Sharīʿa were introduced, but the Muslim ʿulamāʾ and rulers also needed to address diverse regional customs and traditions. A stone inscription from Terengganu in present-day Malaysia, written in Jawi (Arabicised Malay), is one of the first documents in the Malay world with evidence of an effort by a local ruler to accommodate local customs and Sharīʿa.[8] It is a fourteenth-century inscription, a royal decree issued by the ruler of Terengganu, who aimed to complement customary law with Islamic law.[9] Local people assimilated local customs and Sharīʿa through an active institutionalisation process. Absorbing the Arabic term *ʿada* into various languages in the Archipelago is part of the evidence for this process. The variant term *adat* in Malay was used to describe aspects of local traditions, similar to *adaq* in Makassar and *adeq* in Bugis. Gradually Islamised polities, such as the ones in Aceh and Minangkabau in West Sumatra, developed larger hybrid civilisations by accommodating both Islamic teachings and *adat* traditions.

The oceanic networks played significant roles in introducing the Archipelago to other religions, such as Hinduism, Buddhism and Islam. Before European colonisation the arrival of those religions had changed the spiritual landscape of the region along with its social, cultural and political traditions. *Adat* is conceptually often relegated to the peripheries, seen only as a legal product of indigenous communities, passing over much influence from the network of threads across the Indian Ocean. In reality, *adat* is central to the daily life of the people in the Archipelago.[10] Its fundamental and core elements demonstrate streams of continuous change from the past to the present.[11] It contains mores, customs and manners

that are practised and perceived as obligatory in order to maintain peace and prosperity in society.[12] It consists of rights and obligations that bind people to their land and society with pertinent rules, sanctions, ceremonial procedures, social organisation and broader value systems.[13]

The idea that the Indian Ocean is a transregional theatre for an exchange of ideas, which contributes to shared global traditions, opens up the possibility to rethink and reinterpret *adat*. The centrality of *adat* was a way of life for indigenous societies. It is an area which is widely affected by networks of merchants, Sufi guilds, middlemen, sultans and slaves, and was inevitably subjected to transpositions from transoceanic exchanges.[14] As participants travelled their routes they created and integrated into physical as well as social units, serving as agents of change for "the unity and diversity of Indian Ocean civilisations".[15] This allowed them to take part in a transformation process of what would otherwise have been closed and strictly local conversations, which included indigenous legal practices. This is particularly true for the maritime network of Eastern Indonesia, the setting for this research, which is far removed from the central stage of the Indian Ocean but was never isolated from it.[16] Although *adat* takes a central role in the heart of indigenous communities, it is not a set of rigid doctrines contained in normative texts. In fact, *adat* and its accompanying aspects, such as its rituals and languages, allow it to be interpreted in accordance with various socio-historical contexts from time to time, including an attempt to link it with the wider geographical limits of the Indian Ocean.[17]

The approach to reading legal history as an open and public phenomenon in the Indian Ocean reveals the role persons and events outside a legal context played in the complex process of the formation of law. During the fifteenth century the dominant Islamic school of jurisprudence shifted from Ḥanafī to Shāfiʿī (*intiqāl al-madhhab*) for Chinese Muslims on the northern coast of Java. This is an interesting example of the rise of one particular *madhhab* to another that was effected by persons and events outside a legal context. It involved a diaspora community, imperial decrees, the fall of the native Hindu kingdom and merchant-ʿulamāʾ connections around the Indian Ocean.[18] Changes were happening in political and economic settings on the northern coast, where there was a Chinese diaspora community with a significant Ḥanafī Muslim population facing a growing dominance of Shāfiʿī ʿulamāʾ endorsed by a Sino-Javanese ruler. The application of the *haijin* (sea ban) by the Ming government further diminished already declining ties of Chinese Muslims in Java with their Ḥanafī connections in China.[19] These various elements interacted with one another, leading to the birth of a peculiar Sino-Javanese Muslim culture, which in turn was overtaken by the Shāfiʿī doctrine, and that became the leading school of thought in the region and synchronised with Javanese *adat*.[20] Such Indian Ocean maritime networks provided interactions and dialogues that determined *adat* values. To have a coherent understanding of how well-rooted the effect of oceanic networks was on the Malay world, therefore, one must include the dynamics of *adat* in discussions related to the legal traditions, the reception of religions and cultural exchanges.

In an Islamic context, the *ʿāda* (also called *ʿurf*) means 'known custom'. As well as the Qurʾān, the Prophetic traditions (*sunna*), the consensus of the ʿulamāʾ (*ijmāʿ*), and analogy (*qiyās*), Muslim jurists use the *ʿāda* to make judgements, although it is perceived as a secondary authority compared to the other sources.[21] Ghazali (d. 1111), a prominent Islamic jurist and scholar, asserts that the *ʿāda* is "what is accepted by people and is compatible to their way of thinking and is normally adopted by those considered to be of good character".[22] Ibn Mansur (d. 1312), an Egyptian grammarian, defines the *ʿāda* as *al-daydān*, recurring actions over time.[23] One of the main determining factors of the *ʿāda* is its good nature (*ʿurf ṣaḥīḥ*) that manifests itself in regular habits. Generally *al-ʿāda* covers many aspects of Muslim life, including local habits and interpersonal (*muʿāmalāt*) issues, such as professional conduct, commercial transactions, public service or social relationships that are subject to change.[24] Abu Hanifa (d. 767) initiated jurisprudential discussions on the *ʿāda* or *ʿurf* as principles of Islamic law on the basis of his first-hand experiences as a merchant, and his consequent understanding of how customs influenced daily transactions.[25] Before him applying the *ʿāda* was an acknowledged practice of the Islamic judiciary. During the Umayyad era, for instance, governors administered justice by considering the tradition and customs of the newly conquered territories.[26] The weakening of Arab influence during the Abbasid era and later centuries opened the Islamic world to more diversity, which in return strengthened the influence of indigenous customs.

It is important to note that a legal vacuum in the early Islamic period was also a considerable factor for change which allowed many pre-Islamic legal and social customs to influence the laws.[27] The practice of adopting pre-existing legal, administrative and political practices of newly conquered Muslim lands continued until the emergence of professional jurists. They in turn spearheaded the birth and growth of Islamic *madhhabs* "to reclaim authority and displace the centrality of customary practice".[28] In later centuries, as Islam advanced to different parts of the globe, including the Indonesian Archipelago, precedent local traditions also played decisive roles to influence Islamic judgements, as we shall show in this chapter.

In the early twentieth century the Dutch jurist Cornelis van Vollenhoven described *adat* as "the totality of the rules of conduct for natives and foreign orientals that have on the one hand sanctions, and on the other are not codified".[29] He proposed drawing up *adat* law circles (*rechtskringen*) to classify the main native similarities and common traits of different *adat* groups based on geographical proximity, insisting that Malayo-Polynesian roots were the true and pure nature of *adat*.[30] He noted that a large number of Islamic terms for indigenous customs, especially in the field of property law, marriage and inheritance, were simply adopted, just as Latin terms were adopted into Dutch law.[31] He endeavoured to codify *adat* from scattered sources.[32] In the process, he transformed and distorted *adat* into "a mythical legal universe that did not really exist on the ground", as Keebet and Franz von Benda-Beckmann observed.[33]

Colonial civil servants transformed the concept of law within *adat* as a new category of legal process in the Dutch East Indies, paving the way for the birth

of '*hukum adat*' or *adatrecht*, a concept that is still used by Indonesian scholars. This new invention was then interpreted, standardised and applied within a Western legal perspective. Consequently *hukum adat* is different from the *adat* that is routinely observed by people in their daily lives. Nowadays, the discussion about *adat* usually revolves around *adat* as traditional law and the impacts of globalisation on it. The question of how *adat* was created is often absent from scholarly discussions. It has been taken for granted that "it comes naturally from the essence of Indonesian society".[34] This is mainly due to the limited amount of historical evidence that can be used to reconstruct how *adat* was created in the past. Consequently, scholarly analysis has been restricted, between a normative view related to written and unwritten sources of indigenous customary law and relying on the subjective formula of a cultural sense of justice.[35]

Against this background, new light can be shed by a careful reading of traditional *lontara*[36] manuscripts from a Mandar ethnic group on the island of Sulawesi concerning the "origins of *adat*". The term *lontara* or *lottar* (literally, 'palm leaves') is usually understood as an old manuscript recording knowledge from the past.[37] But it is also a name for the traditional writing system of three ethnic groups in South and West Sulawesi: the Makassarese, the Bugis and the Mandarese. The *lontara* records deal with a variety of topics and genres, such as the genealogy of kings and the history of the clans (*lontara pattodioloang*), a diary of rulers (*lontara bilang*), a treaty on village borders (*lontara pattaqpingang*), astronomy (*lontara potika*), magical spells (*lontara pabbura*), philosophy of life (*pappasang*), rhymed poems (*kalindaqdaq*), agreements and constitutions. The Mandarese treat *lontara* texts as a *sosorang* (heirloom) from their ancestors, and thus regard them not just as written documents but also as sacred objects. The texts can only be opened during traditional ceremonies that require certain rituals, such as burning incense and the presence of every family member in traditional attire.[38]

That the *lontara* texts were regarded as sacred by the Mandarese does not necessarily make them historically less accurate or imbue them with legendary elements.[39] Cummings (2010) calls *lontara bilang* annals, a genre which can be seen as "supremely factual, reliable, and uncontaminated by mythical or controversial elements".[40] This style of narration in the *lontara*, recording events as they happened without "excessively flattering the ruler", was rooted in the great interest people in South Sulawesi took in their history.[41] Part of its function is to commemorate the transformation of identity in political or social landscapes and to mark important events, such as conversion to Islam.[42] The people in South Sulawesi continued to produce *lontara* until the mid-nineteenth century.[43]

In this chapter, we analyse *lontara* texts from the perspective of *adat*. Discussions involving *adat* appear in the collected decisions of the traditional council and in the details of *pappasang* (advice) from the ancestors. In order to reconstruct and understand the development of *adat* before and after Islamisation I consulted several copies of the *lontara* texts now kept in Leiden University Library, as well as others, transliterated and translated, as published by the Indonesian Ministry of Education and Culture. Leiden owns several copies of

lontara texts under the KITLV inventory 235 – H 1153 (Collectie A. A. Cense). They were donated by W.J. Leyds, a Dutch Assistant Resident at Mandar from 1929 to 1938. This collection contains valuable information on the history of Mandar, and there are several items of *adat*-related material written by an assistant *taalambtenaar* (scribe) named Tenriadji. This provides enormous insights into the changes and dynamics of *adat* over time. The Indonesian Ministry of Education and Culture transliterated, translated and published copies of *lontara* texts in 1991 as part of a project to preserve local knowledge about ancient manuscripts (*Proyek Penelitian dan Pengkajian Kebudayaan Nusantara*). In this chapter, I mainly use the volumes entitled *Lontara Pattodioloang di Mandar* (1992), *Lontara Mandar* (1991) and *Lontara Odiadaq Odibiasa* (1988).

The manuscript of the last text, *Lontara Odiadaq Odibiasa*, was written in 1229 HE/1814 CE and was recopied in 1357 HE/1938 CE by Pappuangang Isidaq, a member of the royal *adat* council.[44] Four prominent experts on Mandarese language and history, Abdul Muthalib, M.T. Azis Syah, Suradi Yasil and Gunawan, transliterated and translated this manuscript. The first text, *Lontara Pattodioloang di Mandar*, is a genealogy of Mandarese rulers, which gives insights into the role which the Balanipa chiefdom played from the sixteenth to the eighteenth centuries. The dates on the texts suggest that the manuscript is a copy of an older one that is now lost. M. T. Azis Syah edited and published the manuscript in 1992.[45] The second text, *Lontara Mandar*, was also collected from Balanipa, and it was written in 1229 HE/1814 CE.[46] As with the other two texts, the danger of physical harm to the manuscript encouraged the Ministry to conserve its content by publishing it in transliteration and translation with the participation of Mandarese specialists, including A.M. Mandra, M. Yusuf, Hapipa M., Wahyuddin and Tabrtaviv, and with Kencana Sembiring as the main editor.

On the basis of these rich local sources I shall argue that these texts reveal an unexpected series of outside influences on *adat*, in contrast to the wider claims in Mandar that these texts are 'pure' reflections of indigenous cultural values. I shall demonstrate that *adat* was brought from outside into the local community, following their requests to solve specific crises in Mandar society. The arrival of Islam as a foreign religion played a major role in the development of *adat* in the region. The "requested *adat*" and the "adapted Islam" confirm how broader elements from the Indian Ocean world along with other non-local values influenced the Mandarese tradition and how those were formalised and eventually became an integral part of the indigenous identity.

The main focus of this chapter is the process of borrowing *adat* from outside, and later the transplant of Islam into it in the seventeenth century. It explores local narratives in Mandar in order to understand the creative process behind the adoption of *adat*, with an emphasis on identifying the foreign components. This process involved other regions, such as Gowa, which was the most powerful political centre in seventeenth-century South Sulawesi because of its wider involvement in the maritime networks from Mecca to Sumatra and the Spice Islands, as compared to the more isolated Mandar region. After Mandar had successfully borrowed *adat* and transplanted it into their own everyday law, the same *adat* system became

institutionalised after the coming of Islam. This chapter also addresses how the values of Islam became an integral part of *adat* through the establishment of a religious office to administer Islamic affairs. This process was carried out through the foundation of Mukking Pattapulo as an Islamic educational institution, something which traced its origin to a similar religious institution in Aceh and Gowa. The establishment of Mukking Pattapulo in Mandar reveals the earliest effort to encourage Shāfiʿī influence within the locality. As Shāfiʿī tradition became fully acknowledged as the true form of Islam in Mandar, *adat* and Sharīʿa reached a compromise, in which they are considered as "brothers" and must always keep their preferences in balance.

The history of Mandar

One of the earliest references to Mandar appears on the 1596 Linschoten Map of the 'East Indies'. Mamuju, a chiefdom in Mandar, was a transit port that the Portuguese had visited on their expeditions from the Moluccas to Malacca in 1533.[47] In 1610 Godinho de Eredia mentioned Mandar as a trading post in his description of "the Island Macasar" (Makassar was a dominant political entity in South Sulawesi).[48] In his report he records Mandar as a source of marine products, such as tortoiseshells, which were traded in the market of Malacca. The tortoiseshells were said to have been brought by the *Joas* (Javanese traders) to Malacca, indicating an already established contact with Java.

Historically Mandar is also the name of a confederation of seven small polities, known as Pitu Babbana Binanga (The Seven Estuaries), and which comprised the Balanipa, Pamboang, Sendana, Banggae, Tappalang, Mamuju and Binuang chiefdoms. These seven polities are located around Salo Mandar, a river from which presumably the name Mandar originated.[49] The head of Balanipa formed this alliance based on the structure of a typical Austronesian familial organisation. As the main initiator of the collective he was elevated to be the "Father of the Confederation", while Sendana held the position of "Mother of the Confederation", Banggae was the eldest son, and Pamboang the eldest daughter. Mamuju, Tappalang and Binuang were the youngest children.[50] Sendana was the wealthiest of the Mandarese states and had a prominent navy in the region. At first it did not want to accept its position under Balanipa,[51] but came to accept it after engaging in a short war with Balanipa.[52] Balanipa continued to lead the confederation and to represent the other six polities when dealing with foreign powers.

The need for the creation of this federation arose from its geographical terrain, one in which it was difficult to establish and sustain a large kingdom.[53] Another important motive for these chiefdoms to form an alliance was to fight the predatory chiefdom of Pasokkorang together in the sixteenth century.[54] Pasokkorang wanted to be the sole economic power in the Mandar River area and had launched a series of attacks on smaller polities around it. The chiefdom Balanipa played an important role in stifling the ambitions of Pasokkorang, and in turn replaced Pasokkorang as the main political authority in the region.

In this context it is essential to present a brief history of the rise of Balanipa as a prominent power in Mandar. Before the Pitu Babbana Binanga confederation was established, there was an alliance of four villages on the estuaries of the Mandar known as Appeq Banua Kaiyyang.[55] The formation of this alliance was also in response to the ambitious growth of Pasokkorang and to avoid rivalries between other polities.[56] The River Mandar connects the Appeq Banua Kaiyyang villages with the highlands to the north, which was the important source for slaves, rattan, resin, corn and aromatic timber.[57] The highlanders depended on the river network to reach Appeq Banua Kaiyyang to acquire salt, dried fish, cloth, weapons and ceramics, products imported from coastal traders. Realising the strategic location of Appeq Banua Kaiyyang at the mouth of the River Mandar, Pasokkorang started a series of campaigns to control the flow of goods between the hinterland and the coastal areas, with the purpose of building its own centre of trade to rival Gowa to the south.[58]

The Appeq Banua Kaiyyang was unable to obstruct the ambitions of Pasokkorang or to maintain peace in the region. With the help of the neighbouring Bugis state of Batulappak, Pasokkorang raided the region, enslaved its people, and occupied the territory as a tributary.[59] Around the same time there were other nearby polities threatening the borders of Appeq Banua Kaiyyang.[60] In desperation, as a last resort, it requested help from a strong outside power. They chose Gowa, one of the most prominent states in South Sulawesi in the sixteenth century, hoping Gowa would defend them against predation from other chiefdoms. A little while previously Gowa had launched an attack on Siang, a major port on the west coast of South Sulawesi, one that had attracted Malay traders after the fall of Malacca to the Portuguese in 1512.[61] This attack marked the end of Siang's glorious days and initiated an influx of foreign merchants and their commodities to Gowa. It was to become the supreme authority on the west coast.

But there was a mysterious man, named Manyambungi, who was believed to be descended from a royal house of Mandar, who re-ignited hope for Appeq Banua Kaiyyang. Manyambungi lived in Gowa and helped to defend the honour of Gowa in several expeditions. For his distinguished service Manyambungi was appointed as a military commander and married Karaeng Suria, the daughter of a ruler allied to Gowa.[62] The marriage itself would have been enough for him to claim a special position within the inner circle of Gowa's elites. The fame of his greatness spread to Mandar, which motivated the Appeq Banua Kaiyyang alliance to ask for his assistance in eliminating their difficulties. Manyambungi accepted their proposal and marched to his supposed homeland. He attacked Pambusuang, a neighbouring political entity, defeated Pasokkorang, and made an armistice to ensure there would be no disruptions in the future. Pleased with these outcomes, Appeq Banua Kaiyyang crowned him as their ruler.[63] As the ruler he subdued the surrounding areas in a series of ruthless campaigns and reformed the structure of the indigenous tribal administrative institutions, so that they resembled the Makassarese model of government that he had learnt in Gowa.[64] He established the *Amaraqdiangan Balanipa*, the chiefdom of Balanipa, which covered

the Appeq Banua Kaiyyang area, and gave himself the title of *maraqdia*, king, to replace the term *tomakaka* (elder chief) that had been used previously.[65]

At the regional level Mandar had always depended on the patronage of different powerful allies that dominated the politics of the South Sulawesi peninsula from time to time. Local sources show how Mandar could be under the influence of the neighbouring kingdom of Bugis, or of Sawitto, which was known to have made extensive efforts to subjugate them and the Torajans in the highlands prior to the rise of Pasokkorang.[66] In the sixteenth century Mandar pledged allegiance to Gowa after it had been defeated in a military campaign. The Gowa Empire, that dominated the maritime network in the eastern part of the archipelago, forced Mandar to surrender during the reign of Tunipalangga (1546–1565), a *karaeng* (king) who was very eager to strengthen the defences of his emerging kingdom.[67] In 1659 Mandar briefly shifted its allegiance from Gowa to Bone after an unsuccessful rebellion against Gowa.[68] Ten years later, in 1669, Gowa fell after a series of combined battles with Bone and the Dutch East India Company (VOC), which made Bone an unrivalled power in South Sulawesi. When the king of Bone, Arung Palakka (1634–1696), summoned the Mandarese rulers to swear allegiance to him, they had no other choice than to submit. After a long negotiation Mandar became ready to acknowledge the sovereignty of Bone on one condition, that the Pitu Babbana Binanga confederation be granted the freedom to preserve and live under their own *adat*.[69] Bone agreed to this request, ensured their freedom and security, and took on the role of an adjudicator if Balanipa as the Father of the Confederation failed to "extinguish fire that appears between them".[70] The role of Bone as an arbitrator was valid only if the conflicting parties agree to bring their dispute to Bone. At the height of colonial authority, in the early twentieth century, the Dutch put an end to the political hegemony of Bone over Mandar by seizing the region and incorporating it into their colonial administration.

In the seventeenth century the Mandarese were converted to Islam by travelling ʿulamāʾ from the centres of Islamic teachings in the Middle East, Java and Makassar. Most Mandarese nowadays are Sunni Muslims with a strong attachment to the traditional customs. The belief in *arajang* or sacred objects with spiritual power is still prominent.[71] People gather on auspicious days at the *sapo arajang*, the house where they keep the sacred objects, to conduct rituals for the well-being of the society. There are many shrines and graves dedicated to local *Tosalamaq* or Sufi saints who are venerated in a similar manner. Performing the ritual of *sandeq* involves many syncretic elements such as the recitation of the Qurʾān, invoking the blessing of the saint, burning incense, and presenting offerings to the spirits of the tree and the sea. Many other rites of passage in Mandarese life, such as marriage, pregnancy, childbirth, house-warming, and mourning, also involve a syncretism of Islamic rituals with customary traditions.

The *adat* borrowed from Gowa

The origins of Mandar *adat* are closely related to a sixteenth-century figure named I Manyambungi Maraqdia Todilaling who ruled Balanipa from 1550 to 1565.[72]

Both oral and written Mandarese sources contradict one another about details of his background, but in general he was believed to be the son of a local chief who was exiled or kidnapped and sent to Gowa.[73] Manyambungi grew up among the Makassarese people there and at some point earned the respect of the ruler of Gowa to join several of his military campaigns as a *joaq* (soldier). All accounts agree that he lived in Gowa from a very young age and there enlisted in the royal army of Karaeng Tumaparrisiq Kallona (1512–1548).

The installation of Manyambungi as the ruler of Balanipa brought reforms in governance and law, so that Balanipa shifted from being a tribal society into a more structured chiefdom. Manyambungi proposed to the elders of Appeq Banua Kaiyyang abolishing the dispute settlement mechanisms that were current and the traditional practices and replacing them with *adaq* from Gowa. His proposal derived from his observations of the inefficient rules and laws for settling disputes in Mandar.[74] Prior to his arrival disputes used to be settled in an arena with stone walls, known as the *bala batu*. There disputing parties would fight each other with *keris* (daggers) until somebody was killed or severely wounded. The defeated party would be condemned to be convicted, or his corpse would be thrown off a cliff as a final punishment for misconduct.[75] Women engaged in a dispute were made to place their hands into a cauldron of boiling water, and the one who pulled out a hand first was convicted. A leader of the community would be the presiding witness at a trial by combat, not as the judge but as the referee.

After witnessing such a deadly *keris*-combat between men in the *bala batu*, Manyambungi expressed his aversion to this tradition. He compared the administration of justice in Gowa, which was based on wisdom and impartiality and depended on the judgement of the *adat* elders. The elders of Balanipa agreed to borrow the customs from Gowa as a *sossorang* (heirloom) for the people. When the king of Gowa received the request from Manyambungi, he consulted his nine *Gallarang* (the *adat* council). The head of the *Gallarang* said:

> It would not be wise to reject the request, since their lord (Manyambungi) used to live with Your Majesty in Gowa and because the Mandarese do not have their own *adat,* parables and customs yet, and their current practices are bad for themselves.[76]

Accordingly, the king instructed them to write down all the customary laws and parables that existed in Gowa. Upon the compilation of a written *adat*, the king told the Mandarese emissaries: "Oh Mandar! Take this manuscript to your lord. Everything is inscribed here, the guidance for the people of Gowa, day and night. This is what is called *lontara* (written customary law)."

This possible event is relevant to the establishment of a legal system in Mandar, as it reveals an intriguing notion among the people about their *adat* not originating from the core of their society but as having been adapted from another "mature" civilisation. It was common for an "emergent civilisation" to borrow from another civilisation certain models of governance or law in recognition of its "cultural maturity". Accordingly, the arrival of *adat* in Mandar was a milestone for its

emergent civilisation, and the *lontara* of *adat* marked a revolutionary historical change of practice.[77] As a dominant entity with advanced technology, flourishing culture, and a strong military power, Gowa was the blueprint from which Mandar could build its own juridical and bureaucratic systems. Manyambungi's familiarity with the court of Gowa enabled him to borrow and adapt Makassarese *adat*, and in doing so Mandar deliberately placed herself under the sphere of influence of Gowa. We also note that Manyambungi and Puang Dipojosang called the *adat* an "heirloom from the king of Gowa", thus claiming linear descent from the supreme state. Traditionally a *sossorang* or heirloom was appreciated as a token of legitimacy, from a giver to an heir. By considering the *adat* from Gowa as an heirloom, Mandar willingly submitted itself to something of a hierarchic relationship with Gowa and its indirect control.

The *saraq* of Islam

Another turning point in the history of the Mandarese *adat* happened in the seventeenth century. Its close relationship and deep contacts with Gowa allowed Mandar to interact with Muslim merchants from Pahang, Patani, Champa, Minangkabau and Johor. These merchants established settlements and built mosques in Gowa under the protection of the king.[78] The Muslim traders in Gowa helped the empire to expand its maritime trading power from Java Sea to the Spice Islands. In 1605 the rulers of Gowa converted to Islam under the guidance of a Minangkabau preacher named Dato' ri Bandang.[79] Based on the reading of *lontara bilang* (the king's diary) of Gowa, the period after 1605 was dominated by a rivalry between Gowa and the other main Bugis states in the region, which ultimately resulted in a battle for Islamisation (*bunduq kasallanganna* or *musu selleng*) from 1607 to 1611.[80] It was not a coincidence that the expansion of Islam sponsored by Gowa paved the way for its political and social dominance in South Sulawesi, especially after it had defeated its main rival, Bone.

At that time Balanipa was ruled by Kanna I Pattang (c. 1590–1615), the third *maraqdia*[81] and grandson of Manyambungi. He soon effected reforms in the socio-political landscape. Islam had become the main power in this new age of commerce, and it had been promising direct connections to the prosperous Indian Ocean trade through Malay merchants. In the middle of Gowa's battle for Islamisation throughout South Sulawesi, Balanipa received a welcome guest it did not expect, a shaykh named 'Abdur Raḥīm Kamāl al-Dīn. His arrival from Mecca in 1610 at the Galetto harbour on Tamangalle, a small fishing village in Balanipa, marks the beginning of the Islamisation of Mandar.[82] It did not take too long for Kanna I Pattang to convert to Islam. The *adat* leaders and the larger public followed him to embrace the new faith.[83] *Lontara* sources state that shortly after the arrival of the shaykh a wide section of the population of Balanipa declared their testimony of faith (*shahāda*), performed prayers and fasting, paid *zakāt*, celebrated Eid, and organised congregational prayers on Fridays. Kanna I Pattang also married a noble lady from Tammemba, recorded as the first marriage ceremony conducted in Balanipa in accordance with *saraq* (Sharīʿa).[84]

The quick spread of Islam in Mandar depended on the support of local rulers. For instance, to ensure the spread of proper Islamic education in Balanipa a special office called *Puang Kali* (derived from the Arabic word *qādī*) was established by Kanna I Pattang and placed under the jurisdiction of Tuanta di Benuang. Although local sources show that the early instruction of Islam focused entirely on ʿ*ibāda*, the ritual laws, such as common prayers and bodily purification, it was the esoteric elements that attracted most of the public's attention. The shaykh was known among them as *Tuanta di Benuang* ('Our Master in Binuang') or *To Salamaq di Benuang* ('The Blessed One who rests in Binuang'), and was regarded not just as a missionary preaching religion but also as a saintly figure. People sought his blessings especially for good harvests and good health, even after his death.[85]

The process of Islamisation in Mandar shows no traces of forced conversion, hostility or fundamental restructuring. It avoided such methods to introduce the concept of monotheism and rather focused directly on Islamic devotional acts and rituals. This included the prohibition of alcohol and pork.[86] A similar process seems to have happened when Gowa converted to Islam. Dato' ri Bandang, who brought the religion there, emphasised ritual and devotional aspects, such as praying five times a day, fasting during the Arabic month of Ramadan, prohibiting adultery, gambling and usury. Noorduyn has argued that Islamisation in Gowa was a result of a conscious decision of the ruler (and of many of his subjects) to embrace the new faith arising from their interaction with Malay merchants and which gave them some familiarity with Sharīʿa practices before their own conversion.[87] Cummings suggests that the societal pattern of Gowa, which revolves around its rulers' social behaviour, made other Makassarese quickly follow the new religion. Another reason is ensuing material benefits. Conversion to Islam opened many doors for wider trade and control over the area, since Islam had become Gowa's expression of its political relationships in the Archipelago that had begun to be shaped with an Islamic influence.[88]

These are reasons to justify the claim for a smooth and unchallenged conversion to Islam in Mandar, practical rather than religious reasons. Just as in Gowa, Mandar saw that a willing conversion would offer them greater access for trade and for political alliances with other Islamic polities on the northern coast of Java, Sumatra and the Moluccas, and that it would remove any fears of being converted by force by those entities.[89] But the silence in Mandarese sources about any refusal to convert does not necessarily tell the whole strory. As with Makassar, behind an apparent willing conversion to Islam there was resistance from the Makassarese highlanders against a formal acceptance of the new religion. It was not until the start of the Islamisation war campaign sponsored by Karaeng Matoaya and Sultan Ala'uddin (1593–1639) that Islam saw its influence deeply embedded within the Makassarese people at last.

As for Islamic influence over *adat*, the arrival of this new religion did not erase the system or crucially change basic aspects of Mandarese customary law. In fact, Islam changed only a small portion of the already established *adat* in Mandar. Certain habits of the people, such as eating pork and gambling, were

abolished, but in the wider view notions of a rigid caste system and slavery were still retained under *adat*.[90] Lontara sources state that *adat* and Islam are considered to be "brothers" (*meluluareqna adaq anna saraq*).[91] Islam is seen as and must be compatible with *adat*, knowing that the latter is the core of Mandarese life. *Adat* and *saraq* are both regarded as heirlooms, *adat* as inherited from Puang Dipojosang, and *saraq* as inherited from *I Tuang To Pole di Makka* ("Master who Arrived from Mecca", another title of the shaykh). Both persons are equally respected as giving Mandar its ancestral heirlooms.[92] Hence, every ruler has the obligation to protect *adat* and *saraq*.

Similar cases of the adoption of legal processes from a different culture and a foreign religious tradition are attested elsewhere on the Archipelago, as scholars have already argued. Prior to conversion to Islam, the influence of Hinduism and Buddhism on local customary law can be observed, as with the adoption of Sanskrit legal texts from India into the pre-Islamic Javanese legal tradition, which finally resulted in *adat* texts being applied in Bali. This culminated in the transition to colonial administrative practices at the end of the nineteenth century.[93] The Majapahit period saw the creation of many Indic texts which are more local in nature, using many terms that are not used in the original Sanskrit-Old Javanese text.[94] *Kutaramanawa* was adapted by Majapahit in the thirteenth century for legal references derived from *Manawasastra* and *Kutarasastra*, two Sanskrit legal texts.[95] The Javanese society omits several regulations related to marriage and proper conduct of daily life, revealing the prominent position of existing *adat* practices on social relationships over sacred Indic laws. When Java converted to Islam, *Kutaramanawa* was transmitted into Balinese tradition as a religious *adat* text. *Adat* implies *agama* (religion), therefore as a form of customary law *adat* is interlinked with religious doctrines too.[96] The continuity of the *Kutaramanawa* legal tradition in Bali as an heirloom in the form of *adat* gives it legitimacy as the sole heir of Majapahit.[97] At the same time, the Balinese attachment to the Majapahit tradition acts as a protective shield to defending them from Islamisation.

In conclusion, we see that Manyambungi was not just borrowing law to establish stability in his homeland. He also secured the position of his polity within a sphere of influence and protection from Gowa without sacrificing its own independence and autonomy. The acceptance of Islam in the seventeenth century reveals a similar motive, where the ruler of Balanipa saw an opportunity to be part of a greater maritime trade network through conversion, and to avoid any military conquest conducted by Gowa intended to spread Islam in South Sulawesi.

Bargaining with *adat* and to balance *saraq*

The conversion of local rulers in Mandar opened ways for Islam to influence the state through its institutions. These aimed to make 'popular religion', religion as lived and practised in everyday society, the official religion through theological and philosophical frameworks. It began with the creation of a special office called *Puang Kali* (*puang* lord, *kali* = *qāḍī*, an Islamic judge). That position was

as elevated as the office of the *Maraqdia Matowa* (the Old Lord), the head of the *adat* council, and of the *Maraqdia Lolo* (the Young Lord), of the person responsible for the internal affairs of state. Those two offices were usually held by the siblings or close relatives of the king due to their strategic importance. The *Puang Kali* was presented as the partner of the *arajang* (the title for the ruler of Balanipa) and responsible for all matters related to religion. The office was also known as *Maraqdiana Saraq* (the Lord over Sharīʿa) with jurisdiction in every corner of Balanipa.

Puang Kali as *Maraqdiana Saraq* was authorised to lead Friday prayer as the imam, to build mosques, collect *zakāt al-fiṭr*, decide the date when Ramadan began and the religious festivals, solemnise marriage, bless the crops, educate selected children about Islam, and to adjudicate on any other religious matter.[98] The role of *Puang Kali* was different from the role of *Pappuangan Adaq* or that of the *adat* elders, who also adjudicated matters in society. Crimes, especially those incurring the death penalty, were not for *Puang Kali* to adjudicate, but for the council of *adat* with consent from the king. Beyond the centres of Islam in the capital there were small mosques called *langgar* scattered around the villages. These *langgars* came under the jurisdiction of the *Imam*, *Katib* and *Doja* appointed by the *Puang Kali*.[99] They supervised the daily routine of the place of worship and were supported from income they received from *zakāt* and alms. The general administration of justice at the village level was conducted by *Tomatowa* (village head) and the local *adat* council.

The clear division of jurisdiction and the parallel legal enforcement between *Puang Kali* and the *adat* council in Mandar continued until colonial administrators took over. Among the Mandarese the appointment of *Puang Kali* and defining his authority derived from diverse adaptations of Islamic practice and theory. For instance, in Balanipa where the office of *Puang Kali* usually passed down the descendants of Tuanta di Benuang, in Tappalang the appointee was chosen directly by the king after the candidate had been approved by the *adat* council. *Puang Kali* remained the head of the state mosque and in charge of *saraq* related affairs, with limited responsibility for marriage, divorce and inheritance.[100] If an appeal was made by disputing parties over a *saraq* judgement, *Puang Kali* had to forward the case to the *adat* council. Often when the dispute involved intricate stages of an heirloom (*harta pusaka*), the *adat* council would take over the case. Another duty assigned to *Puang Kali* was to advise the king in Islamic matters. The attendance of *Puang Kali* as a representative of religion and of *Pabicara Kapala* as the head of the *adat* council was obligatory at the coronation of a new ruler. If one of them was absent the status of the ruler remained unauthorised.[101] The balance between *adat* and *saraq* was kept by ensuring *Puang Kali* had a defined role in the court over religious and government issues.

When considering the application of *saraq* in Mandar it is important to note that Islamic elements only mattered to aspects of private law which fell under the jurisdiction of *Puang Kali*. Stipulations and rules under *saraq* were acceptable only in the areas of marriage, divorce and inheritance. Penalties (*ḥudūd*) fixed in Islamic law, such as stoning (*rajam*) for adultery or amputation for theft, were not

recognised in Mandarese customary law. In fact, punishment for these offences varied from place to place depending on the social class of the plaintiff and the victim. For instance, a punishment for *malawang* (adultery) committed by someone who already had a spouse according to *adat* is *nibaluangngi* (to be sold) as a slave, with the price determined by the king and the *adat* council.[102] But a convicted family member of the king or the *adat* was punished with a fine (80 real). Anyone who committed *malawang* with a biological child or a stepchild would be condemned to death by the *adat* council through *dilabui* (being thrown into the sea). Fornicating with a slave, whether or not the fornicator owned the slave, meant both participants would be sold to the king and the *adat* council as slaves. According to Islamic tradition, that verdict of *adat* was wrong, since the Qurʾān permits a man to have sexual intercourse with female slave in his possession. A decision by *adat* to punish both participants of *malawang* can be considered a contradiction to the rule of Islam.

Potential clashes between *adat* and *saraq* in the implementation of justice were unavoidable. The main obstacle was due to the application of *adat* without the support of a specific text or legal instruction. The execution of a punishment by *saraq* must be based on strong scriptural authority. *Adat* relies on a sense of justice derived from what is perceived as moral guidance on how life should be conducted by every member of the given society.[103] The main problem with the discrepancies in dealing with the case of *malawang* is not based on an unlawful form of sexual intercourse, but on the abusive privilege of social class, a highly respected Mandarese attitude. The different logic and legal culture seem to create many deviances from rules and stipulations in Sharīʿa, but not always. To some extent *saraq* could bargain with an *adat* position for it to be incorporated into its application. That can only be done if the elements of the offences and the punishments in both traditions agree.[104]

For *mepatei* (murder), *adat* applies certain ways for retaliation which are similar to the *qiṣāṣ* and *diya* traditions in Islamic law. If someone belonging to the *tomarareka* (free people) caste murdered another *tomarareka* or a member of the nobility, the punishment would be *nipappuli* (execution).[105] If a *tomarareka* or a member of the nobility killed one of the slaves they possessed, the punishment would be paying a fine to the authorities. Islam sees the murder of a slave as punishable by paying *diya* or blood money, not the conventional *lex talionis*, 'an eye for an eye'.[106] In the time of the Prophet someone who murdered a slave could be punished in various ways, such as being exiled for a year, allowing some other slave's freedom, being publicly flogged, or paying *diya*. Since condemning a convicted *tomarareka* or member of the nobility to death over the murder of a slave is not acceptable by *adat*, due to the defendant's high position in society, an Islamic solution based on the practice of *diya* was a better option.[107]

In conclusion, for *saraq* to be accepted as the 'brother' of *adat* it must bargain for an important position in order to be established as the source of the moral and legal code in Mandarese culture. So *saraq* has to come to a compromise with many elements in the pre-Islamic Mandar tradition, such as the rigid system of social class. Such compromises create a new identity for Islam as a religion that belongs to the

local population instead of being some imported belief with foreign norms. The fact that Islam was adopted by the rulers of Balanipa without rejection from the council of *adat* shows that despite differences in the applications of the law, the teaching and values promoted by Islam were still considered to be compatible with *adat*.

Aceh, Gowa and Shāfiʿīsm

Besides the office of *Puang Kali*, another significant element of the institutionalising effort during the early Islamic history of Mandar was the foundation of *Mukking Pattapulo* (Forty Inhabitants). In order to increase Islamic influence in the society, Tuanta di Benuang had requested Kanna I Pattang to grant him a piece of land. On this land, as the official *Puang Kali*, he founded the first *Mukking Pattapulo*, a religious seminary attended by 40 Mandarese students.[108] Kanna I Pattang freed *Mukking Pattapulo* from the obligation to pay taxes, to become involved in physical work, or to join the army, and it was to be specially protected under the state. The main objective of this seminary was to assist the work of Tuanta di Benuang in spreading Islam and achieving a balance with *adat*. *Mukking Pattapulo*, together with the establishment of the first mosque in Mandar located at the heart of Balanipa, symbolises the influence of Islam and its closeness to the traditional authority.

The people who were involved in the missionary work of *Puang Kali* became a new social class. They were known as *annangguru* or *andongguru* (religious teachers), and they replaced the *topanrita* or the pre-Islamic priestly caste.[109] The *Puang Kali* sent them to settle in every corner of Balanipa to teach Islam as *imams* and to collect *zakāt*.[110] They played crucial roles among the newly converted community as propagators and moralists. Among other things, they also taught the Mandarese how to read the Qurʾān (*mangaji kittaq*), blessed the rituals for the big events in their lives, and provided answers to religious and moral questions. They were obliged to report any violation of the *saraq* in the areas under their jurisdiction to *Puang Kali*.

The adoption of the position of *qāḍī* and the establishment of *Mukking Pattapulo* represent Mandar participating in the wider networks of the Shāfiʿī tradition in the Archipelago. Aceh occupied a central position as the source of early Islamisation in Gowa, which then influenced many aspects of Islam in Mandar.[111] First, the jurisdictions and roles of the *Puang Kali* resembled certain elements from similar practices in Aceh that eventually derived from an Indic model. Andaya claims that the Acehnese formation of four ministers of states derived from a similar composition in the Mughal Empire during the reign of Akbar (1556–1605).[112] The four ministerial titles in Aceh were *Leubè Kita Kali* to be in charge of Islamic law matters, *Orang Kaya Maharaja Sri Maharaja* to be the chief minister of the affairs of state, *Orang Kaya Laksamana Perdana Menteri*, who was also *Panglima Dalam*, to be responsible for internal court affairs, and *Panglima Bandara* to be in charge of trade and commerce.

This style of Acehnese principle ministries, which varied from the Melaccan concept of principal ministries, was adopted by Gowa with some modifications

in the seventeenth century. One major difference between the Acehnese model and that in the rest of the Malay peninsula was the inclusion of the position of Kali.[113] After converting to Islam, Gowa established an office called *Daeng Ta Kali* to be the authority for implementing Sharīʿa in the kingdom. *Daeng Ta Kali* was an important position on the same level as *Tumailalang Toa* (the head of *adat* representatives), *Tumailalang Lolo* (internal affairs of the kingdom), *Karaeng Tukajannangngang* (commander in chief) and *Sabannara* (trade and commercial activity).[114] Gowa modified the model from Aceh by keeping the two offices of *Tumailalang*, ones that existed before its conversion to Islam, and specifically added the office of *Karaeng Tukajannangngang* for military purposes. This was done allegedly to accommodate the ongoing project of an Islamisation war in and out of South Sulawesi. Mandar followed the four principal ministers from Gowa by establishing the office of *Puang Kali* as *Maraqdiana Saraq* together with *Maraqdia Toa*, *Maraqdia Lolo* and *Pappuangan Adaq* as the *adat* council.[115]

Besides adopting the model of four principal ministries, Mandar also borrowed the concept of *Mukking Pattapulo* from the Acehnese invention of *Mukim*. This system of administrative division was created by Sultan Iskandar Muda in 1613.[116] The initial idea for *Mukim* was to make sure that every Friday the obligation to perform the prayer with 40 adult participants could be fulfilled based on the Shāfiʿī doctrine adhered by the Sultan.[117] This number of participants is absolute and compulsory in the Shāfiʿī school, and any Friday prayer with less than 40 attendees is considered invalid and to be cancelled.[118]

A strict application of a Shāfiʿī pronouncement also prohibits performing Friday prayer in two different mosques within the same locality.[119] The converted rulers made efforts to accommodate the number significant for legitimate obligatory worship. During the reign of Iskandar Muda, many mosques were built to support the establishment of *Mukim* throughout the empire. Beyond just creating a system to ensure the practice of Shāfiʿī doctrine, Acehnese *Mukim* also demonstrated a political motivation, to supervise and control the power of *uleëbalang* (small rulers under the Sultan's jurisdiction) who owned lands where the *Mukim* was established.[120] Outside of Aceh, we find many cases where the newly converted local sovereigns take this particular Shāfiʿī doctrine carefully and adopt the *Mukim* system to ensure the number for Friday congregations is fulfilled. In the eastern part of the Archipelago, Gowa introduced and disseminated the *Mukim* system under the name *Mokkeng*. Gowa also brought this institution to Bima during its military campaign and established the first *Mokkeng* there. *Lontara Bilang*, or the annals of Makassarese rulers, record this event by stating: "He (Karaeng Matoaya) established the Friday service in those overseas countries. The karaeng hoped to gain reward by appointing Mokkeng and then setting them free."[121] Mandar also followed suit and established its own variant in the name of *Mukking Pattapulo*.

Mandar succeeded in assimilating the new religion as a genuine Mandarese faith. This was achieved through the active participation of Mandarese rulers to accommodate Islam by creating the office of *Puang Kali*, establishing courts for *saraq* related matters, patronising the foundation of Islamic educational

institutions, and arranging unions between foreign ʿulamāʾ to highborn members of the society. The conversion process also brought Mandarese *adat* to join the new thread of Islam expanding from Mughal to Moluccas. The works of early foreign Islamic missionaries in Mandar had successfully paved the way for a restructuring of *adat* with religious traditions which came from the Indian Ocean network. *Adat* and *saraq* became inseparable. Implied in the custom is that being Mandarese means that one must embrace both Islam and *adat* as the heirlooms of the ancestors.[122]

Conclusion

The *adat* of the Mandarese people of West Sulawesi has undergone major changes resulting from internal and external factors in the sixteenth and seventeenth centuries. There were two significant catalysts for Mandar to borrow a foreign legal system and a foreign religion within its traditional customary law and bureaucracy. The internal factor was to accommodate the basic needs for the welfare of the society. Dissatisfaction by Manyambungi with the earlier legal system in Mandar was the inspiration for them to borrow a set of rules for life from a civilisation that was observed as 'more mature' and with respect. Gowa, which had already established its own mechanism for ensuring justice and enforcing order within society, presented an adaptable model for the Mandarese. It is no surprise that the main agent behind this process of borrowing *adat* was King Manyambungi, who grew up in the court of Gowa.

Manyambungi's idea to borrow *adat* from Gowa also meant a political strategy to tie Balanipa with the most powerful entity on South Sulawesi. Andaya mentions that Mandarese people had always been oppressed and mostly became victims of the dominant Bugis or Makassarese states.[123] As a small power amidst the political epicentres in the region, Mandar sided with and became an ally of one of these powers in order to maintain their independence and autonomy. Manyambungi's decision to borrow *adat* was potentially an attempt by Balanipa to be included within Gowa's sphere of protection. To a certain extent this was also an attempt to join a broader network of maritime connections in the eastern part of the archipelago that had been sponsored by Gowa from the sixteenth century onwards.

This initiative of borrowing *adat* by Manyambungi also questions the scholarly belief that the *adat* originated purely from the internal values of a local society. The indigenous nature of *adat*, as imagined by classic legal scholars, contradicts the pragmatic motivations for the adoption of *adat* by Mandar. For them the *adat* served as a lifeline to rescue the people from their previous vicious tradition. The introduction of *adat* as a new legal system ensured justice and stability in the region and saved many Mandarese criminals from physical disablement or death because of an unjust system of legal trials. In many situations, the reason for intercultural borrowing by an emergent civilisation from mature ones arises from urgent pressure for one civilisation to reach maturity.[124] A successful transplantation of borrowed law into a particular culture results in integrating elements of law as part of the society. In this case, we learn from the Mandarese how, throughout the changing of

political regimes in South Sulawesi, they always requested that the new dominant power should let them retain their *adat*, for that is what reflects their identity.[125]

Another motivation for Mandar to create changes within its *adat* system in order to accommodate Islam comes from an external factor. In its relations to Islam, we learn that Balanipa had embraced the new religion within a short period. We see how the Mandarese rulers accommodated Islam as part of *adat* through establishing the institution of the *Puang Kali* office. Islam found a place here not from the grassroots but through the support of local rulers. Islam was incorporated into the system, making the subjects of Balanipa obey the Sharīʿa through *adat*.[126] To admit Islamic teaching fully as part of *adat* needed strong support from the rulers as a defining factor. The top-down strategy to spread Islam in Mandar proved to be effective. By the patronage and support of the kings and proponents of *adat* Islam gained influence within the society.[127] The rulers of Balanipa could become part of this large networks stretching from Morocco to the Moluccas. Conversion was also necessary, as Gowa had launched religious wars to neighbouring Bugis states with more political than religious motivation. The Islamisation process in Gowa, which inspired many aspects of the conversion of Mandar, reveals an active process to articulate its place as part of the global *umma* through a series of changes in *adat* and tradition.[128]

The *Mukking Pattapulo*, an educational institution set up to teach future generations of Islamic missionaries as a state-sponsored project by Balanipa rulers, helped the quick spread of Islam in Mandar. Its attachment to strong Shāfiʿī doctrine enables us to trace the concept, which originated from Aceh and was adopted in Gowa. The presence of *Mukking Pattapulo* based on the commitment to honour the Friday prayer in accordance with a Shāfiʿī pronouncement promoted the circulation and entrenchment of the Shāfiʿī tradition as the prominent school of thought within the society. Through this institution, early Islamic missionaries from foreign lands managed to create a new generation of indigenous ʿulamāʾ and maintain the chain of continuity of Islamic knowledge from various places in the Islamic world. The development of Mandarese *adat* through webs of interaction between various actors and events grew from commercial, political and religious motivations. Mandarese records reveal that *adat*, the traditional codes of conduct for the indigenous community in the Archipelago, was an element in the wider oceanic networks before and after the Islamisation process. This transregional dimension helps us question the notion that *adat* was a territorial, exclusive and discrete legal phenomenon.

Notes

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3 Cornelis Willem Buijs and Kees Buijs, *Powers of Blessing from the Wilderness and from Heaven: Structure and Transformation in the Religion of Toraja in the Mamasa Area of South Sulawesi* (Leiden: KITLV Press, 2006), 17.

4 Ridwan Alimuddin, *Sandeq Perahu Tercepat Nusantara* (Yogyakarta: Penerbit Ombak, 2009), 9.
5 W.J. Van der Meulen, "In Search of Ho-ling," *Indonesia* no. 23 (Apr. 1977): 91; K.A. Nilakanta Sastri, "Sri Vijaya," *Bulletin de l'Ecole française d'Extreme-Orient. Tome* 40, no. 2 (1940): 270. Their descriptions are often filled with wonder and fascination along with abhorrent opinions on the customs that they found to be strange and uncanny. From everyday habits, such as eating with one's hands, to competitive cockfighting, amused foreign visitors and adventurers. This can be seen, for example, from an eighth-century Chinese chronicler Tu Yu writing about eating habits of people in Ho-ling (Java) and Ibn Khordadbeh (820–912). He records that the king of Zabaj (Sumatra) received revenue from cockfighting.
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4 *Sharīʿa* translated

Persian documents in English courts

Nandini Chatterjee

Introduction: language, law and empire

Variably between the ninth and the nineteenth centuries, Persian was the language of literary production and administrative record in a huge region that stretched from Bengal to Bosnia, encompassing India, Iran, Central Asia and the northern Indian Ocean, and all the major Islamic empires of the early modern world.[1] The Persian "cosmopolis", alternatively, the "Persianate" world, was identifiable by the supra-ethnic acceptance and use of the Persian language, along with its literary classics, conventions and values.[2] In the Indian subcontinent, Persian coexisted with several highly developed vernacular languages of more regional scope, which emerged roughly from around the beginning of the second millennium CE, that is, from around the same time that Persian entered the linguistic landscape of India.[3]

It would be easy to say that languages in the Persian cosmopolis, especially India, existed in a clearly defined hierarchy, with Persian, with its range and prestige, situated unambiguously above the regional vernaculars. The matter is complicated, however, because the Persian cosmopolis partially overlapped with the cultural zones claimed by two other high-status languages: Sanskrit and Arabic. The use of the term "cosmopolis" in relation to high-status languages of supra-ethnic and immense geographic scope was proposed by Sheldon Pollock, with his path-breaking work on the Sanskrit cosmopolis, which he described as flourishing between the third and thirteenth centuries CE from India to Southeast Asia, and then giving way to the vernacular millennium.[4] Pollock's silence about the other high-status languages that clearly shared Sanskrit's locales was addressed by Ronit Ricci's work on what she called the Arabic cosmopolis, which, she showed as having overlaid Sanskrit's previous incursions in southern India and Southeast Asia.[5] Tomáš Petrů further enriched this picture of Southeast Asia by investigating Persian lexical and literary presence in the Malay world, and its connection with commerce and kingship.[6] Very recently, two major works address (among other things) the dominant linguistic feature of South Asia in the first 800 years of the second millennium – the dominance of Persian. Two volumes of essays, both bearing *The Persianate World* in their titles, situate India alongside Iran at the core of Persian's vast linguistic-cultural spread between the ninth and nineteenth

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centuries.[7] These are major steps towards addressing a historical theme about which there was shared knowledge among South Asianists, but only fragmentary and scattered work until now.[8]

There is still much research to be done in order to produce an analytical approach sufficient for reconciling the empirical fact of the coexistence of multiple cosmopolises, overlapping in particular in the Indian subcontinent. While it is clear that the Sanskrit and Persian cosmopolises (and perhaps the Arabic, too) may have found modes of coexistence in the Indian subcontinent,[9] it remains unclear how exactly the location and usage of these languages can be mapped, and what such patterns imply for people's access and attachment to the highly developed and distinctive normative visions that each of these languages bore. Research published thus far has been focused on literary production and circulation; law gives us access to a different historical archive for answering these questions.

This chapter makes a beginning, by examining the functions of Persian, especially with relation to law and legal documentation between the seventeenth and nineteenth centuries in South Asia. It does so, with a specific methodological and analytical approach to the study of *sharīʿa*. Here the aim is to discover what *sharīʿa* – a word regularly used in the Persian documents this chapter is based on – might have meant to the majority of legally untrained users of law and low-brow specialists, such as village scribes, most of whom could not speak Persian and were not Muslim. I propose here that, dry and formulaic though they were, these legal documents were familiar and ubiquitous, and hence, a better window on the South Asian legal imaginary than jurisprudential texts written in a language incomprehensible to the majority of protagonists (Arabic, or indeed, its counterpart, Sanskrit).

Of the various languages through which one can access understandings and practices of law in general, and *sharīʿa* more specifically, in early modern India, Persian has a specific valence. To focus on legal materials in Persian implies a particular methodological and analytical approach. To begin with, it is an approach that deliberately casts aside the dominant imaginary of the "Islamic" world, with its predictable centre in the Arabian desert, and peripheries in the demographically dominant but analytically ignored regions of South and Southeast Asia. In this way, this chapter shares the aspirations expressed by the editors of this volume in the introduction. However, I join that collective effort from a linguistic and geographical angle that is distinct from the majority of essays in this collection, by foregrounding Persian rather than Arabic as the bearer of law. This is also an approach whose geographical ambit is in the land-based Islamic empires of the early modern period – the Sultanate-Mughal; Safavid-Qajar; Ottoman – which complemented the Oceans of Law that cradled them. In doing so, I am encouraged by Nile Green's alert to the practitioners of Indian Ocean World studies, and suggestion to adopt a 'soft' definition of that zone. By way of demonstration, Green compared Bombay and Barcelona as port cities in the Indian Ocean and the Mediterranean, respectively, but did not accord those seas full explanatory self-sufficiency for processes witnessed therein. Instead, he pointed to wider and more

global networks, including those formed by empires.[10] In the current chapter too, the material expressions of law and legal understanding derived not only from the Islamic world of the Indian Ocean, however capaciously we might define that, but also from early modern trans-Asian empires (the Mughals and their peers), and from the practices of European imperialism.

In taking such a syncretic view of Islamic law in the Indian Ocean, this chapter accords with the poly-genetic approach expressed by editors in the introduction. It also follows the work of Fahad Bishara, whose exhilarating study of Indian Ocean commerce, based on deeds of debt – simply called *waraqa* or "paper" – resolutely takes law far beyond the pronouncements of jurists. In Bishara's oceanic bazaar, structured and facilitated by law, the 'law' itself is both Islamic and colonial: Hindu Gujarati merchants acting as colonial fiscal agents in East Africa are equal players with jurists in the Arabo-Persian Gulf and scribes all around the Indian Ocean.[11] Focusing, like Bishara, on the moments and artefacts of legal actuation, this chapter pays close attention to the forms of the legal documents – their formulae, layout, seals and other material and graphic features. In doing so, this chapter is encouraged by the vision of the archaeologist, art historian, legal scholar (and Indian Oceanist) Elizabeth Lambourn, who has proposed a capacious approach to "legal encounters", based on an idea that "it was not so much law itself than the *making* of law […] that mattered most".[12] If indeed we can take such a bottom-up view of law, then we cannot only think of a colonial Islamic law, but also a colonial Persianate.[13] We can examine another type of legal heteroglossia in the Indian Ocean,[14] becoming aware how deeply the European trading companies plying that sea were involved in the production, proliferation and circulation of Persian-language deeds with Islamic vocabulary.

A Persianate legal sphere

In the central to eastern parts of the Persianate world – in most of India, Iran and Central Asia – Persian (neither Arabic nor Sanskrit) was the preferred language for legal documentation from the twelfth century CE.[15] Moreover, while the forms used for such documentation are traceable to Arabic language formularies called *shurūṭ*, they are exactly modelled on Persian language manuals called *inshāʾ* that also contained other kinds of exemplary prose, such as diplomatic correspondence.[16] *Inshāʾ* was among the most popular genres of Persian literary production, and formed a key component in the Indo-Persian curricula. Thus legal forms and instruments recognisable throughout the Islamic world circulated in India through the medium of Persian, and were standardised with reference to manuals that could be used without specialist religio-legal training, indeed, without Islamic confession.

It is also this landscape awash with Persian-language legal documents that the European trading companies entered in the seventeenth century, pursuing their quest for high-value textiles, condiments and other profit-giving commodities. They sought orders of tax-exemption and other privileges from the Mughal emperors, Deccan sultans and their subordinate nobles; learning in the process to

negotiate the world of Persian documentation, hiring European and non-European scribes for the purpose, and building up a significant Persian-language archive in each case. Eventually, when the English East India Company acquired political dominance over the subcontinent in the late eighteenth century, all such royal orders and charters, granting rights and privileges to all manners of recipients, came under the Company's purview – first through efforts to regulate tax-avoidance, and second, through the need to adjudicate disputed titles.

Well into the twentieth century, Persian documents continued to be produced and accepted as evidence in the courts of British-ruled India. By taking stock of this material, this chapter proposes first, to access the understanding of law, and *sharīʿa* in particular, that people in India carried with them into the colonial period; and second, to examine the possibility that the British Empire in India was, to some extent, a Persianate empire. In doing so, the chapter is both in admiration of, and disagreement with, Gagan Sood's path-breaking work on Indian Ocean correspondence in the eighteenth century. Analysing a mailbag of letters and documents, mostly in Persian, but featuring various other languages, including Armenian, that was captured by the British navy on board a Spanish ship seized as war booty, and subsequently deposited in the British Library, Sood postulates "a coherent, self-regulating arena of activities which spanned much of India and the Islamic heartlands in the period, and which existed mostly, if not entirely, beyond the sovereign purview".'[17] While I recognise the norms and conventions Sood identifies in these documents, and agree that in their wide sharing from Bengal to the Hijaz, they reveal a shared world of practice and communication, I do not see this world as pristine and immune to European intervention and participation. Instead, I turn to legal pluralism with its attendant "jurisdictional jockeying",[18] and turn these concepts and interpretive tools on their heads, to explore how European actors jockeyed a legal landscape that preceded them. In doing so, I am interested in uncovering and using the non-European language source materials that remain under-used by scholars of colonialism, thereby obscuring the indigenous processes and understandings underpinning imperial formations. Attention to such processes and ideas may in fact alter our vision of empires and colonialism significantly. I propose that "legal translation" offers an interpretive angle that can allow us to utilise a vast body of source material, that moreover has the potential for enriching our idea of *sharīʿa* in practice, and of the British Empire on the ground.

Legal translation, as professional experts are fully aware, is not simply a matter of changing languages; it is the process of achieving certain desired legal effects within the host legal system. As we study the process, we quickly become aware of the ethical and technical dilemmas involved in attempting to achieve desirable effects that are faithful to the original intention of a legal document (or not); and of using system-specific technical phrases alien to natural language (or not).[19] By studying Persian documents in English courts in colonial India we gain entry into a historic process of multi-layered legal translation. We find Arabic legal terminology and forms accepted into Persian, supplemented by terminology and instruments from Persianate imperial governance, which was shot through with Indic

vernacular terms and usage, and all of this circulated and familiarised through non-religious texts of model documentary forms. Thus we see *sharīʿa* vernacularised in early modern India, by which we mean that it is both Persianised and Indianised. A second major movement of translation then happens when European corporations-turned-regimes call upon and evaluate existing Persian documentation, and also produce Persian documents of their own, in familiar forms but novel intent, and/or in hybrid and new forms. We thus find *sharīʿa* translated several times, in its journey through Persianate empires, of which the British Empire in India may have been one.

The early history of "British-Persian"

From the beginning of the seventeenth century, when the English East India Company was granted a royal charter to trade in the East,[20] officials of the Company sought to negotiate the best conditions for trade with the Mughal emperors, who ruled most of northern and central India. Early English ambassadors, such as Sir Thomas Roe, who was dispatched by the English Crown, and paid for by the Company, attempted to secure various rights and privileges, recorded in certain kinds of Persian-language documents. Working with a model that may have been derived from the previous experiences of the Levant Company in the Ottoman Empire, Roe appears to have been seeking something like capitulations. The term capitulation, which implied the granting of specific legal privileges and exemptions, related to taxation and legal jurisdiction, among other things, was a European interpretation of a more directive and authoritative Ottoman form – the *ahdname*. From the Ottoman point of view, an *ahdname* was a unilateral promise granted at will by the emperor, not quite the bilateral treaty that 'capitulation' indicated, even if it may have worked as such.[21]

Extrapolating from that experience of successful mistranslation, Roe repeatedly requested a *farmān*, which was a document of order that only the emperor could issue. This was based on the reasonable surmise that an imperial order was likely to deliver the most secure privileges, which could not be overruled by a subordinate prince, noble or officer. By his own account, Roe directly asked emperor Jahangir for "justice", by which he meant protection against what he saw as unlawful meddling (which included inspection and tax-collection) by local officers in the port cities of Surat and Ahmadabad. Jahangir was apparently benevolently inclined and ordered the necessary *farmāns* to be issued. However, this positive beginning was marred by protracted negotiations with prince Khurram (the future emperor Shah Jahan) and his father-in-law and ally, Asaf Khan, two of the most powerful men in Jahangir's court.

Roe's correspondence offers a fascinating glimpse of the political negotiations and back-office work preceding the issuance of a high-status document such as a *farmān*. Despite initial consent from the emperor, Roe discovered that the versions sent to him for checking by Khurram and Asaf Khan were "dishonourable",[22] because they contained clauses that he did not wish to assent to. He did secure some *farmāns* quite easily; for example those addressed to provincial

officials at Ahmadabad (possibly with generic instructions) to treat the Company officials better.[23] The *farmān* for Surat, on the other hand, took longer to negotiate, because the Mughals wanted Roe to commit to important matters such as non-aggression towards the Portuguese and (based on reports from the provincial governor) to restrain the drunken disorderliness of their own men or agree to trial by Mughal judges; Roe was compelled to agree to the latter.[24] But the problem really was that Roe was seeking a different kind of document altogether, because, as he explained to the emperor, he needed "an agreement cleare in all poynts" because English trade required a "more formall and Authentique confirmation then it had by ordinary firmaens".[25] Roe preserved a draft of the document he proposed, which consisted of "Articles of Amytie" between "the great Mogol, King of India, and the King of Great Brittan, France and Ireland", a document with 14 articles and five further clauses,[26] which predictably Asaf Khan dismissed as both too long and "unreasonable". After several months of negotiations, and efforts to win over Prince Khurram, Roe still found Asaf Khan scribbling many notes on the margins of the draft document he had submitted, and pronouncing that an order from the prince would be sufficient. Having by now learnt what *farmāns* were normally like, Roe now produced a much shorter document, which was directive rather than contractual, although it contained the same assurances, privileges and exemptions.[27] One could consider this draft an early instance of semi-successful British-Persian composition, because Roe did receive a formal version of this order, albeit one further reduced in scope, and only issued by prince Khurram, rather than the emperor.

Thus for the next two years, Roe continued to follow the peripatetic Mughal court around, pursuing his elusive ideal *farmān* that could also serve as a treaty, while also negotiating, via commercial arbitrators, the return of (imperially disavowed) taxes collected by a Gujarat official. Roe's failed embassy has been studied (and debated) as an instance of culture clash; we may consider whether it was in fact a case of failed legal translation.[28] Clearly, regardless of court politics, the biggest stumbling point was that Roe was seeking a document that simply could not be produced. In the end, Roe famously declared the Mughal an overgrown elephant who would never bind himself to a treaty,[29] and retreated to the Mediterranean on another diplomatic mission.

The Company's Persian archive

Eventually, however, the East India Company acquired shelves full of Persian-language orders, all the way up to *farmāns* that it dictated to the Mughal emperor himself. In just over a hundred years after Roe's frustrating visit, that is, in the early eighteenth century, Mughal power was in decline and regional states arose all around the subcontinent. Some of these were created by Mughal provincial governors who became independent, and some by genuinely different social groups. All these new states, even those that based their legitimacy on opposition to the Mughals, formally deferred to the Mughals, maintaining what appears in retrospect to be an elaborate charade of subordination to the Mughal throne. The

East India Company meddled in the politics of many of these states, in the hope of securing better tax deals from pliant rulers, and eventually ended up defeating in battle one such major ruler, that of the massive province of Bengal, in 1757. After nearly a decade of attempting to tame the subsequent rulers, the East India Company did battle again, this time against a coalition, which included the Mughal emperor himself.[30]

Thus defeated and humiliated, in 1765, by a much-reproduced and represented *farmān*,[31] the by then powerless Mughal emperor appointed the East India Company his servant, with the task of collecting taxes of the enormous and richest province of Bengal. In effect, it was permission to pocket those tax revenues. Not only this, several other unsigned *farmāns* floated around, just in case the East India Company wanted the poor man to authorise some more.[32] These and many other documents were eventually collated and translated in a variety of ways; some were organised into collections within the archives of the India Office. Such collections included a small number of original Persian documents, but mainly manuscript copies entered into registers (still in Persian), and their English translations.[33]

Towards the end of the nineteenth century, in what appears to have been a huge project of "mapping empire" through law, English translations of many such Persian documents were printed and published as part of very large official projects. One such series of "factory records", i.e. pertaining to the early career of the East India Company in India, was collated by William Foster, the official "historiographer" to the India Office. Foster also collated Sir Thomas Roe's journal and letters connected with his mission to the Mughal court.[34] Another comparable but much larger project was the 14-volume *Treaties, Sanads and Engagements* related to the numerous semi-controlled 'princely' states of India and neighbouring countries, right up to the Persian Gulf, produced by another British Indian civil servant, Charles Aitchison.[35]

Looking through these collections,[36] one finds at least three things – first, that the difficulties with acquiring a Mughal *farmān* in the early seventeenth century did not deter the Company from seeking *farmāns* from other regimes, such as the Deccan sultanates,[37] or various dynasties in Iran. Nor did Company officials appear averse to accepting a range of lower level sub-imperial orders – called *nishāns*, *parwānas* and so on, which offered a range of rights related to trade, taxation and property-holding. Thus, not only was there a deluge of Persian legal documents in the East India Company's archive, moreover, the source never dried up, so all the petty and massive princes and principalities that the Company came across until the mid-nineteenth century, continued to issue Persian documents, familiar in appearance, to record their relationship with the Company.

Forms and types of Persian documents

Here it is worth pausing for a moment to offer a definition of "legal document" and discuss the types and forms of Indo-Persian legal documents. For purposes of this chapter, I consider legal and administrative documents as part of the same

legal landscape, because extant collections related to specific individuals or institutions demonstrate how they were complementary in function. Royal and sub-royal orders created or affirmed entitlements, which were subsequently asserted and disputed by rights-holders, confirmed and rescinded through judicial and political processes, and built upon through transactions such as sale, gift, mortgage and inheritance. Each of these activities were seen to require specific forms of documents. Throughout the early modern Perso-Islamic world, the forms of such documents were strikingly regular; regional variations of form and usage being themselves standardised. As Roe discovered to his frustration, the conventions of appearance, content and formulaic phrases could not be ignored without risking either utter impasse or meaninglessness. In addition, Indo-Persian legal documents were self-nominating, that is, they named their own documentary type, usually in the initial or final line of the document, using formulae such as "*In chand kalme ba-ṭariq-i tamassuk nawishte dādam*" (I wrote and gave these words in the manner of a *tamassuk*, a bond). The documentary types thus recorded could be transregional or extremely local in provenance.

Based on extant collections of Mughal-era documents in Indian archives, both published and unpublished, a preliminary formal-cum-functional typology could look like the one shown in Table 4.1.[38]

Some of these forms were Islamic, in the sense that they conformed to models provided in Islamic books of law, which often contained sections on formularies.[39] Others, however, derived from Persianate chancellery traditions, ranging from the royal to the fiscal. Each of these forms displayed extremely regular graphic and linguistic features; which were, however, specific to identifiable sub-regions, regime and the period.[40] These regular features consisted of highly formulaic language that marked the opening, closing and structuring of the contents of the document – set phrases were inevitably used, and were specific to the type

Table 4.1 Types and forms of Indo-Persian legal documents

Orders	*Petitions*	*Tax contracts*	*Inter-personal transactions*	*Documents related to adjudication*
Farmān	*Iltimās*	*Qaul-qarār pattā-yi ijāra*	*Hiba-nāma* (gift deed)	*Sanad* recording *qāẓī's* decision
Nishān	*ʿArẓadāsht*	*Muchalka*	*Tamassuk* (deed acknowledging a debt or other obligation)	*Maḥẓar-nāma*
Parwāna		*Qabuliyat*	*Fārigh-khaṭṭī* (deed of voiding of obligations)	
Dastak			*Iqrār* or *iqrār-nama* (generic – binding declaration)	
Khaṭ/ Khariṭa			*Nikāh-nāma* (deed of marriage – for Muslims)	
			Rāẓī-nāma (deed of agreement – of any kind)	

of document in question. Other highly regular features consisted of the type and location (in the document) of the seals and the cypher (if any), the use of marginal space, and the use of the verso of the document.

For example, a classic Mughal *farmān*, especially after the mid-seventeenth century, generally opened with the line – "At this time, the lofty order (*farmān*), which must be obeyed, has been issued, that […]." In addition, there were high-value "personal" *farmāns*, not bearing any seals, and often in the emperor's own handwriting, issued to the highest-ranking Rajput nobles, usually to give precise and immediate instructions.[41] In all cases, the writing occupied a block to the south west (left and bottom) of the paper; the first two lines were always indented to the left; there was only one seal – the circular genealogical seal of the Mughal dynasty – accompanied by the royal cypher or *tughra*.

Forms and functions of Persian documents were connected but they did not overlap entirely, which produces classificatory problems for the researcher. To take a *farmān* as example again, in India, this could only be issued by the emperor, and were necessarily orders. The name of this form of document itself derived from the Persian verb *farmudan*, which means "to order". *Farmāns* could be orders to perform (or desist from performing) certain activities, e.g. turning up in court, or they could be orders that created some kind of legal title, for example, through a grant of land. *Parwānas*, on the other hand, were yet another form for issuing orders, of a similar range, but they were issued by nobles who did not belong to the imperial family. *Parwānas* were linguistically and graphically different from *farmāns* – they had different formulaic openings, different usage of seals and margins, different use of space on the paper, and could, in some instances, be bi-lingual.[42]

To indigenous experts, these differences in form mattered a great deal. Indigenous scribal traditions used formularies for the drafting of such documents, which offered classificatory schemes based on the relative status of the writer of the document and its receiver, in addition to the function of the document.[43] Using the incorrect form in the wrong social context would be a breach of etiquette, which could in certain cases tantamount to rebellion. In any case, it would render the document ineffective. As we have already seen with Sir Thomas Roe and his failed efforts, the East India Company was fully awake to the distinctions between such documents, and aware of the differences that they could make to their rights in India. Even if it was premised on a purely functional basis (i.e., the Company was merely looking for the most effective document), intellectual, cultural and political participation in the world of Indo-Persian legal documents was inevitable.

The history of mature "British-Persian"

Historically, the production and receipt of Persian documents did not remain a one-way process; the Company itself produced a huge volume of Persian legal documents, in forms both familiar and innovative. The earliest Persian documents produced by the Company and its employees were, naturally, *ʿarẓadāshts*,

or petitions, to a range of authorities, seeking specific privileges relating to its trading operations.[44] It must have also produced documents of contracts – especially since we know that it advanced money, through brokers, to weavers who produced the prime merchandise that it exported to Europe from India – fine cloth.

By the early eighteenth century, however, the Company and its officials had already started producing Persian documents of order of their own. This began with documents relatively low down in the hierarchy of documents; Company servants infamously produced illegitimate *dastaks* or orders for allowing customs-exempt transit of merchandise, which their Indian brokers re-forged multiple times. We see one such case in May 1711, when the Company's council in Calcutta examined a certain Jagat Das for selling several "Dusticks" to "natives" for five rupees each. It turned out, somewhat embarrassingly, that a previous English governor of Calcutta, Weltden, had handed an armful (158) *dastaks* to Jagat Das.[45]

By the mid-eighteenth century, the Company's creativity as well as political standing had reached further up the scale. The Company was now first among equals in the political landscape of India, and the leading competitor among all the regimes that sought to replace the Mughals. It was also in a position to produce higher-status documents of order of its own, especially when participating in the internal and mutual squabbles of the various regional states.

In Aitchison's *Treaties, Engagements and Sanads*, we see one such set of documents, pertaining to the substantial *rāja* or king of Banaras.[46] This arriviste royal family came from a dynasty of revenue-farmers, who worked for the provincial governor turned king, the Nawabs of Awadh.[47] Wriggling their way up through the conflicts between a substantial successor state (Awadh) and the Company, this family secured autonomy from the Nawab of Awadh, on the one hand, and assurance of their title from the Company, on the other. Thus, in 1776, a *sanad* (generic term for Persian document) was issued to Raja Chait Singh of the Banaras family, confirming his title to the *zamindārī* or superior landholding rights in Ghazipur, a district in the Banaras region.

Even in translation, the document is clearly identifiable as a *parwāna*, that is, a superior form of order that non-imperial nobles could issue. It opens with the standard formula,

> Be it known to the mutsuddies [sic., Persian for officials] in office, present and to come, canongoes, mukudums, ryots, cultivators, to all the inhabitants resident and belonging to Circar Benares […] that whereas, by virtue of a Treaty with Nabob Ausuf ud-dowlah.

It is an odd, stilted English, peppered with transliterated Persian words, a usage that came to be known as the impenetrable jargon of 'Indostan',[48] but the document is actually perfect in Persian! It is signed by the Governor-General in Council, that is, Warren Hastings himself.

Persian documents, such as the *farmān* issued by the cowed Mughal emperor in 1765 are generally treated by historians as hollowed out old forms that

demonstrated the vacuity of Mughal power, while providing the EIC with a shield against British parliamentary intervention. However, the *parwāna* we have just seen was not vacuous in the least; it created very real rights for some parties, and undermined others. And it was produced, not procured by the Company itself. Once one grapples with the scale and persistence of the phenomenon – we are not talking about one crucial early treaty dressed up as an imperial order, but hundreds of thousands of Persian documents, constantly acquired, produced and circulated well into the twentieth century – it does appear that we may need to think afresh about Persian documents in the British imperial archive.

A British-Persian document from a Punjabi village

Let us now assess the phenomenon of British-Persian from a different point on the social scale. In the year 1859, some Punjabi Muslim landowners sold some cultivable land in a village called Pindori to the head of a major Hindu Vaishnava monastic institution which was located there. The institution of Pindori was richly endowed; it had received royal grants of land and its produce (there is a difference, which I will explain later in the chapter) from at least the late seventeenth century, first from the Mughal emperors and their subordinates, and then from the various Sikh warlords or *misldārs* who flourished in the region from the mid-eighteenth century, until Punjab was conquered by the East India Company in 1849.[49]

This document, then derives from ten years after the conquest of Punjab. As such, it shows material and formal signs of regime change – for the first time in this collection which spans two centuries, we have a document scribed on the East India Company's stamp paper. The document is multi-lingual and multi-scribal, as many of the documents in the rest of the collection are, but this one offers specific new combinations – the main text is still written in Persian, but the notes on the reverse are in Urdu and English. How does one situate a document such as this one and interpret its significance? To ask a simple descriptive question – is it a colonial legal document, or an Islamic legal document?

The document records a sale transaction in the form of an *iqrār*; beginning with the formula "*Iqrār kard wa iʿtirāf saḥīḥ sharīʿaī namud*." *Iqrār* is a classical Islamic legal form, found in collections from all over the Islamic world.[50] As the record of a legally binding declaration, it was a capacious form, which could be used to acknowledge a variety of things, and hence used for a huge range of transactions. In India, they had been used (among other things) for recording sales definitely from the sixteenth century, and possibly from earlier.[51] The Indo-Islamic variation of this form admitted of attestations by parties as well as witnesses on the margins of the document, and we see that practice continuing. Authorisation, where it once used to be with the seal of the *qāẓī*, or Islamic judge, is now with the East India Company's stamp, on standardised stamp paper, clearly produced across the country, in Bengal. Again in conformity with Indo-Persian legal documents, there are summary notes on the verso; unlike earlier documents, however, the notes on this document are in Urdu and in English, rather than Persian. The Urdu note called the document a "*waṣiqa-yi baiʿ-nāma*," following

the Indo-Persian convention of specifying the particular and immediate function that the legal form was being put to. It also notes that the lands had been previously measured according to the 'English' system, and that the deed of sale was "registered" into a book (of land titles).

So we can summarise that, in a major province of British-ruled India, in the mid-nineteenth century, while new institutions like standardised stamp paper and land registers had been created, legal documents continued to be produced in Persian, in recognisably Islamic legal forms, using recognisable formal vocabulary that derived from the overlapping Islamic and Persianate traditions of documentation for which we have copious evidence from Mughal times.

This particular transaction was not subject to dispute or litigation, as far as we know, and so this document did not enter the court system. However, hundreds of thousands of very similar documents were presented in British courts in India from the late eighteenth century, right up until India and Pakistan's independence from British rule in 1947. In order to interpret the implications of such a document, it is necessary to form a sense of the scale of the phenomenon (the presence, production and circulation of Persian legal documents in British-ruled India).

Scale: Persian documents in the colonial Indian courts

The survey and assessment of the "British-Persian" documents that have survived is a highly time-consuming task, never attempted before, and only begun by the present author. For now, I can only point to the tip of the iceberg, the appeals to the Judicial Committee of the Privy Council (JCPC), which was once the final court of appeal for the British Empire.[52]

The JCPC, which arose as an ad hoc court out of the King's Privy Council, was utterly a creature of empire. It was an extension of the Crown's prerogative powers to hear appeals from the colonies, its judgments were not binding within the English legal system, and (this is what many fail to notice adequately) it applied laws from other legal systems to somewhere between a fifth and a quarter of all appeals it heard.

For between 1792 and 1998, we have the case papers for 9,368 appeals heard by the JCPC. The JCPC's procedures required parties to produce two sets of printed papers comprising the case for appeal for both sides, the record of proceedings from all subordinate courts, and copies (or record) of any admitted evidence.[53] The JCPC may indeed have heard further appeals for which the papers have not survived, but of these 9,368 appeals, 3,833 (or just over 40 per cent) are from India, including what are now Pakistan and Bangladesh. The vast majority of these appeals were about civil disputes, because the JCPC remained reluctant to take criminal appeals. And again, the vast majority of these appeals were about property, because as per the rules of appeal to the JCPC, only disputes involving very valuable property, or involving a substantive point of law, were eligible.[54]

A very large proportion of those 3,833 appeals from India involved the use of Persian-language legal documents as evidence, either directly, or through translation to English. Quite like the land-sale document from Punjab, these were frequently

in recognisably classical Islamic and/or Persianate legal forms. But this does not mean that they were necessarily old documents merely being dredged out of family stores and translated for the court; quite like the document from Pindori, they were frequently freshly produced, with the participation of parties as well as novel state institutions – such as the land registry. And while British courts in India applied religion-based personal status laws, the use of Persian documents as evidence was not limited only to cases about marriage, divorce, custody and inheritance. Such documents could be produced in connection with a much wider range of property disputes, which were decided by the courts on the basis of colonial statutes and regulations.

If one considers that the JCPC took appeals from 12 tribunals situated within the Indian subcontinent, and from several indirectly governed Indian princely states, too; and also consider that each of those courts would have two to three subordinate levels of courts, one begins to form a sense of the scale of Persian documents being received and translated within the British court system related to India. But exactly what roles did these Persian legal documents play in those court-rooms?

A very large portion of these disputes was about the inheritance of property, specifically, landed property held under the title of *zamīndārī*. The precise implication of the term *zamīndār* was the *cause célèbre* of colonial India in the late eighteenth century; with policy and scholarly discussions rumbling on well into the twentieth. This synthetic Persian word specific to India, and very commonly used by the Mughals to refer to entrenched rural elites, literally means "landholder", and was conceived of in Mughal administrative manuals as co-opted powerful villagers, tasked to collect land revenue, in exchange for a cut in the proceeds. When the East India Company acquired the right to collect taxes in Bengal in 1765, this started off three decades of debates and policy changes about the nature of land ownership in India, until it was finally decided by legislation, in 1793, that the *zamīndārs* were exclusive proprietors of their land, secure in their title as long as they paid a fixed revenue to the state.[55] Scholarship has discussed the transformative effects of this legislation, usually referred to as the "Permanent Settlement" – in denying *zamīndārs* their kingly roles, and those with subordinate titles, any legal standing whatsoever.[56]

The matter hardly ended there, however. Not only did the other provinces in British-ruled India refuse to extend this law to themselves,[57] even in Bengal, there were hundreds of disputes over the mode of verifying the title of *zamīndārs*, which did not attract metropolitan attention. These disputes, during the period of Company rule, that is until the mid-nineteenth century, were heard in Company courts called the *diwāni adālats*, so named because they were essentially courts for hearing revenue disputes, that assumed, by extension, jurisdiction over civil disputes.[58] A cursory skim through the first ten years of the reports of the *sadr diwani adalat*[59] of Calcutta shows that nearly every single case was replete with terms derived from the vocabulary of Persian legal documents and titles dependent on the interpretation of those terms.

Let us consider one case in slightly more detail. In *Nunda Singh v. Mir Jafier Shah* (1794), the *sadr diwani adalat* of Calcutta heard an appeal from the lower

diwani adalat. While the dispute was principally over title to certain lands, it encompassed legal matters related to gift and compensation for killing, both important concerns for Islamic law. Specifically, the plaintiff Nunda Singh asserted his right to 1000 "bighas" of "malguzary" lands in the "mouzah" of Allahdadpore, based on three Persian legal documents. The first of these was a "sannudi khun beha" or a document recording a blood-money payment in lieu of the murder of Nunda Singh's grandfather, for which the defendant's ancestor had paid 100 bighas of "malikana" land. This document was dated in the "Faslee" year of 1149 (1739 CE).[60] The second was an "ikrar-namah" by Mir Jafier Shah confirming the above, dated "Faslee" year of 1188 (1778 CE). The third was a "hiba-namah" or deed of gift made in the "Faslee" year 1191 (1781 CE), whereby Mir Jafier Shah apparently gifted the rest of Allahdadpore, which he owned, to Nunda Singh, constituting him "malika" and "mokuddin."

As it happens, this was a dispute over a *zamīndārī* title. But how could anybody tell? How did the British judges, in this case the Governor General John Shore[61] and Council, who not only lacked knowledge of all relevant Indian legal systems, but any legal training at all, make any sense of these terms? We do see in the report that Muhammadan law officers attached to the court[62] were consulted on a doctrinal matter related to the validity of the gift-deed, but who supplied the translations and extended glosses necessary to understand terms such as *mouza*,[63] *malguzary*,[64] *malikana*,[65] *mokuddin* (*muqaddam*)?[66] The answer is not forthcoming from existing scholarship because scholars have so far concentrated mostly on the translation of high texts of Islamic and Hindu jurisprudence; they have paid no attention to the much more capacious, substantive and persistent project of translation of legal documents and terminology. That unseen and unsung project of legal translation, I argue, is the process by which *sharīʿa* was translated a second time in the Indian subcontinent.

Tax, glossaries, and the hidden history of legal translation

Based on my current research, I propose that this highly functional knowledge of specialist legal terms was created through the enterprise of tax collection and the intellectual projects that were corollary to that most mundane activity. As mentioned above, the first forays by Company officials into the world of Persian documents was made in connection with securing exemption from Mughal taxation. Once granted the right to collect taxes themselves, however, the scale of things was completely revolutionised, for it implied the necessity of entering into the vaults of Indo-Persian record-keeping. This, once again, is generally treated by historians as a frustrating interlude in which Company officials floundered in the mysteries of cryptic numbers, embodied knowledge and illegible scripts, finally rejecting it all in order to create streamlined, and it is assumed, English-language, or modern vernacular record-keeping that merely copied the English forms.[67] This change in policy is assumed to have gone hand in hand with the removal of Persian from the Indian education system.[68] The reality could not be further than this.

When the Company first acquired the right to manage and benefit from the collection of taxes in Bengal, its officials were content to let the indigenous system of revenue administration continue, hoping to merely siphon off the results. Indian officials manning these posts maintained records in Persian, using accounting conventions and numerals that were generally inscrutable to the uninitiated. Very soon, however, such officials came under a cloud – it was suspected that, protected by linguistic inscrutability, they were exploiting the peasantry and pocketing the loot, leaving the countryside damaged and the Company with an empty treasury. And so a post was created in 1786 called the *sarishtadār* or record keeper, and the first person to hold that post was James Grant, who had picked up his Persian during service in the Company army.[69] Grant proved to be an avid Persianist but a highly pragmatic one, so he collated entire series of Persian language records tabulating, district by district, the revenues ordinarily due from various categories of lands, together with the terms used for the various categories of exemptions or reductions and the names of those that held titles affording such exemptions. In some cases, Grant recorded, in the formulaic language of Persian documents, the specific documentary basis (i.e. previously granted *parwānas* etc.) for such exemptions.[70] This then, was something of a proto-land registry for Bengal.

Parallel to such work of surveying and contracting for revenue, which in British-Indian terminology came to be called "settlement", there was the (relatively more) intellectual work of producing manuals, glossaries and dictionaries. One of the earliest works of this kind, which combined the features of a manual and a glossary, was the *Amini* report, produced in 1786 by order of government, which described how tax collection took place in Bengal, and defined a number of key terms.[71] Later works offered more and more fine-grained information, not only about the variety of titles in land, but about the range of documents recording such titles, and indeed the social process of producing them came to be studied and reported on.[72]

"Pure" glossaries, with alphabetically arranged lists of technical terms with pared down definitions appeared around the mid-nineteenth century. These key tools for the everyday work of legal translation arose out of at least three distinct (but not entirely separable) routes: the first, out of settlement operations, the second, out of manuals of governance copied for, or produced afresh for Company officials by Indian experts, and the third, a rising trend within Indian society for self-reflexive linguistic studies among those adept in Persian and the north Indian vernacular, Urdu.[73] Two mutually connected examples of such lexicographic scholarship sponsored by the Company government were the *Supplement to the Glossary of Indian Terms*,[74] ironically produced before the completion of *A Glossary of Revenue and Judicial Terms*.[75] The *Glossary* was a government-sponsored project, led by the eminent Sanskritist H.H. Wilson, to collect information about technical terms from civil servants in the field. In 1842, Wilson generated and circulated a basic list of terms to civil servants in districts, asking them to note corresponding local terms and meanings. The project was an utter failure, most officers returning the list blank or filled with useless notes. One officer, however, produced such a good list, that it was published separately in 1845 as the

Supplement. It was the work of a civil servant, called H.M. Elliot, better known to South Asianists as the editor and translator of several Persian-language historical works. Here, Elliot explicitly concerned himself only with terms related to "the tribes, the customs, the fiscal and agricultural terms of this Presidency", i.e., the province in which he worked. His *Supplement*, however, borrowed very heavily from the *Nawāẓir al-Alfāz* – a lexicon produced by one of the leading poets and linguists of eighteenth-century India, Sirajuddin Khan "Arzu".[76]

As for the *Glossary* itself, despite the frustrations expressed by Wilson, this was a huge work, which continues to be used by scholars until today, and is distinctive for including terms and meanings from various provinces of the country. While much more research is needed, there is already some direct evidence available to show that judges contacted scholar-officials, such as the first Surveyor-General of India,[77] in order to understand the meanings of specific titles in land.[78]

A tribunal for translating titles: Inam Commissions

Legal definitions, however, were not simply matters of discovery; meanings could very well be made. As we have seen, debate over the meaning of the term *zamindār* was finally resolved by legislation. The matter hardly ended there, though. Other provinces, which did not embrace this legislation, experimented with other kinds of titles in land, and subordinate titles gradually gained legal attention. In Bengal itself, there were many other superior titles in land, including those which, their owners asserted, entitled them to exemption from the payment of revenue. As the government of the Company grew concerned about the "leakage" of revenue due to the many types of titles, there arose new departments, especially the Bazi Zamin Daftar, created in 1782,[79] specifically tasked with examining such titles based on existing deeds (usually in Persian) and either issuing documents (also in Persian), securing such titles, or revoking them.[80] This obscure department appears to have had a short life, its functions of examining titles and issuing deeds being transferred to the (revenue) Collector of each district by legislation passed in 1793.[81] It had, however, even in its short life, produced a cache of Persian documents, which now had their own legal validity.[82]

In some of the other provinces, this enterprise turned into the gargantuan project of "Inam Commissions". The Inam Commissions, which were explicitly conceived of as tribunals,[83] deserve to be studied as vast projects of legal translation. The standard procedure of these commissions consisted of examining a range of evidence with regard to the titles of tax-free land, and either endorsing them through the issue of fresh documents (by the late nineteenth century, in English or vernacular languages), or revoking them – outright, or through conversion into salaries for specific offices. Despite the resentment they clearly caused, and metropolitan concern that such resentment may have fed into the great mutiny of soldiers and civil rebellion of 1857, the process continued. The Madras Inam Commission was in fact instituted after the Mutiny and functioned from 1857 until 1862.[84] Thanks to an Endangered Archive Project sponsored by the British Library, we have direct access to some of the title deeds issued by the Madras Inam

Commission.[85] In other cases, especially where titles were disputed, commissioners issued novel forms of (Persian, later Urdu) documents known as *rubekaris* (literally, facing, or with regards to (the) business). These documents then entered into circulation, could be produced as evidence in disputes, and thus became part of the growing family of Persian legal documents in the British Indian courts.

We can see all these processes come together in a (perfectly routine) dispute over land titles (some of them tax-exempt), which was appealed to the Privy Council and decided in 1922. Syed Ameer Ali, the first Indian and first Muslim judge in the Privy Council, also one of the leading experts on some of the laws relevant to the case (e.g. the Bengal Tenancy Act), delivered the judgment. The judgment surveyed a range of documents on which the claims were based and their validity judged – original Mughal grants, documents received by Settlement operations, draft and final land registry documents; it also mentioned terms such as *malikana*, *mouza*, *theka*, *khasra*, *thakbast* and so on. There appeared to be no difficulty in comprehension.[86]

Conclusion: Why "legal translation?"

Today, legal professionals as well as academic scholars of law take "legal translation" to mean principally the translation of legal documents. An ideal legal translation, experts tell us, is one that not only offers an idiomatic translation of the text of a legal document, but ensures the same effect in the host legal system as was intended in the legal system of its production. Such translation might require the use not of modern idiomatic language but of arcane formulae from the host system in order to convey the real sense of the document.[87]

I suggest, without entering into the matter of success or failure, that the persistent presence of Persian legal documents in the courts of British-ruled India is symptomatic of a phenomenon best understood as legal translation. This analytical framework allows us to incorporate into meaningful analysis a vast and curious body of textual artefacts – the documents of "British-Persian". It has the benefit of returning attention to the concrete intellectual and physical processes inherent in the production and use of such documents, both the bare act of translating – from one language to another – and the history of the institutions, individuals and tools that enabled this to happen. In this sense, I could think of legal translation as *translatio*: the moving of Persian and Persianate legal documents from one legal system into another, and space being made for them in the host system through functional technologies of interpretation – less jurisprudence, and more lexicography.

Persian legal documents and the concept of legal translation also allow me to conceive of law, *sharīʿa* in particular, as morphing through successive imperial contexts – first the Mughals and then the British. Already with the Mughals, legal documentation in Persian was well established in India, and presented a hybrid vocabulary and ethos, which derived from the recommendation of classical Islamic jurists writing in Arabic, but also from the chancellery traditions of Persianate empires. Documentary clusters thus presented an apparently eclectic

collection of documentary forms, which includes royal orders and tax contracts in distinctly Indo-Persian forms, together with documents recording transactions, in more pan-Islamic forms. I have argued in this chapter that early modern Indian notions of law have to be derived from the totality of these documentary clusters, in which empire is inseparable from Islam. I have also argued that the European trading companies were early entrants into this Persianate legal landscape, and were compelled to partake of it in order to seek and record necessary privileges. Eventually, when one such corporation, the East India Company, achieved political dominance in the region, it inherited multiple archives of rights-bearing Persian documents, but also the documentation momentum, whereby it continued to produce fresh Persian documents through its own institutions and personnel. All these documents continued to surface in colonial Indian courts well into the twentieth century, pushing us to consider whether the British Empire was another Persianate empire into which *sharīʿa* had been translated, yet again.

Notes

1 Brian Spooner and William L. Hanaway eds., *Literacy in the Persianate World: Writing and the Social Order* (University of Pennsylvania Press, 2012), especially Introduction. A very useful map is offered to show the geographical location of this cultural-linguistic sphere; another is offered in Phillip B. Wagoner and Richard Eaton, *Power, Memory, Architecture: Contested Sites on India's Deccan Plateau, 1300–1600* (Oxford University Press, 2014), 22.
2 The term 'Persianate' was coined by Marshall Hodgson, *The Venture of Islam: Conscience and History in a World Civilisation* (Chicago: Chicago University Press, 1974), Vol. I, 96.
3 Sunil Sharma, *Persian Poetry at the Indian Frontier: Mas'ûd Sa'd Salmân of Lahore* (New Delhi: Permanent Black, 2000); Muzaffar Alam, "The Pursuit of Persian: Language in Mughal Politics," *Modern Asian Studies* 32, no. 2 (1998): 317–49; Muzaffar Alam and Sanjay Subrahmanyam, "The Making of a Munshi," *Comparative Studies of South Asia, Africa and the Middle East* 24, no. 2 (2004): 61–72; Rajeev Kinra, *Writing Self, Writing Empire: Chandar Bhan Brahman and the Cultural World of the Indo-Persian State Secretary* (Berkeley: University of California Press, 2015).
4 Sheldon Pollock, "The Cosmopolitan and Vernacular in History," *Public Culture* 12, no. 3 (2000): 591–625; Pollock, "India in the Vernacular Millenium: Literary Culture and Polity, 1000–1500," *Daedalus* 127, no. 3 (1998): 41–74; Pollock, *The Language of Gods in the World of Men: Sanskrit, Culture, and Power in Premodern India* (Berkeley: University of California Press, 2006).
5 Ronit Ricci, *Islam Translated: Literature, Conversion and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2014).
6 Tomáš Petrů, "'Lands below the Winds' as Part of the Persian Cosmopolis: An Inquiry into Linguistic and Cultural Borrowings from the Persianate societies in the Malay World," *Moussons* 27 (2016): 147–61.
7 Abbas Amanat and Assef Ashraf eds., *The Persianate World: Rethinking a Shared Sphere* (Leiden: Brill, 2018); Nile Green ed., *The Persianate World: The Frontiers of a Eurasian Lingua Franca* (Oakland: University of California Press, 2019).
8 Wagoner and Eaton, *Power, Memory, Architecture*, 19–27.
9 Richard Eaton, "The Persian Cosmopolis (900–1900) and the Sanskrit Cosmopolis (400–1400)," in *The Persianate World*, eds. Amanat and Ashraf, 63–83; also Audrey Truschke, *Culture of Encounters: Sanskrit at the Mughal Court* (New York: Columbia University Press, 2016).

10 Nile Green, "Maritime Worlds and Global History: Comparing the Mediterranean and Indian Ocean through Barcelona and Bombay," *History Compass* 11, no. 7 (2013).
11 Fahad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017).
12 Elizabeth Lambourn and "Editors' Introduction," in *Legal Encounters in the Medieval Globe* (Kalamazoo and York: Arc Humanities Press, 2017), vii–xiv, at x.
13 A possibility also suggested by Nile Green, "Introduction," in *The Persianate World*, ed. Green.
14 As Tom Hoogervorst does for Southeast Asia in "Legal Diglossia, Lexical Borrowing and Mixed Judicial Systems in Early Islamic Java and Sumatra", in this volume.
15 Arabic and Turkish documentation was used in the western part, where Persian was used mainly for literary production.
16 For a good introduction to *inshā'*, see Riazul Islam, *A Calendar of Documents on Indo-Persian Relations* (2 vols., Tehran: Iranian Culture Foundation, 1979–1982), 1–37; for a discussion on models of legal documents in *munshāts*, see Nandini Chatterjee, "*Mahzar-namas* in the Mughal and British Empires: The Uses of an Indo-Islamic Legal Form," *Comparative Studies in Society and History* 58, no. 2 (2016): 379–406.
17 Gagan Sood, *India and the Islamic Heartlands: An Eighteenth Century World of Circulation and Exchange* (Cambridge: Cambridge University Press, 2016), 12.
18 Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002) and several subsequent publications.
19 Leon Wolff, "Legal Translation," in *The Oxford Handbook of Translation Studies*, eds. Kirsten Malmkjaer and Kevin Windle (Oxford: Oxford University Press, 2011).
20 Charter, 43 Eliz I, 31 December [1600], in *Charters Granted to the East-India Company From 1601, Also The Treaties and Grants, Made with, or Obtained from, the Princes and Powers in India, From the Year 1756 to 1772* (London, 1773), 5–6, cited in Philip Stern, *Corporate Sovereignty: The Company-State and the Early Modern Foundations of the British Government in India* (Oxford: Oxford University Press, 2011), 8.
21 Maurice Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls, and Beraths in the 18th Century* (Leiden: Brill, 2006).
22 E.M. Foster ed., *The Embassy of Thomas Roe to the Court of the Great Mogul, 1615–1619* (2 vols., London: Hakluyt Society, 1899), I, 115–17.
23 Ibid., 126.
24 Ibid., 135–6; 140–1, 146–9; 162–4.
25 Ibid., 146.
26 Ibid., 152–6.
27 Ibid., 260–2.
28 Bernard Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton, NJ: Princeton University Press, 1999), 17–19; 112–15; William Pinch, "Same Difference in Europe and India," *History and Theory* 38, no. 3 (1999): 389–419; Sanjay Subrahmanyam, "The Company and the Mughals between Sir Thomas Roe and Sir William Norris," in *Explorations in Connected History: Mughals and Franks*, ed. Subrahmanyam (New Delhi: Oxford University Press, 2005).
29 Subrahmanyam, "The Company and the Mughals," 145.
30 Peter Marshall, *Bengal: The British Bridgehead* (Cambridge: Cambridge University Press, 1987), 70–92.
31 For the English translation of this *farmān*, see William Bolts, *Considerations in Indian Affairs* (London: J. Almon [and others], 1772), Appendix XVIII.
32 Kavita Datla, "The Origins of Indirect Rule in India: Hyderabad and the British Imperial Order," *Law and History Review* 33, no. 2 (2015): 321–50, at p. 341.
33 One such set of (?) Persian manuscript copies of documents included the copies of documents relating to the East India Company's rights in the newly founded city of Calcutta. These documents have been studied by Farhat Hasan to write a story of colo-

nial-indigenous cooperation in the creation of a new city. Farhat Hasan, "Indigenous Cooperation and the Birth of a Colonial City: Calcutta, c. 1698–1750," *Modern Asian Studies* 26, no. 1 (1992): 65–82. Following an old and established tradition, Hasan treats the notebook with copies as the equivalent of the original documents. British Library MSS Add. 24039.

34 William Foster ed., *The Embassy of Sir Thomas Roe to the Court of the Great Mogul, 1615–1619* (2 vols., London: Hakluyt Society, 1899); William Foster ed., *The English Factories in India* (Oxford: Clarendon Press, several publication dates, for the several volumes).

35 C. Aitchison, *A Collection of Treaties, Sanads and Engagements Relating to India and Neighbouring Countries* (14 vols., Calcutta: Government Press, 1892).

36 Persian documents are also constantly referred to in collections that are not focused on these alone; Foster's series are of this nature, also see C.R. Wilson, *The Early Annals of the English in Bengal* (London: W. Thacker and Co., 1900), which repeatedly refers to *sanads*, *hasb al-hukms* and *dastaks* – all orders acquired from some authority or the other.

37 The Mughal Empire never covered all of the Indian subcontinent; major kingdoms arose and persisted, especially towards the south of the peninsula. The EIC naturally interacted with such regimes, too.

38 Collections seen by the author thus far include the multiple sets encompassed in the Acquired Persian Documents series of the National Archives of India, New Delhi, which has around 6,000 documents; a similar number at the U.P. State Archives (Allahabad branch); samples from the *daftars* of various Maratha landholding families, calendared and transcribed by G.H. Khare, *Persian Sources of Indian History* (Pune: Bharat Itihas Samsodhak Mandal, 1934–73), Vols. 1–6; also the published B.N. Goswamy and J.S. Grewal eds., *Mughals and the Jogis of Jakhbar* (Simla: Indian Institute of Advanced Study, 1967); J.S. Grewal ed., *In the By-Lanes of History: Persian Documents from a Punjab Town* (Simla: Indian Institute of Advanced Study, 1975); Mehendale et al., *Adilshahi Farmanein* (Pune: Diamond Publications, 2007).

39 *The Function of Documents in Islamic Law*: *The Chapters on Sales from Ṭaḥāwī's Kitāb al-shurūṭ al-kabīr*, ed. and trans. Jeanette Wakin (Albany, NY: State University of New York Press, 1972); for the most obvious Indian example, see Sheikh Nizam et al., *Fatawa-yi 'Alamgiri*, Maulana Saiyid Amir Ali, trans. to Urdu (Lahore: Maktaba Rahmaniya, n.d.), Vol. 10, 9–124; the section on *shurūṭ* runs from pp. 125–298.

40 There is only one classic and comprehensive study pertaining to the prolific Indo-Persian documents, Momin Mohiuddin, *The Chancellery and Persian Epistolography under the Mughals* (Calcutta: Iran Society, 1971). This book assumes a single and uniform chancellery tradition stretching from Iran to India, and offers descriptive and classificatory information derived unsystematically from formularies and documents from a range of regimes. There is a much more advanced and current tradition of the study of Persian diplomatics with relation to Iran, see, for example, Kondo Nobuaki ed, *Persian Documents: Social History of Iran and Turan in the Fifteenth to the Nineteenth Centuries* (London: Routledge, 2003); Christoph Werner, *An Iranian Town in Transition: A Social and Economic History of the Elites of Tabriz, 1747–1848* (Wiesbaden: Harrassowitz Verlag, 2000).

41 Mahendra Khadgawat and Suhujauddin Khan Naqshbandi eds., *Phārsī Pharmanoṇ ke Prakāsh meṇ Mughalkālīn Bhārat evam Rājput Shāsak* (4 vols., Bikaner: Rajasthan State Archives, 2010–2018).

42 Of which the best known examples are the *parwānas* issued by the Kacchwaha Rajput noble house, preserved in connection with the temple complex in Mathura-Vrindavan, and later, Jaipur. Monica Horstmann, *In Favour of Govinddevaji* (New Delhi: IGNCA, 1999)

43 For a discussion of legal formularies, both Arabic and Persian, see Chatterjee, "*Mahzar-namas*".

44 For an early example of such an *arzadāsht*, apparently read out in Jahangir's court by a British traveller, see *Mr Coryatt to His Friends in England* (London: I. Beale, 1618). I am grateful to Ayesha Mukherjee for pointing out this text to me.
45 C.R. Wilson, *The Early Annals*, 10
46 Aitchison, *Treaties, Engagements and Sanads*, Vol. II, 41–54, especially 45–47.
47 Bernard Cohn, "The Initial British Impact on India: A Case Study of the Benares Region," *Journal of Asian Studies* 19, no. 4 (1960): 418–31.
48 Javed Majeed, "'The Jargon of Indostan': An Exploration of Jargon in Urdu and East India Company English," in *Languages and Jargons: Towards a Social History of Language*, eds. Peter Burke and Roy Porter (Oxford: Polity Press, 1995), 182–205.
49 B.N. Goswamy and J.S. Grewal, *The Mughal and Sikh Rulers and the Vaishnavas of Pindori* (Simla: Indian Institute of Advanced Study, 1968), Document LII, transcription, translation and notes, 345–55, image in unnumbered section. For the history of the Sikh kingdoms of the Punjab, see J.S. Grewal, *The Sikhs* (Cambridge: Cambridge University Press, 1991).
50 See for example, the study of Arabic script documents from the Cairo Genizah, Geoffrey Khan, *Arabic Legal and Administrative Documents in the Cambridge Genizah Collections* (Cambridge: Cambridge University Press, 1993).
51 *Iqrār* actually means a legally binding declaration (often translated by scholars of Islamic studies as "confession", which can be confusing unless the archaic meaning of the term is taken into consideration). An *iqrār* does not have to be written down, in fact, in classical Islamic jurisprudence, verbal declarations as well as testimony (*shahāda*) is always superior to documentary evidence. However, we find prolific use of *iqrār* documents from across the Islamic world, especially (but not exclusively) for commercial and property-related transactions. Such documents are usually sealed by the *qāḍī* (*qāzī* in the Persianate world) and witnessed, according to local conventions, which vary widely.
52 P.A. Howell, *The Judicial Committee of the Privy Council, 1833–1876* (Cambridge: Cambridge University Press, 1979); David B. Swinfen, *Imperial Appeal: The Debate on the Appeal to the Privy Council, 1833–1986* (Manchester: Manchester University Press, 1987); for the earlier period: Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004).
53 These bound volumes of case papers used to be housed at the JCPC's old home at 10 Downing Street until recently, when the JCPC moved to the newly formed UK Supreme Court. Subsequently, these papers were acquired by the National Archives (of UK) but unfortunately not made available for research. Fortunately, a full list of all these papers was created by a staff member, and an incomplete set of these papers is held by the British Library.
54 William Macpherson, *The Practice of the Judicial Committee of Her Majesty's Most Honourable Privy Council* (second edn, London; Henry Sweet, 1873); and Thomas Preston, *Privy Council Appeals: A Manual Showing the Practice and Procedure in Colonial and Indian Appeals* (London: Eyre & Spottiswoode, 1900).
55 Ranajit Guha, *A Rule of Property for Bengal* (Paris: Mouton, 1963); Robert Travers, *Ideology and Empire in Eighteenth Century India: The British in Bengal* (Cambridge: Cambridge University Press, 2007).
56 R.E. Frykenberg ed., *Land Control and Social Structure in Indian History* (Madison: University of Wisconsin Press, 1969).
57 The classic colonial scholarship on Indian land tenures is H. Baden Powell, *The Land Systems of British India* (Oxford: Clarendon Press, 1892).
58 These courts were the products of Warren Hastings' efforts to reorganise and streamline the judicial administration of Bengal by creating a dual hierarchy of courts: revenue-cum-civil courts called *diwāni adālats* and criminal courts called *faujdāri adālats*, with appellate (*sadr*) courts for both branches in Calcutta, and with ultimate appeal to the Privy Council. In addition, there were purely 'English' courts, with limited jurisdiction, situated in the capital cities.

59 *Indian Decisions, Old Series* (Madras: T.A.V. Row, 1912), Vol VI (Sadr Diwani Adalat, Calcutta) cases from 1791–1801.
60 The Fasli year, traditionally used for tax-related documentation, and culturally universalised in Bengal, was an innovation of emperor Akbar; it was the Islamic calendar turned solar; the Gregorian year can be derived from it by adding 590.
61 On John Shore's career, see Jon Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835* (Basingstoke: Palgrave, 2008), 59.
62 J.D.M. Derrett, "The Administration of Hindu Law by the British," *Comparative Studies in Society and History* 4, no. 1 (1961): 10–52; Michael Anderson, "Islamic Law and the Colonial Encounter in British India," in *Institutions and Ideologies*, eds. David Arnold and Peter Robb (Richmond: Curzon, 1993); Michael Dodson, *Orientalism, Empire and National Culture: India, 1770–1880* (Basingstoke: Palgrave, 2007) and several others.
63 Mughal administrative unit for taxation purposes, roughly corresponding to a village.
64 Literally, payment of land revenue, indicates a higher order of title to land – those whose title entails making land revenue payments to the state.
65 Literally, ownership, but indicates a relatively superior and entrenched rights in land – usually refers to a *zamindar*.
66 Village headman, could be a *zamindar*.
67 This is the implication of Bhavani Raman, *Document Raj*, although she sees the effort as a failure, in terms of achieving transparency; and Wilson, *The Domination of Strangers*, especially chapter 5. Wilson suggests that such collection of information eventually led to frustration, confusion, and a government disengaged from Indian social reality.
68 Katherine Prior, "Bad Language: The Role of English, Persian and other Esoteric Tongues in the Dismissal of Sir Edward Colebrooke as Resident of Delhi in 1829," *Modern Asian Studies* 35, no. 1 (2001): 75–112.
69 P. J. Marshall, "Indian Officials under the East India Company in Eighteenth-Century Bengal," *Bengal Past and Present* 84, Part II, Serial no. 158 (1965): 95–120.
70 For example, British Library IO Islamic 4445.
71 R.B. Ramsbotham, *Studies in the Land Revenue History of Bengal, 1769–1787* (Bombay: Humphrey Milford, 1926), which reproduced the report.
72 D. Carmichael Smyth, *Original Bengalese Zumeendaree Accounts, Accompanied with a Translation* (Calcutta: Baptist Mission Press, 1829).
73 The best work on Persian and Urdu dictionaries produced in India since the eighteenth century is Walter Hakala, *Negotiating Languages: Urdu, Hindi and the Definition of Modern South Asia* (New York: Columbia University Press, 2016). Hakala notes but does not engage with the contexts of taxation and law that clearly sponsored the production of some of the key works.
74 H.M. Elliot, *Supplement to the Glossary of Indian Terms* (1st edn, Agra: Secundra Orphan Press, 1845; second edn, Roorkee, 1860).
75 H.H. Wilson, *A Glossary of Revenue and Judicial Terms, and of Useful Words Occurring in Official Documents Relating to the Administration of the Government of British India* (London: W.H. Allen and Co., 1855).
76 Hakala, *Negotiating Languages*, 64–5.
77 Nicholas Dirks, "Colonial Histories and Native Informants: The Biography of an Archive," in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, eds. Peter van der Veer and Carol Breckenridge (Philadelphia: University of Pennsylvania Press, 1993), 279–313.
78 MACK GEN 1, pp. 327–40, British Library. The letter Mackenzie wrote in 1808 to Sir B. Sullivan, Judge of the Supreme Court of Madras, glossing the *kaniyatci* (or *mirasi*) right.
79 Bazi Zamin Daftar roughly translates as "The Department of Miscellaneous Lands."
80 B.B. Misra, *The Central Administration of the East India Company, 1773–1834* (Bombay: Oxford University Press, 1959), 126.

81 The Bengal Revenue-Free Lands (Badshahi Grants) Regulation 37 of 1793, Article 19.
82 The Bengal Revenue-Free Lands (Non-Badshahi Grants), Regulation 19 of 1793, Article 48: "No part of this Regulation is to be considered to annul any grants for holding land exempt from the payment of revenue, made or confirmed by the late Superintendents of the bazi-zamin daftar […] in virtue of the powers vested in them."
83 Alfred Thomas Etheridge, *Narrative of the Bombay Inam Commission and Supplementary Settlements* (Poona: Deccan Herald Press, 1873).
84 W.T. Blair, *A Brief Report on the Entire Operations of the Inam Commission from Its Commencement* (Madras: publisher not identified, 1869).
85 Rescuing Tamil Customary Law EAP project at the British Library.
86 *Jagdeo Narain Singh and others v. Baldeo Narain Singh and Others*, JCPC 64 of 1922.
87 Leon Wolff, "Legal Translation," *Oxford Handbook of Translation Studies.*

5 Possibilities and pitfalls of cosmopolitanism

Two treaties from northern Somalia in the late nineteenth century

Nicholas W. Stephenson Smith

Introduction

Geographically, the southern Red Sea, Gulf of Aden and the wider Somali-speaking coastal regions form part of the western Indian Ocean region. But the Somali coast – ironically, given its extremely long seaboard – has suffered a sort of double neglect in Indian Ocean studies, being an African part of the Indian Ocean, and furthermore on the fringes of the Swahili zone.[1] From an Indian Ocean perspective, Somalia is seen as an unfamiliar, pastoralist land beyond the more familiar confines of sandy Swahili coastlines, urbanisation, coral architecture and Islam.[2] In fact, until quite recently, Indian Ocean historians approached the whole Red Sea and Gulf of Aden region as a "transit space" and even "a sort of void".[3] Yet coastal Somali history is full of stories which go to the heart of oceanic culture, economy and identity, including evidence of long-distance trade, the prevalence of Islam and quite widespread urbanisation.[4] In this chapter, I explore evidence from treaties in the late nineteenth century from north-eastern Somalia, contemporary Puntland, to investigate the existence and nature of Somalia's connections with the Indian Ocean.

The causes underlying the Somali coast's slight neglect in Indian Ocean studies are various; a brief resumé of the reasons will suffice in this short piece. First, it is true that contact between the Horn of Africa and the Indian Ocean lapsed around the sixteenth century, after the conquest of the Somali peninsula by Aḥmad ibn Ibrāhīm al-Ghāzī, also known as Aḥmad Grān. A religio-military leader from northern Somalia, in the 1520s and 1530s Grān launched campaigns against the Christian north-east African highlands. With Ottoman support, he conquered much of the Adal sultanate, which spanned contemporary Somaliland and Djibouti, and ran up the Awash valley towards the Christianised Abyssinian highlands. Grān's military excursions might have restored the regional importance of the Ifat Kingdom, with its port-capital in Zeila, and thus preserved into the modern period an Indian Ocean oriented (and Islamic) influence in northeast Africa.[5] But it was not to be: Grān's influence waned and the Adal sultanate broke up into various smaller entities, such as Aussa, Tadjoura and Rohayto in contemporary Djibouti and Eritrea, and Harrar in contemporary Ethiopia, close to the border with Somaliland. In turn, the Somali-speaking parts of the Indian Ocean world fell into relative decline, at least compared with other nearby regions such

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as Yemen, Oman and Omani East Africa – encompassing much of the former Swahili zone – and Gujarat.[6] In addition to this empirical reason, there are many more prosaic causes underlying Somalia's reported marginality within the Indian Ocean: the difficulties of conducting research during the country's civil war, the destruction of sources through conflict, the dearth of enduring written sources in Somali, the peculiar challenges of oral research in the country – which might for example unlock the region's deeper past through techniques such as oral linguistics[7] – as well as the way civil conflict has focused minds on explaining upheaval and unrest rather than the Somali region's deeper place in the oceanic world.

However, I would argue that the difference between the engagement of the precolonial Somali states in the Indian Ocean world and the engagement of, for example, the Swahili zone is more imagined than real. The reasons for Somalia's relative exclusion are more epistemological than empirical. If histories of the Indian Ocean had to be summarised in a word, that word must surely be "cosmopolitan", which dictionaries variously define as containing "people and things from many parts of the world", or being "free from provincial attachments", or at the individual level, being a "person of the world". Cross-cultural encounters, hybridity, webs, networks, circulations, echoes, equivalence, translations and toleration are but a few other key concepts associated with studies of the Indian Ocean. Kitri Chaudhuri introduced this characterisation of Indian Ocean space in his pioneering works of the 1980s, in which he argued that, "there was a firm impression in the minds of contemporaries, sensed also by historians later, that the [Indian Ocean] had its own unity … means of travel, movements of peoples, economic exchange, climate, and historical forces created elements of cohesion", while "religion, social systems, and cultural traditions … provided the contrasts". Chaudhuri was not unconcerned with inter-regional conflict and division. He observed various episodes of violent conquest in and around the Indian Ocean, from the Mongol invasions to some incidents of piracy in the Indian Ocean in his period. However, on the whole, Chaudhuri emphasised the ways in which historical actors in the ocean region surmounted difference, overcame distance, fostered mutual understanding and created a generally peaceful, tolerant and cosmopolitan maritime milieu.[8] For historians writing in Chaudhuri's wake, Europeans "destroyed" the cosmopolitan world of the Indian Ocean by exporting competition for markets and "politicising" oceanic space.[9]

There is more than an undercurrent of romanticism in these early approaches to the Indian Ocean world and its destruction by Europeans. As Jonathon Glassman has argued, in reference to the Zanzibar case, "the tendency to approach the Swahili coast as an example of a 'cosmopolitan' or 'creolized' culture, and to romanticize such cultures [has obscured] the role of locally inherited ideas" in explaining evidence for violence and division, notably in episodes of racial violence during the colonial and post-colonial eras.[10] A scholarship which emphasises personal and collective histories free from provincial attachments and the peaceful accommodation of things and people from many far-flung parts makes little room for war stories, evidence of social division, race and class conflict, common – though not as prevailing over the long-run as long-distance trade,

Islam and urbanisation – in Somalia's past. Nor can a conventional view of the Indian Ocean as cosmopolitan account for the relatively high degree of parochialism and clannishness identified as a driving force in Somali history favoured by its influential academic narrators such as Ioan Lewis.[11] There are important critical works which emphasise Somalia's cosmopolitan connections, notably by Lee Cassanelli, Edward Alpers and Scott Reese. Yet the solution to the puzzle of Somalia – at least northern Somalia – in Indian Ocean histories cannot be fully resolved by accentuating the cosmopolitan aspects of its history and writing Somalia back into oceanic space.[12]

In short, there are aspects of Somalia's past, and especially its modern past, which are incompatible with the core tenets and themes of the historiography of the Indian Ocean. However, there are also elements of Somalia's entanglement with the ocean which point to the benefits of revisiting Indian Ocean history more broadly by re-examining the Somali-speaking world's place within it. For example, scholars such as Jatin Dua have begun to reframe Somalia's involvement in the ocean in a way that makes sense of violence and division through accounts of the coast's maritime connections, seeing violence in terms of a back-and-forth between predation and protection, as well as the exploitation by coastal peoples of geographical choke points for profit.[13] I have also sought to make sense of the broader southern Red Sea littoral's paradoxical – violent and inter-connected – past in terms of the chaos and divisions wrought by colonial rule.[14] This chapter dwells specifically on the limitations and potentialities of the cosmopolitan lens through which much – though by no means all – Indian Ocean history has been refracted. It does so from a legal and historical vantage point, focusing on evidence from the Somali peninsula. In the process, I argue that not only does the Somali coast sit squarely within the Indian Ocean world, but that Somalia's legal history, in turn, offers rich insights – and commentary on – the cultural, intellectual and legal character of the Indian Ocean region's oceanic history writ large.

Cosmopolitanism, qualified

Such a sweeping assessment of the field of Indian Ocean studies is, of course, open to challenge, and I certainly do not mean to reduce the field to the label of cosmopolitanism. Rather, I would suggest that the field is cosmopolitan in the paradigmatic sense that Antoinette Burton *et al.* use it in the special edition of *History Compass* published in 2013: that Indian Ocean studies have a dominant "cosmopolitan" flavour, albeit with several lesser notes.[15] The evidence presented here adds weight to the lesser notes and challenging variants within the paradigm, but in no way suggests the need to rethink the idea of an Indian Ocean world or its connectedness; on the contrary, it expands the theme in certain ways into the colonial period, when the ocean is often said to have been torn apart. However, I suggest that the evidence from Somalia offers ways to refine and define more precisely the nature of the connections. My point is not, therefore, to debunk

cosmopolitan histories, but rather to see how Somali legal history can shed new light on the malleability, fungibility and limitations of certain widespread motifs of the concept.

By way of illustration, consider the Somali diaspora. Roughly two million, or about one-fifth of Somalia's 10 million or so citizens, currently reside as migrants outside the state's borders. The vast majority of Somalia's migrants live in and around the East African Indian Ocean rim. By 2014, about 1.1 million Somalis lived in refugee camps in and around the Horn of Africa. In 2015 about 1.3 million, or almost two-thirds of Somalia's diaspora, lived in the Indian Ocean region, mainly Kenya, Yemen, Djibouti and South Africa. Before the civil war, in about 1990, fully 90 per cent of the diaspora remained in Somalia's Indian Ocean neighbourhood.[16] Conflict has pushed the diaspora to temporarily settle further and wider, but it has not fundamentally altered the Indian Ocean rhythms of Somalis' diasporic travels.[17] The situation is by no means a purely contemporary one. Similar dynamics held in earlier periods: the Somali diaspora could be said to have begun in the thirteenth century, when Sidis – variously Somalis or Ethiopians – are first documented as travelling to places such as Gujarat and the Persian Gulf as sailors and mercenaries.[18] The coexistence – even causal relationship – between conflict, division and wars, on the one hand, and of connection, coexistence and unity on the other is uncomfortable. Is a person forced to move by conflict an example of cosmopolitanism? What about extradition treaties? I suggest that evidence from Somali history demonstrates that cosmopolitanism, power, violence and conflict co-existed to a far greater degree than seems, *prima facie*, logical.

One strong sub-note scholars have explored to better understand these paradoxical aspects of Indian Ocean history, which can seem stuck between rootedness and diffusion, between the imperatives of place and placeless-ness, is to reframe cosmopolitanism less as "a tool for erasing difference" than as a more or less effective "way of explaining and negotiating" difference.[19] For example, Islamic laws and customs, especially Shāfiʿī concepts, were part of a pan-Indian Ocean repertoire of legal ideas and commercial customs – rather than a strict and inflexible prescription – which enabled divergent coastal regions to overcome their differences, to form connections across geographical space and interact commercially and intellectually in meaningful ways.[20] But as Glassman and others have observed, if cosmopolitanism was a framework for managing difference, the framework's ability to accommodate difference was not infinite; there were times when provincial attachments and social and intra-Indian Ocean cleavages became an important source of conflict and division. This chapter takes a similarly critical approach to cosmopolitanism in a legal context. What particular frameworks and ideas underpinned a cosmopolitan approach to law in Somalia? At what point, and in what circumstances, might those concepts fail as instruments of inclusiveness and incorporation? In what ways could deep-rooted cosmopolitan ideas be recomposed in new circumstances, such as colonial conquest?

By taking a legal approach to Indian Ocean crossings and connections, and examining the record of treaty law in Somalia, we see that in particular historical periods, under particular conditions, Somalis thought of themselves as simultaneously cosmopolitan and distinct, both as heirs to a geographically expansive and intellectually flexible tradition and as steelier advocates of their own sovereign interests. Following scholars in the Mediterranean, 'thinking oceanically' should not involve thinking dichotomously, in terms of either conflict or connection, or unity and divergence.[21] Rather, by examining the international legal record of Somalia we see there was an ebb and flow between cosmopolitan – inclusive, universalising – and more provincial ideas. The colonial period accentuated the provincial elements of Somali approaches to law, but colonial rulers did not invent or introduce ideas such as local sovereignty to the area.

A dichotomous view of the history of the Indian Ocean, positing oppositions between a cosmopolitan deep past and a divided modern history, or between connected regions and isolated regions, or between open and outward-looking creoles and reactionary and inward-looking nativists, cannot fully explain the subtleties and richness of the oceanic conflicts and connections. Several historians have already made this point. Sugata Bose pointed out that deep-rooted habits of thought and practice morphed into nationalism in the context of colonial rule, while also retaining strong elements of trans-nationalism and belying cross-oceanic political ambition. Others such as Thomas Metcalf, Nile Green and Gaurav Desai point to the resilience of intra-oceanic intellectual economies.[22] Similarly, historians of earlier periods have focused on the ways that conflicts and contests might take place on an inter- or intra-imperial basis,[23] between state and merchant,[24] or between slave and master as far back as the early first millennium CE.[25] Even Shlomo Goitien, who produced pioneering works on the Cairo Geniza documents, underscored the natural perils of travels in the Indian Ocean and the man-made troubles one might encounter. As well as pirates, Goitien's medieval travellers attested to riots and massacres in ports such as Aden.[26] Kerry Ward and Clare Anderson have both emphasised that much movement and mixing in the Indian Ocean was the consequence of harsh labour regimes, of conscription and other forms of alienation – with all the attendant tensions and conflicts.[27] Sebastian Prange, from a South Asian perspective, argued in a similarly subtle way that "Asian rulers … perceive[d], exploit[ed], and regulate[d] the ocean as part of their sovereign realms and hegemonic ambitions". In particular, Asian rulers practised the "rights of port" to force merchant shipping to pay customs, while others provided escorts for merchants to protect them against such practices and other maritime threats.[28]

Legal histories of the Indian Ocean world are particularly apt to challenge dichotomous cosmopolitan/nativist understandings of this oceanic space. As the chapters by Kooria, Hoogervorst, Buana and Chatterjee in this volume show, legal documents are translated and recomposed in geographically disparate settings. On the one hand, law is a sort of lingua franca, connecting divergent locales in a unified commercial web. As Fahad Bishara has put it elsewhere, Indian Ocean law provided the foundations on which "merchants, planters, scribes, and commercial agents … move[d] back and forth between the ocean's far-flung shores

and transact[ed] within a common framework".[29] Mawani and Hussin show that Indian Ocean legal texts integrated Persianate, Hindu and Islamic laws and legal authorities – however they emphasise that the exchange of legal ideas was "chaotic, uneven, and disorderly". For local elites, including lawyers, traders and imperial subalterns, ambiguity around translated concepts represented "opportunity" and created the conditions for "creativity" which could prove advantageous to their interests.[30]

In other words, difference was not simply to be "negotiated", but to be profited from, exploited and capitalised upon. Indeed, seas and oceans – which were and remain the main conduit for international interaction and globalisation – have proven an especially fertile environment for producing new law, especially during periods of political upheaval and military conquest. As Lauren Benton has argued, in maritime imperial settings, legal authorities jumbled metropolitan doctrine, regional laws, local interpretations of such laws, and expedience, creating what she describes as a "jurisdictional politics" rather than a set of laws. By widening the frame of what constitutes a legal authority, Benton argued that even pirates invoked and negotiated legal themes, such as the freedom of the seas or letters of marque and reprisal to legitimate acts of seizure on behalf of their nations in times of war.[31] For Benton

> mariners in general, and pirates in particular, helped to shape … geographically variegated legal sea-space, in part through their own strategies of hedging to sustain potential claims to legality and playing one power off against the other [while] European empires were struggling to construct coherent maritime imperial policies.[32]

In this spirit, and echoing Buckmayer and Becker's chapters in this volume, this chapter focuses attention on the politics of nineteenth-century Somali treaty law so as to better understand the dynamic, shifting nature of Somalia's Indian Ocean connections in the colonial nineteenth century.

Cosmopolitan treaty law revisited

As we saw at the beginning of this chapter, northern Somalia had connections to the Indian Ocean world dating back to ancient times. To facilitate long-distance interactions, Somali-speaking people, some of whom had converted to Islam in the first millennium CE itself, used Islamic concepts such as *amān,*[33] or safety for visiting or travelling foreigners. Other related, but more specifically Somali, concepts such as *aban*, or the protection of foreigners through the assignment of a broker, also carried legal force. Both *amān* and *aban* were cosmopolitan in the sense that they allowed peoples with diverse provincial attachments to leave them aside in proscribed circumstances, or to obviate the risk of hostilities for transgressing inter-faith boundaries. They helped, in other words, to negotiate rather than to obliterate regional and confessional difference. These and other international law concepts carried a heavy load in the Indian Ocean history, both as principles

which facilitated the trans-jurisdictional mixing necessary for trade, but also in events which required inter-jurisdictional cooperation, such as international crime and extradition. The remainder of this chapter explores law-making through two treaties, which each reveal elements of eclecticism, of rootedness and of rigidity.

The first treaty was signed between the Majerteen sultanate of northern Somalia, the Hadhrami rulers of Mukalla; the second treaty was entered into by the Majerteen sultanate and the British in Aden. Taken together, the treaties reveal a shift in the nature of Indian Ocean connections, from higher to lower levels of integration and communality. But the shift was by no means a transformation. In fact, the change involved the accentuation of certain pre-existing ideas and the diminution of others. Moreover, the legal equivalence evident in the more deeply rooted regional treaty between Majerteenia and Mukalla did not amount to the creation of indistinguishable regimes. On the contrary, Majerteenia and Mukalla emphasised their distinctiveness in the earlier treaty. However, with the introduction of British imperial notions of sovereignty, territoriality and hierarchy, the ground shifted – the outer limits of concepts which facilitated unity and accommodation between distinct zones were discovered, with far-reaching consequences for the political history of the region.

The first treaty shedding light on the nature of Indian Ocean cosmopolitanism in a Somali setting was an agreement made between the Sultan of Majerteenia and Mukalla over extradition arrangements for criminals. The Majerteen Sultanate was an offshoot of the earlier Adal Sultanate, mentioned above. The treaty was published in English by Lidwien Kapteijns and Jay Spaulding, reproduced and translated from a French traveller's memoir, where it is also published in French and the original Arabic. The Treaty was entered into by a Majeerteen monarch named Sultan Uthman Mahmud, and Naqib Umar al-Kasadi, the ruler of Mukalla. The two regions were long-standing trade partners, and the treaty was made in December 1875, during the north-easterly monsoon, a period of generally increased sailing and trading between the Arabian Peninsula and the Horn of Africa, during which merchants from South Asia and the Persian Gulf visited the African coast before returning on the south-east monsoon in summer. The events which precipitated the treaty also point to a long standing – though hardly cosmopolitan – practice in Somalia and parts of the Arabian Peninsula, and indeed throughout much of the world until the nineteenth century: the blood feud. Earlier in 1875, a Majeerteen Somali visiting the Hadhrami port of Mukalla was murdered. The incident sparked a reprisal killing of a Hadhrami merchant in the Majerteenia by the deceased Somali's kin. The threat of war between the merchants of the two ports prompted the rulers of Majerteenia and Mukalla to stabilise relations. What emerged was a complex agreement, containing several clauses.

The first provision of the Treaty, which is formatted as a narrative rather than a more humdrum list, was to extinguish the blood feud that began with the killing of a man named Sayyid Ibrahim Fahiya. The circumstances of his death are not described, but the fact that he is honoured as a Sayyid suggests the possibility that the reason for his death was a rivalry – or indeed rivalries – between

the various Muslim denominations circulating in the area in the nineteenth century. Indeed, the political and religious climate in South Arabia was unsettled in the 1860s and 1870s; rivalry over control of the Hadhrami coastline between the Naqib of Mukalla from the al-Kasadi dynasty and another South Arabian dynasty, the Ku'aytis, had become intense. In response to the death of the Somali Sayyid Ibrahim Fahiya in Mukalla, it appears that a reprisal killing against a Mukalla merchant took place in Majerteenia, orchestrated by followers or kinsmen of the victim. The Treaty references the offended Majerteen peoples' right to petition the Naqib of Mukalla for restitution, and outlines the view that as a result of the reprisal and of a gift made by the Naqib, the matter would be considered closed, or to use the language of the treaty, that the Majerteen would "cut themselves off" from the killing. The Treaty thus interrupted the blood feud, suggesting the overarching power of royal treaties to overpower clan- or lineage-based customs and rivalries, on the one hand, and of the royal goal of international peace and cooperation, on the other. The treaty simultaneously served to link Mukalla and Majerteenia, as well as to bolster the Naqib of Mukalla's authority in the port of Mukalla and its surroundings in the face of domestic upheaval. In fact, the Treaty was a far-reaching legal document, not just an effort to contain an international blood feud. The treaty went on to mention various "obligations, agreements and bonds" concluded between the rulers and peoples of Mukalla and Majerteenia. The fact that these pledges are not specifically itemised and outlined is suggestive: the two regions had a sufficient, shared understanding of the rules and codes which bound them so as not to require enunciation. However, the *effect* or aims of these obligations, agreements and bonds is summarised by specific wording. "The effect [of the treaty provisions is] that their condition should be one", the treaty states, "and their port cities should be as one."

One inference to be made from this and other elements of the text of the Treaty is that the Treaty was an attempt to abolish blood feuds by making the two regions part of the same legal unit, to eliminate the differences between the two legal systems, or indeed to abolish clanship. But an alternative reading might refer to the widely used principles of *amān* and *aban* which suggests the aim was not to abolish regional differences or the institution of clanship, but rather to suspend them for the purposes of fostering political and commercial connections across the sea. As the British traveller C. Rigby noted, the *aban* had a number of important assimilative functions and "becomes responsible for [a visitor's] security during their residence in [northern Somalia], and also acts as broker, agent, and interpreter".[34] Indeed the concept of *aban* was a sort of 'legal fiction' which integrated outsiders into local systems of clan law – making them honorary members of a clan, most often the sultan's clan – for the duration of their visit to the coast.[35] Since prior to the invention of steam travel traders had relied on monsoon wind patterns – even in their travels between the Arabian Peninsula and the Somali peninsula, this meant long stays of weeks or months for traders on Somali shores seeking Somali trade goods such as gums, incense, fishing goods and ivory. Such lengthy periods of residence required more than fleeting integration into local

society. *Aban*, which dates to at least the fourteenth century, when the Arab traveller Ibn Battuta observed its existence in Somalia, was the region's local solution.[36] But similar concepts existed throughout the Indian Ocean littoral. As Hassan Khallileh shows, Islamic maritime legal texts from the medieval period onwards indicate the similar ways Muslim rulers invoked their legal authority to guarantee the safety of merchants, for example through the distribution of *amān* – or passes of safe conduct to defined groups of foreign merchants travelling in their waters – as well as claiming sovereignty over the seas around ports.[37] Echoes of the system can also be found further south on the East African coast, where Mark Horton has observed that Swahili merchants "monopolised international trade" by reserving for themselves the right to host outside merchants, exchanging prestige goods such as Chinese ceramics, laying on elaborate meals for outsiders, and referring their guests, in turn, to contacts within their wider kin and clan groups, which might stretch the length of the Swahili coast.[38]

Indeed, it was revealing that the Majerteen-Mukalla Treaty explicitly addressed the fact that any joining of their respective jurisdictions should not undermine either ruler's sovereignty in their own lands. On the contrary, the Treaty stated that each of the rulers would continue to "have authority [literally, 'his seal'] in [his own] ports over [his own] subjects and others". Moreover, the Treaty acts to strengthen the hierarchies which underpinned oceanic connections, pointing to another goal of treaty-making: to strengthen monarchical government in the region. Thus, the final provision of the Treaty was designed to prohibit the sheltering of adversaries of the Majerteen sultanate or the Naqib of Mukalla by either ruler. The Treaty makes clear that such enemies of the state will have neither advantage nor assistance from the signatories, but also that they will not be able to visit or to buy land.[39] Given the circumstances in which the Treaty was signed – namely the killing of a Somali holy man against the backdrop of domestic political upheavals in Mukalla – the Treaty's purpose in strengthening royal power through the intensification of regional ties is clear. In other words, the maintenance of regional distinctions rooted in ruling dynasties, the affirmation of inter-regional ties, and the abolition of divisive local practices proceeded in unison. The spirit of the Treaty was thus at once cosmopolitan and parochial. It set out to prevent blood feuds, but also to prevent non-local proselytising, as well as to preserve the respective sovereignties of the Majerteen Sultan and the Naqib of Mukalla. It set out to integrate the two Somali and Hadhrami zones, but also to affirm their distinctiveness and the sovereignty of their respective rulers.

The same slightly paradoxical spirit of cosmopolitanism and respect for sovereignty was echoed in anecdotal accounts of the interplay between law-making and law-breaking by Somalis in the Indian Ocean more broadly. A biography of a mid-nineteenth-century Somali tells of how the seafarer saw "four continents and five seas". In Aden, the man was imprisoned for six years for theft, likely for a transgression of the strict mariners' laws imposed by the British Admiralty and other extra-territorial European courts to discipline sailors recruited to work on merchant ships from all over the world. After six years had passed, the man returned to Somalia. Some years later, the same British official who had sentenced

the man to six years in prison in Aden visited the interior of Somaliland. By coincidence, the official ran into the man he had imprisoned who took him hostage and who stated on seeing his former judge in his home territory: "now I will give *you* two dozen".[40] While Somalis travelled to far-flung corners of the Indian Ocean and beyond, they also defended their right to primacy in their territorial domains, defending the sovereignty and power over all those who visited their lands. The incident also points to the importance of approaching law not solely as text, but also as a practice. In the strongly – though by the nineteenth century not solely – oral culture of Somalia, it is only by reconstructing the scenarios in which issues of law and sovereignty are invoked that we can begin to piece together the legal worlds of the Indian Ocean.

The circumstances of the second treaty differed markedly from those in which the first was created. Ever since the arrival of the Portuguese in the western Indian Ocean in the sixteenth century, a novel approach to international relations and conception of international jurisprudence jostled and competed with Islamic, Persian, Hindu and other indigenous Indian Ocean principles and practices. Open ports of trade, declarations of unity, and principles underpinning consensus such as we saw in the Majerteen-Mukalla Treaty, came under intense pressure under the influence of European commercial interlopers. From the earliest Portuguese and Ottoman naval excursions into the region, imperial aggression became an increasingly dominant feature of international interaction. Later arrivals such as the French, Dutch, British and Italians in the region did not deviate from the path of confrontation in their approach to local states and coastal rulers who failed – or were unable – to satisfy their demands and wishes.[41] The international legal culture which emerged alongside Indian Ocean approaches can be summarised as warlike, adversarial, competitive, and territorial. The conquest of Aden in 1839 and the opening of the Suez Canal in 1869 dramatically accelerated the confrontation between two competing approaches to international law. Concepts such as *aban* carried an especially weighty burden after the opening of the Suez Canal, and during the colonial period more broadly, when inter-jurisdictional contacts not only became more frequent, but also more far-flung, insofar as those responsible for maintaining the body politic in Somalia had to contend with interlopers who had very different conceptions of international law. The concepts endured in spite of the colonial flux, but their uses and interpretation shifted.

The backdrop to many of these Euro-Somali interactions in the nineteenth century was shipwrecks. The story of the Red Sea's nineteenth-century rise from backwater to global maritime transport artery is well rehearsed. But it is less well-attested that steamships servicing the Red Sea route to India were forced to carry so much coal that they regularly ran out of fuel at sea; they kept a mast and set of sails aboard well into the twentieth century.[42] Moreover, European mariners lacked the local knowledge and experience to safely navigate the Red Sea. The result was a series of maritime disasters which precipitated salvage negotiations during which European and Indian Ocean approaches to issues of sovereignty and law were forcibly reconciled. As the political scientist Ian Hurd has observed, treaties are not perfect instruments of cooperation. They rarely reflect a perfect

balancing of the parties' interests. Instead, treaties are influenced by all kinds of external factors. In any treaty there are "winners" and "losers".[43] The transactional nature of treaty-making clearly increased in the text of treaties signed with British and Italian colonial officials. After a series of shipwrecks on Majerteen shores in the late 1870s and early 1880s, British officials attempted to negotiate a variety of salvage and lighthouse construction agreements with Sultan Uthman Mahmud, the same Majerteen ruler who had signed the Mukalla agreement. In 1884, an official from Aden named Major King arrived in Bandar Maryah, a port west of contemporary Bossaso, to conclude an Anglo-Majerteen agreement in exchange for the payment of a stipend.

I have already written elsewhere about the legal negotiation strategies the British – and French, Italians and Ottomans – used in the southern Red Sea: gunboat diplomacy, brinkmanship, misrepresentation, reneging on agreements and stoking local coastal rivalries in order to extract more favourable terms were just some of the methods employed.[44] Such (un)diplomatic tactics not only transformed the context and spirit of law-making in the region; unscrupulous and power-political diplomatic tactics also changed the substance of what was agreed between the parties to international treaties. The text of this second treaty reveals a significant rupture with earlier, more consensual agreements. For a start, unlike the Majerteen-Mukalla Treaty, King's agreement was signed in summer, during a period of generally lower commercial activity, owing to the weaker and more fickle south-westerly summer monsoon. But the British had steamships, which operated – albeit somewhat unreliably – all year round. Administrative necessity and colonial politics rather than trade winds dictated the new diplomatic schedule. Commercial imperatives rather than shared history, environment and culture guided the spirit of the treaty.

In place of tangential references to the unspoken but implicitly understood effects of the document, the King Treaty – while in no way ceding sovereignty to Britain – states in its opening paragraph that the treaty indicates a desire on the part of the signatories to "conform to the principles on which the great British Government is conducted". Any question of shared obligations, of Islamic or Somali concepts such as *amān* or *aban*, or of port cities joining in unity, are side-lined. In their place, Anglo-centric legal and political principles are invoked. Thus, on the surface of the King Treaty, there was no room for accommodation, nor for the blending of two distinct Anglophone and Somali sets of norms, nor for any negotiation of the differences between them. There was a creative-destructive – even demagogic – element to the approach of the British to Majerteen – and indeed other Indian Ocean legal traditions. Colonial Britain is often referred to as a Leviathan, in reference to the powerful sea-monster of the biblical Psalms, intent on slaying other beasts and reorganising the world in its image.[45] Similarly, unlike in the Mukalla-Majerteen Treaty, the list of provisions is full and itemised, like a balance sheet of the two nations' obligations and offerings to one another; the entire contract between Britain and the Majerteen is contained in the treaty's pages, its comprehensiveness usurps other Indian Ocean traditions which might previously have given meaning to an international agreement. In five drily

transactional articles, the Treaty strips Sultan Uthman Mahmud of elements of his sovereignty, notably to forfeit his right to claim salvage from shipwrecks and determine the fate of visitors to his shores, in return for a yearly sum of 360 Maria Theresa thalers.

Yet there is also reason to interpret the treaty as maintaining some important elements of the regional legal treaty tradition, as evinced in the Mukalla-Majerteen treaty. The Treaty does not refer to *amān* or *aban*, of course, but does mandate that any British visitor, or a visitor from any other "power", be afforded "protection" and "good treatment". Each of the five articles clarifies what the parties mean by the concept of protection, which as noted above is broadly equivalent to *amān* or *aban*. While the nuance and Islamic international and maritime law associations of the earlier treaty are lost, the King Treaty nevertheless mirrors the older one in its essential message: that Sultan Uthman retained his sovereignty along Majerteen shores, which in the matter of foreign shipwrecks, travellers and traders meant assimilating them into local law. Of course, the Treaty was fundamentally transactional – offering money in exchange for protection. It also insidiously introduced British legal notions into the Majerteen jurisdiction: according to the Treaty, British and other Western visitors must be treated according to their own terms. In this sense, the Treaty echoed punitive European agreements with the Ottoman Empire during the nineteenth century, which allowed European visitors and residents in Ottoman domains virtual immunity from the law. But the colonial aspects of the treaty should not be overstated; the terms proscribing the ill-treatment of foreigners were vague and limited, confined to requests for "good treatment", assistance with a return passage where required, and a concession from the Sultan to accept the orders of the Political Resident of Aden in determining the fate of the stranded hull of a shipwrecked vessel.

In fact, the formal subordination of the north-eastern Somali coast was still some distance away in the 1880s. Not until the 1890s, in the wake of another wreck, did the Italian Foreign Minister notify the British ambassador in Rome that "no co-existence could be tolerated" in the matter of their treaty relations with the Somali coast, whereupon Sultan Uthman signed a colonial treaty with Italy.[46] Yet even then the result was not an annihilation of Majerteen traditions, but a selective adaptation of the ones most suited to the new colonial jurisprudential climate. The Italians did not transpose Italian laws on Majerteenia; both in theory and in practice they accepted an amalgam of laws, just as most other European empires did. By contrast, what did change was the way in which earlier treaties between coastal sovereigns reaffirmed the web of sovereignty and law which facilitated regional integration. In this sense, the King Treaty represented a juncture of sorts, after which regional international law no longer helped uphold the coastal ruling order, instead replacing it with European preeminence in the international realm. While old concepts could survive in this new politico-jurisprudential environment, their spirit was largely lost, or rather de-emphasised in favour of a more deeply regionalised – even territorialised – form of government.

Conclusion

We started with the idea of cosmopolitanism and its insufficiency in the Somali case. By contemplating the evidence of disunity within an Indian Ocean frame, Somalia may paradoxically be seen as more closely integrated and aligned with the history of the Indian Ocean world, and particularly with the history of South Arabia. It is not the intention of this chapter to suggest that historians should parcel up the Indian Ocean again into sub-regions, to balkanise its study. Rather I have sought to explore what we can learn from understanding the region by attending to the divisions, to the evidence of antagonism between different constituents in the ocean, and to the deep-rooted notions of difference as well as of unity in the legal sphere. The best route into reconciling competing currents of unity and division, of cosmopolitanism and provincialism is, as Markus Vink put it, to be more attentive to the temporality and geography of the Indian Ocean.[47] In other words, a more nuanced approach should seek to establish the patterns, episodes, and themes, a dynamic machinery in which different parts relate to the whole in ways which both remained constant and which changed over time. Methodologically, evidence from Somalia also points to the necessity of focusing on interpreting the behaviours of legal actors rather than concentrating on the presence or absence of legal documentation. Approaching the law in this broader way, we open up a whole panorama of legal materials in the archives, for example in stories about the making of treaties and the relations between coastal states, as well as in stories about crimes, shipwrecks, smuggling and imprisonment to name a few. Mining the archives – broadly conceived – for evidence of Somali legal traditions and behaviours provides a porthole onto the legal culture of the region which would otherwise remain obscure.

I argued that coastal actors used legal events such as treaty making to defend their conception of maritime order against competing visions of the law, to negotiate new relationships with colonial and regional empires and to insert their own conceptions of the law into treaties in the late nineteenth century. Violence, strategising and cosmopolitan law-making went hand in hand. Nineteenth-century rulers of Majerteenia were suspicious of outsiders and careful of their sovereignty, as well as steadfast members of a regional north-western Indian Ocean diplomatic and legal milieu in the 1800s. Paying attention to the limits of cosmopolitanism as a framework for understanding Somali history, and to the ways in which legal concepts were recomposed in different political settings, allows us to see that the production of law in the region arose as much out of conflict as borrowing and translation. As Lauren Benton points out, the forces of globalisation – the British empire, concepts of international maritime law – created, paradoxically, new kinds of "ocean regionalism". In the north-western Indian Ocean area, such regionalism was both deep-rooted – the product of diplomatic exchanges which pre-dated colonial rule – and of a more contemporary provenance, being the product of interactions between European empires and indigenous elites. In the process, the boundaries of cosmopolitan law-making were reached, and forcibly re-oriented to new British, or French or Ottoman norms. In the process, concepts

we saw in the Mukalla treaty such as *amān* were diminished, but so too was the more cordial and cooperative spirit of earlier treaties.

Taking a critical approach to Indian Ocean historiographies by viewing them from the vantage point of the Somali coast need not distort so much as enrich our understanding of the ocean as historical and legal space. As James de Vere Allen summarised it: the Indian Ocean "shared a single, collective [culture] as well as the various distinct ones undeniably existing within it".[48] Sujit Sivasundaram argued even more strongly that efforts to present the Indian Ocean as a single unit must prove elusive: any efforts to write the history of the whole "have had to come to terms with … disconnected locales and adjoining waters".[49] Following Jos Gommans, we might argue instead that there was not a single Indian Ocean cosmopolis, but a series of intersecting and hierarchically interacting "cosmopolises" of language and trade circuits in the pre-modern period, such as the Western Indian Ocean, Bay of Bengal, and South-East Asian zones, although as Gommans notes the Arabic "cosmopolis" became increasingly hegemonic in the modern period, with Arabicised texts predominating over other tongues and traditions, notably Turkic, Persian and Sanskrit.[50] The evidence presented here – limited as it necessarily is – suggests that we might push the point even further still, and argue that the fortunes of different traditions shifted more rapidly and erratically than is sometimes assumed, and that these competitions and reversals occurred both on the scale of the Indian Ocean, but also at the level of sub-regions such as the Gulf of Aden, and even more narrowly still in the law-making which occurred between different regional royalties, such as Mukalla and Majerteenia.

Focusing on maritime and international treaty law helps us trace the boundaries of Indian Ocean cosmopolitanism, to periodise cosmopolitanism, identify its regional variations, and chart its ebb and flow over time. By following the recent wave of legal scholarship which factors in the political aspects of law-making in the maritime realm, as well as scholarship which has re-evaluated Somalia's place in the Indian Ocean region by viewing contacts and connections through a more critical lens, we can build a more detailed and nuanced picture of Somalia's place in the Indian Ocean region and also the nature of the connections which made the Indian Ocean a "world". What emerges is arguably a notion of law and the Indian Ocean world which was only partly manageable within the parameters of cosmopolitan legal concepts. Our destination, to borrow Benton's words once again, is to reconcile two competing approaches to global history, "between writing the history of the impact of European imperial law on the wider world and constructing a narrative that emphasizes the autonomy and resilience of non-European legal orders". For Benton, there is a "critique of the Eurocentrism still implicit in the history of international law" whose unearthing will hinge on attending to the situations, politics and substance of legal events such as treaty-making, shipwrecks and salvage, foreign travel, international crime and extradition out of which new laws emerged. As I have suggested in this chapter, the evidence from Somali legal history points to the resilience of Indian Ocean legal concepts and mechanisms, as well as the ways in which they changed in particular political contexts. By thinking oceanically and tracing the continued connections between different parts of

the Indian Ocean coast into the nineteenth century, we can discern the outlines of a modern regional legal order emerging.[51]

Notes

1 On Africa's place in Indian Ocean studies see, for example, Edward Alpers, *The Indian Ocean in World History* (Oxford: Oxford University Press, 2014); Thomas Spear, "Early Swahili History Reconsidered," *International Journal of African Historical Studies* 33 (2000): 257–90; Ali A. Mazrui, "Towards Abolishing the Red Sea and Re-Africanizing the Arabian Peninsula," in *Africa and the Sea: Proceedings of a Colloquium at the University of Aberdeen*, ed. Jeffrey Stone (Aberdeen: Aberdeen University African Studies Group, 1985).

2 See, for example, Adria LaViolette, "Swahili Cosmopolitanism in Africa and the Indian Ocean World, A.D. 600–1500," *Archaeologies* 4, no. 1 (2008): 24–49; Abdul Sheriff, "East African Coast and Its Role in Maritime Trade," in *UNESCO General History of Africa*, Vol. II, ed. G. Mokhtar (London: Heinemann, 1981), 551–67.

3 Interesting accounts of the Red Sea-shaped gap in Indian Ocean studies (and history generally) can be found in Jonathan Miran, "Mapping Space and Mobility in the Red Sea Region, c. 1500–1950," *History Compass* 12, no. 2 (2014): esp. 199 and Alexis Wick, *The Red Sea: In Search of Lost Space* (Berkley, CA: University of California Press, 2016).

4 See most recently, Jorge Alfredo González-Ruibal, de Torres et al, "Exploring Long Distance Trade in Somaliland (AD 1000–1900): Preliminary Results from the 2015–2016 Field Seasons," *Azania* 52, no. 2 (2017): 135–72. See also, Timothy Insoll, *The Archaeology of Islam in Sub-Saharan Africa* (Cambridge: Cambridge University Press, 2003), 61; Neville Chittick, "An Archaeological Reconnaissance in the Horn: The British Somali Expedition, 1975," *Azania* 11 (1976): 117–33.

5 See J. Spencer Trimingham, "Ahmad Grān," in *Encyclopaedia of Islam,* second edition, eds. P. Bearman et al. (Leiden: Brill, 2012) and Mordechai Abir, *Ethiopia and the Red Sea: The Rise and Decline of the Solomonic Dynasty and Muslim-European Rivalry in the Region* (London: Frank Cass, 1980), ch. 4.

6 Grān's movement also called to mind millenarianism (according to the Hijra calendar) of a variety of forms – Ottoman, Persian, Sunni and Shia – which envisaged the coming of the Mahdi in the sixteenth century CE/the late 900s. Subrahmanyam argues that widespread global Islamic millenarianism, which might well have inspired Grān, typified the dawn of modern, universalist thought in the sixteenth century. See Sanjay Subrahmanyam, "Connected Histories: Notes towards a Reconfiguration of Early Modern Eurasia," *Modern Asian Studies* 31, no. 3 (1997): 735–62.

7 David D. Laitin, *Politics, Language, and Thought: The Somali Experience* (Chicago: Chicago University Press, 1977).

8 Kitri N. Chaudhuri, *Trade and Civilization in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (Cambridge: Cambridge University Press, 1985), 12, 121–2. Chaudhuri's work bears many of Fernand Braudel's hallmarks, including his focus on large-scale political, economic and social unities across the Mediterranean. However, scholars such as George Fadlo Hourani and G.R. Tibbetts had already utilised the broad and comparative frameworks of the Indian Ocean even before the category really existed. They arguably attended more closely to the nuances of the oceanic locales, their particular and diverse cultures and singular anthropologies. See, for example, George Hourani, *Arab Seafaring in the Indian Ocean in Ancient and Early Medieval Times* (Princeton, NJ: Princeton University Press, 1951); G.R. Tibbetts, "Early Muslim Traders in South-East Asia," *Journal of the Malayan Branch of the Royal Asiatic Society* 20, no. 1 (1957): 1–45; G.R. Tibbetts, "Comparisons between Arab and Chinese Navigational Techniques," *Bulletin of the School of Oriental and African Studies* 36, no. 1 (1973): 97–108.

9 Kenneth McPherson attributes the observation that Europeans destroyed the Indian Ocean world to Geoffrey Parker in his work on *Military Innovation and the Rise of the West*. Kenneth McPherson, *The Indian Ocean: A History of People and the Sea* (New Delhi: Oxford University Press, 2006), 207. However, see also scholars such as Eric Wolf, who made a similar points about the impact of colonial conquest and European exploration in the Indian Ocean (and throughout the world), see Eric R. Wolf, *Europe and the People without History* (London: University of California Press, 1982), ch. 8. In the 1990s the notion of European destruction became more widespread. See, for example, Om Prakash, *The New Cambridge History of India: European Commercial Enterprise in Pre-Colonial India* (Cambridge: Cambridge University Press, 1998), 139; Elizabeth Mancke, "Early Modern Expansion and the Politicization of Oceanic Space," *Geographic Review* 89, no. 2 (1999): 226–8.

10 Jonathon Glassman, "Creole Nationalists and the Search for Nativist Authenticity in Twentieth-Century Zanzibar: The Limits of Cosmopolitanism," *Journal of African History* 55, no. 2 (2014): 230.

11 See, especially, Ioan Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of the Horn of Africa* (Oxford: James Currey, 1999).

12 Lee V. Cassanelli, *The Shaping of Somali Society: Reconstructing the History of a Pastoral People, 1600–1900* (Philadelphia: University of Pennsylvania Press, 1982); Scott Reese, *Renewers of the Age: Holy Men and Social Discourses in Colonial Benaadir* (Leiden: Brill, 2008).

13 Jatin Dua, *Captured at Sea: Piracy and Protection in the Indian Ocean* (Oakland, CA: University of California Press, 2019). See also Engseng Ho, "Empire Through Diasporic Eyes: A View from the Other Boat," *Comparative Studies in Society and History* 46, no. 2 (2004): 210–46.

14 Nicholas W. Stephenson Smith, *Colonial Chaos in the Southern Red Sea: A History of Violence from 1830 to the Twentieth Century* (Cambridge: Cambridge University Press, 2021). In other Indian Ocean locales, path-breaking historians such as Julia Stephens and Johan Mathew have charted the tensions between Islamic legal traditions and secular, liberal, British-European ones, and the way in which colonialism transformed trade networks in the north-western Indian Ocean into illegitimate forms of smuggling, while also emphasising the resilience of pre-colonial forms of thought, commerce and politics. See Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge: Cambridge University Press, 2018) and Johan Mathew, *Margins of the Market: Trafficking and Capitalism across the Arabian Sea* (Berkley: University of California Press, 2016).

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18 James de Vere Allen, "Habash, Habshi, Sidi, Sayyid," in *Africa and the Sea: Proceedings of a Colloquium at the University of Aberdeen, March 1984*, ed. Jeffrey C. Stone (Aberdeen: Aberdeen University African Studies Group, 1985), 132–3.

19 Jonathon Glassman, "The Varieties of Cosmopolitanism: A reply," *Cultural Dynamics* 28, no. 3 (2016): 335; Edward Simpson and Kai Kresse, "Introduction: Cosmopolitanism Contested: Anthropology and History in the Western Indian Ocean," in *Struggling with History: Islam and Cosmopolitanism in the Western Indian Ocean*, eds. Simpson and Kresse (New York: Columbia University Press, 2008). See also Engseng Ho, *Graves*

of Tarim: Genealogy and Mobility Across the Indian Ocean (Berkeley: University of California Press, 2006), xxi.

20 See, for example, Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011); Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: Chicago University Press, 2016); Anne K. Bang, *Sufis and Scholars of the Sea: Family Networks in East Africa, 1860–1925* (London and New York: Routledge Curzon, 2004).

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22 Sugata Bose, *A Hundred Horizons: The Indian Ocean in the Age of Global Empire* (Cambridge: Cambridge University Press, 2006). See also Thomas R. Metcalf, *Imperial Connections: India in the Indian Ocean Arena, 1860–1920* (Berkeley: University of California Press, 2007); Nile Green, *Bombay Islam: The Religious Economy of the Western Indian Ocean, 1840–1915* (Cambridge: Cambridge University Press, 2011); Gaurav Desai, *Commerce with the Universe: Africa, India, and the Afrasian Imagination* (New York: Columbia University Press, 2016).

23 See, for example, Giancarlo Casale, "Global Politics in the 1580s: One Canal, Twenty Thousand Cannibals, and an Ottoman Plot to Rule the World," *Journal of World History* 18, no. 3 (2007): 267–96; Roxani Eleni Margariti, "Mercantile Networks, Port Cities, and 'Pirate' States: Conflict and Competition in the Indian Ocean World of Trade before the Sixteenth Century," *Journal of Economic and Social History of the Orient* 51 (2008): 543–77; John L. Meloy, "The Privatisation of Protection: Extortion and the State in the Circassian Mamluk Period," *Journal of the Economic and Social History of the Orient* 47, no. 2 (2004): 195–212.

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30 Renisa Mawani and Iza Hussin, "The Travels of Law: Indian Ocean Itineraries," *Law and History Review* 32, no. 4 (2014): 735.

31 See, especially, Lauren Benton, "Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism," *Comparative Studies in Society and History* 47, no. 4 (2005): 700–24. See also Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002) and Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), esp. 2–4, 31–33.

32 Lauren Benton, "Legal Spaces of Empire," 722.

33 See Hassan S. Khalileh, "Amān," in Gudrun Krämer, Denis Matringe, John Nawas and Everett Rowson, *Encyclopedia of Islam*, Vol. 3 (Leiden: Brill, 2013).
34 C.P. Rigby, "On the Origin of the Somali Race, which Inhabits the North-Eastern Portion of Africa," *Transactions of the Ethnological Society of London* 5 (1867): 94. W.F.W. Owen noted the practice in the 1820s. See W.F.W Owen, *Narrative of Voyages to Explore the Shores of Africa, Arabia, and Madagascar*, Vol. 1 (New York: J. & J. Harper, 1833), 358.
35 C.J. Cruttenden, "Report on the Mijjertheyn Tribe of Somallies, Inhabiting the District Forming the North-East Point of Africa," *Transactions of the Bombay Geographical Society* (1844–6): 118.
36 See Lee V. Cassanelli, "Tradition to Text: Writing Local Somali History in the Travel Narrative of Charles Guillain (1846–48)," *Journal of African Cultural Studies* 18, no. 1 (2006): 63.
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38 Mark Horton, "Port Cities and their Merchants on the East African Coast," in *Cities in the World, 1500–2000*, eds Adrian Green and Roger Leech (London: Routledge, 2006), ch. 1.
39 Lidwien Kapteijns and Jay Spaulding, "Indian Ocean Diplomacy: Two Documents Relating to the Nineteenth Century," *Sudanic Africa* 13 (2002): 24–5. The original (Arabic, and French translation) may be found in Georges Révoil, *Voyages au Cap des Aromates (Afrique Orientale)* (Paris: Librairie de la Société des Gens de Lettres, 1880), 207. For other interesting primary source material, see Lidwien Kapteijns and Jay Spaulding, "From Slaves to Coolies: Two Documents from the Nineteenth-Century Somali Coast," *Sudanic Africa* 3 (1992): 1–8.
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41 See also, Engseng Ho, "Empire Through Diasporic Eyes," 224.
42 Robert J. Blyth, "Aden, British India and the Development of Steam Power in the Red Sea, 1825–1839," in *Maritime Empires: British Imperial Maritime Trade in the Nineteenth Century*, eds. David Killingray, Margarette Lincoln and Nigel Rigby (Woodbridge: The Boydell Press, 2004), 70, 83.
43 Ian Hurd, "Law and the Practice of Diplomacy," *International Journal* 66, no. 3 (2011): 581–96.
44 Smith, *Colonial Chaos*.
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46 Ministero degli Affari Esteri Servizio Storico e Documentazione, Rome, Italy. ASMAI, Posizione 59/ Numero 2 – Somalia Settentrionale, 1887–1909, Fasciolo 33 – Nuova convenzione col Sultan Osman Mahmud, 1901–1902. Giulio Prinetti, Minister for Foreign Affairs, Rome, to M. Pausa, London, 8/2/1902.
47 Markus Vink, "From Port-City to World-System: Spatial Constructs of Dutch Indian Ocean Studies, 1500–1800," *Itinerario* 28, no. 2 (2004): 86.
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49 Sujit Sivasundaram, "Indian Ocean," in *Oceanic Histories*, eds. David Armitage, Alison Bashford and Sujit Sivasundaram (Cambridge: Cambridge University Press, 2018), 31–61.
50 Jos Gommans, "Continuity and Change in the Indian Ocean basin," in *The Cambridge World History: Volume VI: The Construction of a Global World, 1400–1800 CE, Part 1: Foundations*, eds. J.H. Bentley, S. Subrahmanyam and M.E. Wiesner-Hanks (Cambridge: Cambridge University Press, 2015), 202–9.
51 Lauren Benton, "Legal Spaces," 722.

6 Islamic legal crossings and debates in Cambodia

Evidence from fatāwā and French colonial archives in the early twentieth century

Philipp Bruckmayr

Introduction

From the mid-nineteenth century onwards the greater part of Cambodia's Muslim community came to be progressively integrated into what Michael Laffan has called the emerging *jawi* ecumene of Muslim Southeast Asia.[1] As in other parts of the region, this development prominently included the adoption of the *jawi* language and script (i.e. Malay and its adaptation of the Arabic script) as the prime vehicles of religious scholarship and instruction as well as for networking and scholarly exchanges across the Indian Ocean and neighbouring regions. Whereas *jawi* Malay and likewise specific Javanese Islamic influences had been pervasive in Islam in Indochina continuously since the early phases of local Islamisation,[2] the print-powered "Jawisation" of Southeast Asia from the mid-nineteenth century onwards brought about much more linguistic, discursive and curricular integration, qualitatively and quantitatively. In Cambodia there was now a greatly enhanced and accelerated spread of *jawi* Malay, and the contemporary scholarly culture associated with it brought local Muslims closer to the wider world of Southeast Asian Islam. In addition, it was also a decisive factor in increasing religious standardisation among Cambodian Muslims across ethnic and linguistic boundaries. Indeed, Cambodia's Muslim community is a multi-ethnic and multi-religious one. For the greater part it consists of Cham-speaking Muslims with historical roots in the kingdoms of Champa in present-day Vietnam,[3] but it also includes in fewer numbers some mostly Khmer-speaking Chvea, who claim descent from unions between the Malay settlers and the local Khmer.

Within the various *jawi* networks linking the members of the ecumene, from eastern Indonesia in the east to Mecca and Cairo in the west, it was clearly the circuit of Malay scholars from Patani and Kelantan on the north-eastern coast of the Malay Peninsula to which Cambodian Islam was – undoubtedly partly due to its geographic proximity – most closely connected. Besides local teachers, it was thus predominantly Patani and Kelantanese scholars who instructed Cambodian Muslim students in Islamic schools in Cambodia, on the Malay Peninsula and in Mecca. Moreover, the most renowned scholars of Patani and Kelantan of the period were also major producers of Islamic knowledge, primarily in Malay but also in Arabic, through their wide-ranging efforts in writing and

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publishing Islamic literature.[4] Hence, they served as major actors and intermediaries in Islamic legal interchange to and from Cambodia, not just across the Gulf of Siam but also across the Indian Ocean region. As will be shown, the prime scholarly references for legal debates among Cambodian Muslims of the period, were – both on a personal and an intellectual level – strongly conditioned by processes of knowledge production and identity formation resting on oceanic linkages. Thereby this highlights the multi-layered relationship between the local and the transregional spheres connecting Phnom Penh with Mecca and Cairo via the Malay peninsula.

In the following we shall trace and discuss the transmission and circulation of legal knowledge and contentions between Cambodia, the Malay Peninsula and the Arab world in the late nineteenth and early twentieth century. We shall do this on the basis of *fatāwā* issued by Malay muftis in response to questions from Cambodian Muslims, and also through evidence contained in Cambodian archival sources. It will thus be concerned with concrete legal issues engaging local Muslims as well as with the concrete legal references (i.e. manuals of Islamic law and other texts) deployed in the debates by either side of the argument or by the respective muftis. Whereas the limited amount of *fatāwā* and related archival materials in no way provides us with a complete picture of major legal debates, it goes without saying that all the issues encountered in them must at the time have indeed been of vital importance and matters of serious contention for local Muslims. Soliciting a legal opinion from a major scholar abroad, be it in Kelantan, Patani or Mecca, was certainly a rather exceptional step, and could therefore indicate a preceding failure of local mechanisms of arbitration within the community. The same also applies to the Cambodian archival sources. Apart from the fact that they encompass *inter alia* fatwa-like documents, it was only the ineffectiveness of local strategies of problem-solving which prompted the intervention of Khmer and French authorities in the first place. We may thus assume that the fatwa requests were discussed and sent to Malay muftis after similar situations of prolonged local conflicts had arisen.[5]

The fatwas we shall scrutinise stem from two different sources and periods. The first group is from *al-Fatawa al-Fataniyya*, a collection of legal opinions issued by the mufti Ahmad b. Muhammad Zayn al-Fatani (Ahmad Patani, d. 1908). He was undoubtedly the major Patani scholar based in Mecca and one of the most illustrious Southeast Asian scholars in the city in general at that time. He played a particularly decisive role in the spread of Malay and also Arabic printed books among Southeast Asian Muslims through his extensive activities. First he was an editor, publishing books through printing presses in Istanbul and Cairo, and then he was the founding director of the Ottoman Malay printing press in Mecca (est. 1884).[6] He is also known to have had several Cambodian students in Mecca.[7] Unsurprisingly, the bulk of requests for *fatāwā* contained in his collection came from Patani Malays. The second highest number hailed from Cambodia (five enquiries), whereas from Songkhla (Thailand) there were four, and from Kelantan three.[8] Although most *fatāwā* in *al-Fatawa al-Fataniyya* are undated, most pertained to the final years of the mufti's life.[9]

Conversely, the second group of *fatāwā* we consider was issued over two decades later and can be ascribed only to a fatwa-issuing body, not to an individual legal scholar. All the legal opinions of this group were published between 1927 and 1930 in the journal *Pengasuh* (est. 1918). The latter is an official organ of the *Majlis Ugama Islam dan Adat Istiadat Melayu Kelantan* (henceforth MUI), Kelantan's Council for Islamic Religious and Cultural Affairs, which – at the time of its foundation in 1915 – represented the first centralised body for the administration of Islam in any Malayan state.[10] The items published in the fatwa section of *Pengasuh* were from the outset credited exclusively to the MUI's *Meshuarat Ulama* (Council of Scholars). That Council had been established in 1918 to function as the state's official and exclusive institution of *iftā'*. It has, however, been suggested that many of the Council's fatwas were passed by its most prominent member, Tok Kenali (Muhammad b. Yusuf b. Ahmad, d. 1933),[11] who had allegedly been Ahmad Patani's favourite student in Mecca, and is considered to have been a driving force behind the modernisation of Islamic education in early twentieth-century Kelantan.[12] He is also known to have been the teacher of several Cambodian scholars.[13]

Fatwas for Cambodian Muslims in *al-Fatawa al-Fataniyya*

Even the first fatwa for Cambodian Muslims contained in Ahmad Patani's collection is highly suggestive in several ways. First, it represents a non-legal fatwa,[14] which is not concerned with a question of law but with theology and its technical vocabulary. Second, it reflects some of the typical dynamics of Islamic scholarship in countries such as Cambodia. There the local Muslims were participants in the *jawi* ecumene and its process of Jawisation, but the majority of them were not native speakers of the language in which it was transmitted (i.e. Malay). The shifting choice of language is thus highly revealing, in this case primarily from Cham to Malay. There was a delicate relationship between Arabic, the religious and scholarly language of Islam *per se*, and Malay, the *lingua franca* of the ecumene, which gradually became the preferred local scholarly language, with Cham, and to a lesser degree Khmer, as the two local languages. The question concerned is recorded as having been submitted in 1321/1903, and includes the names of the three enquirers.[15] One of them is referred to as the *kadi kemboja* (the qadi of Cambodia), Muhammad Salih. He can be safely identified with the figure of Mat Sales (d. after 1937), a former student of the mufti, who had risen to become a major Cambodian Islamic scholar and dignitary.[16]

Mat Sales and the other enquirers wrote to Ahmad Patani concerning a primarily linguistic problem, revolving around the correct translation of the divine attribute *qidam* (pre-eternal). It is a term found in *Umm al-Barahin*, the famous catechism of the North African scholar Abu ʿAbdallah al-Sanusi (d. 1490), which proved to be immensely popular and influential in Southeast Asia.[17] According to the three *mustaftī*s, the Chams of Cambodia have long been using Malay *sedia* ("from of old") as equivalent to Arabic *qidam*, due to the absence of a satisfactory Cham term. Yet in recent years people had claimed that Cham *klau'* was the equivalent

of both Arabic *qidam* and Malay *sedia*. This was vehemently rejected by the three scholars, who stressed that *klau'* was otherwise applied to objects subject to deterioration, and as such completely inappropriate when referring to Allāh. They also extended their enquiry into Khmer, the second commonest mother tongue of Cambodian Muslims, noting that Cham *klau'* is equivalent to *chah* ("old") in Khmer (*bahasa kemboja*), which carries the same meaning as Malay *tua* ("old"). That would also be something inappropriate to refer to divinity. Clearly accepting the perception of the superior status of Malay as a language of religious scholarship, they conclude by stressing that, although there would indeed exist a Khmer equivalent to Malay *sedia*, that term would not convey the same degree of accuracy (*tidak sampai martabat eloknya kepada martabat sedia*).[18]

To this Ahmad Patani responded with a lengthy exposition, noting *inter alia* that, as far as Malay is concerned, *sedia* is indeed the best translation, as it does not imply "existence with a definite beginning".[19] Concerning the Cham usage of *klau'*, however, he cautions that the appropriateness of the word naturally hinges on its actual meaning and connotations in Cham. In this respect, he further declares that – according to his understanding – *klau'* could refer to the past as well as to the future.[20] As this specific issue is not raised in the *istiftā'*, we may assume that Ahmad Patani had also discussed the matter with some of his Cham students then residing in Mecca, thus providing us with an interesting example of Islamic intellectual interchanges on multiple levels. The mufti further specifies that, while it would be forbidden to say despicable things about God and his attributes, this does not necessarily apply in teaching and learning, provided the teachers use *klau'* with their best intentions and in the actual sense of *qidam*.[21] Although using *klau'* should be done carefully, lest it give rise to misunderstandings, using it is still preferable if students show they are incapable of grasping the meanings of Arabic *qidam* or Malay *sedia*.[22]

As far as the background to the fatwa is concerned, it must be noted that, most probably unbeknown to the mufti, it mirrored the clash of diverging Islamic intellectual traditions in Cambodia, the one based on *jawi* Malay, and the other on Cham literature written in Indic Cham script. Thus, whereas *sedia* is the one common translation of *qidam* in Malay works dealing with al-Sanūsī's scheme of 20 divine attributes,[23] including a Malay interlinear translation by a scholar from the Cham-Chvea community of Chau Doc (Vietnam),[24] a Cham (language and script) manuscript of the same genre, most probably dating to the late nineteenth century, indeed uses *klau'*.[25]

The second enquiry addressed to Ahmad Patani by Cambodian Muslims is less specific than the first, but I shall treat it here briefly. It clearly reflects some wider contemporary developments within Southeast Asian Islam. Indeed, it sheds light on the growing centrality of the daily prayers for Cambodian Muslims, something also documented in other parts of the region. The question sent to the Meccan mufti was whether the prayer over the dead by people who have missed some of the prescribed prayers would be valid or not.[26] Ahmad Patani responded that it was valid for negligent but repentant Muslims to perform the funerary prayers. Moreover, fully conscious of the potential divisiveness of disputes over proper religious

observance, he further stressed that keeping people from saying the prayers within the prescribed timeframe could easily result in harm and intra-community strife (*fitnah*).[27] In fact, it was perhaps exactly such strife that had prompted sending the letter to Mecca. It must be noted that similar debates often arose in other areas of the *jawi* ecumene at that time. The Muslims of Minangkabau in Sumatra were very much divided over the question of whether the missed prayers of the dead could be redeemed through payments (Ar. sg. *fidya*, ml. *fidiah*/*fidyah*).[28] In Java observing daily prayers became a distinguishing feature between *putihan*/*santri* Muslims, i.e. the products of a growing jawi/pegon Islamic education system based on the Arabic script, and the so-called *abangan*/*kejawen* Muslims, followers of a distinctively Javanese Islamic tradition.[29]

The next question addressed to the Meccan mufti is revealing in yet another respect. It concerns the political circumstances of Cambodia's Muslim community under the French Protectorate (1863–1953), and was apparently drafted in response to the French ban on slavery in the country. The question raised is whether or not the sale of a non-Muslim in a non-Muslim country (*kafir harbi*) by either a Muslim or a non-Muslim in the same country, such as Cambodia, to a Muslim would be valid.[30] Ahmad Patani responds that the sale would only be valid on the condition that the seller (whether Muslim or non-Muslim) had taken the person to be sold in battle. The mufti also emphasises that a Muslim in a non-Muslim country is only allowed to engage in battle with its inhabitants if his safety is being threatened. Should his personal safety be granted by the state, he would instead be liable to payments (*membayar*, taxes) and was obliged to refrain from any acts of hostility.[31]

Regarding the background to this fatwa request, it must be noted that the French began to abolish all forms of slavery in the country with the inauguration of their administrative reforms in 1876, which were greatly accelerated in 1884. Accordingly, the ban on slavery was among a number of strongly resented policies, which led to a major rebellion against the French in 1885–1886.[32] The concerned *istiftā'* was most probably an expression of the uncertainties precipitated by these major social and political changes of the Protectorate era.

The next "Cambodian fatwa" of Ahmad Patani to be discussed here is of particularly high value for historians of Cambodian Islam. In order to fully appreciate its relevance it is necessary to recapitulate the results of a major ethnographic study of Cambodia's Muslims in the 1930s carried out over a period of several years by Marcel Ner.[33] According to him, the community was then divided into two contending factions, each with their respective mosque communities and leaders at a local level. From his observations it becomes clear that the factional strife, the beginnings of which he placed in the late nineteenth century, was primarily the result of debates over growing Malay Islamic influence in the country. By his time a numerically superior group by far, locally known as the *trimeu*, was "characterized by the place accorded to Malay in religious instruction, the explication of the Qurʾān and in Muslim rites themselves",[34] thereby epitomising our concept of Jawisation. Conversely, their opponents, locally called *kobuol*, "accorded no room whatsoever to Malay" in their religious affairs,[35] and

"claimed religious superiority for themselves, due to their fidelity to the language of the prophet, which they only knew vaguely, […] repeating formulas while hardly understanding them".[36] Leaving aside Ner's disparaging statements, it is evident that the *kobuol* relied on texts in Arabic ("the language of the prophet") and the local languages in religious ritual and instruction, and – certainly due to the *trimeu* challenge – had adopted a stance which could be described as anti-Jawisation.

This Cambodian intra-Muslim factionalism as well as the respective factional identities and labels proved short-lived. They had apparently already disappeared by the 1960s due to the rapid ascendancy of the *trimeu*.[37] It is, however, the local taxonomy of factional identities which precisely ties Ahmad Patani's fatwa to the observations of Ner. Indeed, he explained that the terms *trimeu* and *kobuol* both derived from formulas used in the Muslim marriage ritual. He noted that the representatives of the former group "had substituted the Malay formula *Akou trimeu* [*aku terima*], 'I accept,' for the Arabic *Kobuol hambeu* [*qabūl/kabul hamba*], carrying the same meaning". He further volunteered the opinion that the underlying reason had been a desire to re-invigorate Qurʾānic education by employing a language related to Cham, which would allow greater numbers of believers to understand its contents. Traditionally Arabic formulas had been mostly recited by heart without necessarily understanding their meaning.[38] Whereas there was certainly more to the process of Jawisation than this latter reasoning, the decisive role of Malay in local religious change was captured well by Ner.

However, the expression *kabul hamba* is clearly not really from Arabic. Although *kabul* derives from Arabic *qabūl*, it is a loanword in Malay, Javanese and other languages of the *jawi* ecumene, such as Cham. It is already attested in old Malay-Cham word lists, written in Cham script and tentatively dated to the seventeenth century.[39] Conversely, *hamba* is a (now outdated) formal Malay first person pronoun.[40] Two points must be stressed in this regard. First, the self-proclaimed *kobuol* defenders of Arabic vis-à-vis Malay must have evidently had little actual command or understanding of the ritual language. Second, the concerned legal opinion seems to indicate that the new hegemonic discourse of Jawisation, which had undoubtedly precipitated the commotion and the reaction of the constituents of the *kobuol* group, was indeed closely tied to the written regimes of religious transmission representing a core feature of Jawisation. Intriguingly, the fatwa represents the earliest testimony to the local debates over the correct performance of marriage rituals, which were to acquire such an emblematic status several decades later.

In his question to the Meccan mufti, the *mustaftī* explains that some people in Cambodia are employing the phrase *kabullah hamba menikahi dia* ("I consent to marry her/him") to express ritually their acceptance of a marriage proposal. Clearly mindful of the dynamics of Jawisation, he asks the mufti whether this "is correct according to the common practice among the Malays". The enquirer further requests a clear explanation of the phrase as well as of the expression usually used by most knowledgeable persons, which already seems to imply that he was convinced that the quoted phrase was not the prevalent one among learned

members of the *jawi* ecumene. Self-assurance is, of course, often the driving force behind fatwa requests.

Similarly instructive are Ahmad Patani's responses. He initially explains that *qabūl* is an Arabic word, which means *terima* in Malay, whereas the Malay counterpart to Arabic *nikāḥ* would be *kahwin* ("marriage"). Accordingly, the quoted phrase would be *terimalah hamba mengahwini dia* in (pure) Malay. Nevertheless, the *kabullah* phrase would also be correct and could thus serve as a valid declaration of consent, provided that the person saying it understood its meaning. Yet, presumably very much to the delight of the *mustaftī*, the mufti hastens to add that it indeed "differs from the established practice of the Patani Malays and others", who would rather use the wording *terimalah nikahnya* instead.[41]

The actual ritual practice mandated by visiting and resident Malay scholars in Cambodia was certainly not the only factor which heaved the eventually eponymous *terima* formula into its prominent position. The *jawi* legal manuals, used both as texts for teaching and for reference about the proper performance of religious ritual, have certainly played a decisive part in this development. Incidentally, Da'ud b. ʿAbdallah al-Fatani (Daud Patani, d. 1847), the most famous Mecca-based Patani scholar of all and a highly productive author,[42] is perhaps best known for his concise manual of Shāfiʿī law on marriage and related issues. His *Idah al-Bab* is regarded as his most influential and most popular work among many Muslim communities of the *jawi* ecumene.[43] Completed in Mecca in 1224/1808-9[44] it was soon disseminated throughout Muslim Southeast Asia. In 1870 it was for the first time printed in Singapore, with a subsequent edition being published there only four years later.[45] There can therefore be little doubt that the book and its teachings had also reached Cambodia by the turn of the twentieth century.

In *Idah al-Bab* Daud Patani emphasises that marriage is invalid without a declaration of consent. According to him, the proper Arabic formulas to be used for that purpose are either *qabiltu nikāḥahā* or *qabiltu tazwījahā*. He translates both as *terima* and not *kabul*.[46] In his more elaborate general legal manual, *al-Jawahir al-Saniyya*,[47] he initially leaves Arabic *qabiltu* untranslated, but then renders *qabiltu nikāḥahā al-nafsī* ("I accept to take her in marriage for myself") as *aku terimalah nikahnya bagi aku*.[48]

Viewed from a broader Indian Ocean perspective, it should be noted that heightened sensibilities for properly performed marriage rituals are at the same time noticeable elsewhere, including in other Muslim minority contexts. Thus, at the other end of the Bay of Bengal (opposite the Malay Peninsula), the nascent sphere of Tamil Muslim printing witnessed the publication of six different texts on the topic by Tamil scholars in the period 1885–1916.[49]

Fatwas for Cambodian Muslims in *Pengasuh*

The second group of *fatāwā* issued in response to questions from Cambodian Muslims to be discussed here is drawn from the Kelantanese MUI's journal *Pengasuh*. I already noted above that *Pengasuh* and its fatwa section were intimately linked to the scholarly network of Ahmad Patani and Tok Kenali, which

included several Cambodian scholars. The subsequent enquiry will deal with four legal opinions, which were published in issues of *Pengasuh* between 1927 and 1930. As was the case with Ahmad Patani's *fatāwā* over two decades earlier, the Cambodian fatwa requests in *Pengasuh* also provide us with an inside view on specific social, religious and political concerns of the local Muslim community. Similarly, they allow us glimpses of the legal and scholarly mindset of the Kelantanese ʿulamāʾ elite of the day. As such, they are representative of legal crossings not only across the Gulf of Siam but across the entire Indian Ocean.

The first fatwa which concerns us was passed in response to an enquiry by a certain Shams al-Din b. Hajj Ahmad Kemboja. His request raises four different points,[50] two of which shed considerable light on the social and religious worlds of Cambodian Muslims as a religious minority among other ethnic and religious minorities in the Khmer Buddhist kingdom. Both questions deal with issues of conversion to Islam and inter-religious marriage. The first question asks whether the marriage of a female convert to Islam could be performed without any witness to her having said the *shahada*, and if it could be performed, whether it would nevertheless be *sunna* to search for a witness. The response is strikingly brief, only noting that it would be *sunna* to have witnesses to the marriage ceremony. It fails to address the question of conversion at all, something which in Kelantan would certainly be much less salient.[51] Ner a few years later observed that intermarriage of female Khmers with Cambodian Muslim men invariably involved a conversion to Islam of the female spouse, which was a frequent occurrence at that time.[52]

The second question, obviously representing a separate case, is likewise related to particulars of intermarriage, conversion and issues of sincerity when changing one's religion under such circumstances. Furthermore, it raises the topic of illicit sexual intercourse, certainly another feature of local social reality. This part of the *istiftā'* revolves around a Muslim girl, who had "committed illicit sexual intercourse with an unbeliever, for example a Chinese". After having been informed by the girl's parents that he would be given their daughter in marriage on condition he first embraced Islam, the culprit accedes to their request. Yet he does not show himself happy with Islam, suggesting it is highly probable that he would eventually reject his conversion and return to his original religion. Shams al-Din's question, which clearly exposes him as a religious functionary, is whether they (*kita*, i.e. the local ʿulama') are supposed to teach him the confession of faith at all, given this background. The mufti's response was swift and made clear that they would be obliged to teach him the confession of faith if he had so requested. What is of course noteworthy is that any discussion about punishment for the illicit sexual intercourse he committed is absent.

The second fatwa to be discussed here was likewise issued in 1926.[53] In this case, the enquirer is clearly identified as a high Cambodian Muslim dignitary, as he introduces himself as *raja kadi* (in Khmer *reachea kaley*) ʿAbd al-Rahim. A few years later this honorary title would belong to the second highest category attainable to Muslim dignitaries in Cambodia.[54] The legal problem he brought before the MUI, however, is one strongly reflective of the minority situation of Cambodia's Muslims and the not always harmonious relationship with the ruler,

who was then still King Sisowath (r. 1904–1927). In his *istiftā'*, ʿAbd al-Rahim refers to the grievances that had arisen over a piece of land belonging to the non-Muslim king (*raja kafir*, i.e. Sisowath). The Muslims had been allowed to occupy the land and were in turn subjected to a land rent. Despite the annual payments, the king was withholding them permission to build a mosque on the plot. Accordingly, the *reachea kaley* asked whether they should nevertheless press on with their project. He even added his own interpretation of a section of one of the most popular and widely disseminated legal texts of the Patani scholarly network, *Matla' al-Badrayn* of Muhammad b. Ismaʿil Da'ud al-Fatani (Nik Mat Kecik Patani, d. 1915).[55] According to that, from the perspective of Islamic law, he thought the mosque could not be legally constructed under such circumstances.

In his response, the mufti concedes that ʿAbd al-Rahim's conclusion about building the mosque without the king's consent as impermissible was correct, as the land in question belongs to him. In addition, however, he clarifies that the section from *Matla' al-Badrayn* refers to a different and not comparable case, as it would relate to the estate of a deceased person in a non-Muslim state. This fatwa clearly shows that Cambodia's Muslims were not completely free from state interference into their mosque building ventures. It also testifies to the relevance of *Matla' al-Badrayn*, which covers the *arkān*, *tawḥīd* and *fiqh* in the familiar composite fashion well established earlier by Daud Patani, as a major reference work for both Cambodian and Kelantanese scholars.

The next two fatwas responding to enquiries from Cambodia were issued in 1928 and 1929.[56] They similarly relate directly to the production and reception of *jawi* scholarly literature, and to developments within the wider region. Indeed, they are concerned with a debate which gained prominence throughout much of Muslim Southeast Asia, including Java, Banjarmasin (Kalimantan), Kelantan and Cambodia, from the late nineteenth century onwards, but particularly in the first decades of the twentieth century. That debate revolved around correct calculations for the *qibla*, notoriously epitomised by the correction of the direction of prayer in the Great Mosque of Yogyakarta by Ahmad Dahlan (d. 1923), the future founder of Indonesia's *Muhammadiyah* organisation (est. 1912), in 1896.[57]

The *mustaftī* of the first fatwa introduces himself as Hj. ʿAbd al-Ghani b. Ahmad of Chroy Changvar (Phnom Penh). He begins by explaining that in his village are two mosques. Recently it had become a cause of concern for some local Muslims that the two mosques had been found to exhibit different orientations for the *qibla*. In the opinion of one faction of the believers both were correct. Based on this reasoning, the holding of the Friday prayer in the village rotated between the two mosques. Hj. ʿAbd al-Ghani, however, suggested that their assumption represented only wishful thinking, as the people involved lacked the necessary knowledge in astronomy. He thus wanted to know from the mufti whether they were right or not to assume both mosques were correctly aligned. In this regard, he also stressed that their calculations of the respective *qibla*s had been carried out without the aid of any suitable tools and were thus merely based on their opinions (*zan*, Ar. *ẓann*). From this description then flows the (rather rhetorical) question of whether it would nevertheless be incumbent on the believers to follow their

interpretation, especially so if there should happen to be people locally available with superior knowledge of the matter. This last statement can safely be taken as to refer to the questioner himself or someone from his circle. What is perhaps more intriguing is his follow-up question. This is clearly reminiscent of the famous intra-community strife resulting from Ahmad Dahlan's attempted correction of the *qibla* in the Sultan's mosque of Yogyakarta. That strife came only to a temporary halt when he was sent to Mecca around 1900.[58] Thus, Hj. ʿAbd al-Ghani asks about the legal implications of an imam at prayer facing in the wrong direction with the congregation following him or turning in another direction.

In his response, the mufti asserts that the faction arguing that both *qibla*s were correct was clearly wrong. Not only did they reject the (true) *ijtihād* given to them, but also their prayer would be invalidated because it did not meet the obligatory condition, that prayer must be correctly directed towards the (actual) *qibla*. Accordingly, he considered their practice to be based not on Islamic legal reasoning (*ijtihad pada syarak*) but on personal opinions and guesswork (*sangka-sangka*). Thus, he strongly emphasised that it was not incumbent on other people to follow them. Finally, the mufti declared it obligatory to correct the direction of prayer in any given mosque, once it had been discovered to be at fault.

The third fatwa drawn up by the MUI for Cambodian Muslims is also on the issue of the correct direction of prayer.[59] This is clear evidence of the *qibla* being a paramount subject of debate among the Muslims of Cambodia at that time. The two *mustaftī*s are *tok kadi* (Khmer *tokaley*) Hj. ʿAbd al-Rahman, a high-ranking Muslim dignitary, and Hj. Yunus Kemboja of Chrang Chamres (Phnom Penh). The former can be safely identified with *tokaley* "To-Man," the head of the northern mosque of Chrang Chamres. He is recorded by the French in 1936[60] as one of those who had risen to the second highest tier of Cambodian Muslim dignitaries. Describing his background to the MUI, Hj. ʿAbd al-Rahman even declares his mosque to be the most widely known in the country, besides the one of the "mufti" (i.e. the Grand Mufti or *changvang* of Chroy Changvar). In the past the people who had built his mosque, he continues, had established its *qibla* based on the setting sun. In this connection, his Cambodian context is becoming evident, as he refers to a month (ml. *bulan*) called *cayt*, which he felt necessary to explain as the fifth month in Malay. This must be taken as a reference to *chaet*, the fifth month of the Khmer lunar calendar, and may have puzzled the mufti. In fact, the nub of the enquirers' first question relates only to the overall validity of the sun-based method of *qibla* calculation.

More specifically, the *mustaftī*s wanted to know what had to be done with the large prayer mats when it became necessary to shift the *qibla* in the mosque if the application of the sunset method was deemed improper. Moving away from their own mosque, but sticking to the essence of the issue at hand, they enquired about the suitability of the sunset method for people finding themselves in woods or in the middle of a jungle with a restricted view of the skies and the horizon. As their next step they asked for confirmation of a quotation from the Malay *Sabil al-Muhtadin* of the famous scholar of Banjarmasin on Kalimantan, Muhammad Arshad al-Banjari (d. 1812). According to him there were six kinds of proofs for

the *qibla*, namely longitude, latitude, the polar star (*bintang kutub*) and other stars (Ar. *kawākib*), sun, moon and the wind.[61] This leads on to their next set of questions, about whether the people should follow al-Banjari's position, and whether that should be on a collective or an individual basis, by employing some or all the proofs. They require additional clarification regarding the book's treatment of the function of sun and moon as tools for calculation, for the *mustaftī*s had found it insufficiently clear in that respect.[62]

This part of the *istiftā'* is of interest in that it reveals the prominence of *Sabīl al-Muhtadīn* in Islamic scholarship in Cambodia at that time. The following part gives us an indication of how specific disputes, such as the one around the *qibla*, could result in factionalism within the community. More intriguingly it gives us a clear indication of the degree to which Kelantan's MUI and its scholars were regarded as higher authorities and thus natural arbiters in such cases by parts of the community. First it is explained that only half of Cambodia's Muslims would be holding the given *ijtihād* on the *qibla*, relying on one of the six possible determinants as obligatory. Consequently, in the absence of an authority clarifying what was true and what was false, quarrels among the ʿulamāʾ over the issue had become rampant. These conflicts had even resulted in split families and the like, so the enquirers held "high hopes that the masters (*tuan-tuan*) of the MUI would be able to dispel the darkness which had been absent […] until it transpired […] that children broke with their fathers and siblings". Obviously they desired to elicit a reprimand to local disputants from higher authorities, so the *mustaftī*s also enquired regarding the legal judgment (*hukum syarak*) on scholars who attempt to hide the rules of the sharīʿa to pass rulings well before matters have been decided, thereby creating divisions.[63]

Finally, they are concerned about a passage from the *jawi* work *Sayr al-Salikin* by ʿAbd al-Samad al-Palimbani (d. 1789) of Palembang in South Sumatra. In there it is stated that it is sufficient to determine the direction of the Kaʿba by relying on the proofs established in the book (i.e. the Qurʾān) and the Sunna as well as by analogy. The Cambodian scholars thus wanted to know whether al-Palimbani's position was reliable or weak, as some other Cambodian ʿulamāʾ of the day claimed.[64] This last point clearly indicates that *Sayr al-Salikin* was a widely distributed and frequently studied work in Cambodia. It also shows that, despite being primarily categorised – especially in Western scholarship – as a book of Sufism, al-Palimbani's work equally served as an important reference for ritual law in Islamic legal transmission across the Gulf of Siam in both directions.[65]

Regarding the first two points, the methods used to establish and/or correct the *qibla*, the mufti simply notes in his answer that these queries have already been dealt with in the earlier fatwa for Hj. ʿAbd al-Ghani Kemboja. In addition, he stresses that a naked-eye observation of the sunset alone would not constitute a proper way of determining the direction of prayer, as the precise *qibla* (*'ayn al-qibla*) would be different in every country, and would even differ within one and the same country. Thus, only the general direction (*jihat al-qibla*) could be established through observation of the sunset. As we proceed to the whole set of issues connected to the quoted passage from *Sabil al-Muhtadin* we find it is addressed

in one combined response. The mufti declares that it is an obligation and necessary condition for a valid performance of the prescribed prayers to determine the correct *qibla*, and that the proofs expounded upon by al-Banjari are the means to comply with that. Accordingly, one of those should be relied upon.

Conversely, the mufti immediately jumps at the opportunity to lash out against the representatives of the traditionalist trend, in connection with the *mustaftī*s' enquiry concerning Islamic scholars who allegedly hide the truth about judgments of Islamic law from their followers. He emphasises that it is clearly forbidden for such individuals to issue *fatāwā* and decisions to common people. Moreover, he continues, their behaviour would be especially reprehensible as they must have doubtless already studied dozens of books. Despite their knowledge, they were falsely instructing people about what they claim to have been definitely established (Ar. *jāzim*), as, for example, in such matters as the alleged obligatory nature of the pronunciation of the *niyya* (intention) before *wuḍū'*. The latter view was at that time rejected by the partisans of the *kaum muda* ("young group", i.e. Islamic reformists) across Southeast Asia.[66]

Finally, the mufti turns to address the part of the *istiftā'* concerned with the contested reliability and legal implications of the passage from *Sayr al-Salikin*. Again, the crux of the matter is whether facing the *'ayn al-qibla* or merely in its general direction is a condition for valid prayer, and whether inaccuracy could render it invalid. Strikingly the response makes no mention of al-Palimbani's text at all. Yet it draws attention to the fact that while the *istiqbāl al-'ayn* (facing the *'ayn al-qibla*) had achieved a degree of common acceptance (*masyhur*, Ar. *mashhūr*) within the Shāfiʿī school, also the contending position (*istiqbāl al-jiha*) had strong supporters. As examples of the latter there was a whole array of Shāfiʿī authorities to be invoked. Then we have a long quotation from a work merely introduced as *Bughya*. It is a passage which highlights how the actual difficulties of establishing the direction of the Kaʿba itself and the uneven distribution of the prerequisite knowledge had impacted the general discussion. This had led to different positions concerning the obligation and its applicability to scholars and common people alike. Even though the passage is given in Malay, it is undoubtedly taken from the Arabic *Bughyat al-Mustarshidin* of ʿAbd al-Rahman b. Muhammad Ba ʿAlawi (d. c. 1835), a former mufti of the Hadhramaut (Yemen).[67]

It is noteworthy that Ba ʿAlawi's book was also used as a reference by Ahmad Patani in his fatwas.[68] Moreover, it was distributed through channels directly linked to the *jawi* ecumene. It was published early on in Cairo by Mustafa al-Babi al-Halabi's printing press, which *inter alia* produced *jawi* and Arabic publications specifically for the Southeast Asian market. This was done first with the aid of Ahmad Patani, and then with that of Tok Kenali's illustrious Malay student Muhammad Idris al-Marbawi (d. 1989).[69] Upon closer inspection, it also becomes evident that the earlier passage, enumerating various Shāfiʿī proponents of the *istiqbāl al-jiha* approach, has likewise been translated from Bā ʿAlawī's work,[70] though in this case without any acknowledgement of the source. Finally, it must be noted that the salience of debates around the calculation of the *qibla* in Cambodia, and of local scholarly contacts to Kelantan, was again brought into

focus a few years later. Mat Sales Haroun, a scholar from eastern Cambodia, was to publish a major *jawi* Malay book on the subject in 1934, complete with accolades from major Kelantanese scholars, including the editor of *Pengasuh*. Those appear on the initial pages of the publication.[71]

Fatwas and books in Cambodian archival sources on intra-Muslim dissensions

Islamic legal transmission across the Indian Ocean is also reflected in a number of French and Cambodian documents drawn up in connection with intra-Muslim dissensions in Chroy Changvar (Phnom Penh). These conflicts unfolded in the period 1931–1935, and involved most prominently the Cambodian Grand Mufti Hj. Tuorman (ʿAbd al-Rahman, d. 1935), his protégé Mat Sales, the prominent religious teacher and erstwhile student of Ahmad Patani (i.e. the *mustaftī* of the *qidam* fatwa), and the lesser known scholar Hj. Kateur (ʿAbd al-Qadir). Despite the fact that contests over religious authority and state patronage may have been the real reason for the conflict, the two opposing camps were mainly divided over two issues, the proper performance of the Friday prayer, and the correct form of the prayer (*salat*) in general.

The background to the first debate is clear. By then Chroy Changvar could boast to have three mosques, and the believers were split over the question whether the Friday prayer could be held simultaneously at all three places of worship, or had to be performed at only one of them, perhaps in an alternating rota. The latter approach had evidently already been put into practice but had increasingly met with objections from parts of the scholarly community. In the early stages of the conflict two local mosque leaders who held divergent opinions began to seek support from higher authorities. One submitted a petition to the Grand Mufti Tuorman, but the other called in a visiting teacher from Patani, Wan Muhammad Idris al-Fatani. The latter's fatwa, however, was bound to stir up even more trouble.

One day in April 1932 the Grand Mufti endeavoured to "bring together all people of knowledge […] to analyse and carefully study" al-Fatani's response. After that event Tuorman and seven other scholars added their signatures to a one-sentence summary of their understanding of the mufti's legal opinion. This made explicit that al-Fatani had declared that "the obligation was to hold a single Friday prayer together, and that it would be wrongful to continue its separate performance".[72] According to the testimony of Tuorman, Hj. Kateur was the only scholar present who refused to sign the document. He had allegedly read only two or three lines of the fatwa before he declared that the believers were entitled to perform their Friday prayers separately.[73]

Since we have both the original Malay letter as well as its French translation, it is obvious that it was Hj. Kateur's reading of the text which was correct. The Patani mufti had noted in his ruling that the Friday prayer "should be conducted separately in each mosque as before". The underlying rationale to his decision was evidently his view that, under the prevailing circumstances, the legal priority

was to end the intra-community conflict rather than to comply with Shāfiʿī legal manuals in local use. Those, as will be shown below, mostly support one single Friday prayer per village. He explained that he had ruled in favour of separate Friday prayers "because the prevention of harm is to take precedence over the achievement of benefit".[74]

As the conflict continued, Grand Mufti Tuorman sent two letters (in Khmer) to the authorities in defence of his support for a single Friday prayer in Chroy Changvar.[75] Two of the five reasons he advanced for his decision are of particular interest to the present enquiry. First, Tuorman asserted, "the holy book *Makoun Saphi Tonnar Chor* and others" were consonant with this decision. Second, deliberations with numerous Cambodian and foreign scholars had confirmed that Chroy Changvar was a single village, in which the believers were to congregate for the Friday prayer in a single mosque. There is a severe phonetic deformation of the title, but there can be no doubt that the work referred to is (*Matn*) *Safinat al-Naja* by Salim b. Sumayr al-Hudri (d. 1854), a Hadrami trader-scholar writing in Batavia.[76] Firm evidence for this assumption can be found in Tuorman's second letter. Strikingly this Khmer language document contains a passage in Arabic on the six conditions for a valid Friday prayer, including the absence of any preceding or simultaneous congregational prayer in the same village. Intriguingly the entire passage is a direct quotation from *Safinat al-Naja*.[77] Even though it was the Arabic *Safīna* which was quoted, the same argument can also be found in numerous *jawi* works then commonly consulted by Cambodian Muslim scholars. Cases in point are Arshad al-Banjari's *Sabil al-Muhtadin*, al-Palimbani's *Sayr al-Salikin*, and two of Daud Patani's books.[78]

The background to the second major debate pitting Hj. Kateur and his followers against the Grand Mufti and his men is less clear. It is, however, evident from the existing documents, that it revolved around the individual obligatory elements of prayer. Four days after the public reading of al-Fatani's Friday prayer fatwa Hj. Kateur submitted a complaint against Tuorman and Mat Sales to the police, with an appeal to forward it to the Ministry of Cults.[79] In it he claimed that his two opponents "had introduced new prayers contrary to the precepts of the Islamic religion".[80] When questioned by the commissioner, he further explained that the latter had imposed the performance of 13 "prostrations" (fr. *lays*) during each prayer. Later Hj. Kateur conceded that these were actually not contrary to religious precepts, but he still held that they were too demanding for the common believer.[81] Even though there emerges no clear picture of the debate from the existing documents, it appears that it was less a question of practicality (i.e. the actual performance of the prayers) than of the teachings of ritual law.

The strong emphasis on the number of 13 formal aspects of canonical prayer, as mandated and seemingly vigorously supervised by the *changvang* and Mat Sales, can be traced to expositions found in Arabic and *jawi* prayer manuals and books on ritual law. Such works, however, exhibit different ways of categorising and breaking down the obligatory elements of prayer. The *Safinat al-Naja*, for example, just like Daud Patani's *Sullam al-Mubtadi'*, lists 17 *arkān al-ṣalāt* (ml. *rukn sembahyang*).[82] A number of other texts widely used in the Patani-Kelantan-Cambodia

scholarly networks, however, do indeed enumerate 13 pillars of prayer. Most importantly this applies to Daud Patani's *Munyat al-muṣallī*,[83] then and now the foremost *jawi* prayer manual on the Malay Peninsula and beyond.[84] In addition, it applies likewise to Daud's *al-Jawahir al-Saniyya* and al-Palimbani's *Sayr al-Salikin*, as well as to *Safinat al-Salat*, a short Arabic treatise which was at times printed together with *Safinat al-Naja*.[85]

There can thus be little doubt that the centrality of the 13 obligatory components of prayer in the discussion was prompted by the fact that Mat Sales and Tuorman were determined to demonstrate their superior knowledge of specific texts on ritual law and, to a lesser degree, to enforce their teachings in their congregations. Yet in the course of French and Khmer investigations, Hj. Kateur's contending position also became associated with a specific work of Islamic law and with the Malay scholar who had provided him with it, again bringing the role of books and scholarly contacts to Malay teachers into focus. Tuorman alleged that Hj. Kateur's views on the canonical prayers derived from the teachings of an ominous Malay scholar, one who had been "secretly teaching the prayers" in Chrang Chamres (Phnom Penh) for some time. More precisely, the Grand Mufti declared that his opponent's "prayers are taken from the book entitled *Pedayatolas Muchas Tahetas Vanis Haya Toulas Muchas Tasitas*, which Hj. Kateur has kept from his teacher Mohaji Din".[86] Despite the fact that phonetic distortion is again pervasive in the transcription of this book title, we can safely identify it with *Bidayat al-Mujtahid wa-Nihayat al-Muqtasid* of Ibn Rushd (d. 1198). As the *Bidaya* merely provides an overview of differing positions on the canonical prayers in the different Sunni schools of law, it does not include a neat enumeration of the obligatory elements of *ṣalāt* according to Shāfiʿī practice.[87]

Tuorman's reference to it is nevertheless indicative of an interesting aspect related to the usage of this particular book. It appears as if its invocation by the Grand Mufti was only precipitated by the fact that it was rather not one commonly studied in his scholarly circles. This is supported by the fact that van Bruinessen noted that *Bidayat al-Mujtahid* had at first been the exclusive purview of the *kaum muda* reformists and was still only rarely taught at Indonesian Islamic schools in the 1990s.[88] In Malaya it was apparently also almost exclusively reformists who concerned themselves with the work. A partial Malay translation was published in serialised form from 1929–1930 in Penang,[89] then also home to major *kaum muda* periodicals, such as *al-Ikhwan* (est. 1926) and *Saudara* (est. 1928).[90]

Finally, it should be mentioned that the religious dissensions in Chroy Changvar also resulted in Islamic legal transmissions across the Indian Ocean in a physical sense. In the second half of 1932, when the conflict had reached its first high point, Mat Sales and Tuorman personally travelled to Mecca to consult with some of its "great scholars". Given the long tradition of requesting and receiving legal rulings by way of letters, this appears as a rather exceptional move. Possibly it was as much intended to dissolve some of the local tension as it was to obtain authoritative legal opinions on the contested issues. It is no surprise to read that

Mat Sales informed the authorities upon his return that the Meccan luminaries had ruled in their favour concerning the question of the Friday prayer.[91]

Concluding remarks

The discussed fatwas for Cambodian Muslims issued by Malay muftis based in Mecca and Kelantan illustrate the active engagement of the local Muslims in Islamic legal transmission across the Gulf of Siam and the Indian Ocean world at large. Within a community consisting primarily of those with a first language other than Malay, we see various translation processes occurring between Cham, Khmer, Malay and Arabic, which are highlighted in these scholarly exchanges. In them the role of Malay particularly stands out as paramount. Even exchanges between Cambodia and Mecca, either through fatwas or printed books, were mostly conducted in Malay and not Arabic. It is also noteworthy that a work such as al-Palimbani's *Sayr al-Salikin*, usually merely regarded as a book on Sufism in academic scholarship, is invoked in the fatwas, thereby testifying to its different functions among local Muslims. Many of the pressing concerns brought before the respective muftis, or the French colonial authorities for that matter, revolved around aspects of ritual law or theological dogma. Nevertheless, debates over ritual law may easily acquire social relevance as emblematic causes for intra-Muslim factionalism. The last case outlined above exposed such a conflict over issues of ritual, which prompted the secular colonial authorities in Cambodia to intervene in order to alleviate intra-community tensions and to protect their appointed representatives in the religious administration.

Such primary sources, through their frequent direct references to earlier fatwa collections and legal manuals, are also helpful in delineating the actual usage of specific works in the region and the local canon of legal literature. It must be noted that some of the fatwas we have discussed exhibit a degree of legal pragmatism which seems to have exceeded that of the respective *mustaftī*s, and this sometimes even proved detrimental to the questioners' apparent interests. Cases in point are Ahmad Fatani's conciliatory opinions on the rendering of the Arabic term *qidam* into languages other than Malay, and on the disputed usage of certain ritualised formulas to express consent in marriage ceremonies. Most illustrative is Wan Muhammad Idris al-Fatani's privileging of intra-community harmony over compliance with locally prevailing Shāfiʿī legal manuals.

Finally, the contemporary process of Jawisation among the Muslims of Southeast Asia, which is well reflected in the sources and debates analysed in this chapter, was strongly conditioned by exchanges across the Indian Ocean. Apart from the fact that the circles of Southeast Asian Muslim teachers and students of various regional and ethnic backgrounds played a major part in fostering a common *jawi* identity, *inter alia* through the common usage of Malay and, to a lesser degree, Javanese, much of the *jawi* literature referred to in the fatwas and archival sources used for this contribution was either written by authors on the Arab Peninsula or after spending an extensive stay there. What is more, works such as al-Banjari's *Sabil al-muhtadin*, which was relied upon both by Cambodian

*mustaftī*s and Malay muftis, albeit far from being merely derivative, were instrumental in the transmission of accumulated canonised Shāfiʿī legal thought from across the ocean into Southeast Asia, by expressing it in the more easily accessible Malay language. Al-Banjari notes in the opening pages of the book, which he completed in 1195/1781, less than ten years after his return from Mecca, that it was penned at the request of Sultan Tahmid Allah of Banjarmasin (r. 1773–1808). He commissioned it to provide his subjects with a text on Shāfiʿī *fiqh* "translated into the *jawi* [i.e. Malay] language, which is widely known among the people of his land", and to select issues from the books of the later authorities of the school, "from among the base texts, commentaries and glosses".[92] On another plane, we have also seen that the intense interest in marriage manuals exhibited in the Muslim minority context of Cambodia, was mirrored along similar lines among the Muslim minority of contemporary Tamil Nadu, and somewhat later in East Africa.[93] Even though the issues and details were diverse and manifold, scholars in all these regions on the Indian Ocean littoral and the South China Sea addressed and assessed these questions *inter alia* based on a common repertoire of Shāfiʿī legal thought, which was primarily disseminated across large tracts of the ocean. The formation of the Hanafi world was very different. Its texts were transmitted across the vast expanses of Eurasia by travellers riding on the backs of animals, not standing on the wooden decks of ships.

Notes

1 Michael Francis Laffan, *Islamic Nationhood and Colonial Indonesia: The Umma Below the Winds* (London: RoutledgeCurzon, 2003), 11–27. As this ecumene spanned parts of the Indian Ocean as well as neighbouring regions of the Pacific and its marginal seas, such as the South China Sea, it may justifiably be treated as a part of the Indian Ocean World.

2 This phrasing should not be taken as indicating unidirectionality, because from early on Islamic influences were certainly flowing from Indochina to other parts of Southeast Asia as well. In particular, Javanese traditions include several early Islamic influences which in one way or another emanate from the Indochinese kingdom of Champa. M.C. Ricklefs, *Mystic Synthesis in Java: A History of Islamization From The Fourteenth To The Early Nineteenth Centuries* (Norwalk, CT: Eastbridge, 2006), 43–44.

3 P.-B. Lafont, *Le Campā. Géographie-Population-Histoire* (Paris: Les Indes savants, 2007).

4 Francis R. Bradley, "The Social Dynamics of Islamic Revivalism in Southeast Asia: The Patani School, 1785–1909," (PhD Dissertation, Univ. of Wisconsin, 2009); Francis R. Bradley, *Forging Islamic Power and Place. The Legacy of Shaykh Dāʾūd bin ʿAbd Allāh al-Faṭānī in Mecca and Southeast Asia* (Honolulu: University of Hawaiʿi Press, 2016); V. Matheson and M.B. Hooker, "Jawi Literature in Patani: The Maintenance of a Tradition," *Journal of the Malaysian Branch of the Royal Asiatic Society* 61 (1988): 1–86; Hasan Madmarn, *The Pondok and Madrasah in Patani* (Bangi: Penerbit UKM, 1999); Ahmad Fathy al-Fatani, *Ulama Besar dari Patani* (Bangi: Penerbit UKM, 2002); Ismail Che Daud ed., *Tokoh-tokoh Ulama' Semenanjung Melayu*, 2 vols. (Kota Bharu: Majlis Ugama Islam dan Adat Istiadat Melayu Kelantan, 1988).

5 This seems to be supported by the fact that so far not a single fatwa of the period in the Cham or Khmer language has come down to us.

6 Hj. Wan Mohd. Shaghir Abdullah, *Al ʾAllamah Syeikh Ahmad al-Fathani Ahli Fikir Islam dan Dunia Melayu* (Kuala Lumpur: Khazanah Fathaniyah, 1992); Bradley, "Social Dynamics", 475–82; C. Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century* (Leiden: Brill, 2007), 306f.
7 H.W.M. Shaghir Abdullah, *Fatwa tentang Binatang Hidup Dua Alam. Syeikh Ahmad al-Fatani* (Shah Alam: Penerbitan Hizbi, 1990), 50.
8 Perayot Rahimulla, "The Patani Fatāwā: A Case Study of the Kitāb al-Fatāwā al-Faṭāniyyah of Shaykh Aḥmad bin Muḥammad Zain bin Muṣṭafa al-Faṭānī," 2 vols., (PhD Dissertation, Univ. of Canterbury, 1992), I, 386.
9 Cf. ibid., I, 379–81.
10 William R. Roff, *Studies on Islam and Society in Southeast Asia* (Singapore: NUS Press, 2009), 179–233.
11 Ibid., 230 n. 102.
12 Abdul Rahman al-Ahmadi, *Tokoh dan Pokok Pemikiran Tok Kenali* (Kuala Lumpur: Bahagian Kebudayaan, Kementerian Kebudayaan, Belia dan Sukan Malaysia, 1983); Abdullah al-Qari b. Hj. Salleh, *Kelantan Serambi Makkah di Zaman Tuk Kenali* (Kenali: Pustaka Asa, 1988).
13 al-Ahmadi, *Tokoh dan Pokok*, 44; al-Qari, *Kelantan Serambi Makkah*, 62, 77f.
14 Non-legal fatwas revolving around issues of *ʿaqīda* or *kalām* were frequently incorporated into fatwa collections but, understandably, only rarely into *furūʿ* works. Cf. Wael B. Hallaq, "From *Fatwā*s to *Furūʿ*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1 (1994): 54.
15 Aḥmad b. Muḥammad Zayn al-Faṭānī, *Al-Fatāwā al-faṭāniyya* (Patani: Patani Press, 1377/1957), 4.
16 Philipp Bruckmayr, *Cambodia's Muslims and the Malay World: Malay Language, Jawi Script, and Islamic Factionalism from the 19th Century to the Present* (Leiden: Brill, 2019), 135.
17 Philipp Bruckmayr, "The *sharḥ*/*ḥāshiya* Phenomenon in Southeast Asia: From al-Sanūsī's *Umm al-barāhīn* to Malay *sifat dua puluh* Literature," *Mélanges de l'Institut Dominicain d'Études Orientales du Caire* 32 (2017): 27–52.
18 Al-Faṭānī, *al-Fatāwā al-faṭāniyya*, 4f.
19 Ibid., 5f.
20 Ibid., 8.
21 Ibid., 12.
22 Ibid., 13.
23 Examples from works popular in Cambodia at that time include: Zayn al-ʿĀbidīn b. Muḥammad al-Faṭānī, *ʾAqīdat al-Nājīn fī ʾIlm Uṣūl al-Dīn* (Patani: Maṭbaʿat Ibn Halābī, n.d.), 18; Muḥammad Zayn al-Dīn b. Muḥammad al-Sumbāwī, *Sirāj al-hūdā* (Pulau Pinang: Percetakan Almaarif, n.d), 9. ʿUthmān b. ʿAbd Allāh b. ʿAqīl al-ʿAlawī, *Kitab Sifat Dua Puluh* (Batavia: n.p., 1317/1899), 5.
24 Antoine Cabaton, "Une traduction interlinéaire malaise de la ʿAqīda d'al-Senūsī," *Journal Asiatique* 10 (1904): 133.
25 *Siphat dua pluh*, private collection of Kai Tam, Svay Pakao, Kampong Chhnang, Cambodia., *fol*. 4a.
26 al-Faṭānī, *al-Fatāwā al-Faṭāniyya*, 72.
27 Ibid., 73.
28 HAMKA (Haji Abdul Malik Karim Amrullah), *Ayahku. Riwayat Hidup Dr. H. Abd. Karim Amrullah dan Perjuangan Kaum Agama di Sumatera*, seond edn (Jakarta: Penerbit Widjaya, 1958), 81.
29 M.C. Ricklefs, *Polarising Javanese Society: Islamic and Other Visions (c. 1830–1930)* (Leiden: KITLV Press, 2007), 82, 90, 97.
30 al-Faṭānī, *al-Fatāwā al-Faṭāniyya*, 94.
31 Ibid., 94f.

32 Gregor Muller, *Colonial Cambodia's 'Bad Frenchmen': The Rise of French Rule and the Life of Thomas Caraman, 1840–87* (London: Routledge, 2006), 189–218.
33 Marcel Ner, "Les musulmans de l'Indochine Française," *Bulletin de l'École Française de l'Extrême-Orient* 41 (1941): 151–200.
34 Ibid., 187.
35 Ibid., 166.
36 Ibid., 169.
37 Misgivings about the spread of Jawisation, however, persisted among certain segments of Cambodia's Muslim community and became finally epitomised in the late 1990s by the establishment and official recognition of the Kan Imam San as a distinct Islamic group. The Kan Imam San see themselves as the guardians of a distinctively Cambodian Cham Islamic tradition and its literature in ancient Cham script. They charge the Cambodian Muslim mainstream for having abandoned Cham traditions for Malay ones. See Philipp Bruckmayr, "The Birth of the Kan Imam San: On the Recent Establishment of a New Islamic Congregation in Cambodia," *Journal of Global South Studies* 34 (2017): 197–224.
38 Ner, "Musulmans de l'Indochine," 187.
39 Po Dharma, *Quatre lexiques malais-cam anciens: rédigés au Campā (*Paris: PEFEO, 1999), 368.
40 R.J. Wilkinson, *A Malay-English Dictionary (Romanised)*, 2 vols. (London: Macmillan, 1959), Vol. 1, 391. Most concise modern Malay-English dictionaries no longer mention the usage of *hamba* as a pronoun.
41 al-Faṭānī, *al-Fatāwā al-Faṭāniyya*, 113.
42 al-Fatani, *Ulama Besar*, 25–42; Bradley, "Social Dynamics", 189–271.
43 Ibid., 326.
44 For brief descriptions see Matheson and Hooker, "Jawi Literature", 23; Madmarn, *Pondok and Madrasah*, 26.
45 Ian Proudfoot, *Early Malay Printed Books. A Provisional Account of Materials Published in the Singapore-Malaysia Area up to 1920, Noting Holdings in Major Public Collections* (Kuala Lumpur: Academy of Malay Studies and the Library, University of Malaya, 1993), 135. Another early edition (1304/1886) was produced in Constantinople. Bradley, "Social Dynamics," 486.
46 Dā'ūd b. ʿAbd Allāh al-Faṭānī, *Īḍāḥ al-Bāb li-Murīd al-Nikāḥ bi-l-Ṣawāb* (Patani: Maṭbaʿat Ibn Halābī, n.d.), 8.
47 Cf. Matheson and Hooker, "Jawi Literature," 23f.
48 Dā'ūd b. ʿAbd Allāh al-Faṭānī, *al-Jawāhir al-Saniyya fī Sharḥ al-'Aqā'id al-Dīniyya wa Aḥkām al-Fiqh al-Marḍiyya wa Ṭarīq al-Sulūk al-Muḥammadiyya* (Patani: Maṭbaʿat Ibn Halābī, n.d.), 167, 169.
49 Most of these had already been reprinted during the period. J.B.P. More, *Muslim Identity, Print Culture and the Dravidian Factor in Tamil Nadu* (New Delhi: Orient Longman, 2004), 232, 236, 238–42, 268–71.
50 *Pengasuh* IX, 216 (15 Ramaḍān 1345/18 March 1927): 3.
51 Ibid., 4.
52 Ner, "Musulmans de l'Indochine," 191.
53 *Pengasuh* X, 217–18 (15 Shawwāl 1345/18 April 1927): 4f.
54 "Liste des dignitaires cham nommés par Ordonnance Royale et par Arrêté Ministériel" (1936), *Archives Nationales du Cambodge – Résident Supérieur de Cambodge* (henceforth ANC-RSC) 28319.
55 On the work see Matheson and Hooker, "Jawi Literature," 32; al-Fatani, *Ulama Besar*, 77; Madmarn, *Pondok and Madrasah*, 31f.
56 *Pengasuh* XII, 263 (15 Dhū l-Qaʿda 1347/24 April 1929): 2–4; XIII, 289–90 (1 and 15 Shawwāl 1348/1 and 15 March 1930): 2f.
57 Nico J.G. Kaptein, *Islam, Colonialism and the Modern Age in the Netherlands East Indies. A Biography of Sayyid 'Uthman (1822–1914)* (Leiden: Brill, 2014), 224–6.

58 Laffan, *Islamic Nationhood*, 168f.; Mitsuo Nakamura, *The Crescent Arises over the Banyan Tree. A Study of the Muhammadiyah Movement in a Central Javanese Town, c. 1910s–2010*, second enlarged edn (Singapore: ISEAS, 2012), 51f.
59 *Pengasuh* XIII, 289–90 (1 and 15 Shawwāl 1348/1 and 15 March 1930): 2f.
60 ANC-RSC 28319.
61 Cf. Muḥammad Arshad b. ʿAbd al-Allāh al-Banjārī, *Sabīl al-Muhtadīn li-Tafaqquh fī Amr al-Dīn*, 2 vols. (Patani: Maṭbaʿat Ibn Halābī, n.d.), I, 189.
62 Indeed, the work is much more concerned with calculations through longitude/latitude and the polar star, which are accordingly explicitly described as the strongest indicators for the purpose. Ibid., 188–90.
63 *Pengasuh* XIII, 2.
64 Ibid., 2f.
65 Certain parts of the work (*inter alia* chapters 2–6) are mainly concerned with proper outward ritual performance. ʿAbd al-Ṣamad al-Falimbānī, *Sayr al-Sālikīn ilā ʾIbādat Rabb al-ʾĀlamīn*, 4 vols. (Derang, Kedah: al-Khazanah al-Banjariyyah, 2001), I, 105–413 & II, 1–107. Yet, also the hidden inner aspects of prayer are duly discussed: ibid., I, 200–17.
66 For brief outlines see Eliraz Giora, *Islam in Indonesia: Modernism, Radicalism, and the Middle East Dimension* (Brighton: Sussex Academic Press, 2004), 1–8; and more specifically William R. Roff, "Kaum Muda – Kaum Tua: innovation and reaction among the Malays 1900-41," in *Readings on Islam in Southeast Asia*, eds Ahmad Ibrahim, Sharon Siddique and Yasmin Hussain (Singapore: Institute of Southeast Asian Studies, 1985), 123–9.
67 *Pengasuh* XIII, 3. The quoted text is much longer than indicated by the quotation marks in the mufti's response, as it indeed runs until the very end of the fatwa. Cf. ʿAbd al-Raḥmān b. Muḥammad Bā ʿAlawī, *Bughyat al-Mustarshidīn fī Talkhīs Fatāwā baʿḍ al-Aʾimma min al-ʾUlamāʾ al-Mutaʾakhkhirīn* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1418/1998), 53.
68 Rahimulla, *Patani Fatāwā*, I, 407f.
69 Shaghir Abdullah, *Al ʾAllamah Syeikh Ahmad*, 97; Bradley, "Social Dynamics", 492–4; Hairul Nizam, *Biodata Ringkas Syeikh Idris al-Marbawi* (n.d.), 4, 7–9.
70 Bā ʿAlawī, *Bughyat al-Mustarshidīn*, 52.
71 Muḥammad Ṣāliḥ b. Hj. Hārūn Kambūjā, *Pedoman Bahagia Membicarakan Sukutan Waktu dan Kiblat yang Mulia* (Kota Bharu: Maṭbaʿat al-Kamāliyya, 1353/1934), 2–6.
72 ANC-RSC 35825.
73 "Déliberation de la Commission Permanente du Conseil des Ministres. Objet: Dissensions religieuses entre Cham de Chrui-Changvar", 11 March 1935, ANC-RSC 35825.
74 ANC-RSC 35825 (undated letter).
75 4 March 1933 and 5 April 1933, ANC-RSC 35825. Summarised in "Déliberation de la Commission."
76 L.W.C. van den Berg, *Het Mohammedaansche godsdienstonderwijs op Java en Madoera en de daarbij gebruikte Arabische boeken* (Batavia: Bataviaasch Genootschap van Kunsten en Wetenschappen, 1887), 9f.; Peter G. Riddell, "Arab Migrants and Islamization in the Malay World during the Colonial Period," *Indonesia and the Malay World* 29 (2001): 120.
77 4 March 1933, ANC-RSC 35825; Sālim b. Sumayr al-Ḥuḍrī, *Matn Safīnat al-Najā fī Uṣūl al-Dīn wa-l-Fiqh ʾalā Madhhab al-Imām al-Shāfiʿī* (Cairo: al-Maktaba wa-l-Maṭbaʿat al-Maḥmūdiyya, n.d.), 15.
78 Arshad al-Banjārī, *Sabīl al-Muhtadīn*, II, 45; al-Falimbānī, *Sayr al-Sālikīn*, I, 270; Dāʾūd b. ʿAbd Allāh al-Faṭānī, *Sullam al-Mubtadiʾ fī Maʿrifa Ṭarīqat al-Muhtadiʾ* (Patani: Maṭbaʿat Ibn Halābī, n.d.), 11f.; ibid., *al-Jawāhir al-Saniyya*, 75.
79 ANC-RSC 35825.
80 "Commissaire Central Boucly à Résident Maire," 6 May 1932, ANC-RSC 35825.

81 Ibid.
82 al-Ḥuḍrī, *Matn Safīnat al-najā*, p. 7f.; Dā'ūd al-Faṭānī, *Sullam al-Mubtadi'*, p. 9f.
83 Dā'ūd b. Shaykh ʿAbd Allāh al-Faṭānī, *Munyat al-Muṣallī* (Mecca: al-Maṭbaʿat al-Mīriyyat al-Kā'ina, 1310/1892), 8–11.
84 Francis R. Bradley, "Sheikh Da'ud al-Fatani's *Munyat al-Musalli* and the Place of Prayer in 19th-Century Patani Communities," *Indonesia and the Malay World* 41 (2013): 198–214.
85 Dā'ūd al-Faṭānī, *al-Jawāhir al-Saniyya*, 58–60; al-Falimbānī, *Sayr al-Sālikīn*, I, 183–97; al-Sayyid ʿAbd Allāh b. ʿUmar al-Ḥaḍramī, *Matn Safīnat al-ṣalāt* in al-Ḥuḍrī, *Matn Safīnat al-najā*, 28.
86 "Déliberátion de la Commission," 7.
87 Ibn Rushd, *The Distinguished Jurist's Primer. Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, trans. Imran Ahsan Khan Nyazee, 2 vols. (Reading: Garnet, 1994), I, 133–55.
88 Martin van Bruinessen, "Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu," *Bijdragen tot de Taal-, Land- en Volkenkunde* 146 (1990): 251.
89 William R. Roff, *Bibliography of Malay and Arabic Periodicals Published in the Straits Settlements and Peninsular Malay States 1876–1941* (London: Oxford University Press, 1972), 14, 43.
90 Cf. Alijah Gordon, *The Real Cry of Syed Shaykh al-Hadi* (Kuala Lumpur: MSRI, 1999); Wan Suhana bt. Wan Sulong, "Saudara (1928–1941): Its Contribution to the Debate on Issues in Malay Society and the Development of a Malay World-view," (PhD Dissertation, University of Hull, 2003).
91 "Déliberátion de la Commission," 9.
92 Arshad al-Banjārī, *Sabīl al-Muhtadīn*, I, 3–4.
93 Mohamed S. Mraja, "The Reform Ideas of Shaykh ʿAbdallāh Ṣāliḥ al-Farsī and the Transformation of Marital Practices among Digo Muslims of Kenya," *Islamic Law and Society* 17 (2010): 245–78.

7 The interplay of two Sharīʿa penal codes

A case from Gayo society, Indonesia

A. Arfiansyah

Introduction

Aceh is the only region in Indonesia where Sharīʿa is officially enforced by the government. This "State Sharīʿa" implies the state's interests in Sharīʿa as it developed official organisations such as a special agency for Sharīʿa administration, and a Sharīʿa police unit known as Wilayatul Hisbah, to monitor the implementation of Sharīʿa in the community. To ensure State Sharīʿa is respected and enforced, the national government allows its parallel national legal organisations in Aceh (police and public prosecutors) to assist the Aceh government in Sharīʿa enforcement. It also expanded the jurisdiction of the existing religious court to tackle Sharīʿa penal offences.

The State Sharīʿa is part of the special autonomy package given by the government of Indonesia to Aceh Province in 1999 as an attempt to end the 32-year armed conflict between the rebellious movement, the Aceh Free Movement (GAM Gerakan Aceh Merdeka), and the Indonesian army. This struggle for a State Sharīʿa can be traced back to the early post-colonial period, when the ʿulamāʾ of Aceh, associated with the Aceh Ulama Union (PUSA), rebelled against a newly formed Republic of Indonesia that broke its earlier promise allowing Aceh to enforce Sharīʿa in the Province.[1]

The demand for the enforcement of Sharīʿa in Aceh develops from historical and cultural aspects that shape the Muslim identity of the local population. From the sixteenth to the late seventeenth century Aceh was an important centre of international commerce. It consequently became a cosmopolitan area and a centre for Islamic learning in Southeast Asia. Scholars from the Indian subcontinent and the Middle East were invited or came on their own incentive to teach Islam. The Indian Ocean was a busy thoroughfare over which many Acehnese voyaged to other Muslim areas to study Islam, but mainly to the Middle East. On their return they established themselves as great scholars of Sufism and other disciplines. Some of them took part in politics, diplomacy and wars, encouraging the study of Islam in the Sultanate and the community. The most prominent of these travellers were Hamzah al-Fansury, Syamsuddin as-Sumatrani and Abdul Rauf as-Singkili. They were religious leaders and offered the greatest political support for the sultanate.[2] With Aceh's history as a cosmopolis, local Muslim scholars

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and those from around the world have travelled further including to Gayo, located right in the middle of Aceh province today, reinforcing an Islam that had earlier come from the eastern part of Aceh.[3]

Since the sixteenth century, and perhaps earlier, Muslim scholars have assimilated Islam into their local culture. Such assimilation is expressed in a popular local saying, "*ägämä ngéūn ädät lágèè zät ngéūn sìféūt* (religion and culture are like substance and its attribute)", or in Gayonese, "*édët pëgër nì ägämä* (culture is the fence of the religion)", referring to the inseparability of religion (Islam) from culture. These historical and cultural aspects constructed the identity of the local people as Muslims. They were the points of reference for the ʿulamāʾ affiliated to PUSA and their successors to demand the implementation of Sharīʿa in 1999.[4] The demand for the enforcement of Sharīʿa was proposed as one of the solutions to end the conflict of the GAM movement against the Indonesian army.[5]

Since 2002, in an effort to enforce the Aceh version of Sharīʿa, the local government produced numerous regional regulations (known locally as Qanun). The Qanun regulates public morality, sexuality and individual religious beliefs, as well as Islamic finance and banking. Nevertheless, although Sharīʿa has state power and legal infrastructures supporting its enforcement, it is not implemented uniformly across the province. Among the cases of "deviant" implementation is the Central Aceh and Bener Meriah districts, where State Sharīʿa is entangled significantly with local culture.

The Central Aceh district is dominated by the Gayonese, the second largest ethnic group in Aceh province after the Acehnese. This research was conducted in that district and partly in the neighbouring district of Bener Meriah, in which the Gayonese are also a majority. In the early days of my fieldwork, I met several public figures enquiring about the development of State Sharīʿa in these two districts. One of them was Mahmud Ibrahim, who was the Head of the State Islamic Treasury (Baitul Mal) Agency and a member of the Ulama Consultative Board of the district. He had previously served as a regional secretary for the Central Aceh district. He also organised a weekly *pengajian* (religious studies circle) in the district's grand mosque (Ruhama Mosque). This indicates that he is an important figure in both religious and administrative affairs in the district. In one of our meetings about the development of State Sharīʿa in Central Aceh he said: "We do not need that kind of Sharīʿa (State Sharīʿa of Aceh province), as we have it in our culture". It was a brief discussion during his office hours. Instead of explaining the basis for his response he continued with another unexpected statement: "We don't have *sumang* (shame) anymore. People could easily break the *adat* norm, so they break the religious orders." Considering his career record, I did not expect such a statement from a figure who is familiar with the state's programmes, notably those relating to the enforcement of State Sharīʿa in Aceh. This led me to the question why the Gayonese prefer *adat* over State Sharīʿa to deal with public immorality and sexual offences.

This chapter discusses the interplay of *adat* and State Sharīʿa in tackling public morality and premarital sex offences in Central Aceh. I define State Sharīʿa as an actual legal ruling of the abstract and unobservable Divine Sharīʿa[6] that reflects

the state's interest in Sharīʿa as formulated by Acehnese scholars and politicians following the Western legal framework.[7] The local *adat* has also been heavily influenced by the same Divine Sharīʿa. The assimilation of Divine Sharīʿa into *adat* was conducted by Sufis at the early arrival of Islam to Aceh. They did not push against the culture. While keeping the traditional practices, they gradually modified the essence of the tradition and culture, such as sayings, prayers and beliefs.[8] I observed that this assimilation still goes on today in Gayo.

During the contextualisation and integration of Islam in Gayo, some *adat* practices are eliminated because of their irrelevance to Islamic tenets. Others are modified and enriched. The rest are retained, except that their chants are substituted with Islamic prayers, such as in the *Tëpung Täwär* (blessing) tradition which originated from Hinduism.[9] The outcome of the process is still called *adat*. In many seminars and talks about the *adat*, Gayonese are often convinced that maintaining and practising *adat* is just as important as maintaining Islamic teachings. The most noticeable efforts can be seen through Ibrahim and Pinan's three-volume publication on "Adat and Sharīʿa in Gayo". It compiles all *adat* practices, most of which no longer exist, and justifies them with religious arguments cited from the Qurʾān and the Prophetic traditions.[10]

The existing literature on Islam and culture in Indonesia mostly pays attention to localised Islam and the interplay of Islam and *adat* in aspects of family law (see, for example, James Siegel, Benda Beckmann, John R. Bowen, Ratno Lukito and David Kloos[11]). Kloos observes that one of the implications of the formalisation of Sharīʿa in a village is that State Sharīʿa triggers vigilance in the locality against offenders in order to defend the "good name" of the village.[12] This chapter continues to study the localised version of Sharīʿa in the form of *adat* but focuses on the localised version of Sharīʿa penal law instead of family law. It shows the interplay of *adat* with State Sharīʿa.

Both forms of Sharīʿa take legal sources from the same Divine Sharīʿa but they are distinguished by history, authority and the purposes of enforcement.[13] Despite the differences, both interact and complement each other to govern public morality and premarital sex. The State Sharīʿa has the state power, while the *adat* has the communal power run by the village elites. These two authorities are deployed together to support each other's interests. This chapter adds another dimension to Henley and Davidson's observation on the *adat* revival in Java and the eastern part of Indonesia. He argued that the revival of *adat* in Indonesia has an anti-Islamic element. According to him, the current *adat* revival takes place largely in areas where the progress of Islam is blocked by Christianity or Hinduism, or where Islamic conversion has taken place, but the pre-Islamic elements remain important in social life.[14] I aim to enrich this argument by observing that the *adat* has also been revived in places like Aceh where Islam is an important element of daily life and Sharīʿa is routinely enforced by the established state's legal organisations. Rather than being in conflict with each other, *adat* and State Sharīʿa complement one another in the social field. I observe this linkage through the work of the state and *adat* (village) elites governing public morality and premarital sex

offences as well as the work of the village Sharīʿa officer unit (hereafter called the WH *Kampong*).

I note two factors which allow the *adat* to play an important role in supporting the implementation of State Sharīʿa in tackling public morality and premarital sex in Gayo. First, in line with Michael Feener's argument, State Sharīʿa is limited by the modern secularised political, governance and administration systems, which make the central role of government in commanding personal religiosity difficult to fully accomplish.[15] The State Sharīʿa is executed by the institution of the State Sharīʿa Agency (DSI, *Dinas Syariat Islam*), which is given a limited budget and authority.[16] Second, the provision of the State Sharīʿa is relatively new for the Gayonese. It does not include the cultural norms adhered by the Gayonese, particularly regarding the Sharīʿa concept of *zina*.[17]

The Gayonese see premarital sex as morally different from extramarital sex, which drives them to treat the offences in two different ways. According to their *adat,* premarital sex is subjected to a temporary exile called *farak*, while the punishment for extramarital sex is permanent banishment from one's village, for which the term *jeret naru* (literally, a long grave, implying that the perpetrators can be considered dead) is used. This distinction is thought to have originated from the *adat* text titled 45 Articles of Linge Kingdom, said to have been written in the twelfth century. As a result of the contextualised and the localised Divine Sharīʿa, both of which vary in time, space and purpose,[18] the formulation of public morality and *zina* of both *adat* and the State Sharīʿa differ from the basic rule of *zina* (premarital and extramarital sex) found in the classical Islamic legal texts. In this basic rule of *zina*, premarital sex is punished by flogging, while extramarital sex is punished by stoning to death.[19] The latter sentence varies from one legal school to another.[20] Although the legal formulation of both *adat* and State Sharīʿa on *zina* differ from each other and are not precisely in line with the classical rule, both combine in the social field to achieve each other's interests by creating the WH *Kampong* unit, the unit investigating the enforcement of Sharīʿa in the village. It is staffed by local youth, who are subject to intensive control by the government, and that legitimises the actions of the unit and supports the *adat* tribunal investigating all sexual offences. The creation of the WH *Kampong* by the central Aceh government supports the interest of the state in the enforcement of the State Sharīʿa, as well as the interests of the village apparatus and *adat* elites to revive and regain authority in the community. However, instead of referring to State Sharīʿa provisions on public morality and *zina*, the unit adopts *adat* penal law as the legal reference for case investigations and reports to the local government.

Feener portrays the presence of the *adat* alongside the enforcement of the State Sharīʿa as a reflection of the instrumentalist paradigm of law that pervades government administration and in social change in Indonesia that is occurring at the local level.[21] He also suggests that this phenomenon shows the perceived compatibility of *adat* with Sharīʿa.[22] This chapter provides an actual empirical situation of this perceived compatibility by narrating the *adat* and the State Sharīʿa legal approach to public morality and premarital sex offences.

My data has been collected from literature, media and formal interviews, as well as fieldwork observation conducted from 2014 to 2015. In the *first* section, I discuss the text called "45 Articles of Linge Kingdom" and its provisions for public morality and premarital sex. This text is believed to be the source of Gayonese law. Some norms regulated by the text were included in the Qanun No. 10/2002 on Gayo Adat Law. The *second* section discusses the local norms and practices related to public morality and premarital sex, which are conceptualised in *sumang* and *farak* respectively. These two norms are mentioned in the "45 Articles of Linge Kingdom" and were revived in 2002 through the Qanun on Gayo Adat Law. *Sumang* is a social morality concept of the Gayonese, with different meanings according to context. It is used to indicate misconduct, shame or inappropriateness. I interpret it as shame following the standard use of the word.[23] Those who offend the norms, particularly those who are involved in premarital and extramarital sex, are considered to be lacking public and personal morality. For brevity, here I discuss only *adat* punishment for premarital sex offences. The *third* section describes the WH *Kampong* responsibilities, which are designed by the local government to overcome the limits of the state in the enforcement of the State Sharīʿa and, at the same time, to revive the *adat*. In the conclusion, I briefly elaborate on the interplay of *adat* and the State Sharīʿa. I argue that, although they have different concepts and approaches towards public morality and premarital sex, they support one another in a pragmatic way to achieve their interests. It comes about because of the local belief that both *adat* and State Sharīʿa are equally inspired by the Divine Sharīʿa. Their differences lie in the historical background and authority, which are merged in the work of WH *Kampong*. This bases the enforcement of State Sharīʿa as a regional and cultural policy on the outcome of negotiation and interdependency between the State Sharīʿa and *adat*.

The 45 Articles of the Linge Kingdom

The Aceh sultanate, in which Gayo was one of its dependencies, was not only a centre for trade and politics, but it was also a centre for Islamic studies.[24] Thus, numerous manuscripts were produced and circulated within and outside the sultanate.[25] In Gayo only a small number of manuscripts survived in personal archives, whose owners attach supernatural beliefs to them, as they are written in a "strange" language and structure. These aspects often make the owners believe that they were chosen by the manuscripts, and thus they keep them away from others. According to Awan Lewa, who was once a wing commander of Darul Islam of Ulama Revolt in Central Aceh in the 1950s, at that time there were many manuscripts circulating in Islamic religious schools around the Lake of Lot Tawar of Central Aceh. During the ʿulamāʾ rebellion against the Indonesian government in the 1950s, the manuscripts were transported from Central Aceh to the neighbouring district of Gayo Lues. There is no subsequent information about the existence of these manuscripts. This restricts scholars from observing Gayo precolonial history, so they rely heavily on the Dutch records and the local oral history of *këkébërèn*.[26]

During my fieldwork I was informed that there were three manuscripts in Central Aceh and in the Bener Meriah districts. I succeeded in accessing only one untitled *mantra* manuscript, written in Arabic script (*Jawi*) and kept by a member of the local House of Representatives. I and my interlocutor also visited the keeper of another manuscript. Instead of giving us access, he preferred to tell us about the cosmology of Gayo and other local mythologies. The last manuscript was kept in the village of Linge, where the former Islamic kingdom of Gayo was located, but the keeper prohibited me from accessing it, as it could lead to immediate disaster, because the world would be unable to bear the ray of light from the most beloved creation of God. He told me: "The earth will severely shake, water will flow from the soil, the sky will go dark, wind will violently blow, and thunder will strike." According to him, there was only one person, Mahmud Ibrahim, who had ever accessed it. When I met Mahmud Ibrahim at Takengen, he said that it was true that he had accessed the manuscript when he acted as regency secretary of Aceh Tengah in the mid-990s. He and his colleague read the text in bushes beside a soccer field in the village. He did not read the entire manuscript as the sky went dark and a shower started. But there was no sign of any imminent supernatural hazard. He noticed that the manuscript was *Nur Muhammad* written in Arabic script by three persons from three different backgrounds; a Gayonese, a Persian and an Arab.

The restricted access to the existing manuscripts and the attachment of supernatural beliefs to them make the text entitled 45 Articles of Linge Kingdom (henceforward 45 Articles) the focus of the Gayonese today. It is the only text widely circulating among the Gayonese and it is gaining popularity today as it has been translated into Bahasa. It is widely known as the original text about the law of the Gayonese. It appears in a printed book[27] and social media. Most notably, parts of the manuscript are legalised and included in the district regulation (Qanun) No. 10/2002 on Gayo Adat Law. The authority of the text seems to be unquestionable, despite the fact that its original text in Arabic script is missing and the translation is carried out poorly. The first known translation, which is now kept at the main library of Leiden University, was published by L.K. Ara, a well-known Gayonese poet, in 1972.[28] Some terms appear to be irrelevant to the pre-colonial time such as the use of Rupiah, the current Indonesian currency. A large number of the Gayonese, however, believe the manuscript to be original and attribute great symbolic value to it.

According to the local officials who were involved in the drafting of the Qanun on Gayo Adat in 2002, legalising some parts of the text was a political means to protect the Gayonese culture and identity amidst the universalisation of the dominant culture and ethnic politics in Aceh province. Furthermore, they explain that the Indonesian government had universalised Indonesian culture and identity under the slogan of *Budaya Indonesia* (Indonesian culture). This slogan is ambiguous, as there is no ethnic group which might represent on its own the vast diversity of ethnic groups in Indonesia. The Acehnese had fought for recognition of their uniqueness, blocking the universalisation of identity and culture. They then legalised a specific Qanun on *adat*, stressing their uniqueness from the rest of the ethnic groups in the archipelago.

The Gayonese also responded to the universalisation of Acehnese culture and identity in a way similar to the Acehnese response to the Indonesian culture. In many ways, the Gayonese are different from the Acehnese.[29] To stress the difference today the Central Aceh government has set about legalising their *adat* that was partly sourced from the manuscript of the 45 Articles. That stresses the importance of the text for the Gayonese in their ambition to protect their culture and identity from the expansion of external cultures. Legalising the *adat* was also a response to what locals consider as the moral degradation of the youth today. According to many of my respondents, including Mahmud Ibrahim and the three other state figures mentioned above, moral degradation occurs today because people start leaving their culture behind and adopt an external one as a point of reference. To deal with the social issues, they have to speak from the local cultural perspectives. Here, they find the manuscript crucial as it is the most tangible and accessible evidence about their original *adat* that speaks about morality.

The local idea of morality is normally conceptualised through the *sumang*. Article five of 45 Articles says that there are four categories of *sumang*: *sumang* in speaking, *sumang* in sitting, *sumang* in walking, and *sumang* in seeing. Similarly, crime is also classified into four categories. One of them deals with physical offences. The other three regulate sexual offences. Their differences lie in the sites where the offence was committed and the prevailing relationship between the offenders. One of them is *Muroba*, or the one who "cannot marry the guardian".[30] Islamic law does not legalise such a marriage. *Adat* law intervenes by giving *farak* or *jeret naru*.[31]

Both clauses are legalised in the Qanun No. 10/2002 on Gayo Adat law and are translated as follows:

A. Article 11 on *Sumang*

   The Gayonese *adat* law categorised the *sumang* as:

   1. *Sumang Kenunulen:* is when a man and a woman who are not a *muhrim* (guardian)/husband and wife sit in a secluded place.
   2. *Sumang Percerakan:* is when a man and a woman who are not a *muhrim* talk in an improper place.
   3. *Sumang Pelangkahan:* is when a man and a woman do not walk with their *muhrim,* husband or wife.
   4. *Sumang Pergaulen:* is when a man and a woman look at each other continuously in a crowded public place.

B. The Qanun does not define the *farak*. It only regulates the legal procedure for the enforcement of the *farak*. Point 7 of Article 19 states that offenders who have fulfilled the *farak* punishment could be re-admitted as a community member after they have:

   1. Provided and prepared enough food and organised a feast for the villagers;
   2. Sought forgiveness and repentance from Allah and asked for forgiveness from the community in a traditional ritual.

C. Article 21 of the Qanun states that intra-*bëlah* marriage may be forbidden, depending on whether a village still recognises such law. If the village still recognises such law, offenders could be given *farak* or *jeret naru*.

The Qanun also mentions that the *adat* of the Gayonese does not contradict the Divine Sharīʿa. On the contrary, it strengthens the idea that their *adat* is well maintained because of its relevance to the (Divine) Sharīʿa. Article 6 of the Qanun states that (1) the recognised *adat* law and tradition existing in Gayo society in Central Aceh have been well-preserved, since they do not oppose the Sharīʿa and (2) Sharīʿa provides guidance for practising *adat*.

Clearly the Qanun on Gayo Adat Law, that was legalised after the formalisation of State Sharīʿa in Aceh, does not consider State Sharīʿa as an inspiration and legal source for the Qanun. Even so, in the Indonesian legal hierarchical order the provincial Qanun regulating the formalised or State Sharīʿa is placed higher than the district regulation. This reflects the local thought that *adat* is essentially on a similar level with State Sharīʿa, even though they have different authority according to the state legal system. Both are the product of a human effort to translate and contextualise Divine Sharīʿa into a particular locality. Bälz calls this process the secular reading of Sharīʿa that tries to accommodate the principle of Sharīʿa within the system of secular law.[32] The actual outcome varies in time, space, and purpose.

Gayo Adat norms on public morality and premarital sex

The following discussion shows the local understanding and practices concerning the *adat* elements that are inspired by the Divine Sharīʿa. We shall investigate *sumang* (public morality) and *farak* (punishment for premarital sex offender).

Sumang

As we can see in point A, the 45 Articles text does not define every form of public morality or *sumang*. For legalisation purposes, the government of Central Aceh defines every form, as we can see in point C above. The given definitions are stricter than the everyday understanding of the norm by the community. In daily practice the Gayonese understand *sumang* as a social morality norm, one that not only regulates gender interaction, but also interaction between different age-groups and social structures. Both male and female are equally subjected to the same standards.[33]

The different interpretation of *sumang* in the Qanun from daily practice is seen in the whole form of *sumang*. The first is the *sumang përcërakën*. According to my informants, the *sumang* observes the place and the duration of the talk. In actual practice, a man and woman are advised to talk in the open and for a limited time. In the past this norm challenged young lovers who wanted to have a romantic date. Since they were prohibited from having a long talk, a young couple used to meet in quiet hidden places. During the night a man would sometimes visit a

woman's house and hide under her room. Informants who got married before the 1980s were familiar with this. They called it "*merojok*" (literally, staking). The Gayonese houses in the past were constructed on high wooden stilts (*rumah panggung*) allowing people to walk or sit under the house. A man would sit directly under the floor of his girlfriend's room, so that they could chat in whispers or hand notes through gaps in the wooden floor. This was done in obedience to the norm and for fear of the consequences if the man got caught.

Ami, a woman of Chinese descent, recalled such an incident. When she was a teenager in the 1970s, she safely went everywhere in daytime, and somebody from her village would accompany her upon request. No man dared to reject a woman's request from the same settlement for a companion, because a woman was the most protected member of the community. Moreover, it was considered as a request from a family member. A man from her village also could not date her, as it was prohibited by the norm. Since she was well accompanied and protected, a man from the neighbouring village did not dare to flirt with her. "I am Chinese, but I was also subjected to this norm. I was feeling safe because we were tied like family. We protected each other. Dating was tough and very challenging in the past. Particularly during the daytime. Not because the couples were shy, but because of the risk of being beaten by men from my village if he got caught."

In contrast to the definition as stated in the Qanun, according to Yusen Saleh, the Acting Head of the Adat Council of Central Aceh, *sumang përcërakën*, is not exclusively meant to communicate between a man and a woman. It also governs communication between a younger and an older person, where Gayonese are expected to communicate with each other in a proper manner and should address with a specific kin term (*tūtür*). The *tūtür* organises proper conduct and attitude that sets the mode of speaking, body stances, marriage possibilities and cooperation. The *tūtür* follows the family's lineages and is generational. A son of a younger brother has to say "big brother" (*abang*) to the son of an older brother, following the generational structure of the father or mother, even if the son of the younger brother is ten years older than the son of the older brother. This also applies to the external family group (*bëlah*). The most senior *bëlah's* family member will be addressed with a higher *tūtür* such "grandfather" even if he is an infant. This depends on the relationship that was established in the community.

The members of a *bëlah* or family group do not necessarily share a common ancestor.[34] They may originate from diverse social or even ethnic groups. The *bëlah* was a small group of people who had initiated the establishment of a settlement in the past. Awan Lewa, who was in his nineties when we met, explained that, in the past, unrelated individuals who shared a rice field decided to establish a new settlement. There they agreed to be tied as a family and set the *tūtür* for themselves. The *tūtür* was based on the age of the members if they did not know their relational standing concerning family lineages. However, as they usually came from the same village, they developed the *tūtür* following the original *tūtür* of the place of origin. Later, more members from diverse social divisions and ethnic groups joined the first inhabitants and set up new kin terms positioning themselves in the social structure. The *tūtür*, indicating the

social structure, has been passed down to the present time, and the Gayonese of today accept it as it is, understanding when to say "*ēngâh* (uncle)" to an infant in the same neighbourhood. The *tūtür* has become ambiguous for the current generation because of, among other things, marriage and migration from one place to another. The youth, who have commonly been in touch with external cultures, are also reluctant to be addressed following the standard *tūtür*, particularly by those who are of the same age. To track the relationship, a Gayonese is accustomed to ask a new acquaintance "*urang sih kam?* (Which people are you from?)". Such a question establishes the ancestral origin of kinship or clan. It does not ask where one is living, but to which kinship group one belongs. An enquirer expects to learn one's father, grandfather, or someone he thinks he knows from one's lineage. Such a question is especially crucial when the acquaintance is his or her child's potential spouse in order to prevent endogamous marriage.

The societal understanding of a second form of *sumang*, the *sumang kënünülën,* also differs from the definition given in the Qanun. This norm is observed in a family group (*bëlah*)*,* village gathering or ritual, where it is decided who is offered a better seat and served first. Like the *sumang përcërakën* norm, the s*umang kënünülën* regulates the relationship between a man and a woman, mainly when a man visits a woman's house in the absence of her husband, or widows or widowers in the absence of relatives or a cousin. The Qanun defines that this norm is breached when a man and a woman who are not a *muhrim* (husband and wife) sit in a secluded and quiet place. The same situation is called *khalwat* by the Qanun on the Islamic penal code of State Sharīʿa of Aceh province. Both concepts of *sumang kënünülën* and *khalwat,* however, originate from two unrelated contexts and historical backgrounds. The s*umang kënünülën* is a cultural concept that is transmitted from the past to the present. It becomes the source of a local attitude and the reason to observe public morality. The *khalwat* is the contemporary concept of public morality that is formulated by Aceh scholars and politicians. Later, both *adat* and State Sharīʿa concepts and authority were merged into the executive work of imposing the concepts by the WH *Kampong* unit.

The third norm, one that is different in the societal understanding of *sumang* and the written Qanun, is the s*umang pëlangkahan*. Until the late 1980s, according to my elderly informants, this norm was observed when a single man or a group of men would change direction if they came across a group of women approaching from the opposite direction. No woman could walk out on her own but should be in a group or with a family companion, and then the whole *bëlah* was considered as a family. The Qanun defines this situation as "An unmarried man and woman are prohibited from walking together." This reducing definition appears to contextualise the norm into the prevailing situation, in which *bëlah* ties and social responsibility giving protection and security have decreased following urbanisation and modernisation in the area. In the past, a woman was prohibited from walking alone to the wood to go harvesting without a male companion from her own *bëlah*, a person originally considered as family. This was from a fear that she would be threatened with harm.

The last difference is in the *sumang pergaulan* norm. The Gayonese know this norm as *sumang pënèngonën* (staring) and it is also mentioned in the 45 Articles. The Qanun changes the word "*pënèngonën*" to *pergaulan*, which literally means social interaction. However, the government defines *pergaulan* as a man and a woman flirting with each other in public. In everyday use, the word *pergaulan* is used to address unacceptable social interactions in contemporary youth behaviour, which is perhaps what the government likes to address. Traditionally, however, the Gayonese understand that *sumang pënèngonën* governs a larger aspect of social life than flirting and the waywardness of youth. According to many of my informants, it governs the dress and appearance of adult Gayonese in public. Generally, people are expected to dress in ways that are not sexually provocative.

The *sumang* norms, according to Yusen Saleh, Head of Gayo Adat Council of Central Aceh, are all designed to prevent unlawful sexual intercourse as stated in the Qurʾān. He says: "this is the way our ancestors protect their posterity and, at the same time, implement religious orders to avoid unlawful sexual intercourse". He refers to a Qurʾānic verse to support his argument: "And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way" (17: 32).

Today, many parts of the original *sumang* norms have faded from attention following changes in social life. The most noticeable *sumang* norm that remains today is the *sumang përcërakën.* However, some kin terms are also missing and replaced by a popular term from Malay/Indonesian, such as "*ayah* (father)" replacing "*ama*", "*mäk cìk* (aunty)" replacing "*ìbi*", "*paman* (uncle)" replacing "*pön*", "*kakak* (sister)" replacing "*aka*", and other substitutions of kin terms. Other norms feature in the speech of old people to satirise the misbehaviour in today's society. During a *pengajian* led by Mahmud Ibrahim at the district grand mosque, he uses the term *sumang* quite often to address the current moral degradation. For example, he says:

> People now do not have *sumang* anymore. They have left their *adat* behind for something new that does not belong to them. At home, we forget to introduce *sumang* to our children. Maybe we think it is unimportant for the current life style. But look what we have heard from the news so far! Many young couples are involved in unlawful sexual intercourse. They are then forced into a marriage. After three years, they get divorced. They don't return to our 'shoulder' in one piece, but in two pieces and maybe more (daughter/son and his/her infant). They then become our dependants.

Ibrahim's speech reflects an elderly nostalgia about a moral standard from the past, when *sumang* norms had great authority over them. When they come to power they try to revive the norms to bring back the minimum standards of morality from the past to rule the current situation that they think will turn to moral degradation.

Farak

This section deals with the consequences of committing unlawful sexual intercourse. Those committing such an offence are considered guilty of transgressing

or not heeding the local moral standard of the *sumang.* Here I discuss only the punishment for a premarital sex offence called the *farak*, an Islamic penal ruling on premarital sex contextualised in the local *adat*. According to Mahmud Ibrahim, a respected scholar and bureaucrat, the Gayo *adat* is a distinct system that promotes virtue and revives religious teachings within the community. The local understanding of the *adat* as a "fence of religion" implies that the Gayonese in the past formulated *adat* practices that were not necessarily in line with any interpreted Sharīʿa, as long as the *adat* did not oppose the principle of Islam but encircled (protected) Islam. As a result, according to Ibrahim, the current Muslims, particularly Muslims from outside, would see that *adat* norms and practices are irrelevant to Islam. However, according to him, *adat* is like a fence for a house. It protects and, at the same time, beautifies the house. He exemplifies this by mentioning the prohibition of endogamous marriages. Ibrahim, supported by Yusen Saleh in a different conversation, explains that Islam allows believers to marry a member of their own *bëlah*. However, *adat* blocks that possibility, while Islam justifies this contradiction. Ibrahim says:

> religion also teaches us to maintain social harmony and treat other people as brothers. By allowing endogamy, a domestic conflict could influence the harmony of the extended family member living in the same territory. This would ruin the balance of the *bëlah*. Islam does not suggest such a situation.

That is the basis for the agreement made by Gayonese in the past to prohibit endogamy. If the norm is offended, usually because the offenders commit premarital sex, the offenders are forced into an endogamous marriage and then expelled temporarily from their community. The offenders' dignity and social status will be restored once they have fulfilled the *adat* penalty.

There is insufficient information about the initial construction of the *farak*. Many of my respondents view the *farak* as an integral part of the *adat*. Some *adat* elites attribute *farak* to the 45 Articles. I assume that the construction and the practice of *farak* may be an outcome of contextualising the Divine Sharīʿa into the *adat.* The word *farak* is a specific *adat* legal term that is uttered only in the context of legal expressions. *Farak* may be derived from the Arabic word "*faraqa*", which means to disconnect something from its origin. Much like the adaptation of the word *adat* from Arabic *ʿāda*, *faraqa* was adopted and modified into the Gayonese language to become *farak*.

Farak is also regulated in most Sunni Islamic legal schools except Ḥanafism. These schools suggest exiling the offenders for one year in addition to flogging. They referred their legal argument to a *ḥadīth*: "when an unmarried man commits unlawful sexual intercourse with an unmarried woman, they should receive 100 lashes and be exiled for one year. If they were married, they shall receive 100 lashes and be stoned to death."[35]All Islamic legal schools, except Ḥanafism, agree that the 100 lashes should be followed by banishment for one year.[36] Perhaps, in the early introduction of Islam, flogging was not introduced to Gayo, but instead only the exile. The punishment was then embedded into the cultural system and

became crucial to maintain their social arrangement. Gayo in the past established a specific legal procedure to free the offender from the penalty. Offenders are advised to buy a young water buffalo in the market. After one year, when it grew enough, it should be served for a feast for all internal and neighbouring *bëlah* members. The feast is a moment where the offenders should ask for forgiveness and reacceptance to be part the *bëlah*. It is also a moment to restore the couple's and their family's honour.

According to Ichwan, a secretary of the village Lot Kala in Kebayakan, in the old tradition the water buffalo had to be submitted after one year in exile. Today the practice has changed. A wealthy family could buy a big water buffalo and hand it to the village overnight. Taking that into consideration, the duration of the exile would be lessened to three or four months. Although a rich man could afford the water buffalo straight away, he could only submit it after four months. This practice, however, is different from one village to another.

In practice, the Gayonese do not apply *farak* to premarital sex offenders, but instead to those violating endogamous marriage. Since the unlawful sexual intercourse is considered a shameful deed, it should be concealed from others. Only if a pregnancy results the deed is made known. But it is kept strictly secret among the core family to be shared only with the village council. That is because they are necessarily involved in every wedding ritual ceremony and similar events for their members.[37] Marrying the offenders is the only solution to keep the secret and force the man to take responsibility for his behaviour with the woman.

The confidential information then becomes a "public secret" once they are wed, although it is quietly organised. Since endogamous marriage was prohibited, society would quickly assume that such a wedding occurred because of premarital sex. This situation often forces offenders to live in exile permanently. Although they had paid their penalty to the village, that only reclaimed their position and honour in the social arrangement of the *bëlah*.

During one of my visits I met Hidayat Syah, an imam of the village of Jongok Meluem, trained under the instruction of Saleh Adry, one of the most influential local scholar, second in rank in the Ulama rebellious movement of Darul Islam in Central Aceh. He explained that marrying a couple guilty of premarital sex is a punishment itself. According to him Islam promises a virgin man will only marry a virgin woman. He then takes a Qurʾān with Indonesian translation and shows me the verse: "Let no man guilty of adultery or fornication marry, unless a woman similarly guilty, or an Unbeliever. Nor let any but such a man or an Unbeliever marry such a woman. To the Believers such a thing is forbidden" (24:3). Based on that verse, according to him, it is important to find a virgin partner to marry. Anyone committing premarital sex will not be able to find a virgin to marry. The promise of religion will not be fulfilled to them. He said:

> People may think, when we force premarital sex offenders into marriage, it is purely *adat* law that is against the religion. But, look, *Adat* (culture) revives Islamic teachings. This stimulation may appear as *bidʿah* (innovation or improvisation), but with it (the *bidʿah*), we can practise Islam in our

> community. Islam does not carry specific culture, does it? It only brings universal teachings which can be brought to life only with culture.

Zubaidah, a member of the Gayo Adat Assembly (MAG, *Majelis Adat Gayo*) in Bener Meriah district, argues that the marriage of premarital sex offenders to each other is also suggested by the Shāfiʿī and Ḥanafi schools. She told me that in Gayo *adat*, it only means to provide social security and protection for the woman and the potential foetus: "The man cannot only enjoy reaching the earthly heaven (*surgë dënië*) and then leave the woman without responsibility. They have enjoyed it together and they have to take the consequences together too." She adds further that the marriage does not purify and free offenders from the sin of *zina*. The offenders can only be freed from the sin if they fully repent to God. Any given punishment only has social and cultural significance. There is no religious significance either for the community or the offenders. She says: "That is their business with Allah. Our concern is the social structure and other earthly matters such as inheritance and child custody. They have to be guaranteed and protected. Our social order has to be stabilised."

The *farak* has been enforced differently by the Gayonese from one locality to another. In some villages, even in the same subdistrict, such as in Kebayakan of Central Aceh, a water buffalo can be submitted within a week. Some consider the water buffalo as a substitution for the exile. If offenders can submit the penalty straight away, they are freed from exile. In some villages, such as Lot Kala and a remote area such as Linge, the penalty has to be sequential, so that the offenders are allowed to submit the water buffalo only after the exile is finished. I observe that these differences are the outcome of the global campaign for human rights and a citizen's right to live wherever they wish within Indonesia's jurisdiction. Some village elites are wary of being sued by the police if they force *adat* law on those who do not culturally belong to their community. They then strategise to find the balance between enforcing the *adat* punishment and respecting an individual's rights. For the offenders, they have no option but to fulfil the *adat* punishment, since access to social assistance, which is controlled by the *adat* elites, is highly important for them.

We will now observe the general practice of *farak* in two districts populated dominantly by the Gayonese, Bener Meriah and Central Aceh. In Bener Meriah, the *farak* was revived by the Hakim *bëlah* in 2008, when a young couple from the Hakim Weh Ilang village was forced into endogamous marriage because of committing premarital sex. For some time this was an issue among the Gayonese in the district. Since the early 1990s there had been no penalty for endogamous marriage, although it would have brought shame to the family and the *bëlah* members. Some people took the view that *adat* was adjusting to current developments, in particular, to the increasing mobility of people from one place to another. This mobility brings together individuals with diverse backgrounds into one village. In such a village enforcement is difficult, because the *farak* is originally a punishment for an intra-*bëlah* member involved in premarital sex, and for other sexual and major offences, who are then obliged to marry.

For Alwin Alahad, district head of Hizbut Tahrir Indonesia, a radical Islamic organisation, practising *farak* is not only a matter of reviving the *adat* norm related to morality and sexuality, but it is also a matter of upholding religious teachings related to *zina*. Alwin is a young man from the Hakim *bëlah* living in Hakim Weh Ilang, a village in Bener Meriah. As a radical Muslim activist he regularly campaigns for a radical Sharīʿa and politics based on the *caliphate* system in the district, while the organisation itself campaigns across Indonesia and worldwide. A month after the young couple committing premarital sex were wed he approached all the Hakim *bëlah* members scattered across Bener Meriah, Central Aceh, and Gayo Lues districts, to initiate an annual clan feast (*mangan urum)*.

In 2009, after passing through hard times, he succeeded in gathering all the members of the Hakim *bëlah* to the feast tradition. The feast was organised in Alwin's village. During the feast, he delivered the first speech about the importance of the *farak* and *mangan murum* traditions. In his speech Alwin said:

> What happened to the couple (who were involved in the unlawful sexual intercourse) was a shame. From now on it should be avoided. Our ancestors conceptualised *sumang,* prohibited endogamy and set the *farak* as a penalty to prevent such a deed. As Muslims, however, we must firstly follow the Qurʾān. The Qurʾān instructs us to punish premarital sex offenders with 100 lashes in front of the public. As true Muslims, we have to accept it. Do you agree?

Alwin asked the audience. "Well, that is too hard. We don't have the heart to enforce that," said an old attendee. "Well," Alwin responded, "we have an alternative punishment in our culture. That is *farak.* It is the only way to prevent *zina* in our family (the Hakim *bëlah*), since there are no other alternatives for us." He then explained the importance of the *mangang murum*, a traditional event where each member could get to know each other. By doing so, every single member of the Hakim's *bëlah* would know those whom they were prohibited from marrying. He said, "We are a family. As a family, we have to know each other well. And as a family, we cannot marry each other." Since the reunion has been revived, according to Alwin, no sexual offence has been observed.

In Central Aceh, *farak* has been consistently practised in the region around the lake of Lot Tawar and in the higher land, such as Linge. One place I looked at was Kebayakan subdistrict. In Kebayakan the practice of *farak* is forced on the village members. Long after the independence of Indonesia, the *bëlah*'s politics and territory shifted to the Indonesian village system. Various *bëlah* members lived side by side with other *bëlah* members in one village. They were no longer tied to their original *bëlah*, but to the village that included several *bëlah* members and even other ethnic groups. The *mangan murum* tradition in Kebayakan was witnessed for the last time in the late 1970s. The absence of this tradition was a significant indication of the loosening of ties to the *bëlah*. The shift in the social arrangements from *bëlah* to village changes the jurisdiction of

the *farak* from being applicable to an internal *bëlah* to being applicable to the entire community of the village. This shift effectively removes the application of the *farak* from *bëlah* members living in different villages. This contrasts with Hakim *bëlah*, which would validate *farak* for all *bëlah* members, including those living in other districts. The limitation faced by the Kebayakan community is tackled by the WH *Kampong* unit programme promoted by the district DSI (see below).

The most recent case of *farak* in the Kebayakan subdistrict occurred in January 2014. A young couple from two different *bëlah*s (Lot and Ciq) in the village Lot Kala were involved in premarital sex and consequently forced into marriage. The *adat*, the village institutions, however, did not agree with the marriage because it violated the *adat* and decided to penalise the offenders instead:

1. *Gërë igënapi* ([the village] will not support the marriage)
    i. The members of the offenders' *bëlah*, the member of Lot Kala village, as well as the council of Lot Kala village will not attend the wedding.
    ii. The administration of Lot Kala village will not issue any related document to legalise the marriage.
2. *Farak*
    i. The bridegroom will be expelled from Lot Kala Village and cannot visit the village, either for attending a ritual for the living or the dead or family events.
    ii. The administration of Lot Kala village will issue a migration document for Party I and Party II to any village that they wish to domicile in.
3. *Dënë* (penalty)
    i. Submit a water buffalo
    ii. [Submit] Sufficient rice and funds
4. *Niró Määf* (asking for forgiveness)
    i. Ask for forgiveness from all the members of the village.
    ii. When Party I and Party II have fulfilled the aforementioned *adat* sanctions, they will be allowed to return to Lot Kala Village and be reconciled with Lot Kala village members through a reconciliation event to restore the name and dignity of Party I and Party II as well as their families.

(The last point means that their bond as husband and wife will be socially and culturally recognised.)

We have seen in this section that *adat* can be revived in areas where Sharīʿa has been formalised. State Sharīʿa is seen as new and strange. It is less preferred by the Gayonese. It is what the local people considered moral degradation. The revived and legalised *adat* norms are then used by the local government to support the enforcement of State Sharīʿa, which was limited by institutional authority and meagre financial and human resources. In doing so, the local government created the WH *Kampong*, which reinforces the *adat* norms and is legitimated and financially enjoys state support.

WH *Kampong*

The District Agency for Sharīʿa (DSI, Dinas Syariat Islam) of Central Aceh has utilised *adat* norms by creating the *Wilayatul Hisbah Kampong* unit[38] (henceforward WH *Kampong*), the unit investigating the enforcement of Sharīʿa in the village, a unit responsible for monitoring the implementation of State Sharīʿa at a local level. The WH *Kampong* was created in 2011 when Saleh Samaun was in charge at the DSI office (2011–2014). He thought limiting the state in enforcing State Sharīʿa could be tackled only with the support of the *adat* institutions and the youth of the village. The youth is traditionally considered "a fence of the village" that provides security and assistance for community affairs.

The Gayonese, as well as the Acehnese, believe that *adat* is compatible with Sharīʿa. Feener provides general information about the cooperation of the State Sharīʿa Police (the State *Wilayatul Hisbah*) with the *adat* institution. He takes an example from Peureulak, East Aceh district, where the state WH handed over 25 cases of *khalwat* to the headman of the village, which is one of the *adat* institutions, to be investigated by *adat*. According to him it reflects the inability of the WH to carry out their primary assignments in monitoring the implementation of State Sharīʿa. It reflects a perceived compatibility between the State Sharīʿa and *adat*.[39] The necessity to create the WH *Kampong* unit derives from the fact that the DSI office is limited with regard to its authority, budget and personnel. Moreover, the DSI has no line of coordination, and certainly no line of command, to the state WH agency that is specifically assigned to monitor the implementation of State Sharīʿa. The state WH was removed from the DSI to be included in the Civil Investigator Agency (Satpol PP, *Satuan Polisi Pamong Praja*) in 2008.[40] Hierarchically, both DSI and Satpol PP occupy the same administrative tier.

The State WH was removed by Article 244 of the Law on the Governance of Aceh in 2006, which was an outcome of the peace agreement between the Aceh rebellious movement and the Indonesian army. Many people thought the exclusion of WH from the DSI was the cause of the decrease in State Sharīʿa enforcement.[41] In Central Aceh, the State WH had less than fifteen personnel, among whom only three were permanent staff. This made enforcing the State Sharīʿa impossible over a total area of 431,839 km^2. In view of all this, initiating the WH *Kampong* was crucial for the success of the DSI. Unlike other parts of Aceh, where the state WH cooperated with the community and the WH *Kampong*,[42] in Central Aceh the state WH was not linked with the community and the WH *Kampong*.

The WH *Kampong* members in Central Aceh are the youth of the targeted villages to be monitored by the Sharīʿa around the popular tourist areas of the Lake of Lot Tawar and Takengon city. The area is forested, scrubby and quiet. There the youth are carefully appointed by village institutions, who hand their candidate's name to the DSI. They are trained and backed up by higher officials, including a number of high-ranking military and police officers. The involvement of military and police institutions is designed to provide the WH *Kampong* with protection if they should be troubled by military or police officers who are unhappy with the

WH *Kampong* activities. Indeed, fights between low-ranking military and police officers and the WH *Kampong* have occasionally occurred.

The creation of the WH *Kampong* reflects, as Feener points out, the instrumentalist paradigm of law that has pervaded social change in government administration at the local level in Indonesia.[43] The instrumentalism is driven by the limitations on the DSI to enforce the State Sharīʿa by themselves. Consequently, the state has to find an alternative to make its programmes successful. The alternative is found in the *adat* which is believed to be inspired by the same source of law (the Divine Sharīʿa) and having the same objective to control public immorality.

Initially, in 2011, WH *Kampong* was formed in nine villages of five subdistricts around Lake Lot Tawar. During the year, the DSI of Central Aceh received 24 reports of offences relating to immoral acts. In 2012 the number drastically increased to 315 cases, when the monitored areas were expanded to 23 villages in five subdistricts. The state also authorised *adat* institutions to tackle other public immoral acts and *zina* offences. The 315 cases included 282 minor cases and 33 major cases from the villages (see Table 7.1). By contrast, during the same period (2011–2012), the Mahkamah Syariah did not try any case relating to the offence of *khalwat*/*zina* as determined in the Aceh version of State Sharia.

Table 7.1 Data collected from Dinas Syariat Islam Aceh Tengah (the Central Aceh District Agency of Sharīʿa)

No	*Subdistrict*	*Village*	*Number of cases*		*Subtotal*	*Note*
			Minor	*Major*		
1	Bebesen	Belang Kolak II	–	2	2	
		Keramat Mupakat	2	–	2	
		Simpang Empat	1	8	9	
		Kemili	–	1	1	
		Tensaran	14	–	14	
		Kala Kemili	–	6	6	
2.	Lut Tawar	Gunung Suku	13	–	13	
		Rawe	7	–	7	
		Toweren Toa	3	–	3	
		One-One	7	–	7	
		Bujang	2	–	2	
		Hakim Bale Bujang	2	–	2	
3.	Kebayakan	Mendale	59	8	67	
		Jongok Meluem	14	–	14	
		Lot Kala	2	–	2	
4.	Bintang	Kala Bintang	11	–	11	
		Kelitu	40	–	40	
		Gegarang	50	–	50	
		Mengaya	9	–	9	
		Bamil Nosar	18	1	19	
5.	Pegasing	Belang Bebangka	14	7	21	
		Pedekok	9	–	9	
		Tebuk	5	–	5	
Total		**23 Villages**	**282**	**33**	**315**	

According to Sarwani, the head of the law division of the district DSI (2012–2015), dating in secluded places falls under the light case category. Offenders in this category would be ordered to leave the place or be given a written warning. Meanwhile, engaging in *zina* would be categorised as a serious offence. The *adat* tribunal would deal with both light and more serious cases. The tribunal has no right to detain the offenders but would not release them until each headman or representative and the parents were present. In contrast, the Qanun No 14/2003 on *khalwat* did not distinguish between *zina* and dating and sexual intercourse. Both fall under the *khalwat* category and incur identical punishment. Later, the Aceh government distinguished between *zina* (premarital and extramarital sex) and *khalwat* through the Qanun No. 6/2014 on *Jinayah.* All legal situations discussed here happened before the Qanun on Jinayah was officially enforced in October 2015.

Central Aceh government standardises the number of the *adat* penalties depending on the offence. The fine is called *Pëmbasöh Lantè* (cleaning floor).[44] A light offence would be fined around IDR 300,000 to 500,000. More serious offences incur fines from IDR 1,000,000 to 1,500,000. The fine would be shared among the youth, who are traditionally considered as the protectors of the village from any harm and immorality, and with the member of WH *Kampong*, to supplement their poor salary. In other parts of Aceh province the *adat* penalty for the same offence is locally decided. It varies from sanctions, such as submitting a goat for the communal feast, to other punishments decided by local leaders.[45]

In addition, the DSI granted IDR 1,000,000 as a reward for every reported case that had been previously processed in the *adat* tribunal. The reward would also be an additional income for both the WH *Kampong* members and the village. From 2012–2013 the village of Mendale, located on the North coast of Lake of Lot Tawar, had itself processed more than an average of 30 cases per month, including light and serious cases. Hasan Basri, one of the village apparatus, said that sometimes he had to process five cases in a day. Sometimes it was at night. He said,

> People offended *adat* and religious teachings at very different times of day. We even caught offenders at noon. And, since no parent and headman showed up, we had to detain them, and they had to stay at my home until their parents came in the early morning.

However, according to Hasan Basri, few of the cases that he handled were reported to the DSI. He also faked offenders' names to protect their dignity. There were also some couples who went on to have a serious relationship and who sent him wedding invitation cards.

The DSI provided some training and some modules for *adat* institution members and WH *Kampong* officers. Results exceeded the expectations of the DSI. The number of reported cases was beyond the budget allocated for the reward. The DSI was forced to delay payment of a fee due to Mendale village of IDR

15,000,000. Firmansyah, a member of the WH *Kampong* from Mendale village, told me that initially the DSI was incredulous, suspecting that the village had made up the report to get the reward. Officers from his village were the most suspected as they reported more cases than others. He was furious. He shared his resentment with a friend who was a police officer. The officer then taught him how to collect evidence using a camera. During the training, the police also participated in monitoring the offence. He showed Firmansyah how to crawl silently into the bush to collect the evidence: "He joined me twice to perform the monitoring assignments. It was like semi-military training, but it was unofficial (as it was a personal offer of assistance from a friend who is a police officer)." Since he was able to provide valid evidence in the form of photographs and video, Firmansyah's reports could not be denied any longer.

However, Satpol PP, which supervises the state Sharīʿa officer, disagreed about assigning the village youth to take over their duties, although they realised their limitations in terms of personnel and budget. They worried that youth activities would lead to vigilantism. Indeed, according to Sarwani, there were many reports from offenders that they had been robbed by those who claimed to be members of the WH *Kampong*.

> I received many complaints. I immediately called the WH *Kampong* members, where the offenders were being robbed. I asked the complainants to point out to me the robbers by recognising their faces. Sometimes I showed them our WH *Kampong* photos that we had collected. However, the offenders failed to recognise the robbers.

This vigilantism and the protest from Satpol PP stopped the WH *Kampong* programme in 2013–2014. Although the DSI claimed it had been a success and proposed an extension of the programme, the head of the district DSI failed to convince the regional secretary about the importance of the WH *Kampong* unit in supporting the enforcement of State Sharīʿa.

In the coastal part of Aceh province David Kloos observed that the enforcement of the State Sharīʿa had given villagers the authority to control public immorality in the village. In the name of State Sharīʿa, using the local *adat* norms, villagers carry out vigilante actions. The violent actions are seen as a local way to support the enforcement of the State Sharīʿa, in which the state legal agencies appear to allow such actions. Kloos observes that the vigilante actions cannot simply explain the outbursts through which villagers try to purge the moral degradation in their villages. In many cases they try to defend the "good name" of their village from offenders who are mostly youths. [46]

Among the differences between the coastal Aceh and the Gayo community concerning vigilantism is the involvement of the state in organising the *adat* institution. Through the cases studied by Kloos, we see the absence of the state legitimation and control to prevent villagers from acting violently. Consequently, offenders against State Sharīʿa, who are automatically also considered to be offenders of the local *adat*, are violently punished. Village leaders agree to such

punishments although at the same time they argue that such violence is not considered *adat*. The absence of the state's legitimation makes it complicated for offenders who have suffered violence to file their complaint. In Gayo, the district government, supported by provincial government, controls the *adat* procedures to enforce its norm and the activities of the WH *Kampong*. The control enables the local government to collect complaints from offenders suffering violence.

The complaint was one of reasons that the regional secretary terminated the WH *Kampong* programme in 2013–2014. The termination was contested by headmen around Lake Tawar and Takengon city. Without state support the village did not dare to tackle the increasing public immorality. In May 2015, after the protest, the DSI held a meeting with all the protesting headmen. The meeting was mainly to discuss the role of Sharīʿa and *adat* in facing the increasing public immorality in Central Aceh. Some of the headmen proposed the legalisation of *farak* as an alternative for State Sharīʿa.

During the meeting, Mahmud Ibrahim, who is the serving head of the Baitul Mal Agency, offered to use *zakat* to partly fund the WH *Kampong* unit. In Central Aceh, *zakat* is collected by the imam of a village, who then hands it to the Baitul Mal Agency. The agency will distribute the *zakat* for many different charitable purposes, for the shelter of the poor, education and the like. All attending headmen agreed with Ibrahim's proposal. With the public acknowledgement (of the village headmen) Ibrahim did not have any burden about using the *zakat* to support the WH *Kampong*. The DSI continued the existence of the unit with a Decree from the Regent of Central Aceh No. 451/551/2015. It included police and military officers, who were assigned to the village as members of the WH *Kampong*. The Sharīʿa-monitored areas were also expanded to 31 villages in the five subdistricts. All of them were villages around the Lake of Lot Tawar and Takengon city.

Conclusion

Scholars have observed many forms of contextualised Divine Sharīʿa in different Muslim communities. This chapter has shown some overlooked outcomes of the adaptation of Islamic penal law in Gayonese Muslim localities in Indonesia. These appear in Gayo *adat* norms on public morality and premarital sex. Inspired by Divine Sharīʿa, these norms have developed to become important cultural aspects that sustain the Gayonese social order. Accordingly, violating the norms is not only perceived as a violation of the religious order, but it is also considered as harming the social structure. Thus, for example, the prohibition of Islam regarding *zina* (in this chapter, premarital sex) was adapted by the Gayonese to the idea of shame. There are four forms of shame, all of which prevent the Gayonese from committing *zina*. Those who are involved in premarital sex will be forced into an endogamous marriage, which will be followed by temporary banishment from the community. The punishment is meant to enforce moral standards by communicating the seriousness of the crime of the offenders, and to warn others about the consequences of harming the social structure. From the offenders' perspective, by

accepting the *adat* punishment they are seen to be decriminalised as deviants and they can reclaim their position and honour within the local social structure.

The outcome of the assimilation of Islam is that the Gayonese believe that their *adat* is also part of Sharīʿa. This "Adat Sharīʿa" has its very roots in the local culture that cannot be replaced by another idea of Sharīʿa in the form of the State Sharīʿa, which has just been introduced by the Aceh government. Although the State Sharīʿa has the state's power and established legal organisations to enforce its law, it cannot suppress the *adat* which is also allowed to be revived by national and provincial governments. This shows that even in an area where Sharīʿa is formally introduced by the government, *adat* can still be revived, even to challenge the State Sharīʿa.

The Adat Sharīʿa and the State Sharīʿa are equally considered an actual legal ruling of the Divine Sharīʿa that were produced at different times, in different places and for different purposes, which compete to play their individual roles in directing the community life in accordance with the Divine Sharīʿa. They may be competing with each other, as we have seen in the cases of *zina* that are not in line with the standard Islamic law. In practice, however, the law of the state, though having the power of the state, is still not able to penetrate the *adat*, which has the power of the community. Both then have to cooperate through a certain programme (for the Gayo it is the WH *Kampong*) to support each other's interests.

These observations of the situation as it is today will stimulate further research into the process of the assimilation of Islam into local culture in the past, in order to see how the Islamic penal law was assimilated and what texts were referred to by local people to allow Islam to become rooted in the local culture. These matters are beyond the scope of this chapter, which has observed the influence of the translated manuscript of the 45 Articles of Linge Kingdom for the Gayonese, which has become the basis for *adat* revival today. The existence of that manuscript and other manuscripts, such as *Nur Muhammad* written by a Persian, an Arab and a Gayonese, reveals earlier Gayonese connections with the larger Muslim communities around the Indian Ocean.

Notes

1 For historical background about the Aceh's State Sharīʿa see Tim Kell, *The Root of Acehnese Rebellion* (Ithaca, NY: Cornell Modern Indonesia Project, 1995); Nazaruddin Sjamsuddin, *The Republican Revolt: A Study of the Acehnese Rebellion* (Singapore: Institute of Southeast Asian Studies, 1985); Edward Aspinall, "From Islamism to Nationalism in Aceh, Indonesia," *Nations and Nationalism* 13, no. 2 (2007): 245–63.

2 Sher Banua L. Khan, "The Sultanahs of Aceh, 1641-99," in *Aceh: History, Politics and Culture*, eds. Arndt Graf et al. (Singapore: Institute of Southeast Asian Studies ISEAS, 2010), 3; Amirul Hadi, *Aceh, Sejarah, Budaya, Dan Tradisi* (Jakarta: Yayasan Obor Indonesia, 2010), 154–60; Denys Lombard, *Kerajaan Aceh zaman Sultan Iskandar Muda (1607–1636)* (Jakarta: Kepustakaan Populer Gramedia KPG, 2006).

3 Pocut Haslinda Syahrul, *Silsilah raja-raja Islam di Aceh dan hubungannya dengan raja-raja Islam di Nusantara*, Kronika Aceh (Jakarta: Pelita Hidup Insani, 2008).

4 Al Yasa' Abubakar, *Syari'at Islam Di Provinsi Nanggroe Aceh Darussalam: Paradigma, Kebijakan Dan Kegiatan* (Banda Aceh: Dinas syari'at Islam, 2005).

5 Syahrizal Abbas and Syamsul Rijal, *Dimensi pemikiran hukum dalam implementasi syariat Islam di Aceh* (Banda Aceh: Dinas syari'at Islam di Aceh, 2007).
6 Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (London: Hurst, 2005), 31.
7 The legalisation of State Sharīʿa follows the legal framework of the Indonesian legal system, which adopts positive law from the Western legal tradition. Hierarchically, the legalised Sharīʿa in Aceh province is equivalent to regional regulations in other part of Indonesia, all of which have lower authority than national law. However, in Aceh province the Indonesian government grants a special autonomy. That allows the province to enforce Sharīʿa inspired law, which here I call State Sharīʿa, and to formalise *adat* law and *adat* institutions. In practice Aceh now enforces three penal law systems in the province: a national penal law operated by the district court; State Sharīʿa operated by Mahkamah Syar'iyah or a religious court in another province; and *adat* law operated by the *adat* institution in the village. For further readings see, for example, Abubakar, *Syari'at Islam Di Provinsi Nanggroe Aceh Darussalam: Paradigma, Kebijakan Dan Kegiatan*; Al Yasa' Abubakar, *Penerapan Syariat Islam Di Aceh: Upaya Penyusunan Fiqih Dalam Negara Bangsa* (Banda Aceh: Dinas Syariat Islam, 2008); R. Michael Feener, "State Sharīʿa and Its Limits," in *Islam and the Limits of the State: Reconfigurations of Practice, Community and Authority in Contemporary Aceh*, eds. David Kloos, Annemarie Samuels, and R. Michael Feener, Leiden Studies in Islam and Society, Vol. 3 (Leiden/Boston: Brill, 2016), 1–24; R. Michael Feener, *Shariʿa and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia*, Oxford Islamic Legal Studies (Oxford; New York: Oxford University Press, 2013).
8 Robert W. Hefner, "Islam in an Era of Nation-States: Politics and Religious Renewal in Muslim Southeast Asia," in *Islam in an Era of Nation-States: Politics and Religious Renewal in Muslim Southeast Asia*, eds. Patricia Horvatich and Robert W. Hefner (Honolulu: University of Hawai'i Press, 1997), 10.
9 For the process of *adat* transformation in family law, see John R. Bowen, "The Transformation of an Indonesian Property System: 'Adat, Islam, and Social Change in the Gayo Highlands," *American Ethnologist* 15, no. 2 (1988): 274–93; John R. Bowen, "A Modernist Muslim Poetic: Irony and Social Critique in Gayo Islamic Verse," *The Journal of Asian Studies* 52, no. 3 (1993): 629–46.
10 Mahmud Ibrahim and A.R. Hakim Aman Pinan, *Syari'at Dan Adat Istiadat*, 3 vols (Takengon: Yayasan Maqammahmuda, 2002–2010).
11 David Kloos, *Becoming Better Muslims: Religious Authority and Ethical Improvement in Aceh, Indonesia*, Princeton Studies in Muslim Politics (Princeton, NJ: Princeton University Press, 2018); Ratno Lukito, *Islamic Law and "Adat" Encounter : The Experience of Indonesia* (Montreal: Institute of Islamic Studies, McGill University, 1997); John R. Bowen, "Consensus and Suspicion: Judicial Reasoning and Social Change in an Indonesian Society 1960–1994," *Law & Society Review* 34, no. 1 (2000): 97–127; John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003); Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann, "Decentralisation, the Transformation of the Nagari and the Dynamics of Legal Pluralism," in *Political and Legal Transfornations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation* (Cambridge: Cambridge University Press, 2013); James T. Siegel, *The Rope of God* (Berkeley and Los Angeles: University of California Press, 1969).
12 David Kloos, "In the Name of Syariah? Vigilante Violence, Territoriality, and Moral Authority in Aceh, Indonesia," *Indonesia*, no. 98 (2014): 59–90.
13 The background of State Sharīʿa enforcement was a political motive to end the bloody 32-year armed conflict in Aceh province and to strengthen the identity of the Aceh

population as Muslims. The enforcement of *adat* is meant to maintain a stable social arrangement as well as a local identity as Gayonese Muslim.

14 David Henley and Jamie S. Davidson, "In the Name of Adat: Regional Perspectives on Reform, Tradition, and Democracy in Indonesia," *Modern Asian Studies* 42, no. 4 (2008): 834–44.
15 R. Michael Feener, "State Sharīʿa and Its Limits," 18–19.
16 Feener, *Shariʿa and Social Engineering*, 212–17.
17 The Aceh government, through the Qanun No. 4/2013, treats premarital sex, extramarital sex and being in a secluded place with the absence of sexual intercourse as *khalwat*. Although the latest Qanun No. 6/2014 on *Jinayah* (Islamic penal law), separates *khalwat* from *zina*, it still generalises *zina* as premarital and extramarital sex offences. The single broad category suggests the standardisation of punishment for any infringement related to sexual offences, which contradicts Gayonese *adat* classification of sexual offences of *zina*
18 For a different outcome of the state law sourced from the Divine Sharīʿa see J.M. Otto ed., *Sharīʿa Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Amsterdam: Leiden University Press, 2010).
19 Selma Cook ed., *Al-Maram Min Adillat Al-Ahkâm: Compiled and Referenced by Imãm ibn Hajr (773H-852H)*, trans. Nancy Eweiss (Egypt: Dar Al-Manarah, 2003), 451–52.
20 Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005), 61.
21 Feener, *Shariʿa and Social Engineering*, 197.
22 Ibid., 245.
23 *Sumang* is synonymous with "*sumbang*", a Malay/Indonesian word for shame.
24 Lombard, *Kerajaan Aceh*.
25 Ali Hasymy, *Sejarah kebudayaan Islam di Indonesia* (Jakarta: Bulan Bintang, 1990), 164–94.
26 Bowen has largely explored Gayonese pre-colonial history using the *këkébërèn.* John R. Bowen, *Sumatran Politics and Poetics: Gayo History, 1900–1989* (New Haven, CT: Yale University Press, 1991). During my field research, I found that the narration of *këkébërèn* has very much changed. Different narrators, ages, and *bëlah* backgrounds deliver different versions of narration. Sometimes, it is also political and aims to accentuate their *bëlah* or group over others.
27 Ibrahim and Pinan, *Syari'at Dan Adat Istiadat*, 2010.
28 L.K Ara, "Resam Peraturan Di Negeri Gajo" (L.K. ARA, 25 January 1972).
29 For anthropological differences, please see and compare Snouck Hurgronje's work on the Acehnese and Gayonese. C. Snouck Hurgronje, *Tanah Gayo dan penduduknya*, Seri INIS; XXV (Jakarta: INIS, 1996); C. Snouck Hurgronje, *The Achehnese* (Leyden: Brill, 1906).
30 Before the modernisation of village administration in 2002, Gayonese consider *bëlah*'s member as a family. In Hurgronje's record, they call each other as *sara inë* (one mother). Hurgronje, *Tanah Gayo dan penduduknya*, 64. The Sara *inë* term does not simply mean that the *bëlah's* member originated from the same ancestral line. Their origins are diverse. Some elderly people I met originated from other *bëlah* and even from the coastal community of the Acehnese. They openly call themselves Gayonese and share primordial sentiment with other Gayonese toward Acehnese and *bëlah* in the region.
31 Ara, "Resam Peraturan Di Negeri Gajo."
32 Kilian Bälz, "The Secular Reconstruction of Islamic Law: The Egyptian Supreme Constitutional Court and the 'Battle over the Veil' in the State-Run Schools," in *Legal Pluralism in the Arab World*, eds. Baudouin Dupret, M.S. Berger and Laila Al- Zwaini, Arab and Islamic Laws Series (The Hague: Kluwer Law International, 1999), 46.
33 Besides shame having been a subject of a wide variety of discipline, it is also used to describe phenomena at different levels, such as to describe self-experience, relational

episodes, and cultural practices for maintaining honour and prestige. It is exercised differently in many cultures as a social control with various levels of sanctions. It depends on the consensus of the society and the type of the society such as whether they are a majority or minority and heterogeneous or monogamous community. Paul Gilbert, *Shame: Interpersonal Behaviour, Psychopathology, and Culture*, Series in Affective Science Shame (New York: Oxford University Press, 1998), 3–4; John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge: Cambridge University Press, 1989), 493–4.

34 Hurgronje, *Tanah Gayo dan penduduknya*, 64.

35 Cook, *Bulugh Al-Maram Min Adillat Al-Ahkâm: Compiled and Referenced by Imãm ibn Hajr (773H-852H)*, 451.

36 Peters, *Crime and Punishment in Islamic Law*, 60.

37 In Gayo, marriage is a matter of uniting one village with another. The involvement of the headman is highly important and commonly starts from the phase of delivering the dowry to the bride's family. There, the headman and the bride's family would discuss further arrangement for the wedding ceremony such as the date and the like.

38 The *Wilayatul Hisbah Kampong* is the Sharīʿa investigator in the village. It is also known as the *Muhtasib desa* unit in other parts of Aceh province.

39 Feener, *Shariʿa and Social Engineering*, 245.

40 Ibid., 222–33; Feener, "State Sharīʿa and Its Limits," 13. For the pattern of WH activity after its inclusion to the Civil Investigator Agency *see* Benjamin Otto and Jan Michiel Otto, "Shariʿa Police in Banda Aceh: Enforcement of Islam-Based Regulations and People's Perceptions," in *Islam and the Limits of the State*, eds. Feener, Kloos, and Samuels, 185–213.

41 Serambi Indonesia, "Ulama: Kembalikan WH Ke Dinas SI," *Serambi Indonesia*, 17 October 2012, http://aceh.tribunnews.com/2012/10/17/ulama-kembalikan-wh-ke-dinas-si; Serambi Indonesia, "Ketua MPU: Kembalikan WH Ke Dinas Syariat Islam," *Serambi Indonesia*, 27 March 2012, http://aceh.tribunnews.com/2012/03/27/ketua-mpu-kembalikan-wh-ke-dinas-syariat-islam.

42 Feener, *Shariʿa and Social Engineering*, 244–6; Otto and Otto, "Shariʿa Police in Banda Aceh" 201.

43 Feener, *Shariʿa and Social Engineering*, 197.

44 Article thirty of the 45 Article mentions the *Pëmbasöh Lantè* as a fee for a woman giving birth in another village. Today *Pëmbasöh Lantè* is considered as a fine for those who "defaces the floor" of the village by committing premarital sex. Here we could see how Gayonese go back to the old practice to answer the current need using a different approach. The old practices were developed and adjusted to answer specific needs of the current situation.

45 Feener, 244.

46 Kloos, "In the Name of Syariah?"

8 Post-colonial nostalgia, conspiracy theories and uneasy quiescence

Newspaper commentary on the debate on kadhis' courts in contemporary Tanzania

Felicitas Becker with Shabani Mwakalinga

Introduction

The wide reach and social importance of Islamic law in the Western Indian Ocean has been made clear in recent scholarship. Hassan Mwakimako and Elke Stockreiter have described the lively contests around and multiple social uses made of Islamic courts in the colonial period, while Fahad Bishara's study of law and trade in the region shows the social as well as commercial importance of Islamic law here since long before colonialism.[1] Anne Bang's work, in its turn, shows that legal scholarship was one of several strands in the scholarly networks that shaped the identities of the region's scholars throughout the nineteenth and into the twentieth century.[2] In this way, Islamic law has become a core element of our understanding of the Western Indian Ocean as a cosmopolitan sphere defined by networked rather than territorial identities, by mobility and fluidity rather than place-specific belonging.

This depiction of the practice of Islamic law as a connective element within scholarly and commercial networks that flourished in the imperial age contrasts markedly with the characterisation of the history of Islamic law under colonial rule elsewhere in the British empire. Discussing the 'Anglo-Muhammadan law' of India, Muhammad Qasim Zaman has coined the influential observation that colonial rule transformed the fluid, adaptable processes of Islamic law that allowed for very varied applications of the rules into a fixed codex, on the model of European legal traditions.[3] Going even further, Wael Hallaq describes the influence of colonial rule on the practice of Islamic law as profoundly alienating, transforming embedded, intentionally moral forms of conflict resolution into rigid technical prescriptions.[4] Variations on these contrasts persist when observing the present. While Mwakimako describes Islamic courts in Kenya as subject to efforts to bring them under state control, he sees these as only partially successful, and Erin Stiles and Susan Hirsch describe the practice of these courts in Zanzibar and coastal Kenya as flexible, evolving and accommodating, much like in Stockreiter's and Bishara's accounts of earlier periods.[5]

The sources of this contrast are perhaps partly disciplinary. Anthropologists and area studies specialists who are concerned with place-specificity, and who may still feel they have to demonstrate that the regions they deal with were fully

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part of an Indian Ocean sphere, emphasise the continuing flexibility and adaptability of Islamic law; the fact that it can be diverse without therefore being any less Islamic.[6] By contrast, claims about the adulterating effects of colonial rule on Islamic law come from scholars who do not have to argue for the Islamic as well as cosmopolitan identity of their research sites. The problem that underlies this contrast, then, is that of the status of African locations within the Indian Ocean world. The region-specific scholars mentioned above, and many others such as Kai Kresse and Matthew Hopper, have worked hard and successfully to bring the East African coast into the narrative of the Western Indian Ocean cosmopolis.[7] Yet in so doing, they have also highlighted that cosmopolitan towns tended to create their own exclusions; that the cosmopolitan needs the yokel as foil, and that mainland Africans tended to have the role of yokel foisted upon them.[8] Where on the African continent the Indian Ocean world ends, then, remains an open question.[9]

The present chapter discusses material that shows that this question remains unsettled and unsettling for Muslims in the East African region today, and that discussion of the role of Islamic law in East Africa's societies can bring these tensions to the surface. In other words, it does not share the focus in much of the literature above on flexibility, continuity and the effectiveness of Islamic law as a mediating practice and as a plank in the establishment of scholarly networks and careers.[10] But neither does it endorse the pessimistic account of the ossification of Islamic law under colonial rule. It is concerned not with the practice of the courts, but with the public debates on the role of Islam in the public sphere and on Christian–Muslim relations in Tanzania today that the courts engender. These debates, as will be seen, engage questions of history, belonging – thus cosmopolitanism – and post-coloniality. They show that, while there are some voices in favour of Islamic courts that imply a rigid understanding of Islamic law, of the kind Zaman and Hallaq deplore, the main point of debating the courts is arguably that they are 'good to think with' about much broader questions of religious, legal and social pluralism. In so doing, they allow the articulation of a distinctive kind of nostalgia for a more cosmopolitan past, which in turn allows the observer to trace recent refractions of the old question of where exactly the cosmopolitan Muslim ecumene of the Western Indian Ocean ends.

The material discussed here refers to post-colonial Tanzania. This is a context where the courts were of long standing in the coastal area, and spread inland in the nineteenth century in the wake of Muslim long-distance traders.[11] That said, colonial rule here did not formalise them in the same way as in the Zanzibar protectorate (the islands of Unguja and Pemba and the coastal strip of Kenya), and their operations in the colonial period have so far remained largely below the radar of both historical and Islamic studies scholarship.[12] In the contemporary debate, too, the content and practical operation of the law, the bread and butter of legal scholarship, are largely treated as a 'black box'. Instead, the discussion focuses on the lack of *institutionalisation* of Islamic law. Although policymakers' disinterest in the functioning of the courts can be traced to the colonial period, it is at present presented as a consequence of the actions of

Tanzania's post-colonial state. As such, it is often integrated into a broader narrative of what Muslim discontents and activists call the *mfumokristo,* roughly, the 'Christian regime' in post-colonial Tanzania. By this they denote active, coordinated efforts by a Christian establishment to minimise Muslims' contributions to the achievement of independence and to marginalise them from political power.[13]

Talk of the *mfumokristo* is a distinctive Tanzanian form of Muslim discontent about what Kresse has termed the displacement of East African Muslims to a 'double periphery' since the end of colonialism: they have become marginal both to the new territorial and Christian-dominated nation-states they now find themselves in, and to the Indian Ocean sphere that is not carved up into a series of independent nation-states.[14] Ironically, then, the post-colonial world of nation-states entailed the loss of a cosmopolitan Muslim homeland.[15] Yet again: this Indian Ocean homeland was implicitly maritime; in other words, it had no defined place for African mainlanders. What becomes visible here is that the Western Indian Ocean sphere, where Islam at large and Islamic law in particular are positioned as a catalyst of cosmopolitanism, has an uneasy relationship with what lies beyond its borders on the African mainland. As Glassman, among others, has shown, mainlanders were classificatory strangers, and indeed barbarians, in this sphere throughout the late pre-colonial and into the colonial period.[16] Economically and politically, relations between the Indian Ocean sphere and the mainland were warlike and exploitative during the era of Zanzibari hegemony, when coastal traders mediated the extraction of slaves and ivory from the interior. My own work has been concerned partly with how conversion to Islam in the colonial period helped mitigate this heritage.[17] Nevertheless, the statements on Islamic courts discussed below show that a distinction between 'coastal' and 'mainland' Muslims retains a degree of traction in Tanzania. Thus while the issue of the absence of Islamic law courts in Tanzania serves as a focal point for Muslims' discontent, it also re-energises old divisions.

These glimpses at the internal diversity of Muslims cast some light on both the reach and the limits of Islamist mobilisation in Tanzania. This is not to say that the divisions simply limit mobilisation or prevent radicalisation. (I would argue that religious tolerance in Tanzania is much more than a failure of radicalisation; it is a complex positive attitude.)[18] Rather, the concern about Islamic courts does serve to build bridges between radicals who hint at the need for the Islamisation of the public sphere, and more moderate defenders of Islamic life-ways that they posit as traditional. But it also becomes evident that the issue of the courts can stand for, or aid the expression of, very different grievances and political visions. The courts can be many things to many people. Notwithstanding assumptions about the coherence and internal consistency of Islamic law made in connection with debates on the courts, then, nostalgia for the courts does not homogenise Muslims' social attitudes or political stances. The conclusion will consider how this observation can be related to the large-scale issue of the increasing rigidity of Islamic law under colonial influence.

Kadhis' courts in Tanzanian history and public debate: some background

There is some evidence, from the likes of the fourteenth-century traveller Ibn Battuta, that specialists in Islamic law operated on what is now the Tanzanian part of the Swahili coast in the fourteenth century. In the nineteenth century, the practice of Islamic law, including court cases, spread up country with long-distance trade. Since the colonial period, Islamic courts here have been known, by the title of their decision-making officials, as *kadhis' courts.* They continue to be debated under this label today. As coastal Muslims here did not have the special status of their Kenyan neighbours, who officially remained subjects of the Sultan of Zanzibar rather than the British crown, official oversight of and support for these courts was very limited and left little paper trail. The overall direction of change in the colonial period nevertheless appears much as elsewhere. That is to say, colonial rule limited the scope of the application of Islamic law to family law, including inheritance, marriage and custody matters but little else. As elsewhere, the courts were run by British-endorsed judges recruited from the local *ʿulamāʾ*; some of them were occasionally paid salaries.

As hinted at above, work by Mwakimako for Kenya and Stockreiter for Zanzibar indicates further similarities with events elsewhere in the British empire. There were pronounced efforts by officials to 'reform' the processes used in Islamic courts, especially regarding evidence and record-keeping, and to induce judges to explicate and formalise the content of the law. Nevertheless, Stockreiter also demonstrated the ways in which *Kadhis* in colonial Zanzibar persisted in applying established standards of evidence. She also shows that courts continued to be central to social negotiations about marriage and property, many of them initiated by women. The literature on the post-colonial permutations of these courts chimes with this emphasis. Erin Stiles in Zanzibar and Susan Hirsch on the Kenyan coast both emphasise the courts' continuing social embeddedness and women's ability to negotiate for tolerable outcomes in them.

These discussions on continuity vs. change and the posited alienating effects of colonialism on Islamic law, though, are conspicuous by their absence in the debates on kadhis' courts in Tanzania today. Rather, the sources and processes of Islamic law are typically taken as given, and the question of colonial-era transformations or divergences does not occur. Instead, the starting point of the debate is the current absence of kadhis' courts from the mainland-Tanzanian legal system, in contrast with Kenya and the islands, where they have survived. Their abolition was part of a reform process that had already started in the colonial period and culminated with the unification of the court system in 1963. Due to the post-colonial dating of this unification, the abolition of kadhis' courts is typically portrayed as an act of the post-colonial state. By extension, the debate on demands for their reintroduction takes the form of debates on the secular nature of the Tanzanian state (is it really secular or actually krypto-Christian, and if it is secular, what does it owe its religious congregations?), and on religious tolerance.

The demand for reinstatement of the courts is frequently expressed in activist, Islamist papers such as the Dar es Salaam-based Islamist weekly *An-Nuur,* where their absence is cast as evidence of the state's determination to stop Muslims from leading properly Muslim lives. The discussion below, by contrast, focuses on a close reading of a long exposition of the history and present-day problematic of Islamic courts in Tanzania, published in the weekly newspaper *Raia Mwema* (The Good Citizen), which has both Muslim and Christian authors on staff and has published conflicting opinions on the courts. Its author, identified only as Said, focuses entirely on the late-colonial version of the kadhis' courts. He treats them as a fully legitimate means for the application of Islamic law, and places them in a seamless continuity with the pre-colonial period. The colonial nature of these courts, in other words, is not reflected on, and there is no thought of it having had any adulterating effects. Instead, the courts are placed within the context of an on-going polemic about the place of Muslims in the post-colonial Tanzanian polity.

The source, then, tells us much about the symbolic value of kadhis' courts to Tanzanian Muslims today, and their place in a narrative of Muslim political alienation and victimhood. In so doing, though, it also illuminates issues that are less explicit in current debates on Muslims' relationship to the Tanzanian state, but important to understanding their dynamism. Central among them is the prevalence of nostalgia for the colonial past among sections of the Muslim population, expressed here as fond reminiscence about a network of late-colonial Muslim notables. By including figures from locations off the coast, the author makes efforts to assert the inclusive nature, cosmopolitan character and geographic spread of Tanzania's Muslim community beyond the coast. Nevertheless, a lengthy anonymous online comment on the article calls out Said for overemphasising both the late-colonial prominence and post-colonial marginalization of educated – which in this context implies coastal – Muslims. Text and commentary together provide a vivid illustration both of the place-specific histories which underpin the emergence of kadhis' courts as a 'wedge issue' for Tanzanian Islamists, and of the complications of speaking of Tanzanian Muslims as 'one' population.

The focus on one text and a critical commentary on it, then, serves several aims. It allows a careful consideration of how much more than legal pluralism or the correct execution of laws is at stake here. Above all, though, it is intended to provide the reader with insight into how the debate and the grievances involved are articulated by people living through it. This choice is informed by the observation that the Swahili-language public sphere is central to the debates examined here. While it has found a number of perceptive observers and interpreters in the scholars already mentioned, ensuring that it is heard in discussions of the Western Indian Ocean remains an on-going effort. Moreover, the focus on these texts also enables the drawing-out of at least some of the implications of the embattled state of press freedom in Tanzania. Before turning to these texts, though, more background is needed on the rhetoric about marginalisation and political competition that the issue of the courts is bound up with.

A short history of Muslim–Christian community relations in Tanzania

Tanzanian Muslims form the overwhelming majority of inhabitants in the Zanzibar archipelago, which technically is one half of the United Republic of Tanzania, the product of the unification of mainland Tanganyika with the former Sultanate of Zanzibar in 1964. In practice, though, Zanzibar is dwarfed by mainland Tanzania, with less than 2 million vs. over 36 million inhabitants. On the mainland, Muslims form a large minority; some activists claim that Muslims equal or even exceed Christians in number.[19] Reliable figures are unobtainable because the question of religious affiliation has been removed from the census, in an unsuccessful bid to avoid politicisation of this issue.[20] As this source also makes clear, Muslims were deeply invested in the national project when it started in 1961, but many have since come to think of themselves as marginalised in national politics and mainland Tanzanian society.[21] The reasons again reach back deep into the colonial past, and are fairly typical of the heritage of British colonialism. Much of the colonial Tanzanian education system was in the hands of missionaries, leading to self-selection against Muslims pursuing secondary and higher education. In consequence, they were under-represented in the higher echelons of the Tanzanian administration after independence, when formal education became a prerequisite for inheriting the state apparatus. Subsequently, they became under-represented also in the entrepreneurial class that has spun itself off from the 'state class' in the course of neoliberal reform since the 1990s.[22]

While this source of Muslim discontent is fairly clearly traceable, there are also more muted and more complicated undercurrents between Muslims and Christians in the country. The anonymous commenter in the source alludes to them when he raises the history of mistrust between 'coastal' and 'up country' people. The central issue here is that coastal Swahili culture used to cultivate an ideological distinction between *muungwana*, 'civilised (implicitly Muslim) citizen', and *shenzi*, up-country barbarian.[23] Muslim identity or lack of it was part of this distinction. In the nineteenth century, with the expansion of plantation slavery, driven especially by immigrant Omani planters, on the East African coast, this distinction began to coincide also with that between free person and slave. Notwithstanding all the noise made about the anti-slavery credentials of British colonialism, British rule endorsed the notion of coastal, and especially Zanzibari, culture as a harbinger of civilisation on the 'dark continent', adding a racial tinge as by 1900 recent Arab immigrants had become the ruling minority in Zanzibar, with important representation also in coastal towns on the mainland.[24] Again, the source hints at the heritage of this situation with the distinctly Omani names of many of the *makadhi* mentioned, especially in the coastal town of Tanga, whose legal tradition the author particularly lauds.

Decolonisation upended this form of civilisational cum racial thinking, most dramatically in Zanzibar, where the overthrow of an ethnically Omani-dominated successor regime was accompanied by a massacre of inhabitants of Arab descent.[25] Unification with Tanganyika to form Tanzania followed shortly after, with a

settlement negotiated between the presidents of both countries. Elsewhere in the region too, coastal people who had conceived of themselves as part of a Western Indian Ocean Islamic sphere, implicitly under the umbrella of British rule, found themselves instead on the geographic margins of new nations that looked inwards, to cultivators and (as it turned out chimerical) urban workers for progress, rather than to the predominantly Muslim intermediate traders and plantation landlords who had been the engine of prosperity (such as it was) before colonialism.[26] This was particularly salient in Tanzania, with its heavy policy focus on rural peasantries as the engine of economic liberation, and deep mistrust of the economic and political roles of intermediary traders.[27] Meanwhile Christian Tanzanians also elaborated a narrative according to which colonisation and mission together became God's means to lead them out of the dark ages of pre-colonial slave trading, slavery and ignorance, into the light of the modern nation.[28] In this version of Tanzanian history, the Arab presence is cast as villainous, defined by its association with the slave trade.

Tanzanian Muslims from beyond the old Muslim towns also display ambivalence towards the Arabicate heritage of coastal congregations; something hinted at by the anonymous commenter, who chides Said for putting too much emphasis on the role of 'learned' (read: coastal) members of the Muslim community. Bibi Titi, whom he mentions as a counter-example, was by contrast of very plebeian Makonde extraction (an ethnic group sometimes cast as particularly 'backwards').[29] Add to this the fact that the British colonial regime allowed and to some extent bankrolled kadhis' courts, and Muslims find themselves in the ambiguous position of pining for British imperial protection, even as they assert their community's role in ending it.

Members of the Christian, anti-kadhis' courts camp, in their turn, emphasise the unimpeachably legal, formal and constitutional character of their arguments, but a sense of mistrust and grievance against Muslims seeps through. It draws both on the historical narratives just mentioned, and on fear of a recent Islamist revival among East African Muslims, and its rumoured foreign backers.[30] In Zanzibar, this Islamism has become the main vehicle also for the separatist movement, which in effect recasts the colonial narrative of Zanzibar as an Islamic civilisation on the edge of Africa to portray it as a civilisation that has fallen victim to *ukoloni mweusi,* 'black colonialism'.[31] On the mainland, it often focuses on the claim that Tanzania is governed by a *mfumokristo,* a Christian regime or conspiracy. All these notions become clearer by examining Said's text.

Remembering the courts, condemning the present

The article entitled '*Kadhis' Courts: Tanzania reaps the fruits of rejecting its own history,* was published on 4 February 2015. The publication venue, a weekly journal called *Raia Mwema*, forms part of a specific media ecosystem. Tanzanian media have been officially liberalised since the early 1990s, but are not therefore free of state interference: there have been repeated closures or partial bans on papers perceived as too critical.[32] Moreover, while growth has in recent years

been mostly on the tabloid end of the newspaper market, *Raia Mwema* markets itself clearly as high-brow and, as will be seen, a defender of political virtue. This is not without risk; a similar weekly was shut down in 2012 for being too critical of the government.

Raia Mwema's motto is *muungwana ni vitendo*, literally 'the free person is action'.[33] This phrase is the second half of one of the better-known Swahili proverbs. The full sentence is *ada ya mtwa kunena, muungwana ni vitendo*, which translates as 'it is the custom of slaves to talk, while free men act'. There is a certain irony in putting this motto on a product whose reason for being is text, thus words. A charitable interpretation is that they emphasise their readership's status as free people who can and should be allowed to act, albeit by appealing to a claim once used to denigrate the involuntarily unfree. In this sense, the motto can also be seen as an assertion of political rights: as long as Tanzania's citizens are recognized as 'free', it is implied, they are also entitled to political action. Our author Said's first concern, though, is indeed with words. He starts by expressing very widespread concerns about the deteriorating tone of public debate in Tanzania, especially pertaining to religion.[34]

> Anybody who enters social networks these days and reads up on the debate about kadhis' courts will be shocked by the aggressive language and sometimes slurs between those arguing the different sides. Both throw accusations and harsh words at the other. […] One thing that emerges very clearly from these discussions is that there is a great division between Muslims and Christians concerning kadhis' courts. Hatred and enmity have come out into the open. How is this possible when our leaders tell us that the Father of the Nation left us a stable foundation of unity?

By challenging the assumption that the 'Father of the Nation', in other words, Tanzania's first independent president Julius Nyerere, succeeded in uniting the country, Said signals his lack of enthusiasm for Tanzania's official political narrative, which places heavy emphasis on Nyerere's achievements and his precious heritage. He thereby immediately places himself on the oppositional side of Tanzania's political divides. Yet it is a question that academic observers, too, are concerned about: how stable is civic peace in Tanzania; why or why not? Said suggests that the debate on kadhis' courts is as divisive as it is due to widespread ignorance:

> The soothsayers (*wahenga*) say the signal of rain is clouds. The question to ask is, where have we as a country got stuck? The truth is that many of those who are debating kadhis' courts do not know the history of Tanzania, or if you want Tanganyika, well.

The proverb can be taken as a call to trust the evidence of one's eyes, rather than assumptions or official discourses. The reference to Tanganyika, the colonial name for Mainland Tanzania, signals sympathies with the Zanzibari separatist

movement, whose supporters often insist on discarding the term Tanzania in favour of Tanganyika on one hand and Zanzibar on the other. From this, Said segues into a damning comment on the state of public and especially higher education in Tanzania:

> Among those who participate in the debate are grownups over fifty years of age, but also youths who were born after the liberation of Tanganyika in 1961. Now the question is, how come that these people [born post 61], who are now the large majority, don't known the history of their country? How come we have had a University for almost half a century […] and still until now our history is being uhm-d and ahr-d about, it has not been clarified? […] I will not proffer an answer now, even though I have one. What kind of history is being taught in those universities that makes sure people do not know themselves?

While complaints about the state of the educational system are near-universal in Tanzania, Said hints that something more specific and more sinister than general institutional incapacity is at play. As will be seen, this 'I have an answer, I will not state it' is a recurrent line in the article. It alludes to the claim that there are aspects of Tanzanian politics that cannot be spoken about openly. In part, this is simply a statement of fact: the press has been bullied in recent years when it brought up issues that powerful people wanted to keep under the carpet. But beyond this observation, there is a great diversity of different beliefs about shadowy factions and forces 'running' or influencing Tanzanian politics, be they corrupt insiders, foreign investors, ethnic networks or religious factions. In this sense, the *mfumokristo* notion is part of a spectrum, and the fact that there *are* limits on freedom of speech raises the credibility of this spectrum as a whole: if it is clear that certain facts cannot be stated, then who is to know how many more there are? Media repression, in other words, makes sure that the 'rumour mill' keeps turning. But Said quickly moves on from his hints, to a mainstay of the disagreements over kadhis' courts: Christian opponents insisting that support for a system of kadhis' courts would be contrary to the Tanzanian state's secularist principles. He challenges this objection by pointing out that there are Christian-run institutions that obtain regular government funding.

> Some of the contributors to the debate in the networks, typically Christians, say "how is it possible that kadhis' courts should be paid for by the government, when the government has no religion?" Muslims answer by saying "how come that the government provides billions every year for the churches to serve their institutions, through the 'Memorandum of Understanding' (MoU)?" […] For those who perhaps do not know about this treaty, it dates from 1993, when the government of Tanzania signed it with the churches […] It is an understanding according to which the government *iliridhia na kuidhinisha* – supports and endorses education, social and health services run by the CCT [Christian Council of Tanzania] and TEC [Tanzanian Episcopal Conference] in coordination with the government. The contract was […] signed by deputy prime minister Edward Lowassa.

> The big thing about this contract is the secrecy that surrounded the entire plan, and moreover, it was signed without consulting or informing Muslims. […] In order to implement this treaty, the government had to make changes to the Education Act of 1978, and it is only in connection with these changes being brought to Parliament that Muslims found out […] Another question is how this significant matter was passed by the Parliament without hindrance? Did it pass because the Muslims in Parliament thought it had benefits for our country? Or did it pass because there are few Muslims in Parliament and they were overpowered by their Christian fellow MPs, lacking a voice because of their small number? If the latter is true, how did we get here and what is the potential harm of this situation for the future of our country?

This comparison is somewhat misleading. The so-called Memorandum of Understanding became necessary in the process of reprivatising facilities built by missions that had been nationalised in the 1960s–1970s, in keeping with a broader agenda of economic liberalisation. Unlike kadhis' courts, the hospitals and schools in question do not serve Christian congregations specifically, and their functions are not specifically religious. Rather, they are essential pillars of Tanzania's anyway ramshackle medical and educational system. Said, though, implies that the Christian affiliations of these institutions do in fact confer advantages specifically on Christians. In so doing, he alludes to a widespread perception among Muslims that Christian identity provides advantages especially in educational institutions, and again raises the possibility of conspiracy.

> A person may ask why, then, the same government did not come up with any plan […] to provide funding for Muslim institutions, so that those might pursue their own progress, like the churches' ones? I will not answer this question, though I have answers. Rather, let us move on to ask whether kadhis' courts are so new a thing in this country as to cause such public disagreement (*mtafaruku*) as we now witness?

Again, the allusion to the unspeakable, followed by a pivot towards the main narrative of the article; the long and eminent history of kadhis' courts in Tanzania before their abolition by Nyerere. As Said puts it,

> The truth is that when colonialism arrived in Tanganyika, it found Muslims judging each other by their book.

Note the implication that Islamic law was something that could be established with reference simply to 'the book', that is, the Qur'ān, rather than sprawling legal traditions that fill libraries. Said goes on:

> The missionary Johan Krapf came to Tanganyika and was received by Chief Kimweri of Usambara in 1848. Krapf was received with the greatest generosity, and he found Kimweri a Muslim, he knew to read and write in Arabic

> script and he sat in court at his council […] It is obvious that Kimweri did not pass judgment with reference to any 'Order in Council' from India because the British hadn't even arrived. Kimweri was passing judgments according to the sharia, as Muslims on the coastal strip of East Africa have done for a long time.

This is a remarkable appropriation of mission history. Johann Krapf worked in Mombasa, a Muslim town in today's Kenya, for many years. He made next to no converts, but his travels provided rare sources on pre-colonial East Africa. Said's claim about Kimweri using sharia is unconvincing: keeping Muslim scribes and familiarity with Islam were standard practice for rulers near the coast in his day (the mid- to late nineteenth century), but they did not imply adherence to Islamic dogma or law. In fact, Kimweri has been discussed as emblematic of *indigenous*, neither Christian nor Muslim, religious practice in a groundbreaking and still much-quoted study.[35] This account treats him as representative of a religious and political tradition in which kings were held responsible for 'cooling the land', thereby protecting harvests. For Said, by contrast, starting his historical account with Kimweri is a way of emphasising the relevance of Islam to Tanganyikan history beyond the coast. This agenda is still at work in the next paragraph, which also begins to draw the image of the late-colonial Muslim notable:

> I reached a state of understanding in the Tanganyika of the 1950/60s and I have memories of these kadhis' courts. Some of their judges I have seen with my own eyes; some as they worked in court passing judgment, others on the street as they exchanged greetings with my elders. I remember Sheikh Abdallah Simba [simba = 'lion'] from Songea […] If I close my eyes it is as if I saw him now […] He used to come to Dar es Salaam in his Land Rover, driving himself, and he always wore a *kanzu* [the long robe worn by coastal Muslims], coat [European-style suit jacket], and tarbush.[36] He had two children, Bi Habiba and Mwajuma. Bi Habiba was the same age as my mother, and she was a nurse at the Princess Margaret Hospital (now Muhimbili Hospital), but Mwajuma was the age group of my elder sister. Mwajuma attended the St Joseph's Convent School (now Forodhani) […] Sheikh Abdallah Simba worked as a judge at the court in Songea, using Islamic Law, and he was friendly with my grandfather Salum Abdallah since their shared youth in the Dar es Salaam of the 1920s […] He owned two homes [in Dar], one on Kipata Street (now Kleist Sykes Street) and one on Somali Street (now Omari Londo Street). The names of these streets have been changed in order to preserve the memory of those elders Kleist Sykes and Omari Londo who left a large mark on the history of the liberation of Tanganyika.

This passage sets the tone for the main body of the article: detailed and affectionate reminiscences about late-colonial Muslim scholars who worked as kadhis. Said's first example is a man who worked in a region, Songea, that is typically associated

with a very assertive Catholic mission, and whose name suggests recent African, rather than Arab, ancestry.[37] The details of his dress style evince the self-assured respectability that this milieu enjoyed in the economically prosperous 1950s, the straddling of Arabicate and Europeanate elements indicating cultural and political accommodations that appear very comfortable in hindsight. Abdallah Simba's daughters, too, moved between their Muslim home and both Christian and colonial institutions – Princess Margaret Hospital, no less – apparently without friction. The nostalgia is palpable. Said elaborates:

> There was also Sheikh Said Chaurembo [cha urembo – 'thing of beauty'], who was a judge at the Court of Kariakoo [Dar es Salaam's oldest and liveliest Muslim neighbourhood]. Chaurembo was a member of the Political Subcommittee of the Tanganyika African Association [TAA, i.e. the precursor to the Tanganyika African National Union (TANU) that led Tanganyika to independence under Nyerere] in 1950. This committee, under the Mufti Sheikh Hassan bin Amir, contributed significantly to the effort to build up TANU in 1954 and to make Nyerere its leader in the pursuit of decolonization, but here is not the place to explain this.

This paragraph raises another abiding theme of Muslim discontent in post-colonial Tanzania: Nyerere's and TANU/CCM's failure to show proper appreciation for the contribution of Muslims to the struggle for independence, often described as an active effort to wipe out the memories of this role. After asserting the Chaurembo family's role in shaping their city by enumerating the buildings they owned, Said elaborates this point with reference to Said Chaurembo's nephew Abdallah:

> Sheikh Abdallah Chaurembo was a learned man in the Muslim religion, who was deeply involved in the efforts to obtain Tanganyika's freedom. He was present in the meeting of TANU that was held in Pemba Street [in Kariakoo] one night in 1955, when the big point on the agenda was how TANU would dampen the role of Islam in the party, in order to reduce the perception that TANU was a party of Muslims […] This was an important issue in order to enable Mwalimu Nyerere to lead the struggle for independence in peace. Together with Sh. A Chaurembo, at this meeting there was also Sh. Nurdin Hussein and Rajab Diwani, but the main speaker and the one who pushed the agenda, brokered an agreement and got a declaration passed by TANU was Mufti Sh. Hassan bin Ameir. The declaration [that resulted from the meeting] stated that anybody who would bring *udini*, religious division or discrimination, into TANU, would be "removed" […] a person may ask themselves, how come that in the history of the liberation of Tanganyika one doesn't hear these names mentioned? Is it not somewhat surprising that these patriots should have fought for Tanganyika's liberation in order to install a government that would then break the foundations of their religion?

I have found no reference to this meeting in the authoritative account of TANU's campaign, John Iliffe's *Modern History of Tanganyika*, or other work on the late precolonial/early post-colonial period.[38] But this silence provides no conclusive reason to assume it did not happen. Indeed, Iliffe does observes that popular enthusiasm for independence was initially greater among Muslims. They had fewer cultural conflicts to deal with than mission-educated Christians invested in a more clearly Europeanate version of modernity. By bringing up this meeting, Said claims that Muslims effectively gave up their predominance in the independence movement in the broader national interest. The subsequent fate of the courts, then, shows that they have been poorly rewarded for this selflessness.

Said then provides further examples of the scholarly families that used to run kadhis' courts in Tanga, a coastal town, as well as Moshi and Arusha near Mount Kilimanjaro, and Tabora, an early centre of Islam in Western Tanzania, far from the coast, due to its large Arab trading population in the nineteenth century. He points out connections between late-colonial kadhis and later generations of these families, who continued their religious learning or branched out to other achievements (in one case, a sheikh's sons excelled as footballers on the national team). With evident nostalgia, he recalls a network of mutually endorsing, cooperating scholar-notables, much as were found in other Muslim societies of the Western Indian Ocean and beyond.

Evidently, the late colonial order provided these men with a scope that was later lost. Part of this decline was economic: Abdallah Simba's Land Rover suggests a level of economic comfort, tied to the post-war commodity boom, that would turn out to be fleeting. Yet other mechanisms of this decline remain to be clearly established. For example, TANU/CCM's stringent rules against entrepreneurial activities by its office holders during its socialist phase from ca. 1967 to 1986 meant that anyone who held a party office had to give up or hide acting as a landlord, and the same period also saw the aggressive nationalisation of housing stock.[39] Said, though, now focuses on the 1963 legislation that created a unified court system, in the process abolishing a variety of local courts with colonial roots, including the so-called *liwalis' courts* that had defrayed the functions of kadhis' courts since 1952. He portrays the move as a surprise:

> The situation was like this: all of Tanganyika had its kadhis' courts; there was no thought of there being an agenda to erase them after independence. What caused the government in 1963 to break up these courts? I have an answer but I will not present it.

Again the 'I know but won't say', obliquely raising anti-Muslim conspiracy theories. Next, Said broadens the issue from the loss of the courts to the status of Muslims in Tanzania at large, and explicates his conspiracy theory.

> Some say that introducing kadhis' courts would break the unity of the country. This raises the question: does Tanzania have this much-mentioned unity at the moment? Why are there so many complaints from the side of the

> Muslims, saying the government practices religious discrimination against them? This began as a slight murmur for many years and then burst out into a loud voice, that our country is governed by a *mfumokristo*. In 2012, Muslims held many meetings across the country, in order to make this issue public. The videos of these meetings have spread across the country in the [social media] networks.

The term *mfumokristo,* as already mentioned, entails the assertion that Christians and in particular Catholics, led by the Catholic Nyerere, quickly marginalised Muslims from political power in the early years of independence and have been working ever since to reserve the fruits of independence to Christians.[40] Having thrown out this divisive term, Said ends by calling on the government to respond to the accusations of Muslims, and promising to elaborate further on what went wrong with post-colonial Tanzania.

> Unfortunately, the government is quiet until now. The observer may wonder why the government maintains silence on such a significant and dangerous accusation? Is it quiet because what Muslims say has no truth or merit to it, or is it quiet because it fears opening a Pandora's box? I have an answer to this question, too […] I think, reader, you have been able to learn, even if only in outline, a summary of the history of our country as it was. How we have arrived at this *uhasama* [divisiveness] we now find ourselves in is a separate question, and God willing we will discuss it.

This paragraph is another study in the use of insinuation and rhetorical assertion. It would be absurd for the author to have stated all his claims while thinking them without merit; obviously, then, Said implies that the government fears a Pandora's box. The reference to "our country as it was", meanwhile, once more evokes a sense of loss; of regression rather than progress since independence. While his vagueness is well suited to conspiracy talk, which tends to depend on assertion without proof, it is also strategic in a context where press freedom is precarious, allowing Said to potentially disown some of the more divisive implications of his writing if challenged by the authorities. In this regard, the article again demonstrates the deleterious effect of fear of sanctions on the clarity of public debate. But by calling his own assertions dangerous and emphasising growing Muslim discontent, Said also hints at the possibility of future unrest. His prose balances between evasion, insinuation, elegy for a lost age and quiet threat. An online response suggests that these ambiguities were not lost on the readership.

Internal dissent: a critical response by an anonymous reader

At the time the article appeared, *Raia Mwema* online provided a comments function that provides a window on responses to some of the paper's content. Through this route, Said's work found a very vocal critic. Though their comment starts out

with praise, it quickly moves on to criticise conflations and inaccuracies in Said's article:

> Writer, you have written a good article about what kadhis' courts were like in Tanganyika, but this is not a summary of the history of our country as it was […] Kimweri ye Nyumbai was a chief and he passed judgment like other chiefs according to traditional law and not like kadhis' courts; not all his government or all Shambaa [Kimweri's ethnic group] were Muslim. You have correctly identified the names of the sheikhs in the courts, but you have failed to state clearly who started these courts officially in Tanganyika and who paid for them, I think you know and you wouldn't want your *umma* to know.

The commentator points to the fact that Said's article effectively endorses a colonial institution, as the colonial kadhis' courts were backed and in part financed by the colonial government. They hint that this dependence on colonial support constitutes an embarrassment. Next, the critique moves on to social divisions which Said's nostalgic vision of late colonialism is accused of papering over.

> This article has not fully established the facts of […] that time, for example the constant mistrust that reigned between people from the coast and the interior, Muslims and Christians, businesspeople and government workers, educated and uneducated people, and so on.

This sounds somewhat like the official government line on TANU and Nyerere, which emphasises their achievement in overcoming these divisions. But the critic takes the point somewhere else, enumerating Muslim independence campaigners whom Said did not mention, and emphasising that their aim was not to profit from independence:

> This meeting at Pemba Street in 1955 to reduce the role of Islam is not described truthfully. The fear of tribalism and religious division was real, and therefore Ally Sykes and Dossa Aziz started the effort to 'sell' a schoolteacher, a Christian, an educated man who did not know how to wear either a *kanzu* or long trousers, and who spoke up-country Swahili [i.e. Nyerere], and part of the effort was to buy him the required clothing. Many people, from both coast and interior, were not ready to be led by [Nyerere]. The effort was directed towards obtaining freedom, not towards obtaining wealth or fame in history.

By presenting a divergent account of this meeting, the anonymous critic signals that they are no less an insider to the history of Tanzanian Muslims in the period than Said. The claims about Dar es Salaam's Muslim elders having paid for Nyerere's first proper suit circulate in Kariakoo, the heart of Muslim Dar es Salaam.[41] The commentary thus joins Said in emphasising the importance of

Muslims' contribution to the independence movement, and their selflessness. In so doing, though, it also chides Said for giving the impression that a role in the independence movement should have led to personal gain or prominence. Moreover, by enumerating the divisions of late-colonial society, the commentary highlights the social divisions, including among Muslims, that Said sought to minimise. It then goes further by challenging Said's implication that marginalised Muslims face marginalising Christians as two discrete, internally homogeneous groups:

> That Christian institutions of social service are being given billions and do not pay tax is a major misrepresentation, no matter what religion the person pushing it follows; […] it is a way of building lies and hatred in society. Writer, you say the Memorandum of Understanding [concerning state support for Christian-run institutions] was put in place secretly without Muslims knowing. The question arises, who was the President of the Republic? Alhaji Ali Hassan Mwinyi, and the finance minister was Kighoma Malima, later Jakhaya Kikwete!!! They are all Muslims, and you say that those handling the files of this country did not have word? This is an obvious lie.

Unlike Said's claims, then, the commentator insists that Muslims were informed of and involved in the drawing up of the Memorandum of Understanding. This disagreement is based on divergent uses of the term 'Muslim': the critic takes involvement of individual Muslim politicians as tantamount to Muslim representation in the decision, whereas Said was referring to involvement by Muslim activist organisations. Further, where Said saw Christians in government and in Christian institutions safeguarding each other's interests, the critic merely sees pragmatic considerations at work:

> when the [Christian social service] institutions were returned to the citizens [de-nationalised], it was necessary for the government to make a new contract because the government's approach is to provide these services for free, but it is necessary to meet the costs, for example of KCMC [Kilimanjaro Christian Medical Centre, run by the Lutheran Church], Ndanda hospital [run by Catholic missionaries] and so on. The churches provided these services without a direct benefit for their believers, as it was with the cooperative societies that were nationalised.

The critic further emphasises that nationalisation, and by extension its reversal, was not a religious issue, but a policy one, and emphasises that there were *Muslim* institutions that remained under the control of their religious sponsors:

> When Mwalimu [teacher, an honorific used for Nyerere] Nyerere nationalized social service institutions, he did not call Muslims to debate, but rather the cabinet, and he made a decision based on [policy] considerations, not only for Christian institutions, see for example the Aga Khan and others. But the Muslim institutions were not touched!!! Why, because Mwalimu knew the

> importance they had for Muslims and he did not want them to remain behind progress-wise.

The allusion to not leaving Muslims behind refers to the widespread perception that they *were* behind in the 1950s, which was well-founded certainly with regard to their educational status.[42] That the Aga Khan hospital was left under Ismaili control to support Muslim advancement is nevertheless a charitable interpretation: the Ismailis were Indian, and there is good reason to think that the Nyerere government considered the Indian minority to have profited unduly from their role as commercial middlemen in Tanzania.[43] Leaving them in charge of the hospital, then, was a way of making them contribute to social services. The commentary here illustrates the fungibility of political choices and events; their capacity to serve very divergent political narratives. Where Said saw an anti-Muslim agenda, his critic sees special consideration given to them.

Having taken issue with Said's representation and interpretation of political events and facts during the Nyerere era, his critic turns to a more fundamental point concerning the status of Islamic courts. Pointing out that Muslims complaining about the lack of courts are in a minority, he states that:

> It appears, then, that not all Muslims need kadhis' courts, and that they are not essential like the five pillars of Islam, they are not one of the things absolutely needed to stabilize society or the Muslim *umma*.

This claim would meet with vociferous rejection from Said and other campaigners for the courts, who insist that the courts are essential for Muslims to live their religion properly. The critic indirectly acknowledges this stance, by pivoting towards the broader question of Christian-Muslim coexistence in Tanzania, Muslims' role in government, and Nyerere's role in shaping them.

> If you start asserting a *mfumokristo* in order to demand the rights of Muslims, this is somewhat threatening […] Nyerere respected Muslims a lot […] he had a forum called the Elders of Dar es Salaam, every time he had a difficult decision to make in government, like the Ugandan War, he believed in their wisdom and good judgment, he did not want his neighbours in Mikocheni to be bought out or moved for any reasons. It was the elders of Dar who chose him as leader of TANU and not he who preferred them. For this reason, he respected true [literally *safi,* 'clean'] Muslims for their wisdom, and after independence he gave them leadership.

The critic's rejection of assertions about *mfumokristo*, then, takes a similar form as these assertions: it is based on hearsay about *informal* connections and mutual accommodations, now in the form of Nyerere's 'council of [Muslim] elders'. The informal character of this council and of its members' credentials, moreover, serves to counter a further plank of the *mfumokristo* narrative, namely that Christians monopolised power by marginalising Muslims in higher education. Thus, the critic asserts:

> in some cases [Nyerere chose them] despite their limited education, he knew that it is good judgment and wisdom that lead, not worldly education, even if the manager in chief needs education. For example [the Nyerere-era vice-president Rashidi] Kawawa, and a living example is [Nyerere's successor] Rais Alhaji Ali Hassan Mwinyi, it was not as if he had a lot of education, but their reputation for leadership at every level, from when he started in government until now in retirement, was high and solid; it was not a question of degrees from universities.

Besides countering the narrative that Muslims were marginalised politically by their marginality to higher education, these claims combine with those about Nyerere's council of elders to give the impression that Said's view of Muslim notables' networks is partial, partisan and restricted; in effect, that Said is elitist by focusing excessively on networks of predominantly coastal notables who lost out personally from the closure of the kadhis' courts. Said's critic ends with a plea against divisive mis-statements of history:

> Comrade writer, I have read in social networks and found that often arguments and topics are built up with reference to events or issues that did not occur, and often history is used selectively or untruthfully. But we have freedom of opinion and it is your right, but look at Somalia, Chad, Mauritania, where they are now, and where Nigeria is going. Forget Iran, Iraq, Pakistan, Egypt and Algeria. Let us learn from Malaysia and Indonesia.

The commentary here states the liberal observer's dilemma when faced with activists' half-truths: repressing them would breach the principle of free speech, yet their potential political effects are worrying. The use of the term 'comrade', *ndugu,* as an address is friendly, and perhaps a touch admonitory, as technically a *ndugu* is both a close and a slightly junior relative. Moreover, it evokes the political language of the Nyerere era, when the use of this term was encouraged as an analogue to the English 'comrade'. The writer, then, again signals his own loyalty to the heritage of the Nyerere years. The enumeration of countries to emulate or not, meanwhile, acknowledges the widespread difficulty of negotiating religious pluralism in post-colonial states, pitting countries that have experienced significant religious strife or repression against others that have maintained relatively peaceful coexistence.

Conclusion: duelling views of the unsettled western border of the Islamic Indian Ocean sphere

It is evident that Said's and his critic's claims are concerned less with the practicalities and legal aspects of a possible Islamic court system in Tanzania than with broader questions of political history, legitimacy and relations between Muslims and Christians. In a sense, their ability to take the content and process of Islamic law for granted, as something to be derived in an apparently obvious manner from

'the book', can be said to provide evidence of the problematic raised by Zaman and Hallaq.[44] Neither Said nor his critic have anything to say on the procedural complexities of Islamic law and how it could accommodate or contribute to legal practice in a multi-religious setting. Moreover, rhetoric about *mfumokristo* is often and easily integrated into a Tanzanian version of Islamist discourse that portrays Islamic law as of necessity all-encompassing, coherent and rigid. Said's critic acknowledges this when he describes mention of *mfumokristo* as threatening: it is so not only because it involves conspiracy-theorising and blame-mongering, but also because the solutions proposed to it often involve rather absolutist views of Islam.[45]

Yet the late-colonial practice of Islamic law that Said remembers so fondly was, in fact, already compartmentalised and limited; a product of the kinds of colonial realignments critiqued by Hallaq and traced by Stockreiter in Zanzibar. Concomitantly, it had little to do with the absolutism of those contemporary political Islamists who demand that Tanzanian Muslims strive to live by 'God's law' alone. Nevertheless, as long as the focus of mobilisation is the comprehensive absence of kadhis' courts, the substantive law they might use, their possible procedures and scope, do not even come into sight as a problem. Arguably, the reinsertion of the practice of Islamic law into the state's legal framework has become one of the core aims of Tanzanian Islamist activists partly because it can be presented in deceptively concrete and unambiguous terms, while leaving the complications of legal interpretation for later.

One implication of this approach by East African Muslim activists is that they continue to struggle on terrain defined by, and in terms derived from, the heritage of colonialism: that of the ex-colonial state. They struggle to be included in or to achieve control of a post-colonial, 'Western' and modern political project; there is no escaping the Western-derived categories of statehood, governance and law. This outcome is again in keeping with those accounts that see Islamic law as transformed by the colonial encounter, and its pre-colonial social life, organic, embedded and moral, as unrecoverable. It also chimes with a larger-scale critique that sees not just post-colonial Islamic legal practice, but the entirety of the institutional framework of the nation-state as alienating and constraining.[46]

Yet how does this account of colonial-era ossification feeding into the era of post-colonial Islamist political contestation sit with the observations on the still-flexible, still-embedded practice of Islamic law by legal anthropologists?[47] One part of the answer is that the compartmentalisation of Islamic law into the sphere of personal and family law only, and in the case of mainland Tanzania outside the formal court system, has allowed it to continue functioning in a socially embedded and flexible way within this limited sphere. Limitation of the scope of Islamic law, in this way, arguably had effects that ran counter to those of the elaboration of flexible legal process into rigid legal rules. In part, the relatively off-hand attitude of colonial administrators to the goings-on in East African Islamic courts reflects the fact that Zanzibar (that is, the islands that are now part of Tanzania, and the coastal strip now part of Kenya) was a British protectorate, rather than a full colony. Beyond this, though, the disinterest of British officials in kadhis' courts in

colonial Tanganyika is likely to reflect the generally dismissive, routinely racist attitudes of colonial officials towards 'black' African Muslims. They were perceived as inauthentic, Islam a mere 'veneer', and therefore both un-threatening and uneducable; neither deserving nor likely to profit from official attention.[48] The perceived marginality of these Islamic legal practitioners to the Indian Ocean sphere, in other words, allowed their practice to continue with little official interference in the shadows.

The texts discussed above show that the dichotomy of Islamic maritime civilisation vs. continental African barbarism that underlay this colonial-era dismissiveness still haunts the debate on kadhis' courts. Said's and his critic's views of the last days of the kadhis' courts' colonial existence and of post-colonial Tanzanian politics trace out very different ways of imagining the Indian Ocean sphere. To Said, the kadhis' courts are part of a cosmopolitan past he wants recovered. The focus is on reinstating the *'ulamā'*; the Muslim scholar-notables who, in Said's telling, straddled the worlds of late colonial respectability – Land Rovers, mission schools and tarboushes – and of nationalist activism with ease. The evident attractiveness of this lost world to the author provides indication also of the depth of the bitterness at the *'ulamā'* being robbed of the fruits of the independence they helped bring about. The care Said takes to portray the people involved in running the courts as diverse, with Arab, 'coastal' names mentioned in one breath with notables from Christian-dominated up-country towns, shows his determination not to let this be dismissed as the niche complaint of a narrow coastal elite.

His anonymous critic is nevertheless swift to pick up on the contradictions surrounding the historical moment Said idealises. The critique alludes to the colonial underpinnings of the court system, and explicitly invokes the salience of social divisions and hierarchical thinking in the milieu Said describes. By emphasising differences in educational status among Muslim independence activists and accusing Said of focusing on the better-educated ones, the commentator portrays Said's version of the ex-kadhis as precisely the kind of disgruntled, self-seeking elite Said did not want them to be seen as. Conversely, the critic insists that Muslims distinguished not by education, but by commitment and character, were given due influence within Nyerere's government. S/he portrays the post-colonial dispensation as counteracting petty social divisions that had prevailed under colonialism, subverting Said's claim to authoritative historical knowledge and his characterisation of a seamless milieu of late-colonial cosmopolitans.

Thus, while campaigners for the reintroduction of kadhis' courts in Tanzania tend to portray them as an unproblematic universal feature of Muslim societies, Said's statements open up a maze of place- and time-specific historical claims and counter-claims. The ironic outcome brings to mind Iza Hussin's careful examination of changes in and the institutionalisation and operationalisation of Islamic law in colonial Malaysia. It occurred in conversation with other Muslim parts of the British empire, but with the help of local elites and in a manner that was deeply imbricated with the distinctive politics of accommodation between these elites and British imperialists in this particular setting.[49] Similarly, the East African discussion on kadhis' courts appears unable to quite escape the accommodations

between British residents and the Zanzibari authorities that co-produced the colonial discourse of Islam as an outside civilising force in East Africa.[50]

Combined with the accommodations in legal practice that occurred in the shadow of officials' racialised contempt for the practice of Islamic law among Africans, these observations highlight that while the states and legal systems bequeathed by colonialism invariably pose problems to the continuing practice of Islamic law, these problems take on many forms, patterns and directions. A dichotomy between pre-colonial flexibility and connectivity, as per Bishara, and present-day rigidity catalysed by colonial intervention would be misleading. The diverse and ambiguous outcomes are not well understood in terms of encounters between 'imperialism' on one hand and 'local societies' on the other. Rather, these were encounters between different imperial actors and different factions in the societies they encountered, shaped by time- and place-specific contexts.

Likewise, there are today different disciplinary factions among the academics observing these outcomes, and their different normative assumptions further increase the diversity in findings. In particular, scholarship based heavily on written, English or Arabic-language, sources tends to emphasise cosmopolitan networking and inclusiveness within the Western Indian Ocean, while more fieldwork-based scholarship, drawing on Swahili oral sources, sees ruptures and place-boundedness. By contrast, in the history of Islamic law, work on Arabic-language sources has been more focused on colonialism catalysing greater rigidity, whereas Swahili-language work gives more space to continuing fluidity and accommodation. In this manner, academic work, too, is haunted by long-standing ways of mapping cultural difference on geographic location. This observation is not intended to undermine any one of these specialisations and approaches, but rather to appeal for greater interaction across these sub-disciplinary boundaries, so as to examine their underlying assumptions together.

Two more points deserve to be made quickly. First, Said's anonymous critic gives some indication of the reasoning of those Muslim notables in Tanzania who do not see the need to challenge the state. Views such as theirs do not often make it into the media, where critical Muslim activists on one hand, and Christians opposing the courts on the other, are much more vocal, or indeed into academic discussion of Islam in East Africa, which tends to focus either away from politics or on political radicalism. Said's critic, then, provides a rare insight into the diversity of Tanzanian Muslims' views of the state they inhabit. S/he intimates that the post-colonial dispensation helped moderate hierarchies and bridge divisions that colonial rule had cultivated, including those between Muslims of different backgrounds. The critic's refusal to take an oppositional stance, then, is based not on resignation or fear, but rather on a positive view of the accomplishments of the post-colonial state. This intervention, then, shows that the reach of Muslim discontents' activism is limited not only by effective repression or mainstream Muslims' political quiescence, but by actively positive endorsements of the post-colonial state by some Muslims.

Last, the conspiratorial hinting and the allusive language in Said's and his critic's writings provide a vivid illustration of the way conspiracy theorising

feeds off the lack of freedom of speech, and concomitantly of information. Despite limited everyday intervention, the threat of official retaliation hangs over media organisations in Tanzania. This, in turn, creates justified mistrust concerning the completeness of political information openly available. Amid this lack of space for open debate in the media, for verification and rebuttal, incendiary claims can thrive even if factually incorrect. Lack of press freedom, in this sense, ultimately works to the advantage of conspiracy theorists, as it creates a space where unsubstantiated assertions can claim a spurious legitimacy. The elaboration of the need for, and absence of, kadhis' courts into a symbol of Muslims' oppression takes place partly in this space, creating disagreements that are impossible to settle because, as so often, there is no agreement on the facts.

Notes

1 Hassan Mwakimako, "The Historical Development of Muslim Courts; Tthe Kadhi, Mudir and Liwali courts and the Civil Procedure and Criminal Procedure Ordinance, ca. 1963," *Journal of Eastern African Studies* (2013): 329–43. Elke Stockreiter, *Law, Gender and Social Change in Post-Abolition Zanzibar* (Cambridge: Cambridge University Press, 2015); Fahad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean* (Cambridge: Cambridge University Press, 2017).
2 Anne Bang, *Sufis and Scholars of the Sea* (London: Routledge, 2004)*;* Anne Bang, *Islamic Sufi Networks in the Western Indian Ocean, ca 1880–1940: Ripples of Reform* (Leiden: Brill, 2014).
3 Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton, NJ: Princeton University Press, 2002).
4 Wael Hallaq, *Sharia: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2012).
5 Mwakimako, "Historical Development"; Erin Stiles, *An Islamic Court in Context: A Study in Judicial Reasoning* (London: Palgrave Macmillan, 2009); Susan Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: University of Chicago Press, 1998); Stockreiter, *Islamic Law*.
6 For the neglect of the African side in earlier accounts of Indian Ocean history, see e.g. Chaudhury, *Asia before Europe* (Cambridge: Cambridge University Press, 1991). On the problem of Islam in Africa being seen as inauthentic, see Rudolph T. Ware, *The Walking Quran* (Chapel Hill: University of North Carolina Press, 2014).
7 Kai Kresse, "Muslim Politics in Post-Colonial Kenya: Negotiating Knowledge on the Double-Periphery." *Journal of the Royal Anthropological Institute* 15 (2010): 72–90.
8 Felicitas Becker and Joel Cabrita, "Introduction: Performing Citizenship and Enacting Exclusion on Africa's Indian Ocean Coast," *Journal of African History* 55 (2014): 1–12.
9 On this tension between constant boundary crossing and the persistence of highly place-specific identities in the Indian Ocean, see also Nicholas Smith's chapter in this collection.
10 Bishara, *Sea of Debt*; Bang, *Islamic Sufi Networks*.
11 Thomas McDow, *Buying Time: Debt and Mobility in the Western Indian Ocean* (Athens, OH: Ohio University Press, 2018).
12 Shabani Mwakalinga is currently pursuing PhD research on the colonial history of the courts at Gent University. His research indicates that the place of kadhis' courts in the colonial court system was a headache for officials and that official kadhis' courts remained very few. Islamic legal reasoning, however, was widely used, alongside other

legal traditions, in so-called Liwalis' courts. The present-day characterisation of colonial kadhis' courts by campaigners for their reintroduction is clearly idealised.

13 For a book-length elaboration of this claim, see Mohamed Said, *The Life and Times of Abdulwaheed Sykes* (London: Minerva Press, 1998).
14 Kresse, "Double-periphery."
15 James Piscatori, *Islam in a World of Nation-States* (Cambridge: Cambridge University Press, 1986).
16 Jonathon Glassman, *Feasts and Riot: Revelry, Rebellion and Popular Consciousness on the Swahili Coast, 1856–1888* (Oxford: James Currey, 1995); Jonathon Glassman, *War of Words, War of Stones: Racial Thought and Violence in Late-Colonial Zanzibar* (Bloomington, IN: Indiana University Press, 2013).
17 Felicitas Becker, *Becoming Muslim in Mainland Tanzania* (Oxford: Oxford University Press, 2008).
18 On sources of religious tolerance in Tanzania, see David Westerlund, *Ujamaa Na Dini: A Study of Some Aspects of Society and Religion in Tanzania* (Stockholm: Almkvist and Wiksell, 1980); Bruce Heilman and Paul Kaiser, "Religion, Identity and Politics in Tanzania," *Third World Quarterly* 23 (2002): 691–709.
19 On the history of the unification of Zanzibar and Tanganyika, see Michael Lofchie, *Zanzibar: Background to revolution* (Princeton, NJ: Princeton University Press, 1965), and Thomas Burgess, *Race, Revolution and the Struggle for Human Rights in Zanzibar* (Athens, OH: Ohio University Press, 2012).
20 On the efforts of the state to entrench its official secularism, see Westerlund, *Ujamaa Na Dini.*
21 Roman Loimeier, "Perceptions of Marginalization," in *Islam and Muslim Politics in Africa*, eds. Benjamin Soares and Rene Otayek (London: Palgrave Macmillan, 2007), 137–156; Becker, *Becoming Muslim*, chapters 7–8.
22 On Muslims' difficult relationship with colonial education, Becker, *Becoming Muslim,* chapter 4, and Roman Loimeier, *Between Social Skills and Marketable Skills* (Leiden: Brill, 2012). On the rise of an entrepreneurial class on the basis of connections to the state apparatus, Michael Lofchie, *The Political Economy of Tanzania* (Chapel Hill: University of North Carolina Press, 2015).
23 The nineteenth-century history of this distinction on the coast, in the context of Omani immigration, is captured brilliantly in Glassman, *Feasts and Riot.*
24 Glassman, *War of Words.*
25 Ibid.
26 For the ramifications of this shift on the northern, Kenyan Swahili coast, see Kai Kresse, *Philosophising in Mombasa* (Edinburgh: Edinburgh University Press, 2007).
27 On Tanzania's socialist phase, see Priya Lal, *African Socialism in Post-Colonial Tanzania* (Cambridge: Cambridge University Press, 2015), and Leander Schneider, *Government of Development* (Bloomington: Indiana University Press, 2014).
28 Gregory Maddox with Ernest Kongola, *Practicing History in Central Tanzania: Writing, Memory and Performance* (Portsmouth, NH: Heinemann, 2006).
29 On Bibi Titi, see Susan Geiger, *TANU Women: Gender and Culture in the Making of Tanzanian Nationalism* (Portsmouth, NH: Heinemann, 1996); on Makonde as backward, Lal, *African Socialism,* chapter 4.
30 Felicitas Becker, "Rural Islamism during the 'War on Terror': A Tanzanian Case Study," *African Affairs* 105 (2006): 583–603; Becker, *Becoming Muslim*, chapters 7–8.
31 I thank Yussuf Hamad, Swahili lecturer at SOAS, for alerting me to the currency of this phrase.
32 In recent years, under President Magufuli, media repression has increased.
33 I use 'person' rather than 'man' as Swahili does not have grammatical gender, and the person referred to could be female or male. Nevertheless, the archetypical *muungwana* would undoubtedly be thought of as male.

34 The importance of Swahili, a Bantu language shaped by its role as a medium in trade and rich in Arabic loanwords, as a means of debate and cultural expression among East African Muslims recalls the role of Malay for Cambodian Muslims, as explored in Philipp Bruckmayr's chapter in this collection.
35 Steven Feierman, *The Shambaa Kingdom: A History* (Madison, WI: University of Wisconsin Press, 1974).
36 Shabani Mwakalinga has so far been unable to locate archival evidence of a kadhis' court or a Kadhi Abdallah Simba in Songea. Rather, it appears that Islamic law there was applied in the context of the liwalis' court, part of the 'native authority' court system.
37 On the history of Songea and Catholicism there, see John Iliffe, *A Modern History of Tanganyika* (Cambridge: Cambridge University Press, 1979), passim, and Frumentius Renner ed., *Der fuenfarmige Leuchter: Beitraege zum Werden und Wirken der Benediktinerkongregation St Ottilien* (St Ottilien: Verlag der Missionsbenediktiner, 1978–93) (5 volumes).
38 Iliffe, *Modern History*; James Giblin and Gregory Maddox eds., *In Search of a Nation: Histories of Authority and Dissidence in Tanzania* (Oxford: James Currey, 2005).
39 James Brennan, *Taifa: Making State and Nation in Tanzania* (Athens, OH: Ohio University Pres, 2013); Aili Mari Tripp, *Changing the Rules: The Politics of Liberalization and Informal Urban Economy in Tanzania* (Berkeley, CA: University of California Press, 1997).
40 On this narrative, see Said, *Abdulwaheed Sykes*; Becker, *Becoming Muslim*, chapters 7–8; Loimeier, "Perceptions of Marginalization".
41 For instance, I encountered them in the household of Mzee Gonga, a miller cum local intellectual in Kariakoo.
42 James Brennan, "The Short History of Political Opposition and Multi-Party Politics in Tanzania, 1958–1964," in *In Search of a Nation,* eds. Giblin and Maddox, 250–76.
43 Brennan, *Taifa.*
44 Zaman, *Ulama*; Hallaq, *Sharia.*
45 On Islamism in Tanzania, Roman Loimeier, "Zanzibar's Geographies of Evil: The Moral Discourse of the Ansar al-sunna in Contemporary Zanzibar," *Journal of Islamic Studies* 31 (2011): 4–28; Felicitas Becker, "Rural Islamism during the 'War on Terror': A Tanzanian Case Study," *African Affairs* 105 (2006): 583–603.
46 Hallaq, *Sharia*; Wael Hallaq, *The Impossible State: Islam, Politics and Modernity's Moral Predicament* (New York: Columbia University Press, 2013).
47 Stiles, *Islamic Court in Context*; Hirsch, *Pronouncing and Persevering*.
48 Becker, *Becoming Muslim,* chapter 3; Ware, *The Walking Quran.*
49 Iza Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority and the Making of the Muslim State* (Chicago: University of Chicago Press, 2016).
50 Glassman, *War of Words.*

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