

Craving Bureaucracy: Marriage, Islamic Law, and Arab Petitioners in the Straits Settlements

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Abstract

British involvement in Muslim affairs in the Straits Settlements (Malacca, Penang and Singapore) was done at the behest of Muslim subjects in the colony. Arab Muslims, who were a minority in the region, exhorted British authorities to take charge of the administration of Muslim marriages and divorces. In this way, authority was vested by these Muslims in colonial legal institutions. Instead of trying to wrest religious authority from the secular colonial power, petitioners essentially attempted to remove religious authority from the hands of Muslim *qādis* by granting more control to non-Muslim British colonial authorities. Though British authorities were initially reluctant to take on the mantle of administering legal lives of Muslim subjects who formed fifteen percent of the British Crown Colony, a petition in 1875 subsequently led to the application of legal codes and case law devised in British India in 1880 through the Mahomedan Marriage Ordinance that was brought into effect in 1882. This led to an unprecedented development in the administration of Islamic law in Southeast Asia. Thereafter, colonial legal practitioners relied heavily on this corpus of precedents and knowledge prepared by their predecessors in British India. Their conception of Islamic law was in other words based on a universal view of Islamic law, minimally affected by local understandings and customs. A universal view of Islam, coupled with centralized colonial bureaucracy suited the needs of highly mobile Arabs who traversed the Indian Ocean as they craved accountability on the part of legal administrators.

Introduction

In 1875, 143 memorialists, most of whom were Arabs, sent a petition to William Jervois, the new Governor of the Straits Settlements of Malacca, Penang, and Singapore.¹ In the petition, they requested that the British colonial government record Muslim marriages

¹ "Mahomedan Marriage Divorce," *Straits Times (ST)*, September 11, 1875, 1. "The Legislative Council, 6th July," *ST Overland Journal*, July 12, 1880, 3. The original petition did not survive. The names of individual memorialists is unknown.

and divorces in the Crown Colony and officially appoint *qāḍīs* (judges). The petitioners complained that the existing mode of recording Muslim marriages and divorces had produced incomplete entries in the *qāḍīs*' books without full names, addresses, and dates. *Qāḍīs* who solemnized Muslim marriages tended to rely solely on verbal testimony of persons involved.² This made it extremely difficult to prove the validity of marriages, legitimacy of progeny, and property titles. Petitioners underscored that British authorities had already met with several complaints about several *qāḍīs*' conduct in the Straits Settlements prior to 1875.³ Indeed, British officials were aware that *qāḍīs* were often guilty of ratifying marital unions that would be contrary to Islamic law, such as marriages without the permission of a woman's guardian. *Qāḍīs* would also declare a marriage invalid for a woman who was tired of her husband, and they would forge an entry into the register of marriages for "a good fee."⁴

Colonial administration of Islamic law was not only welcomed in this case but actively sought after by some Muslims. Arab residents did not possess much authority in the Straits Settlements at this point in time, which could explain their reliance on colonial officials. Being highly mobile merchants, and as part of diasporic communities with property holdings, children and wives at various places throughout the Malay Archipelago, South Asia, and Hadhramaut, these Arabs could certainly benefit from better record-keeping and clearer, unambiguous legislation facilitated by a more efficient colonial legal regime. Their itinerant lives, which tended to produce far-flung relations, made notarial attestation by centralized depositories all the more crucial.⁵ Authoritarian powers could offer an abstract formalism of legal certainty provided by juridical formalism that would enable the legal system to operate like a technically rational machine.⁶ Religious authority was ceded in order to ensure that some form of predictable, coercive mechanism was enforced in legal matters.

The Arab petitioners' preoccupation with marriage was understandable since they often married local women based in the region. Arabs had been travelling to Southeast Asia from East Africa and the Middle East since the ninth century usually on their way to trade with Canton in China.⁷ By the latter half of the nineteenth century, Arabs in

² Oral testimony was not only adequate but even preferred in Islamic courts. Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005), 87.

³ "The New Gaming," W.E. Maxwell, *ST*, June 13, 1883, 2.

⁴ "The New Gaming," W.E. Maxwell, *ST*, June 13, 1883, 2.

⁵ W. B. Hallaq, *Shari'a—Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 177.

⁶ Max Weber, *Law in Economy and Society* (Cambridge: Harvard University Press, 1954), 226–227.

⁷ These merchants came from Bukhara, Zanzibar, Baghdad, Oman, Kish, Hadhramaut, Mecca, Basra, Egypt and Mosul. Paul Wheatley, *The Golden Khersonese: Studies in the Historical Geography of the Malay Peninsula before A.D. 1500* (Kuala Lumpur: University of Malaya Press, 1961), vi, xvii, 210–211, 244–245; Janet L. Abu-Lughod, *Before European Hegemony: The World System A.D. 1250–1350*. (New York: Oxford University Press, 1989), 298; O. W. Wolters, *Early Indonesia Commerce: A Study on the Origins of Srivijaya* (Ithaca: Cornell University Press, 1967), 178; Rita Rose di Meglio, "Arab Trade with Indonesia and the Malay Peninsula from the 8th to the 16th Century," in *Islam and the Trade of Asia: A Colloquium*, ed. D.S. Richards (Oxford: Bruno Cassirer, 1970), 105–135; Chao Ju-Kua, *On the Chinese and Arab Trade*, eds. Fr. Hirth and W.W. Rockhill, (Amsterdam: Oriental Press, 1966), 117.

Southeast Asia mostly originated from Hadhramaut in present-day Yemen. They came as merchants, religious scholars, pilgrims, judges, laborers, and explorers.⁸ Some became wealthy merchants, married into local ruling families, or borrowed upon their religious legitimacy as Arabs to forge positions as rulers in the region.⁹ However, by the latter half of the nineteenth century as Dutch and British colonial rule intensified in the region, they lost their social and political clout in the Malay world, which rendered an alliance with European colonial officials necessary.¹⁰ Despite constituting less than 0.1% of the entire Muslim population in the Straits Settlements, the Arab elite were able to steer the direction of British policy regarding Muslim religious affairs in the late nineteenth century. Arab elites, more so than other Muslims in the region (such as Malays, Javanese, Indian Muslims, Buginese), lived fully as members of a colonial society governed by British law.¹¹ Even Dutch colonial official L.W.C. van den Berg who was based in Dutch Batavia noted that Singapore possessed the most flourishing (though not the largest) Arab colony in all the Indian Archipelago by the 1880s.¹² It is not surprising therefore that the Arab elite in the Crown colony would try to ensure that their family lives were well-regulated by an efficient legal administration.

The Case of *Salmah and Fatimah v. Soolong*

Arab dissatisfaction with *qāḍī*'s conduct in the Crown Colony intensified due to a high profile case that was brought to the Supreme Court in Singapore in February 1878.¹³ In the case of *Salmah And Fatimah, Infants, By Their Next Friend Shaik Omar V. Soolong* (henceforth *Salmah and Fatimah v. Soolong*), a *qāḍī* had solemnized a marriage between an Arab woman and a non-Arab man in Singapore without the consent of the bride's guardian (*walī*) who was her paternal uncle. In fact, the young woman, Fatimah, had deliberately married her Indian husband, Ismail, during her uncle's absence. Upon his return, her uncle contested the validity of the marriage

⁸ For more on Hadhramis specifically, see William G. Clarence-Smith and Ulrike Freitag, eds. *Hadhrami Traders, Scholars and Statesmen in the Indian Ocean Diaspora* (Leiden: Brill, 1997); Huub de Jonge and Nico Kaptein, eds. *Transcending Borders: Arabs, Politics, Trade and Islam in Southeast Asia* (Leiden: KITLV Press, 2002); Ahmed Ibrahim Abushouk and Hassan Ahmed Ibrahim, eds., *The Hadhrami Diaspora in Southeast Asia—Identity Maintenance or Assimilation* (Leiden: Brill, 2009);

⁹ For more on this phenomenon, see Engseng Ho, *Graves of Tarim: Genealogy and Mobility across the Indian Ocean* (Berkeley: University of California Press, 2006), 168-170, 183-184.

¹⁰ On the decline of Arab influence in Southeast Asia during the nineteenth century, see Sumit K. Mandal, "The Indian Ocean in a Malay Text: The Hikayat Mesrakelek in Transregional Perspective," *Indonesia and the Malay World*, 41, 120 (July 2013), 243.

¹¹ W. Roff, "Murder as an aid to social history," 92. In 1939, Arabs donated so much money to the Malayan Patriotic Fund in support of the British colonial government that they merited their own headline in *The Straits Times*. "Arab Donations to Patriotic Fund," *ST*, October 6, 1930, 12.

¹² L.W.C. van den Berg cited in W.H. Ingrams, *A Report on the Social, Economic and Political Condition of the Hadhramaut*. (London: His Majesty's Stationery Office, 1936), 149.

¹³ *Salmah And Fatimah, Infants, By Their Next Friend Shaik Omar V. Soolong* [1878] 1 KY 421.

in British colonial court. An Arab *mufti* (expert in Islamic law) named Syed Mohamed bin Shaik bin Sahil from the neighboring state of Johore, a kingdom administratively separate from but immediately adjacent to Singapore on the southern tip of the Malay Peninsula, was consulted by the presiding judge, Chief Justice Sir Thomas Sidgreaves. The *mufti* stated that Fatimah who followed the Shāfi'i *madhhab* (one of the four main Sunni schools of law) required the consent of her guardian who was her paternal uncle for her marriage to be valid since she had never been married before.¹⁴ If her guardian was away in another country which would take "twenty-four hours journey" by foot or forty-five miles by sea, a *qāḍī* "appointed as such by the Government of the country" should stand in as a woman's *walī* or guardian. Since he only recognized government-appointed *qāḍīs*, he claimed that there was no *qāḍī* in the Straits Settlements in February 1878. Hence, he believed, according to proper procedure, Fatimah had no choice but to wait for her guardian to return. However, she obviously did not wait for his return, and the *mufti* therefore chided her publicly in court for shrewdly arranging her own marriage independent of her uncle's approval.

If indeed Fatimah had remained a Shāfi'i, she would have needed her guardian's consent in order to marry according to that legal school. However, since she had converted to the Ḥanafī *madhhab*, her marriage could be validated by a *qāḍī* without the consent of her guardian. The *mufti* did not relent in the face of this new development in Fatimah's life and clarified that a Shāfi'i woman could indeed switch to another sect after attaining puberty, but she still had to ensure that the marriage was "koofoo" (*kafā'a*) or sufficient with a partner who was her equal.¹⁵ He emphasized that according to both the laws of Ḥanafī and Shāfi'i *madhhabs*, the Indians (referred to as "Klings") and Malays were not equal to the Arabs, and therefore Fatimah's marriage to Ismail was null and void.

In response to the *mufti's* testimony, Chief Justice Sidgreaves cited no less than three legal manuals that had been produced in British India, namely William Hay Macnaghten's *Principles of Mohamedan Law*, Baillie's *Digest* and Shama Churun Sircar's *The Muhammadan Law*.¹⁶ He dismissed the Arab *mufti's* notion of equality of marriage since

¹⁴ The term *madhhab* has been translated as "sect," "rite," and most commonly as "school." However, as Joseph Schacht and George Makdisi warn us, it did not signify any definite organization, nor a strict uniformity of doctrine within each school, nor any formal teaching, nor any official status, nor even the existence of a body of law in the Western meaning of the term. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 28; George Makdisi, "The Significance of the Sunni Schools of Law in Islamic Religious History," *IJMES* 10 (1979): 1.

¹⁵ For more on the issue of equality of marriages amongst the Arab community, see Sumit K. Mandal, "Challenging Inequality in a Modern Islamic Idiom: Arabs in Early 20th-Century Java," in *Southeast Asia and The Middle East: Islam, Movement and the Longue Durée*, ed. Eric Tagliacozzo (Stanford: Stanford University Press, 2009), 156-175.

¹⁶ For the relevant sections on the subject of guardianship cited by Sidgreaves, see Shama Churun Sircar, *The Muhammadan Law* (Calcutta: Thacker, Spink and Co., 1873), 334.

he did not see this as a concern “amongst Muslims outside of Arabia.” In addition, he referred to a case in Bombay High Court Reports in 1864.¹⁷

The Hanifites hold that a girl who arrives at puberty, without having been married by her father or guardian, is then legally emancipated from all guardianship, and can select a husband without reference to his wishes. The Shafites, on the other hand, hold that a virgin, whether before or after puberty, cannot give herself in marriage without the consent of her father. The effect of a lawful change from the sect of Shafi to that of Hanifa, would be to emancipate the girl, who had arrived at puberty, from the control of her father, and to enable her to marry without consulting his wishes or obtaining his consent.¹⁸

He ended his judgment by stating that:

Now the words used here legally emancipated from all guardianship and can select a husband without reference to his wishes are very strong, and, it appears to me, that I should be acting in direct contravention of this decision, if I held that, on the ground of inequality, this girl Fatimah was still subject to her guardian, and that she could not select a husband without reference to his wishes.¹⁹

The judge dismissed the *mufti*'s ruling and ruled that Fatimah's marriage to Ismail was indeed valid.

The case of *Salmah and Fatimah v. Soolong* was the most significant case concerning Islamic law that immediately preceded the passing of the Mahomedan Marriage Ordinance of 1880. It demonstrated three related phenomena. Firstly, courtroom proceedings bolstered the Arabs' view of the *qāḍīs*' inadequacy as religious authorities, possible corruption, and unfair alliance with local women based in the colony such as Fatimah, who was allowed to marry a non-Arab by a *qāḍī*. Secondly, the case revealed that British judges' authority clearly superseded that of *muftis* who might be called as an expert witness in British courts, but had neither real power nor influence. *Salmah and Fatimah v. Soolong* drove home the point that an alliance with British legal administration was important to ensure an alignment of interests.

Thirdly, *Salmah and Fatimah v. Soolong* also affected colonial legal administration's view of Islamic law in the colony. Because Chief Justice Sidgreaves

¹⁷ *Mubammad Ibra'him bin Mubammad Sayad Park'r v. Gulam Ahmed bin Mubammad Sayad Roghe and Mubammad Sayad bin Mubammad Ibra'him Roghe*. Bom. H.C. Reports Suit no. 49 of 1863, Bombay High Court Reports Volume 1, 223. The headnote of the case clearly states that: “After attaining puberty a Muhammadan female of any one of the four sects can elect to belong to whichever of the other three sects she pleases, and the legality of her subsequent acts will be governed by the tenets of the Imam whose follower she may have become. A girl whose parents and family are followers of the school of Shafii, and who has arrived at puberty and has not been married or betrothed by her father or guardian, can change her sect from that of Shafii to that of Hanifa, so as to render valid a marriage subsequently entered into by her without the consent of her father.”

¹⁸ *Salmah And Fatimah, Infants, By Their Next Friend Shaik Omar V. Soolong* [1878] 1 KY 421.

¹⁹ *Salmah And Fatimah, Infants, By Their Next Friend Shaik Omar V. Soolong* [1878] 1 KY 421.

deciphered and applied Ḥanafī laws in such a complex legal case, the colonial legal administration achieved a high level of confidence in navigating this new legal terrain through his example. The case of *Salmah and Fatimah v. Soolong* was, however, an exceptional opportunity for a British judge in the Straits Settlements since most Muslims in the region actually belonged to the Shāfi'ī school of law.²⁰ Nonetheless, court proceedings brought to light the copious amount of materials on Islamic law already at hand, albeit mostly pertaining to Ḥanafī law, inherited from British India. This realization, and possible newfound confidence in dealing with the intricacies of Islamic law, prompted British colonial administration in the Straits Settlements to consider more direct intervention into the administration of Islamic law in the colony.

The Petition of 1875

The direct impetus for legal reform was a petition by Muslim subjects in 1875 who were displeased with local *qāḍīs*' performance. Their complaints struck a chord with British legal administrators who, like Sir Thomas Sidgreaves, already occasionally handled cases involving Islamic law when they were brought to higher courts as in the case of *Salmah and Fatimah v. Soolong*. In 1875, there were numerous *qāḍīs* throughout the Straits Settlements since each ethnic community elected its own *qāḍī* in each settlement—Penang, Malacca and Singapore.²¹ Within the colony, several *qāḍīs* operated in the same space without defined territorial jurisdiction. In other words, these *qāḍīs* exercised authority only over those Muslims who voluntarily recognized them.²² *Qāḍīs* in the Straits Settlements armed themselves with letter-patents from “the chief lights of the Mohamedan religion in the town or settlement to which he belongs.”²³ A sum of money was paid for the letter-patent, and this practice led to a certain arbitrariness in appointments.

British View of Local Conceptions of *Adat* (Customary Law)

Yet, British authorities chose not to intervene in the affairs of *qāḍīs*. Partly this was because British authorities in the Malay Archipelago generally

²⁰ A similar case appeared in court in 1907. *M.M. Noordin v. Shaik Mohamed Meah Noordin Shah & Anor.* 10 SSLR [1908] 72.

²¹ “The Legislative Council, 6th July,” *ST Overland Journal*, July 12, 1880, 3. The Legislative Council narrowed the number of Muslim communities to three distinct and discrete groups—Arab, Indian and Malay, although there were actually many more ethnic communities, including Muslims who originated from other parts of the Malay Archipelago. Moreover, each community sometimes appointed more than one *qāḍī*. Special Editor’s Note: See A. Malhi, this volume, for a discussion of the emergence of a Malay Muslim identity.

²² “Pinang,” *ST*, February 28, 1854, 7.

²³ “The New Gaming,” W.E. Maxwell, *ST*, June 13, 1883, 2.

acknowledged that religious practice in the region was diverse, and possessed very distinct localized forms and coloring,²⁴ as was evident in the numerous colonial digests and loose collections of local laws known as *undang-undang* which included both Islamic law and local customary laws known as *adat*.²⁵ They were also aware of the tension that emerged amongst Muslims in the region since the early nineteenth century between proponents of *adat* and returning Haj pilgrims and religious scholars.²⁶ These legal codes were considered important enough to be collected by British Orientalist William Marsden, as well as East India Company employees such as Thomas Stamford Raffles and William Farquhar from Sumatra, Java, Borneo, Singapore and the Malay Peninsula during the early nineteenth century.²⁷ This effort was followed by British scholar-officials such as Richard O. Winstedt and Richard J. Wilkinson a century later.²⁸ Yet, these legal codes were never implemented in colonial courts in the Straits Settlements.²⁹ Such collections tended to be only of scholarly interest, presumably as a form of ethnographic study that would illuminate British understanding of local societies but did not possess practical value in the Straits

²⁴ M. A. Hose, "Inaugural Address," *Journal of the Straits Branch of the Royal Asiatic Society* 1 (July 1878): 8.

²⁵ Lists of *adat* laws never aspired to the status of a legal system, and did not resemble a normative system of jurisprudence. M.B. Hooker, *Adat Laws in Modern Malaya* (Kuala Lumpur: Oxford University Press, 1972), 85.

²⁶ Anthony C. Milner, "Inventing Politics: The Case of Malaysia" *Past and Present* 132 (1991), 114 cited in Iza Hussin, "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State" *Law and Social Inquiry*, 32, 3 (2007): 761.

²⁷ The Asia and Africa Collections in the British Library holds manuscript copies of *adat* laws, including various versions of the Malacca laws (*Undang-Undang Melaka*) collected by Crawford, Raffles and Farquhar. See BL Mss Sloane 1293, Mss Add 12398. William Marsden, *The History of Sumatra* (London: Printed for the author, by J. McCreery, 1811), Thomas Stamford Raffles and Frank Hull, *The History of Java* (London: Black, Parbury, and Allen, 1817). For an analysis of the Malacca laws, see M.B. Hooker, "The Oriental Law Text: with reference to the Undang-Undang Melaka and Malay Law," *Malaysian Legal Essays: A Collection of Essays in Honour of Professor Emeritus Datuk Ahmad Ibrahim* (Kuala Lumpur: Malayan Law Journal, 1986), 431-456. For a description of early 19th century British efforts specifically, see T. J. Newbold, *Political and Statistical Account of the British Settlements in the Straits of Malacca*, Volume 2 (London: John Murray, 1839), 215-313.

²⁸ For example, see Richard O. Winstedt, *A History of Classical Malay Literature* (New York: Oxford University Press, 1969); Richard O. Winstedt, *Sbaman, Saiva and Sufi, a Study of the Evolution of Malay Magic* (London: Constable & Company Ltd. 1925); Richard O. Winstedt, *The Circumstances of Malay Life: The Kampong, the House, Furniture, Dress, Food*, Papers on Malay Subjects (Kuala Lumpur: Printed by J. Russell at the F.M.S. Govt. Press, 1909); Richard James Wilkinson, *A History of the Peninsular Malays, with Chapters on Perak and Selangor* (Singapore: Kelly and Walsh, 1923), Richard James Wilkinson, *Papers on Malay Subjects: History* (Singapore: Federated Malay States Government Press, 1920); Richard James Wilkinson, *Malay Industries* (Kuala Lumpur: F.M.S. Govt. Press, 1911).

²⁹ *Adat* laws were implemented in the Federated and Unfederated Malay states in the *Qadi* courts and *Sbaria* courts. Ahmad Ibrahim, *Towards a History of Law in Malaysia and Singapore* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992), 9.

Settlements.³⁰ British colonial authorities ultimately considered Islamic law, as codified in their legal compendia produced in India, more commonly known as Anglo-Mohamedan law, to be more relevant to the lives of Muslim subjects in the Straits Settlements than were the *undang-undang*.

The exercise of power by several *qādīs* within each settlement was construed as a problem by the petitioners, who believed that this might lead to highly disorganized records, if any at all. More importantly, each *qādī* might favor his own ethnic community over another, putting the highly mobile Arab migrant without influential footing in the colony at a disadvantage.³¹ Arabs formed only a small minority, at less than 1% of the entire Muslim population in the colony. Most Muslims in the colony were from the Indo-Malay Archipelago, although there were also South Asian Muslims based in the region.³² Since Arab men who frequently travelled across the Indian Ocean often married local women based in the colony, they were already at a disadvantage in most marital disputes since the women would most likely consult *qādīs* within their own community in their husbands' absence. The petitioners noted that it was common for an Arab merchant to return to the Straits Settlements, Malaya and the Netherlands Indies to find himself unceremoniously divorced from his local wife.³³ It was not surprising that Arab petitioners insisted that only one *qādī* should be appointed by the colonial government. They also insisted that the colonial government would have sole authority to appoint *qādīs* in each settlement. The British colonial legal apparatus would provide a valuable sense of predictability regarding the legal consequences of *qādīs'* actions. The petitioners suggested that a "Mahomedan registrar" be appointed under the supervision of the British Registrar General.³⁴ They strongly recommended that no marriage or divorce should be recognized except those solemnized by certain qualified *qādīs* licensed by the colonial Government. Each *qādī* would be answerable to the Mahomedan Registrar, a government-appointed British official who could be a non-Muslim. The Registrar would not only record the names of individual *qādīs*, brides and grooms, but also marriage settlements consisting of promises in consideration of marriages involving money and property.³⁵

³⁰ However, in the Malay States on the peninsula, such collections aided British legal practitioners immensely when cases involving Malay rulers on the peninsula were brought to English courts. The *Undang-Undang Melaka* (Laws of Malacca) was used in Pahang, Johore and Kedah. See Yock Fang Liaw, *Undang-Undang Melaka—the Laws of Melaka* (The Hague: M. Nijhoff, 1976).

³¹ Special Editors' Note: The invocation of universal Islamic law by Arabs to mitigate their minority status in the Straits Settlements contrasts with the conflation of Malay and Muslim identities just northward along the Malay Peninsula, see A. Malhi article in this issue.

³² Censuses indicate that South Asian Muslims formed about 10% of the Muslim population in the Straits Settlements.

³³ "The Legislative Council, 6th July," *ST Overland Journal*, July 12, 1880, 3.

³⁴ The functions and duties actually corresponded to that of the Mahomedan Registrar by the Bengal Act no. 1 of 1876.

³⁵ For example, see *Abamed Meab & Anor. v. Nacodab Merican*, [1893] 4 Ky 583.

More importantly for the petitioners, the Registrar would provide an important repository of documents that could be retrieved as evidence in colonial courts.

British Reluctance

To the petitioners' disappointment, the Legislative Council was at first reluctant to administer Islamic law in the colony more directly. After five long years, information was finally procured by the Council from various colonial governments in Ceylon, Madras, Calcutta and Bombay on the administrations of Islamic laws in these places.³⁶ Authorities based in the Straits Settlements discovered that the administrations of Muslim marriages in these places were, in fact, only in their nascent stage. The writer of the legislative report noted that:

under these circumstances, clearly the only course open for our Legislature is to await the passage of this law, in order that we may profit by the wider experience of India, and reap the benefit of the legal talent that will be brought to bear upon the Bill before it becomes law. We should thus be afforded some fixed data for the preparation of a similar law for this Colony, instead of groping in the dark, as we shall otherwise be compelled to do.³⁷

Despite the Arabs' exhortations for heightened colonial involvement in Muslim marriages, the Legislative Council, headed by Thomas Braddell, was generally reluctant to make the Bill compulsory. He argued that "the lower classes of Muslims" would not find it easy to register their marriages, in contrast to "the higher classes of Arabs" who happened to be the main class of memorialists clamoring for compulsory laws.³⁸

Furthermore, colonial authorities throughout the British Empire were generally determined not to be involved in matters of religion during the second half of the nineteenth century. The policy of non-interference in religious affairs dated back to the aftermath of the Sepoy Rebellion, also known as the First Indian War of Independence (1857–1858).³⁹ In the aftermath, Queen Victoria took control of India from the East India Company and guaranteed religious toleration to all Indian subjects.⁴⁰ Subsequently,

³⁶ The replies from Madras and Calcutta covered a list of Acts in force and Bills under consideration, while those from Bombay and Ceylon were more detailed. "The Mahomedan Law of Marriage and Divorce," October 2, 1875, 1.

³⁷ "Mahomedan Marriage Divorce," *ST*, September 11, 1875, 1.

³⁸ The identity of these "lower class Muslims" was not specified beyond the fact that the 143 petitioners did not fall within this category. "The Legislative Council, 6th July," *ST Overland Journal*, July 12, 1880, 3.

³⁹ This conflict in 1857 was a widespread revolt against British authorities in which Muslims and Hindus joined together. British authorities crushed this opposition severely and officially ended Mughal rule.

⁴⁰ Queen Victoria proclaimed "we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure." "Proclamation by the Queen in Council to the princes, chiefs, and people in India." A. B. Keith, *Speeches and Documents on Indian Policy 1750-1921. Volume 1* (London: Oxford University Press, 1922), 382.

certain issues that were designated “religious” were deemed outside of colonial intervention. Yet, scholars of British Empire have shown how colonial authorities claimed to avoid interfering in religious affairs while actually transforming religious laws in significant ways.⁴¹ For example, in British India, colonial administrative policies had already led to a drastic reorientation of Islamic legal practice—a shift from Islamic law’s “substantial rationality” to a more “formal rationality” implemented by colonial authorities.⁴² In light of this potentially drastic transformation, why then were Arab subjects in the Straits Settlements so willing to align themselves with British colonial officials?

Alliance between Mobile Merchants and Colonial Officials

By sending a detailed petition filled with demands, the predominantly Arab Muslim memorialists not only displayed a high level of knowledge of the legal workings of the Empire, but also willingly participated within the colonial legal structure. Nonetheless, they were not members of the Legislative Council.⁴³ Neither were they represented within the legal profession; the first Arab lawyer only appeared in 1948.⁴⁴ Since they frequently travelled back and forth across the Indian Ocean, they might have considered themselves unsuitable candidates for any sort of permanent role within colonial bureaucracy. In Legislative Council meetings, their views were represented by two British gentlemen, Mr. Bishop and Mr. Thomas Shelford.⁴⁵ Thus, their voices were not directly heard in the legislative council. Rather, British intermediaries had to push their agendas through council meetings. Members of the Arab elite could not directly participate in debates during council meetings, despite their high motivation to operate through colonial legal channels.

In order to bolster their cause, the memorialists, through their British representatives, Mr. Bishop and Mr. Shelford, gave two examples of grievances that could be alleviated by the introduction of a compulsory system of marriage registration.⁴⁶ The first example was

⁴¹ Ritu Birla, *Stages of Capital: Law, Culture and Market Governance in Colonial India* (Durham: Duke University Press, 2009); Bernard S. Cohn, *Colonialism and Its Forms of Knowledge—The British in India* (New York: Princeton University Press, 1996); Rachel Sturman, *The Government of Social Life in Colonial India—Liberalism, Religious Law, and Women’s Rights* (New York: Cambridge University Press, 2012).

⁴² Scott Alan Kugle, “Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia,” *Modern Asian Studies* 35, 2 (2001): 270.

⁴³ The only local member was a wealthy Chinese businessman named Whampoa Hoo Ah Kay. The first Muslim representative on the Straits Settlements Legislative Council was a Malay named Eunus Abdullah appointed in 1924. Since the Muslim elite, not to mention litigants in court, in the Straits were either Indian Muslim or Arab, it was interesting that the colonial government picked a Malay. “Hon. Inche Unos: Reception by United Islamic Association,” *ST*, March 25, 1924, 10; Mark R. Frost and Yu-Mei Balasingamchow, *Singapore: A Biography* (Singapore: National Museum of Singapore, 2009), 196.

⁴⁴ His name was Syed Hassan bin Mohamed Salim Almenoar. Muslim Correspondent, “Passes Law Exams: Muslim Notes,” *ST*, July 12, 1948, 5.

⁴⁵ Untitled, *ST*, July 10, 1880, 2.

⁴⁶ Untitled, *ST*, July 10, 1880, 2.

that of a pregnant woman who wished to receive some kind of redress from her husband which she was entitled to according to Islamic law. Shelford and Bishop reasoned that if she was unable to prove her marriage in the colony, due to the lack of a system of marriage registration in the colony, she risked being in great hardship. The second example was more common—a Muslim man found himself divorced from his wife who, or whose family, had bribed the *qāḍīs* into granting her a divorce.⁴⁷ The children of polygamous unions ran the risk of being considered illegitimate in the courts of law. For those Arab Muslims who often travelled, it was useful to have records in one place, rather than in separate mosques as was common practice prior to 1880, when the Imam of a mosque solemnized a marriage.⁴⁸ In order to avoid corruption, they argued, authority could be centralized if the Governor of the Straits Settlements appointed only one *qāḍī* for each settlement.

Furthermore, on occasion, British colonial judges in the Straits Settlements such as Thomas Sidgreaves had already directly adjudicated cases involving Islamic law, thus circumventing the authority of local intermediaries. Throughout the British Empire, the process of streamlining Islamic law was hastened by codification that had already been systematically conducted under the aegis of modernization and centralization in British India during the late eighteenth century.⁴⁹ As we have seen, British legal administrators in the Straits Settlements conveniently had on hand a new hybrid mixture known as Anglo-Mahomedan Law comprising both Islamic Law and English Law. This new set of laws had been compiled in a corpus of legal codes, commentaries, translations and judicial precedents that their predecessors had accumulated since the late eighteenth century in South Asia.

Universalization of Anglo-Mohamedan Law

The process of codification of Islamic Law in the British Empire occurred in two phases, the first, beginning in the late eighteenth century under the auspices of the East India Company was followed by a second phase from the 1860s directly overseen by the metropolitan state.⁵⁰ The Charter of George II in 1753 had already granted Hindu and

⁴⁷ This phenomenon was generally true according to the Attorney-General. "The Legislative Council, 6th July," *ST Overland Journal*, July 12, 1880, 3.

⁴⁸ "The Assizes—A Case of Bigamy," *ST*, January 9, 1905, 5.

⁴⁹ Molded by ideas of Indian difference, the very process of codification in British India was a radical break from historical English common legal tradition. Some British philosophers, such as Jeremy Bentham and his followers Thomas Macaulay and James Mill, harbored hopes that codification of laws would eventually be undertaken in England. Elizabeth Kolsky, *Colonial Justice in British India* (New York: Cambridge University Press, 2010), 70-71; Guenther, "A Colonial Court Defines a Muslim," 293.

⁵⁰ The British created two legal codes, Hindu and Muslim, thus forcefully inscribing a Hindu/Muslim binary on Indian societies by completely disregarding the diversity of Indian legal traditions. Personal laws of Jains, Sikhs, Parsis, and certain tribes were initially not recognized. Afterwards, only Parsi personal laws have been recognized. Rosane Rocher, "British Orientalism in the Eighteenth Century," in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, eds. Carol A. Breckenridge and Peter van der Veer (Philadelphia: University of Pennsylvania Press, 1993), 221-222.

Muslim subjects exemption from Company Courts. The Charter allowed them to have recourse to their own religious laws.⁵¹ In 1772, Governor Warren Hastings introduced the Adalat system, a watershed moment in the legal history of British India.⁵² Subsequently, matters of inheritance, marriage, caste and other religious institutions were to fall under the purview of religious laws since Hastings believed that certain beliefs should be respected instead of being held under the control of English Common Law, of which he thought subject populations were wholly ignorant.⁵³ The Adalat system made it compulsory for local Muslim and Hindu religious experts to function as juriconsults (legal experts) to assist English officers in both criminal courts and civil courts known as the Mofussil Diwani Adalat in Bengal, Bihar and Orissa.⁵⁴ In this way, the Hastings Regulations subtly introduced a new legal fulcrum—English legal authority—around which Hindu and Muslim religious laws pivoted.⁵⁵

The last four decades of the nineteenth century also witnessed the prolific production of legal textbooks, digests and jurisprudential works that led to further consolidation and refinement of legal ideology in the early twentieth century.⁵⁶ Pure textual authority ran counter to the Islamic legal tradition where the authority of the legal interpreter (judge) and the legal interpretation did not yield a system of codes and precedents that oriented future legal decisions.⁵⁷ By contrast, the traditional method of Islamic jurisprudence involved extensive references to the Qur'an, *hadiths* and legal opinions of Muslim jurists and scholars which were often diverse and

⁵¹ Asaf A. Fyzee, "Muhammadan Law in India," *Comparative Studies in Society and History* 5,4 (July 1963): 412.

⁵² Warren Hastings (governor of Bengal from 1772, Governor-General from 1774 to 1885), created two courts in each district, namely the Diwani Adalat which handled civil cases, and the Foujdari Adalat that held trials for crimes and misdemeanors. The civil courts applied Islamic and Hindu laws to Muslims and Hindus, while the criminal courts applied Islamic law universally. M.P. Jain, *Outlines of Indian Legal History* (Delhi: University of Delhi Press, 1952), 57-69.

⁵³ Clause XXIII stated that "(i)n all suits regarding inheritance, marriage, caste and other religious usages or institutions, the laws of the Koran with respect to the Mohamedans and those of the Shaster with respect to the Gentoos shall invariably be adhered to." See Rocher, "British Orientalism in the Eighteenth Century," 215-249.

⁵⁴ Lauren Benton demonstrates how these experts actually occupied an ambiguous position within colonial bureaucracy, since they certainly did not occupy the same status as British officials although they were certainly officers of the Company and employees of the courts. Lauren Benton, "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State," *Comparative Studies in Society and History* 41, 3 (2000): 571.

⁵⁵ Scott Alan Kugle, "Framed, Blamed and Renamed," 262.

⁵⁶ Anderson, "Themes in South Asian Legal Studies," 168.

⁵⁷ There were two types of authority in Islamic legal thought—legislative authority that is divine and concretized in foundational texts, and interpretive or declarative authority which belongs to jurists. The latter is a derivative authority, drawn entirely from the legislative authority of God. The Muslim jurist bears no authority in his person or status in the sense that his declarations are automatically accepted as valid. The authority depends upon the methodology employed by the jurists and his skills. Bernard G. Weiss, *The Spirit of Islamic Law* (Athens: University of Georgia Press, 1998), 65.

contradictory.⁵⁸ In other words, the pre-colonial Islamic legal milieu was characterized by a multiplicity of systems, with no fixed authoritative body of law, no set of binding precedents and no single legitimate way of applying or changing them. Colonial legal literature, by contrast, removed complications and subtleties in certain areas of law that were regarded by colonial authorities as extraneous or even cumbersome.⁵⁹ In the process of colonial codification and translation, traditional religious literature which was filled with rich jurisprudential ruminations and conflicting legal opinions were drastically reduced to collections of binding legal precedents. Codified laws in India and translated legal texts collectively known as Anglo-Mohamedan Law supposedly applied to all Muslim subjects regardless of their historical and cultural background.⁶⁰

Ḥanafī laws prevailed throughout the Empire wherever Ḥanafī-based Anglo-Mohamedan laws were exported—even in places like Singapore where Shāfiʿī adherents predominated. Even as late as 1940, Faiz Tyabji's list of recommended books for courtroom use by English legal practitioners contained thirteen titles on the Ḥanafī *madhhab*, but only five on the Shāfiʿī *madhhab*.⁶¹ Indeed, the Shāfiʿīs received relatively little attention in colonial literature on the whole, since there were relatively fewer adherents to the *madhhab* within British India. R.K. Wilson's 500-page digest of Anglo-Muhammadan laws only dedicated 32 pages to Shāfiʿī law.⁶² Indian laws were inherited in whole, as the bases of authority, because Ḥanafī and Shāfiʿī *madhhabs* were perceived to share many similarities. Thus, in the eyes of British legal administrators, there was no need to devise a whole other legal code based on Shāfiʿī laws.⁶³ In the Straits Settlements, Islamic law was mostly devised *in situ*, in courtrooms, where litigation provided occasions for dialogue between the colonizers and colonized.⁶⁴

⁵⁸ Special Editors' Note: For an illustration of the diversity within the Islamic legal tradition, see Said Hassan's article in this issue, which describes current debates over loyalty to non-Muslim polities.

⁵⁹ In fact, inconsistencies in legal texts were not regarded as a mark of rich diversity. Instead they were regarded as signs that past Muslim scholars were ignorant of the subject matter or "carried the law in their heads" anyway which precluded proper legal codes in writing. Faiz Badrudin Tyabji, *Mubammadan Law: The Personal Law of Muslims* (Bombay: N.M. Tripathi and Co., 1940), xii.

⁶⁰ S. Kugle, "Framed, Blamed and Renamed," 301, 306, 309-310. By the eve of the Second World War, Islamic law codes devised in British India applied also to Muslim subjects in Ceylon, Iraq, Palestine, Malay States, Somaliland, Zanzibar, Trinidad and Tobago, Nigeria, Cyprus, Gold Coast and the Straits Settlements. British officials stationed in various colonies constantly updated each other on amendments to legal statutes and acts, by corresponding with the Colonial Office in London, who dutifully copied their correspondences and sent them to other British governments throughout the empire. This framework is in line with the argument put forth by legal scholar Marc Galanter who emphasizes that colonial administrators tended to implement general rules that were applicable to whole societies. Marc Galanter, "The Displacement of Traditional Law in Modern India," *Journal of Social Issues* 24, 4 (1968): 65-91.

⁶¹ Tyabji, *Mubammadan Law*, 90.

⁶² Roland Knyvet Wilson, *A Digest of Anglo-Mubammadan Law* (London: W. Thacker & Co., 1895).

⁶³ There were actually key differences within the legal stipulations of other *madhhabs* especially with regards to family law.

⁶⁴ Elizabeth Kolsky, "Forum: Maneuvering the Personal Law System in Colonial India—Introduction," *Law and History Review* 28, 3 (October 2010): 975.

Furthermore, the Straits Settlements had been retrospectively declared “uninhabited” in a landmark case 1858 by Chief Justice Benson Maxwell who cited the Second Charter of Justice.⁶⁵ This meant that Islamic law could not form part of the law of the colony except through ordinance, reserved for Personal Law which covered family law.⁶⁶ This also meant that the customary laws of Malays were neither respected nor enforced at any point in the history of the Straits Settlements. English law became the default law instead of local customary laws.⁶⁷ The First Charter of Justice in 1807 placed the Straits Settlements under the government of Fort William of Bengal under East India Company rule. In 1867, the Straits Settlements became a Crown Colony ruled directly from England. Islamic law had been enforced in a limited fashion in the first Straits Settlement of Penang, but Judge William Hackett in yet another landmark case in 1871 dismissed this notion in line with the legal fiction that the Straits Settlements was supposedly uninhabited.⁶⁸ He argued that there were no legally constituted courts in Penang to administer the laws at the time. He stated that in any case, the Second Charter of Justice in 1826 had introduced English Law as the basic law in the Straits Settlements and relegated laws of colonial subjects—whether Chinese, Hindu and Islamic—to the area of family law. Through these two landmark cases, Islamic law was largely written out as the legal basis for the Straits Settlements once and for all with only two exceptions. The first exception to this was the Malacca Customary Land Laws formalized in 1886. Since the Portuguese and Dutch colonial powers retained Malay laws (customary *adat* and Islamic) in Malacca prior to formal British occupation in 1824, British colonial legal officials decided to recognize these laws as well. Malacca customary land automatically descended on the death of the holder to the holder’s heirs according to Islamic law, regardless of stipulations in the holder’s will.⁶⁹ The second exception was the law governing “*harta syarikat*” or “*harta sepencarian*,” property acquired by the couple during marriage, that was actually applied in the Straits Settlements.⁷⁰ This law of joint marital property allows a wife to

⁶⁵ The case in which Maxwell announced this was *Regina V. Willans* [1858] KY 4.

⁶⁶ In criminal cases the Indian Penal Code applied, having been introduced into the colony in 1871. Charles B. Buckley, *Anecdotal History of Singapore*, 682.

⁶⁷ Although there were reportedly four Malay families residing in Penang when Francis Light arrived in 1786, the island was retrospectively declared “uninhabited” in the Charter of 1807, when the law of England was transported into Penang. James Low, “An Account on the Origin and Progress of the British Colonies in the Straits of Malacca,” *Journal of the Indian Archipelago and Eastern Asia* 4 (1850): 11.

⁶⁸ *Fatimah & Ors. V. D. Logan & Ors.* [1871] 1 KY 1.

⁶⁹ For a discussion on Malacca’s special status vis-à-vis the Straits Settlements, see Benson Maxwell, “Land Tenure in Malacca under European Rule,” *JSBRAS* 13 (June 1884): 75-220.

⁷⁰ This was a Malay custom and did not exist in Islamic law. Judith Djamour, *The Muslim Matrimonial Court in Singapore* (London: Athlone Press, 1966), 4; M.B. Hooker, “The Muslims in Malaysia and Singapore: The Law of Matrimonial Property,” *Family Law in Asia and Africa*, ed. J.N.D. Anderson (London: George Allen and Unwin Ltd., 1968), 189-204; Ahmad Ibrahim, “The Muslims in Malaysia and Singapore,” *Family Law in Asia and Africa*, ed. J.N.D. Anderson (London: George Allen and Unwin Ltd., 1968), 188.

claim a portion of property gained during the course of a marriage, even if it was earned by the husband.

Before 1880, *qāḍis* administered Islamic law unsupervised by colonial authorities. There was no centralized authority that oversaw the *qāḍis'* rulings. Only occasionally would cases such as *Salmah and Fatimah v. Soolong* be brought to colonial courts. Prior to 1880, all laws relating to family law (Islamic, Hindu and Chinese) were devised in courtroom cases in the Straits Settlements rather than during legislative council meetings. The Mahomedan Marriage Ordinance was the first time Islamic law was formally recognized via legislation in the Straits Settlements. Each ethnic Muslim community in the Straits Settlements not only appointed their own *qāḍis*, but also demanded that colonial courts recognize their diverse sets of customary laws as promised. Frequent intermarriages amongst diverse Muslim communities consisting of Indians, Arabs and Malays, as well as numerous communities from the neighboring Netherlands Indies meant that marital disputes were huge conundrums even for *qāḍis*.⁷¹

In passing the Mahomedan Marriage Ordinance, British authorities suddenly claimed to have no recourse to the laws of original inhabitants since the Straits Settlements had been retrospectively declared legally “uninhabited” in 1858 before officially becoming a British settlement. Hence, local *adat* and customary laws were not considered at all. In fact, at the legislative council meeting in 1880, the Attorney-General stressed that English law was imposed by default for so long without any official legislation for Hindu and Islamic laws, precisely because the Straits Settlements was previously supposedly uninhabited.⁷² This legal fiction paved the way for the importation of Anglo-Mahomedan law into the Straits Settlements at the expense of local customary laws. Both colonial legislators and Muslim memorialists claimed ignorance of diversity amongst Muslims opting instead for a universal view of Islamic law.

Legal continuity was a priority, which meant that legislative changes still had to be explained. Since English Common Law had already been declared the default law in the Straits Settlements in 1858, Recorder of Penang Sir Peter Benson Maxwell had to explain how Islamic law could now be enforced by British legal authorities in 1880, albeit in a limited scope involving only family law. In order to support his argument, he focused on the necessity of applying Islamic law to the special status of Muslim married women’s property.⁷³ He also stressed that according to Islamic law, the Muslim husband could dissolve the marriage at any time, and her right to maintenance would end with the

⁷¹ While cases involving *adat* or customary law might have been brought to colonial courts, Straits Settlements law reports, published systematically from 1869 onwards, highlighted only the application of Islamic law, and not *adat*. Hence, there is no historical evidence that colonial courts upheld *adat* or customary law apart from the Malacca Customary Land Law and the laws of joint marital property. Mahomedan Marriage Divorce, *ST Overland Journal*, September 11, 1875, 1.

⁷² Mahomedan Marriage Divorce, *ST Overland Journal*, September 11, 1875, 1.

⁷³ “The Council Meeting of 1st June,” *ST*, June 19, 1880, 1.

divorce.⁷⁴ Considering these stark differences between English Common Law and Islamic law, he argued that it was unjust for English law to be applied to Muslims. In his view, it would be especially unfair for Muslim women in the Straits, who would not only be susceptible to sudden divorce by her husband, something which English law could not remedy, but also potentially deprive her of her property, which her husband would have had a stake in according to English law. Maxwell stated that Islamic law, with its own in-built system of preventive measures was best applied to Muslim marriages, rather than an incomplete application of English law, which could be potentially harmful to Muslim women who ran the risk of being doubly oppressed by both laws. Thus, he thought it more prudent for Muslims to be wholly subjected to Islamic law rather than a modified version of English Common Law, or a hybrid of both legal systems, in the realm of family law.

Mahomedan Marriage Ordinance

In 1880, “an Ordinance to provide of the registration of Marriages and Divorces among Mahomedans” was passed. The ordinance not only provided for the appointment of *qādis*, but also defined the modifications of “the Laws of Property to be recognized in the case of Mahomedan Marriages.” More specifically, the ordinance had three parts—the first part providing for the registration of marriages and divorces so as to facilitate proof in Court, the second for the recognition of *qādis* appointed by the Muslim public, and the third part dealing with the rules regarding the rights of widows and children of Muslims dying without a will.⁷⁵ It came into operation on December 1, 1882, two years after its promulgation. More commonly referred to as the Mahomedan Marriage Bill, it restricted the purview of the *qādi* to matters of marriage and divorce. From 1882 onwards, *qādis* were restricted to solemnizing marriages only. Legal cases were brought to colonial courts presided over by British judges.

Qādis in the Straits Settlements already kept registers, which were readily produced in courts.⁷⁶ The bill however ensured that proper steps were taken to preserve documents. Every month, each *qādi* had to appear before the Registrar in order to deposit copies of all entries made in his registers and indexes verified on oath.⁷⁷ Records were kept in standard format in either English or Malay and preserved by the state.⁷⁸

⁷⁴ He had stated this point earlier in March 1867 in the court of Malacca as well. *Chulas and Kachee v. Kolson binte Seydoo Malim* (1867) Wood 30.

⁷⁵ “The Council Meeting of 1st June,” *ST*, June 19, 1880, 1.

⁷⁶ For example, see *Fatimah & Anor v. Armootab Pullay* 4 Ky 225.

⁷⁷ In 1869, a barrister-at-law Robert Carr Woods had complained about the problem of itinerant *qādis* taking their registry with them when they left the colony. Each *qādi*'s books and seals of office were to be given up to the Registrar upon his death. Robert Carr Woods, *A Selection of Oriental Cases Decided in the Supreme Courts of the Straits Settlements* (Penang: S. Jeremiah), n.p.

⁷⁸ Mahomedans Ordinance no. 26, ss.5, 7. *Laws of the Straits Settlements, Volume 1*, 312.

The Legislative Council correctly predicted that the petitioners would not stop insisting on compulsory registration of marriages and divorces or on the colonial appointment of *qāḍīs*.⁷⁹ Contrary to their demands, the Council stressed that the Mahomedan Marriage Bill was not even compulsory.⁸⁰ Although the 143 memorialists craved the imposition of more stringent rules by colonial authorities, the Council refused because this would be an unprecedented move fraught with uncertainty.⁸¹ The Legislative Council deliberately stopped short of officially appointing *qāḍīs*, preferring instead to only recognize existing *qāḍīs* as a precaution. The council stated that *qāḍīs* in British India were not even appointed by “the Indian Government with all its experience, and it would therefore be unsafe as the result could not be known.”⁸² Thus, the 143 petitioners in the Straits Settlements had to be contented with the fact the Mahomedan Ordinance V of 1880 in the Straits Settlements would now place *qāḍīs* squarely within colonial bureaucracy, officially as “deputy registrars of Muslim marriages.” *Qāḍīs* were therefore effectively transformed into civil servants by the ordinance as they were effectively integrated into the ranks of the Registrar.⁸³ By 1936, the Governor of the Straits Settlements would appoint a *qāḍī* in each settlement with limited jurisdiction as his decisions were subjected to the Registrar under the Governor’s supreme authority.⁸⁴

Translation of a Shāfi’ī text

In terms of legislation, Shāfi’ī law took a backseat to Ḥanafī law throughout the British Empire but in 1914, a British judge found it useful to translate one legal manual in particular. In November 1882, a Dutch Orientalist scholar based in Batavia, L.W.C. van den Berg (1847-1927), published the French translation of the *Minhāj al-Ṭalibīn* at the

⁷⁹ “The Council Meeting of 1st June,” *ST*, June 19, 1880, 1.

⁸⁰ Compulsory registration of Chinese marriages was also not an option considered by the British government, although it was desired by a number of Chinese ladies and a limited number of Chinese gentlemen of “advanced views” according to a British official Maurice Freedman, “Chinese Family Law in Singapore,” in *Family Law in Asia and Africa*, ed. J.N.D. Anderson (London: George Allen and Unwin Ltd., 1968), 53.

⁸¹ In a report to the India Office in London, Attorney-General of the Straits Settlements Thomas Braddell expressed his discomfort when he stressed that the Ordinance was already of “a very special character” because it required British officials to recognize *qāḍīs*. The only suggestion received from the India Office was for the words “and issue of deceased children” to be added after the word “children” whenever it occurs in the proposed Bill submitted. IOR/L/PJ/6/68 File 422, T. Braddell, Attorney-General’s Office, Singapore to Undersecretary of State, India Office, London August 31, 1880. “The Council Meeting of 1st June,” *ST*, June 19, 1880, 1; “The Legislative Council, 6th July,” *ST Overland Journal*, July 12 1880, 3.

⁸² “The Council Meeting of 1st June,” *ST*, June 19, 1880, 1.

⁸³ Mahomedans Ordinance no. 26, s.5, *Laws of the Straits Settlements, Volume 1* (London: Waterlow & Sons, 1920), 312.

⁸⁴ “Mahomedans Ordinance no. 26,” *The Laws of the Straits Settlements, 1835-1900* (London: Waterlow & Sons Limited, 1920), 311-325.

request of the Dutch colonial government.⁸⁵ The *Minbāj* was an abridged manual, since it was a gloss of a larger volume by ‘Abd al-Karīm b. Abī Sa‘īd Muḥammad al-Rāfi‘ī (555-623/1160-1226) *Al-Muḥarrar*, which was itself a summary of a much lengthier work—the original *Al-Wajīz fī Fiqh al-Imām al-Shāfi‘ī* written by Abū Ḥāmed Muḥammad ibn Muḥammad al-Ghazālī (1058-1111).⁸⁶ The long history of the *Minbāj* could be traced back to 670/1270 when the Shāfi‘ī jurist, Muḥyī al-Dīn Abū Zakariyyā al-Nawawī (631-676/1233-1277), one of the most important authorities on Shāfi‘ī law, finished writing the relatively concise volume that usefully devoted much attention to issues in daily life.⁸⁷ Van den Berg’s version relieved its colonial legal practitioners of lengthy discussions, appendices and chains of transmitters, offering only the essentials in order to make the work more accessible to its intended audience.⁸⁸ Within a year of its publication, van den Berg’s translation had reached Britain and was lauded as a welcome edition in British dependencies in the Malay world, precisely because it was a manual of Shāfi‘ī law. Translated into French, instead of Dutch, it was considered potentially useful to “any European establishment.”⁸⁹ They had to wait more than three decades for an English translation. The translator was E.C. Howard, a district judge in Singapore, who had “therefore enjoyed the peculiar advantages in acquiring a knowledge of this branch of Mohamedan law.”⁹⁰ Amongst British colonial officials stationed in the Malay world,

⁸⁵ Van den Berg’s choice of French instead of Dutch suggested that he meant the three volumes to be of wider use than just within the Dutch colonies. However the publication of the original Arabic in the same volume suggested that it was also meant for anyone who understood Arabic, as pointed out by Snouck Hurgronje in his review of the translation. C. Snouck Hurgronje, “Minhādij at-tālibin, Le guide des zéles croyants,” *De Indische Gids* 5 (April 1883): 7.

⁸⁶ For a convenient diagram created by Syed ‘Uthmān bin Abdullah bin Aqil bin Yaḥyā, depicting the complete genealogy of texts derived from monumental work of al-Ghazālī, see C. Snouck Hurgronje, “Serie IJ: Godsdienstig Recht en Godsdienstige Rechtspraak,” *Adatrechtbundel* 1 (1910): 218. Also, see C. Snouck Hurgronje, “Minhādij at-tālibin,” 6. Syed ‘Uthmān’s scheme was reproduced in Th. W. Juny-boll’s handbook in the form of a list. Theodor Willem Jan Juny-boll, *Handleiding Tot De Kennis Van De Mohammedaansche Wet Volgens De Leer Der Sjafi‘Tische School* (Leiden: Voorheen E.J. Brill, 1903), 374-376.

⁸⁷ W. Heffening, “al-Nawawī (or al-Nawāwī), Muḥyī al-Dīn Abū Zakariyyā’ Yaḥyā b. Sharaf b. Murī,” in P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs, eds. *Encyclopaedia of Islam, Second Edition*, Brill, 2010. Brill Online. October 31, 2010 <http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-5858>

⁸⁸ John Strawson, “Islamic Law and English Texts,” in *Laws of the Postcolonial*, eds. Eve Darian-Smith and Peter Fitzpatrick (Ann Arbor: University of Michigan Press, 1999), 110.

⁸⁹ “Bibliographical Notices,” *Transactions of the Royal Historical Society*, New Series 2, (1885): 345.

⁹⁰ The reviewer was presumably referring to the Shāfi‘ī adherents in Singapore. E. J. Trevelyan, “Reviews,” *Journal of the Society of Comparative Legislation* 16, 2 (1916): 399. This was certainly not the first time independent Dutch and British colonial projects benefitted each other in the colonial administration of religious laws. Earlier, van den Berg had cited Hamilton’s translation of the *Hidaya* in his first book, *De Beginselen van het Mohammedaansche Recht, volgens de Imams Aboe-Hanifat en asj- Sjafē’i*, on both Hanafi and Shāfi‘ī madhhabs published in 1878. L.W.C. van den Berg, *De Beginselen van het Mohammedaansche Recht, volgens de Imams Aboe-Hanifat en asj- Sjafē’i* (Batavia: Ernst and Co., 1878), 1.

Howard's translation was especially valuable since legal textbooks on Shāfi'i law were fewer in number, as most colonial officials in British India were keener on translating literature on Ḥanafī law, as we have seen. Being a manual of Shāfi'i law specifically, translations of the *Minbāj* frequently became reference texts for colonial lawyers and judges in courts, not only in Netherlands Indies, Malaya and the Straits Settlements, but also in Southern India, Egypt and the Aden Protectorate.⁹¹

Conclusion

Ultimately however, Howard's translation proved to be one of the few attempts by a British official based in the Malay world to produce a work on Islamic law. The Shāfi'i legal manual, *Minbāj al -Ṭ'alibīn* was only translated into English in 1914, and even so, it was hardly comprehensive. Shāfi'i legal doctrine was usually discovered on a case-by-case basis by colonial legal practitioners, as cases were brought before them in courts just like in the case of *Salmah and Fatimah v. Soolong* in 1878. Over time, legal precedents established a binding legal corpus in the English Common Law tradition. From the perspective of legislation, British colonial authorities' universal conception of Islamic law prevailed. Local customary laws which were not deemed part of Islamic law were not recognized in legislation with only two exceptions—the Malacca Customary Land Law and laws of joint marital property. In British India, legal codification had already undermined the Islamic classical tradition. Codification of the *sharī'a* had enabled authorities to neatly sidestep the plurality of legal opinions held by Muslim scholars and, eventually, ignore the spectrum of legal interpretations on a single issue. British confidence, derived from their experience in administering Islamic law in India, created a global view of Islam. Despite an awareness of key differences between the two schools of law, especially with regards to family law (such as the need for guardians' permission for marriages), British legal authorities did not create a separate legal code anywhere else in the Empire. Their universal view of Islamic law rendered such an effort unnecessary. Such differences would have to be explicated upon in court as in the case of *Salmah and Fatimah v. Soolong*.

In a way, Arab subjects in the Straits Settlements shared this universal view of Islamic law. Like their British colonial allies, they conveniently ignored the diversity of Islamic legal practices in the colony. This ties in with their desire for more centralized implementation of family law by a strong bureaucracy that could be both granted and guaranteed

⁹¹ British reviewers of van den Berg's French translation emphasized the book's importance by highlighting the fact that there were many Shāfi'i colonial subjects within the British Empire in the late nineteenth century. Review, *The Journal of the Royal Asiatic Society of Great Britain and Ireland New Series* 16, 4 (October 1884): lxxxv; "Quarterly Notes," *Law Magazine and Review*, 8 (1883): 338. For more on the use of the *Minbāj* by local populations in the Malay world, see R. Knox-Mawer, "Islamic Domestic Law in the Colony of Aden," *International Journal of Comparative Law Quarterly* 5 (1956): 511-518; Syed A. Majid, "Wakf as Family Settlement among the Mohammedans," *Journal of the Society of Comparative Legislation* 9 (1908): 122-141.

only by the colonial state. They pushed for more colonial involvement in family law in the colony, paving the way for colonial intervention in religious affairs. From 1882 onwards, armed with statutes, legal codes, and local precedents, colonial judges usurped the authority of *qāḍīs* and *muftis* as they ratified marriages and divorces, and presided over more cases involving Islamic law. The Arab petitioners successfully persuaded British authorities to bureaucratize *qāḍi* records and monitor their actions. What happened afterwards was unpredictable, and Arabs quickly lost their ability to steer British legal administration in their favor. After 1882, Arab litigants managed to change law over several decades in a limited fashion only by establishing legal precedent in the English Common Law tradition. They did not do so in a purposeful manner, but simply because they formed more than 60% of litigants in colonial courts in cases involving Islamic law.⁹² Case law, rather than legislation, would become the battleground for reform in the British colony from then onwards.⁹³

⁹² M.B. Hooker, "Muhammadan Law and Islamic Law," in *Islam in Southeast Asia*, ed. M.B. Hooker (Leiden: Brill, 1983), 167.

⁹³ See Nurfadzilah Yahaya, "Courting Jurisdictions—Colonial Administration of Islamic Law Pertaining to Arabs in the British Straits Settlements and the Netherlands East Indies, 1860-1941," Phd diss., Princeton University, 2012.