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Nurfadzilah Yahaya. ***Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia*****.** Cornell University Press, 2020. ISBN: 9781501750878 (hardcover, $49.95); 9781501764646 (paperback, $29.95).

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Introduction by Saarah Jappie, Social Science Research Council

This roundtable brings together scholars of law, politics, economics, and society in conversation around Nurfadzilah Yahaya's path-breaking monograph, *Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia*. Situated at the intersection of Indian Ocean studies, legal history, and Islamic studies, *Fluid Jurisdictions* presents the story of the Arab diaspora in the Dutch East Indies and the British Straits Settlements from the perspective of legal infrastructure. Focusing on the mid-nineteenth to the early twentieth century, the book draws on a linguistically and generically vast range of sources in order to detail how Arab elites sought to create their own legal domains across the Indian Ocean primarily as means to safeguard their property in a rapidly shifting colonial context. Yahaya weaves together a richly detailed narrative that demonstrates how Southeast Asian Arabs, deemed 'foreign orientals,' leveraged colonial legal regimes and courted colonial authorities in order to advance their own interests, in turn engaging in lawfare against other subject populations. In so doing, and despite representing only a small minority in both the Dutch East Indies and the Straits Settlements, this community had a profound impact on the shaping of colonial (and therefore post-colonial) Islamic law.

A firmly transregional study, *Fluid Jurisdictions* offers a refreshing view of the Indian Ocean from the perspective of Southeast Asia looking west to Hadhramaut, in a field largely populated by studies of dynamics within the central and western parts of the region.[1] Alongside the spatial reconfiguration achieved in the book, Yahaya also succeeds in complicating concepts which are generally seen as fundamental to the Indian Ocean world and underscoring its unity. For instance, the book's portrayal of an increasingly racialized society in which a Muslim community harnessed legal systems against other Muslim colonial subjects in order to maintain a favorable position destabilizes notions of inherent cosmopolitanism. Similarly, the book provides new historical material through which to reanalyze terms like hybridity and creolization.

As the following essays demonstrate, the three reviewers respond to *Fluid Jurisdictions* enthusiastically, remarking on its refreshing methodological approach, the richness of its multilingual archival source base, and the historical complexity that emerges from Yahaya's comparison of two distinct imperial spaces. Collectively, they highlight the relevance of the book across regional and disciplinary literatures. Debjani Bhattacharyya and Mark Fathi Massoud emphasize its welcome contribution to the literature on histories of empire and colonialism as regards rethinking territorial jurisdiction on the one hand and the role of third parties in influencing colonial rule on the other hand. Bhattacharyya further highlights Yahaya's fresh contribution to the study of non-European economic practices under colonialism, placing the book in conversation with literature on economic practices in colonial South Asia and demonstrating how it presents a shift within that field.

Hollian Wint draws our attention to resonances between Yahaya's case studies and the experiences of Afro-Arab and Gujarati Isma'ili diasporic communities in Zanzibar. For example, she notes that the power of family legal disputes to redefine social boundaries, as arose in the examples leveraged in *Fluid Jurisdictions,* also emerged in Zanzibar during a similar period. In her response, Yahaya acknowledges these comparisons, but emphasizes the distinctness of the cases in *Fluid Jurisdictions* precisely because of the Southeast Asian context. As she states, "If they had not embarked on large scale migration, the Hadhrami elite's approach to Islamic law would likely have been closer to those in Wint's examples." We might ask then, what are the limits and possibilities of intra- and inter-diasporic comparison?

Two threads of discussion stand out from the reviews: the power of paper and the afterlives of colonialism. Bhattacharyya and Wint both draw attention to the book's exploration of regimes of writing, which Yahaya places in conversation with the

[1] An earlier example that takes this perspective is Natalie Mobini-Kesheh's *The Hadrami Awakening: Community and identity in the Netherlands East Indies*, 1900-1942 (Cornell: SEAP, 1999). Recent works focusing on the western half of the Indian Ocean, and which arise in *Fluid Jurisdictions,* include Fahad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780-1950* (Cambridge: Cambridge University Press, 2017) and Johan Mathew, *Margins of the Market: Trafficking and Capitalism across the Arabian Sea* (Berkeley: University of California Press, 2016).

work of Bhavani Raman and Brinkley Messick, among others.[2] As they highlight, Yahaya demonstrates how writing and the concatenation of legal texts made elite Arabs legible to colonial regimes and assisted in securing their property. As Yahaya outlines in her response, these practices led to the creation of a "pan-oceanic jurisdiction anchored in paper." Wint's review raises important questions around the potential for sites of gendered textual arbitrage within this textual habitus, and the extent to which "textual domination" influenced daily life in the colonies. Meanwhile, Massoud explores British and Dutch colonial attitudes towards Arab minorities, pointing to the instability of Arab identity and the colonial anxieties and anti-Arab sentiment it produced in the Dutch context in particular. Shifting the perspective to the afterlives of colonial formations, he questions to what extent racist structures of colonial rule might have influenced independence era and post-colonial laws and policies. In response, Yahaya points out that this history is one of continuity, not rupture.

Nurfadzilah Yahaya is historian of Southeast Asia at the National University of Singapore. She specializes in legal history, histories of Southeast Asia, Islamic law, mobilities, and the Indian Ocean. She received her Ph.D. in History at Princeton University in 2012. Between 2012 and 2015, she was the Mark Steinberg Weil Early Career Fellow in Islamic Studies at Washington University in St. Louis. Her book *Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia* was published by Cornell University Press in 2020. She has published in *Journal of Women's History, Law and History Review*, *Muslim World* and *Indonesia and the Malay World*. She currently serves on the editorial boards of *Journal of Southeast Asian Studies*, *Journal of Global History* and *Journal of Indian Ocean World Studies.*

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Hollian Wint is an Assistant Professor of African History at the University of California, Los Angeles. She received a 2021-2 ACLS Fellowship to complete her first book project, entitled *Mobile Households: The Intimate Economies of Credit Across the Indian Ocean, c. 1860-1964.* Her work more broadly examines the intersections of gender, political economy, and material culture.

[2] Bhavani Raman, *Document Raj: Writing and scribes in early colonial South India* (Chicago: University of Chicago Press, 2012); Brinkley Messick, "Textual Properties: Writing and Wealth in a Shari'a Case," *Anthropological Quarterly* 68:3 (July 1995).

Review by Debjani Bhattacharyya, Drexel University

The relationship between private capital, law, and state-formation under colonialism remains an undertheorized area of historiographical scholarship. Nurfadzilah Yahaya's *Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia* investigates this relationship by focusing on the lives, networks, and legal entanglements of the diasporic Arab merchants in Southeast Asia. Through a densely researched, rivetingly rich, and original historiographical interventions into legal history and history of colonial capital, Yahaya narrates the story of diasporic capital in the age of empire to make wide-ranging contributions to legal history and beyond. *Fluid Jurisdiction* overturns the dominant historiographical commonsense that European imperialism led to new patterns of legal pluralism.[3] She foregrounds the contradictions produced by colonialism which both restricted and created possibilities for the subject populations, primarily the diasporic merchant communities. By shifting the focus to the Dutch and English colonial holdings in Southeast Asia and excavating the complex history of the diasporic Arab population, she historicizes Arab merchants' engagement with imperial law.

The core claims of the book rests on documenting how Arab merchants created their own legal domains with fluid jurisdiction that were specific in nature, and in the process created a layered and differentiated relationship between authority, territory, and law. Through six tightly argued chapters, Yahaya shows us how the Arab merchants used the colonial courts, bureaucracy, powers of attorney, property and ideas of charity to exploit, deepen and extend their jurisdictional authority, which were sometimes fluid, and at other times papered over with European interpretation. The narrative of legal arbitrage that emerges from these pages will be critical in rethinking legal histories of empire as they relate to territorial jurisdiction and interpretive communities of law. Moreover, it also renders inadequate stock methods of reading the Indian Ocean trading diaspora through ideas of cosmopolitanism, hybridity, and creolization.

Apart from the path-breaking interventions into the historiography on legal history, Indian Ocean Studies, and a rethinking of colonial state-making,[4] *Fluid Jurisdiction* makes two significant contributions that I want to focus on in this review. First, by turning to the debates on vernacular capital and philanthropy the book critically rethinks the relationship between law and economy. Second, by focusing on the bureaucratization of regulation and the "papereality" (16) that ensues, Yahaya overturns facile arguments about writing and colonial power.[5]

The story of private capital, which in spite of being critical machinery for the entrenchment of colonial extraction has mostly been narrated as a history of surveillance, disciplining, and regulation, occupying an inside/outside status within the market. Within South Asian historiography, for instance, the question of the singular role of merchant capital and European joint-stock companies in the Indian Ocean has remained vexed. If the story of bazaar economy in colonial South Asia has been

[3] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2001); Lauren Benton and Richard J. Ross eds., *Legal Pluralism and Empires 1500-1840* (New York: New York University Press, 2013).

[4] Yahaya's work is in conversation with the new directions in legal history of the Indian Ocean and colonial state making as charted in the works of Iza Hussin *The Politics of Islamic Law: Local Elites, Colonial Authority and the Making of the Muslim State* (Chicago: University of Chicago Press 2016); Renisa Mawani and Iza Hussin. 2014. "The Travels of Law: Indian Ocean Itineraries." *Law and History Review* 32:4 (2014): 733-747, DOI: https://doi.org/10.1017/S0738248014000467 Nandini Chatterjee, and Lakshmi Subramanian. "Law and the Spaces of Empire: Introduction to the Special Issue." *Journal of Colonialism and Colonial History* 15:1 (2014), DOI: https://doi.org/10.1353/cch.2014.0012.

[5] Here she draws upon the seminal arguments of Bhavani Raman, *Document Raj: Writing and Scribed in Early Colonial South India* (Chicago: University of Chicago Press, 2012).

theorized as an integrative sinew that linked colonial capital to the hinterlands on the one hand,[6] the information networks of hinterland market towns have been understood to be central to keeping the wheels of imperial economy chugging on the other hand.[7] Shifting the focus away from the landed to the marine spaces scholars have explored the economic shadows within which Indian Ocean merchants continued to operate through the eighteenth and nineteenth centuries.[8] Overturning these earlier frames for exploring the transformation that vernacular capital underwent during the age of Empire, Ritu Birla documented how colonial law and regulation culturalized Marwari (western Indian merchant community) economic behaviors therefore framing them as the outside of the market.[9] *Fluid Jurisdiction* announces a shift within this body of literature by exploring the multiple and often contradictory ways the diasporic trading communities – which were categorized as "Foreign Orientals" (7), settled yet outsiders – maneuvered circuits of legitimacy within colonial legal architecture in order to protect their capital and mercantile networks. They did so by offering legal interpretation of Islamic law that nullified indigenous Islamic practices, which sometimes had the adverse effects of enabling codification of particular legal interpretation in the colonial courts. Other times they leveraged legitimacy by surveilling other merchants, litigating vociferously about Muslim personal law in colonial courts and subsequently deepening particular forms of authority through reiterative process of bureaucratization. Indeed, Yahaya historicizes the process through which diasporic capital became foreign or, to borrow from Ikyo Day's recent formulation "alien capital."[10] *Fluid Jurisdiction* opens new frames to study non-European economic practices in the colonies beyond culturalization and disciplining. The complex picture of the Arab merchants that emerges is marked by a subtle balance between surveillance, regulation, collaboration, and structured forms of dispossession of indigenous populations within the deeply unequal power relationship under colonialism, a relationship that Yahaya evocatively concludes is held together by "a dynamic of abeyance in which questions of consent and coercion are suspended for the sake of quotidian convenience" (168).

Turning her focus to private wealth in order to investigate questions of law and jurisdiction in colonial Southeast Asia allows Yahaya to explore the authority of paper with an utterly fresh lens. Bureaucratic regimes of paper did not just unleash a regulatory regime on Arab capital, even if they may have displaced other forms of authority, but as she argues by drilling down into the role of powers of attorney, it made the colonial state accountable to its subject population. Deftly troubling the link between writing and power, Yahaya shows that textual habitus created by the writing practices of the Arab merchants enabled them to secure their property, inheritance, trade, trusts while simultaneously engaging in lawfare with

[6] Sudipta Sen, *Empire of Free Trade: The East India Company and the Making of the Colonial Marketplace* (Philadelphia: University of Pennsylvania Press, 1998); Anand Yang, *Bazaar India: Markets, Society, and the Colonial State in Bihar* (Berkeley: University of California Press, 1999).

[7] Christopher Bayly, *Rulers, Townsmen and Bazaars: North Indian Society in the Age of British Expansion, 1770–1870* (Oxford: Oxford University Press1983) and *Empire and Information: Intelligence Gathering and Social Communication in India, 1780–1870* (Cambridge: Cambridge University Press, 1996)

[8] Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling and States along a Southeast Asian Frontier* (New Haven: Yale University Press, 2005); Joahn Mathew, *Margins of the Market: Trafficking and Capitalism across the Arabian Sea* (Berkeley: University of California Press, 2016).

[9] Ritu Birla, *Stages of Capital: Law, Cultural and Market Governance in Late Colonial India* (Durham: Duke University Press, 2009).

[10] Ikyo Day, *Alien Capital: Asian Racialization and the Logic of Settler Colonial Capitalism* (Durham: Duke University Press, 2016).

others. She argues that these writing practices generated fluid forms of jurisdiction that linked vast spaces, but more importantly sometimes widened distances across oceans.

Methodologically fresh and archivally dense, *Fluid Jurisdiction* not only defamiliarizes standard arguments within legal histories of empire by marshalling a rich body of evidence from Malay, Arabic, Dutch, and English sources, it also opens fresh ground to ask questions about the relationship between alien capital and its racialization during the age of empire in colonial Southeast Asia.

Review by Mark Fathi Massoud, University of California, Santa Cruz

Nurfadzilah Yahaya's *Fluid Jurisdictions* illuminates the professional work and everyday experiences of Arab Muslim minorities living in Southeast Asia during colonial rule in the nineteenth and twentieth centuries. It makes a lasting contribution to the study of law and colonialism by showing how third parties – migrants who were neither European officials nor Native subjects – shaped colonial rule.[11]

The research for *Fluid Jurisdictions* was no small undertaking. Yahaya studied Arab Muslims living under two colonial regimes, the British and the Dutch, each with different historical contexts and locations. Yahaya brings together archival materials in seven languages (Arabic, Dutch, English, French, Indonesian, Jawi, and Malay) that are scattered across four countries (Malaysia, Singapore, the United Kingdom, and the Netherlands).

My lasting impression of this book comes from its careful unveiling, in necessary and sometimes painful detail, of how European officials' pathological racial hatred toward Arab Muslims defined colonial laws and legal institutions.

Arabs as Minorities under Two Regimes

Yahaya's book introduces the reader to the stories of migrants who traveled long distances from the Middle East and North Africa across the Indian Ocean to Southeast Asia. These persons sought economic prosperity by working as traders and merchants. Arabs made up about one percent of the population of the British-controlled Straits Settlements (Singapore as well as Malacca and Penang in what is contemporary Malaysia) and about six percent of the population of the Dutch-controlled Netherlands-Indies (in what is contemporary Indonesia) (14, 33, 84-85).

What is particularly revealing is how colonial elites struggled to place Arab ethnic identity. Arab ethnicity seemed fluid; it existed between rather than within colonial racial categories. To colonial administrators, Yahaya tells us, Arabs were neither Europeans nor Natives. As I understood it, Arab identity instead fell into the abyss between foreign and Native: sometimes it was one, sometimes it was the other, and sometimes it was both, especially to officials who confronted the children of Arabs and Natives who had intermarried. This volatility exposed Arabs to extraordinary legal subjugation yet moderate economic privilege. Some Arab migrants earned rights that Natives did not possess. But colonial administrators also treated Arabs with disdain, sometimes expelling Arabs for their ethnicity alone (98).

In the sections of the book discussing the Straits Settlements, Yahaya shows how Arabs were deemed "aliens" both with respect to Europeans and to Natives, and how Arab presence helped colonial administrators "accumulate legislative power" (163–164). Arab Muslim men also devised ways to escape colonial rule, paradoxically by indenturing themselves to it (71). For instance, the most elite among them created strategic alliances with colonial administrators, trying to use colonial legal institutions for their benefit. They convinced colonial officials to codify Islamic laws – including the Mohamedan Marriage Ordinance of 1880 – and to hire Muslim judges (*qadis*) to work in Islamic courts with official recognition (23-24, 38).

While Yahaya documents how Arab minorities attained some social and legal privileges, she also shows how Arabs also lived under racism's constant surveillance. The British colonial Consulate-General, for instance, used Arab informants to create an "Index of Arabs" that classified hundreds of prominent Arab Muslim men by their loyalty to the British empire (131). Arabs also paid higher taxes than Natives and migrants from China, India, and Japan (167).

[11] Foundational works in the field of law and colonial rule include Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History* (New York: Cambridge University Press, 2002); Bernard S. Cohn, *Colonialism and its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996); and Jean Comaroff and John Comaroff, *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa* (Chicago: University of Chicago Press, 1991).

In the sections of the book discussing the Netherlands-Indies, Yahaya shows how Dutch colonial law classified all persons as Natives, Orientals, or Europeans. This Dutch "race-based legal system" took colonial racism to a distressing extreme (100). Dutch officials regularly labeled Arabs as parasites, fortune-seekers, and "vultures ready to pounce on [others'] misfortunes" (83–84). Those born with mixed Arab and Southeast Asian heritage were called "halfbloed" or "bastard-Arabieren" (19).

Dutch-imposed legal codes also required persons of Arab descent "to dress as Arabs," usually with sandals and turbans (99). Dutch writings found by the author similarly depicted Arabs in derogatory ways. Yahaya exposes readers to the vertiginous experience of "Kafkaesque" jurisdictional situations in which Arabs in the Netherlands-Indies were simultaneously included into and excluded from society (104).

It may come as no surprise to the readers of this book that some Arabs living under these conditions tried simply to "pass" as Natives (90). (Yahaya documents colonial administrators' perspective that Arabs were little more than "adept infiltrators" who married Natives to take economic power.) Dutch administrators feared that Arabs would be seen as Natives. Further, they dreaded "the possible equation of Arabs with themselves, Europeans" (101).

The instability of Arab identity, to colonial officials, led to "the possibility of fluid jurisdictions," which in Yahaya's words, "horrified Dutch authorities" (101). Why? Yahaya's explanation for Dutch colonial legal panic is as much about the rise of legal politics as it is about the protection of European capitalism. Colonial officials viewed Arabs as their "commercial rivals" (102). Officials passed tax laws and other legislation that distinguished people by ethnic background so that white Europeans, not Arab Muslims, would gain the most wealth from Southeast Asia's lucrative maritime shipping industry (93).

Reconsidering Gender and Class

Fluid Jurisdictions demonstrates not only how colonial laws and ideologies perpetuated racism but also how they implanted class discrimination and patriarchy into society. Yahaya explains how wealthy Arab Muslim men and European male colonial administrators both saw themselves as the "custodians of [Arab] women's lives" (55). Arab men in particular used colonial courts to "curb undesirable divorces and marriages," especially situations in which Arab Muslim women initiated divorce or married outside their lineages (165).

But women living under colonialism were not merely subjects, Yahaya argues. Archival records that she found were replete with examples of Arab Muslim women who claimed their own authority too. Some of these women asserted inheritance rights, and many of them used intricate power-of-attorney rules to control their personal wealth by appointing or dismissing their own financial managers. In colonial Singapore, Yahaya's research finds, women produced about one-third of Arabs' power-of-attorney filings (76-78).

Anti-Arab and Anti-Muslim Hate Beyond the Colonies

Fluid Jurisdictions engages with many themes within colonial studies – migration, minorities, power, bureaucracy, family, dispute resolution, lawmaking, and the creation of archives and repositories. The book discusses these themes within the important tradition of historical writing that emphasizes descriptive completeness and complexity.[12]

As a law and society scholar who cares about how colonial legal politics shapes states and societies, I have questions that go beyond the case studies and explore the implications of Yahaya's findings. First, in what ways does racism against Arab identity (regardless of an Arab person's faith) merge with or depart from discrimination against Muslim faith (regardless of a

[12] See also Fahad Ahmad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (New York: Cambridge University Press, 2017); Mark Fathi Massoud, *Shari'a, Inshallah: Finding God in Somali Legal Politics* (New York: Cambridge University Press, 2021); and James Jaffe, *Ironies of Colonial Governance: Law, Custom, and Justice in Colonial India* (New York: Cambridge University Press, 2015).

Muslim person's ethnicity)? For instance, at times it seemed that colonial law in Southeast Asia gave some Arab Muslims more rights because of their Muslim faith yet fewer rights because of their Arab ethnicity.

Second, what are the consequences of anti-Arab and anti-Muslim hate under colonialism? In other words, how do racist and Islamophobic structures of colonial rule shape the postcolonial laws and policies that evolved from independence, or the independence struggles themselves?

These questions matter not only for Southeast Asia but also for many other places that endured colonial rule and have become increasingly hostile to migrants, especially those who identify as Arab or Muslim.[13] Because independent states inherit colonial codes and institutions, colonial forms of racism, anti-religious hate, and sexism would seem to germinate the seeds of independent postcolonial states.

By privileging the experiences of Arab Muslim minorities, *Fluid Jurisdictions* deftly leads readers through the dysfunctions of British and Dutch colonial rule. The result is a compelling achievement in colonial legal history and Indian Ocean World studies.

[13] On the contemporary hostility toward Muslims and Islam, see Mark Fathi Massoud and Kathleen M. Moore, "Shari'a Consciousness: Law and Lived Religion among California Muslims," *Law and Social Inquiry* 45:3: 787-817. See also Sahar Aziz, *The Racial Muslim* (Berkeley: University of California Press, 2021) and Mayanthi Fernando, *The Republic Unsettled: Muslim French and the Contradictions of Secularism* (Durham: Duke University Press, 2014).

Review by Hollian Wint, University of California, Los Angeles

Fluid Jurisdictions is a rich account of Arab "legal arbitrage" in colonial southeast Asia that sits at the intersection of several important scholarships (163). The colonial law of the title is a complex phenomenon, only in part because Nurfadzilah Yahaya has chosen to compare two distinct imperial spaces: the British Straits Settlements and the Netherlands Indies. In both cases, Yahaya clearly shows colonial law to be a site of uncertainties and contradictions, defined by competing interests at the local, imperial, and inter-imperial scale. At the heart of Yahaya's account of colonial law, however, is the invocation and mobilization of "Islamic law" by both colonial officials and their Arab subjects. Indeed, Yahaya is careful to challenge the stability of and dichotomy between "colonial law" and "Islamic law" (169). Crucially, the category of Islamic law within colonial spaces was produced primarily through the regulation of family relations, a process that brings Yahaya's analysis into conversation with a well-developed scholarship on colonial India.[14]

A second analytical thread that runs perhaps more subtly through the book is that of writing and power. More specifically, Yahaya is interested in the regimes of writing or "textual habitus" produced by the colonial encounter (16). This concept may certainly have a disparate, interdisciplinary history—one thinks of the growing scholarship on print cultures initiated by Benedict Anderson's *Imagined Communities* on the one hand and the rich scholarship on colonial archives associated with Ann Stoler's work on the other.[15] However, Yahaya grounds her analysis more clearly within the more recent works of Brinkley Messick, Bhavani Raman, and Fahad Bishara that connect writing as both object and action to the production of durable and mobile property regimes.[16] It is at the convergence of these two analytical threads that I find Yahaya's most compelling contributions.

Like Messick and Bishara, Yahaya understands Islamic legal texts to have a necessarily wide reach; the Southeast Asian Arab diaspora, like the Afro-Arab communities of the western Indian Ocean, consisted of commercial actors with multiple sites of operation and capital. Oceanic paper regimes relied on extensive networks of legal service providers—*qadhis* (judges), but also *katib* (scribes)—to inscribe property relations into various documentary forms. Yet, as Talal Asad argued in the 1980s, Islamic legal traditions must be understood as dynamic and "discursive";[17] legal actors shared various modes of interpreting both scripture and *fiqh* (jurisprudence), but often came to very different conclusions. Unlike Messick, and to a certain extent Bishara, Yahaya is primarily concerned with how Islamic texts entered the colonial legal sphere. Drawing on Raman, she

[14] Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights* (New York: Cambridge University Press, 2012); Ritu Birla, *Stages of Capital:Law, Culture, and Market Governance in Late Colonial India* (Durham: Duke University Press, 2008); Mytheli Sreenivas, *Wives, Widows, and Concubines: The Conjugal Family Ideal in Colonial India* (Bloomington: Indiana University Press, 2008); Eleanor Newbigin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community* (Cambridge: Cambridge University Press, 2013); Amrita Shodhan, *A Question of Community: Religious Groups and Colonial Law* (Calcutta: Samya, 2001).

[15] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. (London: Verso books, 2006); Isabel Hofmeyr, Preben Kaarsholm, and Bodil Folke Frederiksen. "Introduction: print cultures, nationalisms and publics of the Indian Ocean," *Africa: Journal of the International African Institute* 81:1 (2011): 1-22; Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2010).

[16] Brinkley Messick, "Textual Properties: Writing and Wealth in a Shari'a Case," *Anthropological Quarterly* 68:3 (July 1995); Bhavani Raman, *Document Raj: Writing and scribes in early colonial South India* (Chicago: University of Chicago Press, 2012); Fahad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780-1950* (Cambridge: Cambridge University Press, 2017).

[17] Talal Asad, *The Idea of an Anthropology of Islam* (Washington, D.C.: Center for Contemporary Arab Studies, Georgetown University, 1986); Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993).

attends to the process that made texts legible and to the ways in which colonial statecraft created "new modes of attestation, documentation, and evidence that rendered most pre-colonial practices obsolete while privileging others" (16).

While other scholarship on the colonial encounter focuses on acts of subversion, resistance, and adaptation—Yahaya cites Johan Mathew and Eric Tagliacozzo, but one might as easily turn to Derek Peterson's work in East Africa—Yahaya seeks to make a rather different claim: that Arabs in southeast Asia "sought to make themselves highly legible to colonial governments" (16).[18] They mobilized trans-local powers of attorney in colonial courts, for example, despite the spatial restrictions on colonial jurisdictions and the uncertainty of Dutch legal structures in the Netherlands Indies (chapter 2). And they registered *waqf* bequests with colonial courts despite the distortion and evacuation of *waqf* rights under the British (chapter 6). In so doing, they consented to, even collaborated in, the production of new textual regimes and, as a result, were "a significant driving force behind the expansion of colonial jurisdiction in Southeast Asia" (3).

Here the links to Yahaya's larger argument about the collaborative, if unequal relationship between Arab minorities and the colonial bureaucracies of the British Straits Settlements and Dutch Indonesia are clear. Crucially, however, this confluence of interests was deeply gendered and stemmed in large part from elite Arab men's desires to regulate the domain of kinship. Petitions received from Arab men by both the British and Dutch authorities, like legal disputes in colonial India, were concerned primarily with marital affairs and thus ultimately with the control of property. The complex racial structures of the southeast Asian societies—where Arab migrants had long married local women—came to play also in these disputes; attempts to undermine the authority of local *qadhis* were also attempts to impose stricter definitions of *kafa'a* (sufficiency in marriage) in order to limit the transfer of assets outside of lineages. A similar process can be observed among both Afro-Arab Muslims and Gujarati Isma'ili Khojas in Zanzibar from the end of the nineteenth century, where family legal disputes redrew the boundaries of community.[19] In all cases, however, it is not clear how successful colonial officers or elite men were in regulating intimate and property relations on the ground.

Indeed, this is suggested by another part of Yahaya's narrative, though it is certainly not the dominant thread in her analysis. At the end of chapter six, Yahaya assesses the relatively small number of women testators found in the archives of the Straits Settlement. She notes that "women founded trusts, often out of a sizable portion of their estate, that tended to benefit other women" (160). This is a pattern that is also notable in the Gujarati wills registered at the British consulate in Zanzibar during the last third of the nineteenth century. Interestingly, Yahaya suggests, albeit tentatively, that this may have been "an attempt to create a sort of matrilineal system of property devolution on the part of female settlors" (160) And, indeed, it is implied that this was a traceable response to the legal maneuverings of Arab husbands and fathers in this period (Yahaya emphasizes another response, switching between *maddhabs*, in her discussion of Fatima in chapter one and her conclusion). What I find particularly fascinating here is the connections that one can draw between Yahaya's concern with legal arbitrage and colonial law on the one hand and with textual regimes on the other. Certainly, in nineteenth and twentieth century East Africa, there is evidence that Gujarati, African, and Afro-Gujarati women began to use legal documents in new ways, mobilizing dowry contracts as forms of conjugal capital, for example. Thus, this begs the question of whether the "textual habitus" created by the encounter of colonial and Islamic law in southeast Asia co-produced sites of gendered textual arbitrage.

[18] Johan Mathew, *Margins of the Market: Trafficking and Capitalism across the Arabian Sea* (Berkeley: University of California Press, 2016); Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling and States along a Southeast Asian Frontier, 1865-1915* (New Haven: Yale University Press, 2005); Derek Peterson, *Translation, Bookkeeping, and Work of Imagination in Colonial Kenya* (Portsmouth: Heinemann, 2004).

[19] Elke Stockreiter, *Islamic Law, Gender and Social Change in Post-Abolition Zanzibar* (New York: Cambridge University Press, 2015; Iqbal Akhtar, "Negotiating the Racial Boundaries of Khoja Caste Membership in Late Nineteenth-Century Colonial Zanzibar (1878-1899)," *Journal of Africana Religions* 2:3 (2014): 297-316; Hollian Wint, "Credible Relations: Indian Finance and East African Society in the Indian Ocean, c.1840–1930" (PhD dissertation, New York University, 2016).

This is where a shift away from the activities of elite Arabs may be useful. Muslim women of all classes likely relied on legal arbiters—judges and scribes—to inscribe and certify their contracts and bequests. Given that the wives of Arab men were often local or the product of mixed marriages, is it safe to assume that they had other legal avenues even after Arab elite men had undermined the authority of local qadis in the 1880s? If Arab men could access property and the other benefits of native status through marriage, then did their wives successfully assert their nativeness to avoid the harsher restrictions on their autonomy imposed by elite Arab men's stricter interpretations of Islamic law? If the extension of colonial jurisdiction constituted a form of "textual domination," to take Messick's term, then how far did this penetrate into the daily lives of colonial subjects?[20] On this point, as Yahaya herself points out, the otherwise impressive archives mobilized in *Fluid Jurisdictions* are silent.

[20] Messick, *The Calligraphic State*, 1

Response by Nurfadzilah Yahaya, National University of Singapore

I am grateful to Debjani Bhattacharyya, Mark Fathi Massoud and Hollian Wint for engaging so keenly with my book. I appreciate how they eruditely highlight its arguments. I also thank Saarah Jappie for writing the Introduction. Over the past 14 centuries, Muslims continually adopted and adapted Islamic law while fusing older forms of law with Islamic law. Not surprisingly, fissures and frictions emerged but *Fluid Jurisdictions* tells a story that is rather extreme compared to the rest of the Indian Ocean because it took place in a region where British and Dutch colonial rule left a broad and deep imprint. Hollian Wint's emphasis on comparison with other works on Islamic law in the Indian Ocean region and in South Asia throughout her review raises the question of whether the Arab elite in Southeast Asia have done the same thing in Hadhramaut had they remained on the western end of the Indian Ocean. The answer is no. If they had not embarked on large-scale migration, the Hadhrami elite's approach to Islamic law would likely have been closer to those in Wint's examples.

Historically, throughout the Islamic world Muslims constantly adapted Islamic law to new surroundings and circumstances. Because of this, substantive legal content had always shifted lightly within the scope of Islamic law. Other legal systems were incorporated over time by Muslims across the world. Genealogies remained Islamic. Under colonial rule, legal content continued to shift lightly but with a major difference: changes wrought by colonialism settled heavily. European colonial authority during the nineteenth century was more brutal than what had come before. The violent force of colonialism pressed against the contours of the container of Islamic law, an outcome of colonial rule that some people due to their proximity to power failed to anticipate.

In the book I reconstruct the intertwining of private capital, law, and state-formation, as Debjani Bhattacharyya states. This phenomenon dates back to the nineteenth century rather than the twentieth century, as is as commonly thought. With the entrenchment of colonial rule in Southeast Asia in the nineteenth century, legal systems were restructured even more than before and at a faster pace. Rather than balk at colonial legal interference, some colonial subjects flocked to colonial authorities to negotiate a more favorable position in their societies. One might say that they attempted to legislate through colonial rule and envisioned a collaborative setup. What led to this magical thinking in Southeast Asia?

They likely did not foresee that they would lose control of Islamic law to colonialists due to their close relationships over several decades, and in some cases, centuries. In the second half of the nineteenth century, a new era was afoot, and most Arabs in Southeast Asia had also recently arrived although some had been in the region for longer. It was anxious times for everyone — without a lane of their own in this new world, the Arab elite eventually mastered the performance of legal pluralism, working off the striking imbalance and injustice that set in under colonial rule.

One might be tempted to frame this period as a time of expanded legal possibility, but that would give too much credit to colonial rule. It was more the case that as members of the Arab diaspora came to possess property in the region, they came to possess something else – the hard-edged clarity of apprehension of their historical realities. Despite their small numbers (less than 1% of the population in the British colony), the Arab elite were able to determine legal transformations in the Netherlands Indies and British Straits Settlements during the latter half of the nineteenth century. They were more successful in the British colony by capitalising on its political and bureaucratic birth as a Crown Colony in 1867.[21]

They lost no time in staking a public position (reports in both British and Dutch colonies imbue their petitions with the texture of a chorus) such that by 1880, the Mohamedan Marriage Ordinance was passed in the Straits Settlements at the Arab elite's behest. Some British colonialists viewed this as a step too far since even their counterparts in British India did not implement such extensive administrative practices that included the registration of marriages and divorces as well as supervision of cases involving family law which usually fell under the jurisdiction of Muslim judges throughout British

[21] Jack Jin Gary Lee, "Plural Society and the Colonial State: English Law and the Making of Crown Colony Government in the Straits Settlements," *Asian Journal of Law and Society* 2:2 (November 2015): 229-249.

Empire. Then again, the Anglo-Muhammadan law, which had been exported throughout the British Empire, was already a chimera, comprising different systems of laws grafted together. If legal codes can be newfangled, why not jurisdictions? In the context of history of Islamic law, the Mohamedan Marriage Ordinance of 1880 marks the apotheosis of colonial transformation.

In matters of jurisdiction, we must attend to two forms - territorial and personal – because jurisdictions are a layered and there is a differentiated relationship between authority, territory, and law as Bhattacharyya eloquently points out. *Fluid Jurisdictions* attends to the way these three phenomena are constantly moving at different rates and directions from the perspective of one mobile community. Essentially, the Arab elite brazenly tried to mark out their own seamless jurisdiction by conjuring up a pan-oceanic jurisdiction anchored in paper, specifically legal documents that governed property such as wills, land deeds and powers of attorney, which remain dynamic and disputed across generations.

That is what makes the approach of Southeast Asian Arabs in courting colonial jurisdictions so extraordinary. In the face of colonial tightening, they sought to expand their territory of maneuver through a panoply of measures that unwittingly or not propelled colonial reach. On the one hand, their actions preserved the Indian Ocean and Southeast Asia as a zone of vitality and exchange even in period of high empire that notoriously undermined inter-Asian trade. On the other hand, their actions masked the volatility of the terrain of action because jurisdictions were no longer fungible by this time. That jurisdictions were heavily weighted towards Dutch and British from the late nineteenth century onwards in the Indian Ocean proved this to be true.

As Mark Fathi Massoud rightly observes, Arab identity was an asset in the eyes of British colonial officials in the Straits Settlements although he suggests that their ethnic and religious identities did run on two different axes. If we had more examples of non-Muslim Arabs in the archives, we would see a different history indeed. We catch a hint of this bifurcation between ethnicity (Arab) and religion (Islam) in a case involving waqfs (Muslim endowments) in the 1920s. Rather than consulting Muslim jurists, British judges relied on the testimony of an Arabic-speaking non-Muslim Arab commission agent known as J.N. Mobaied, who repeatedly referred to Arab Muslims as "they." Both his ethnicity and language capabilities rendered him an expert in their eyes, and his non-Muslim identity provided an aura of objectivity.

In the Netherlands Indies, being Arab was sometimes an advantage but more often was not, especially from the 1890s onwards. Individual Arabs leveraged different aspects of their identity at different times – their wealth if they had some, or their racial identity for Orientalist scholar-bureaucrats who valued their proximity to Arabia. The Arab elite was linked to the mercantile vocation in the British Straits Settlements of Penang, Malacca and Singapore which were commercial port cities above all where merchants were highly valued. while the Netherlands Indies where they formed 5% to 7% of the population (depending on location) was a much larger and more varied colony-archipelago relying hugely on revenue from plantations. There, they were racially profiled as consummate middlemen who were seen as allies but were scapegoated as trading rivals as the decades went by especially with the introduction of the Cultuurstelsel (tanam paksa) in the nineteenth century, the Dutch Cultivation System that made plantations more crucial to colonial profits.

The new era in both British and Dutch territories led to the creation of the bureaucratic and archival culture that made the writing of this book possible.[22] The legal arbitrage evident in the sources they produced, which Wint and Bhattacharyya highlight, broke down overdrawn distinctions between public and private spheres of law, and between the economic, the religious and the political realms. It should no longer be possible to assume that people historically lived their lives according to this compartmentalisation. The remarkable effort of the Arab diaspora demonstrates how they attempted to merge and

[22] For more on paper and archives, see Matthew Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2016); Ben Kafka, *The Demon of Writing* (New York: Zone Books, 2012); Renisa Mawani, "Archival Legal History: Towards the Ocean as Archive," in *The Oxford Handbook of Legal History*, ed. Markus Dubber and Christopher Tomlin (Oxford: Oxford University Press, 2018): 292– 310; Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India* (Chicago: University of Chicago Press, 2012).

separate these different spheres depending on circumstances, thus demonstrating their legal acumen in recognising colonial preoccupation with the separation between different legal realms. Lee Anne Fennell's book, *Slices and Lumps: Division and Aggregation in Law and Life*, demonstrates how some places remain lumpy, and how certain aspects of law such as family law and corporate law are sliced off in terms of jurisdictions, and with great inconsistency, thus producing yet more lumps.[23]

Bhattacharyya rightly points out that the complex history of the Arab elite in Southeast Asia is a subtle balance between surveillance, regulation, collaboration, and structured forms of dispossession. But there was never any equilibrium. The loop of compliance by colonial subjects, we now know, directly led to colonial refrain that stays with us today. Islamic law became more gendered in Southeast Asia under colonial rule because Arab elite's recourse to non-Muslim colonial authority led to intensification of patriarchal norms. Community decisions were increasingly based on colonial law. British and Dutch colonial administrators had interests that were different from Arab elite who courted their jurisdictions. Slowly, the latter learnt that investing in colonial institutions yielded poor returns. Over several generations, what accrued was wisdom and likely, frustration and despair. Did they pine for what could have been as they quietly seethed at the outcome?

Eventually, the production of new textual regimes of Islamic law in Southeast Asia rests not on traditional Islamic texts but on two main sources - documents stored in bureaucratic repositories including wills and testaments which doubled up as endowment or waqf deeds, and in English Common Law jurisdictions, in the form of legal precedents that consists of corpus of judgments of previous legal cases. That is the twist in the legal history of Islamic law in the modern period. Of course this does not pass muster for many Muslims in the world – precedents have a very limited role in Islamic law if any. The truth of the matter is that genealogies of Islamic law were henceforth splintered. Documentation was recognised as useful by the early twentieth century but beyond that did not carry as much weight as direct in-person testimony. Perhaps colonial rule resulted in a lack of confidence in charting an independent way forward. After all, legitimacy is a strong factor in law which led to heavy reliance on precedent even if it was un-Islamic at times.

There is a third reason, which brings me to the questions posed by Mark Fathi Massoud as to how racist and Islamophobic structures of colonial rule shaped the postcolonial laws and policies that evolved from independence, or the independence struggles themselves? Put differently, what did postcolonial legal authorities inherit and what did they discard from colonial period? One of the of the main reasons why I wrote this book is to prove that there was indeed continuity in state formation because colonial subjects had swiftly acquired knowledge of colonial legal workings and enthusiastically navigated new legal systems to their advantage. Throughout the world, colonial legal systems still continue to form monuments to colonial pasts.

In all three countries – Malaysia, Singapore and Indonesia - Muslims were not quelled and diminished under colonial rule living in a state of hibernation only to be awakened upon political independence. In the Netherlands Indies, the Arab elite in the Netherlands Indies also, though unsuccessfully, called upon Dutch authorities to take on a bigger role in administering Islamic law. The story of transformation of Islamic law in Southeast Asia was a history of continuity, not rupture. Successive national governments of Malaysia, Indonesia and Singapore recognized this, which led them to separately conclude that Islamic law under colonial rule *was* indeed Islamic law. Personal jurisdictions, that is, jurisdictions that resides within persons, ensure the continuity of religious laws, and especially Islamic law, within the territories that eventually formed the three countries. Territorially, jurisdictions were broken twice; first, from the pre-colonial period to colonial times, and again during the transition to the postcolonial era. In terms of Personal Law however, jurisdictions were unbroken across generations, preserved through the exception of Personal Law which resides uneasily in the realm of the family, consisting of religious laws.

Of course, this is a familiar narrative. What is remarkable is that despite distortions in substantive law in the process of codification or colonialists' interpretations, and injustice in legal practice, there is tacit recognition on the part of successive independent governments and legislators that Muslims played a hand in the formation of Islamic law in colonial jurisdictions, and because of this, what was wrought was theirs to own. Undoubtedly, their sphere of control was severely

[23] Lee Anne Fennell, *Slices and Lumps: Division and Aggregation in Law and Life* (Chicago: University of Chicago Press, 2020).

curtailed during the colonial period but they were directly involved in colonial state-making, as Bhattacharyya highlights in her review. Obviously, the jurisdictions of Islamic law were wide-ranging in the precolonial period covering several aspects of life. Much like first language attrition, the process of forgetting a first or native language, knowledge of legal systems no longer in use were frustratingly no longer accessible over centuries.

Personal Law remained the purview of Muslims who continued to have input in the Straits Settlements for a while in 1880s, significantly more input in parts of Malaya through Malay rulers on the peninsula, and much more input through the *priesterraden* (Islamic religious courts) in Indonesia who ruled on nearly all cases involving Islamic law without the intervention of Dutch judges for the most part. Moreover, the contours of Personal Law were preserved upon independence by all three countries, as the infrastructure of the colonial governments were inherited by these nation-states. That is the thing about monuments – they often have to be taken in whole or not at all.