

“IN STRANGER TIDES”: INTER-CULTURAL CONTACTS, CONTRACTS AND  
LEGALITIES IN EARLY MODERN MARITIME SOUTHEAST ASIA  
(1700-1850)

A Thesis

Presented to the Faculty of the Graduate School  
of Cornell University

In Partial Fulfillment of the Requirements for the Degree of  
Master of Arts

by

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[AUGUST 2021]

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## ABSTRACT

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In a description of a series of “small” voices, political vignettes and “micro-histories”, this thesis offers an introductory foray to the quotidian rites and rituals of commerce that marked the inter-cultural contacts in early modern Southeast Asia and attempts to reconstruct a history of international diplomacy from below. Even though maritime history of Southeast Asia has been a rich terrain of study, legal texts, and social rites of commerce that aided the expansion of maritime trade in early modern Southeast Asia has been a neglected site of enquiry. In a survey of sixteenth, seventeenth and early eighteenth century trading practices, this thesis demonstrates how bonds of ethnicity, mercenary intimacies and conversion were buttressed by written maritime laws and normative injunctions. The first section of the thesis thus describes the codification and the expansion of the Malay maritime code *Undang-Undang Laut* and *Undang Undang Melaka* and the laws of Amanna Gappa. The second section of this thesis proceeds to describe the activities of the Shah-Bandars in the region while the third section studies a series of gift giving rituals. How the centuries of inter-cultural commercial negotiations produced a fluid yet mutually intelligible, composite “juridical field” of textual replications, legal repertoires, repetitive diplomatic gestures and conducts remain the moot point of this thesis. Going beyond the binary of “pure” gifts and commercial contracts, this thesis argues how traditional “non-market” forms of exchange especially gift-giving, “status” driven rituals, treaty-making, trading laws,

writing and contracting intersected to form hybrid assemblages which forms an understudied episode in the genealogy of modern contract regimes and nineteenth century international legal regimes. In short, this thesis excavates the makings of what roughly could be called a “cultural” ledger of commerce in early modern insular Southeast Asia.

## BIOGRAPHICAL SKETCH

Rukmini is a historian of Indian Ocean and early modern and modern maritime South and Southeast Asia. Before, coming to Cornell, she had finished her dissertation on early nineteenth century Bay of Bengal in Centre for Studies in Social Sciences, Calcutta. She also holds a Master's degree from Jawaharlal Nehru University, New Delhi. At Cornell she has specialized in primarily the history of Southeast Asia, maritime history and histories of capitalism.

*Dedicated to my friends*

## ACKNOWLEDGMENTS

A thesis however small it maybe incurs some debts. This is especially true for a thesis which speaks of the disappearing boundaries between gifts and contracts. Fortunately, in my case, some of these debts and gifts of friendship has been unconditional. Firstly I would like to thank my advisor Durba Ghosh who routinely tamed my unruly language, my seamless jumping from one historiography to another and helped me hone my argumentation skills. I would also like to thank Professor Eric Tagliacozzo who furthered my interest in the history of maritime Southeast Asia and by now it has transformed into a passion. I also thank Professor Robert Travers for helping me navigate conceptual histories of political economy and international law. I thank Professor T.J Hinrichs and Professor Tamara Loos for being my champion even though they were not directly in my committee. I also thank late Professor Hari Sankar Vasudevan for being there always and encouraging my work.

Among my friends, my discussions with Matthew Reeder about early Modern Southeast Asia has strengthened this project. I also thank Benedetta Carnaghi, Kelsey Utne, Jonathan Lohnes and Samantha Wesner for being around during some extremely lonely years. I also thank Roshni Chatterjee, Ritwika M., Pallabi Munsu, Mrinalini Vasudevan, Ben. Z. and Koyel C. for being my friend unconditionally. This thesis on “friendship” is dedicated to these friendships in my life although I do not know how to repay the debt. I also thank the Big Red Barn staff at Cornell for the occasional free Americano and Mac and Cheese that they provided to their regular customers. Lastly, these words are dedicated to my mother whom I miss every day.

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# **“In stranger tides”: inter-cultural contacts, contracts and legalities in early modern maritime Southeast Asia (1700-1850)**

## **Introduction**

“Avoid carefully to contract debts...cut timber in the woods...catch fish in the sea...and raise a capital...but do not dare to run in debt, either to the Sultan, the Company or any individual...observe this injunction, my dear son”.<sup>1</sup>

The above quote coming from a rare personal narrative of a Malay seafaring family gives an unusual glimpse to the politics of competing jurisdictions in eighteenth century archipelagic world of Southeast Asia. The family history, written by a Malay nakhoda of Bencoolen, Lella begins somewhere in late seventeenth century with the migration of a Minangkabau ancestor Nakoda Makuta to a port near Banjarmasin.<sup>2</sup> After working in a gold mine for five years, Nakoda Makuta was driven away by a fleet of Bugi prows, who attacked the village.<sup>3</sup> Fleeing slavery, Nakoda Makuta entered into the service of Sultan of Bantam, transporting pepper to the Dutch residency of Bantam. This narrative also speaks in detail how Nakoda Makuta and his son’s part in a pacification expedition against the “Abung” head-hunters of the highlands of Sumatra

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<sup>1</sup>“*Memoirs of a Malayan Family written by themselves and translated from the original*” translated. William Marsden, (London: Printed for the Oriental translation fund, 1830). p 6.

<sup>2</sup> Nakoda as a term means helmsman of a ship. Occasionally the term also means captain of a ship.

<sup>3</sup> The Bugis were a militarised group of sea nomads who migrated to the straits of Malaya from south and central Sulawesi. The Bugi migration to the western archipelago started from seventeenth century during the rule of Arung Pallaka while the major wave of migration occurred in eighteenth century. During eighteenth century, the Bugis often became king-makers in the Malay courts. Leonard Y. Andaya, “The Bugis-Makassar Diasporas” in *Journal of the Malaysian Branch of the Royal Asiatic Society* 68 (1:1995):119-38.

and subsequent victory. Makuta's descendant, Nakoda Muda's participation in the raids against the hill-men brought him into close contact with the Sultanate of Bantam and paved the way for his recruitment as a headman of the Malay merchant communities. By the mid-eighteenth century, the reader finds the Nakoda fighting a battle against rebellious *Bajau-Laut* (sea-faring) subjects of the Sultan and subsequently earning robes of honour and the title of *Kei Damang Perwasidana*. This slow rise of the family in the fishing village of Semangka however was halted by a stroke of misfortune. By 1760's, the family was framed for smuggling pepper into the rival British residency at Bencoolen. The narrator of the memoir places the blame on a Dutch soldier named Raus and continuously insists on the family's unflinching loyalty towards the Sultan, if not V.O.C (the Dutch East India Company). Fearing arrest and exile in a penal colony, the beleaguered Nakoda family mobilised their followers, killed the Dutch captain and took shelter in the British residency of Bencoolen.<sup>4</sup> The pithy memoir stops with the death of Nakoda Muda. Yet, unusually rich in personal detail, the memoir reveals the livelihood strategies of the maritime subjects of the indigenous Sultanates and their deft manipulation of spaces of competing jurisdictions. Simultaneously, Nakoda Muda's stern warning to his sons about accumulation of debts and possible imprisonment reveals the spectral presence of coercive royal decrees, customary laws, slow expansion

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<sup>4</sup> From 1750 onwards, the *Anak Sungai* Sultanate, an erstwhile vassal of the principality of Inderpura emerged as a shelter for Minangkabau immigrants under the support of British residents at Bencoolen. The British soon started using the *Dusun* chiefs to further pepper cultivation in this area. From the description of the memoir, it is a distinct possibility that the Nakoda was a Dusun chief under the Anak Sungai Sultanate adjacent to Bencoolen. For a history of this area and the political turmoil, migration and the war between Anak Sungai Sultanate and the British, see, J. Kathirithamby Wells and Yousuff Iskander, *The Syair Mukomuko: Some Historical Aspects of a Nineteenth Century Sumatran Court Chronicle*, ([Kuala Lumpur]: Malaysian Branch of the Royal Asiatic Society, 1985).

of contractual bonds and the emergence of European Companies as political puppeteers in the region. By foregrounding these “small” voices, political vignettes and “micro-histories”, this thesis offers a “thick description” of the quotidian rites and rituals of commerce that marked the inter-cultural contacts and attempts to reconstruct a history of international diplomacy from below. Simultaneously by uncovering a brief history of Asian maritime and legal codes this thesis attempts to shift the focus from the centrality of Westphalian resolution in the field of early modern international law and gestures towards a polyphonic and hybrid genealogy of global early modern law making.

Methodologically this thesis is situated at the interstices between the early modern “Connected History” project, “New Diplomatic Histories” and studies on “legal pluralism” within Empires. Shifting the field of enquiry from canonical texts, advocates of the “legal pluralist” approach focus on practices and hint towards the manner in which “legal pluralism” or law was not external to but embedded in the very heart of “imperial jurispractice”. Among these growing body of scholars, Lauren Benton and Richard Ross have demonstrated how much before formal colonization, imperial law travelled with both formal and informal agents; imperial officials, merchants, soldiers, settlers or even convict labour. But travel of laws also paved way towards its dispersion and deferral and translations. Imperial legal systems were often forced to accommodate customary practices of the colonized and were subjected to jurisdictional jockeying by multiple actors.<sup>5</sup> My project intends to build on the methodological insights offered by

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<sup>5</sup> Lauren Benton, *Rage for Order: the British Empire and the Origins of International law (1800-1850)* (Cambridge: Harvard University Press, 2016); Saliha Belmessous, *Native Claims*, (Oxford: Oxford University Press, 2012); Richard Ross and Lauren Benton eds. *Legal Pluralism and Empires, 1500-1850*, (USA: Kindle Edition, NYU Press, 2013; Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires 1400-1900* (New York:

proponents of “legal pluralism” but indulges in a necessary recalibration of scales of enquiry. Present works following a distinct “legal pluralism” approach at times offer a synoptic and sweeping survey across many imperial locales and sites and is largely dependent on European language records. This approach often erodes the distinct regional realities, especially salience of pre-colonial practices that might have influenced the reception and reworking of European laws in late eighteenth and nineteenth century. For example, in a recent methodological essay, Lauren Benton and Adam Clulow concedes how law especially a series of ritualised protocols, subtle semantic manipulations, deceptions, elaborate ceremonial interactions and an ambiguous notion of “protection” marked the quotidian workings of early modern diplomacy.<sup>6</sup> The maritime laws of Malacca is very briefly tackled in that essay only to disappear in a series of fleeting descriptions coming from all over the globe. This thesis consciously uses Malay language chronicles and translated Malay maritime legal codes (mostly translations) and partially attempts to fill this lacuna.

A close analysis of mundane rituals and processes, I contend also offers a subtle corrective and addition to the “connected history” corpus revolving around early modern tricksters, adventurers and charismatic individuals.<sup>7</sup> Shifting the gaze from

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Cambridge University Press, 2009); Lauren Benton, *Law and Colonial Cultures: Legal regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2004).

<sup>6</sup> Lauren Benton and Adam Clulow, “Legal encounters and the Origins of Global law” in Jerry Bentley, Sanjay Subrahmanyam and Merry. E. Wiesner Hanks eds. *Cambridge World History: Constructions of a global world, 1400-1800 C.E.*, Part 2, Volume VI (Cambridge University Press: Cambridge, 2015), pp 80-100.

<sup>7</sup> I am specifically hinting towards the “connected history” project which describes how mobile figures narrated their de-familiarising experiences of ‘inter-cultural’ encounters in early modern South Asia and South-east Asia. The project aptly brings into view the complex mental map, fantastic projections and fantasies of Eurasian travellers, envoys and “go betweens” inhabiting a liminal zone. Instead of reiterating a Saidian paradigm, the

individual actors, this thesis proposes to tease out the institutions, the legal codes and the interlocking webs of obligation, gift giving and contract, which shaped the “moral economy” of sojourning in the “unruly” seas of the East.<sup>8</sup> An emphasis on intersections between mobile actor oriented geographies and formal domain of treaty making, including actions of “non-ambassadorial” diplomatic actors namely, merchants, writers, harbour masters as intermediaries has been the hallmark of “New diplomatic” histories of the Mediterranean and Indian Ocean world.<sup>9</sup> Role of institutions,

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project points out to the internal fissures and tensions in the texts written by these itinerant figures. Simultaneously the project seeks to interrogate “globality” beyond the heroic, Eurocentric narratives of European exploration. Sanjay Subrahmanyam, “The legend of Sultan Bulaqi and the Estado da India, 1628-40” in idem, *Explorations in Connected Histories* (Oxford University Press: New Delhi, 2011); Sanjay Subrahmanyam, “Manila, Melaka, Mylapore: A Dominican Voyage through the Indies, circa 1600” in idem, *Explorations in Connected History: From the Tagus to the Ganges* (Oxford University of Press: New Delhi, 2005); Sanjay Subrahmanyam, *Three ways to be Alien: Treavils and Encounters in the Early modern World* (Waltham: Mass: Brandeis University Press, 2011). In a recent book, Sanjay Subrahmanyam has also delineated how European understanding of India was not static but was malleable stemming out of their varied encounters with what they regarded as “India”. Law however has been conspicuously absent from this corpus. Sanjay Subrahmanyam, *Europe's India: Words, People, Empires, 1500-1800* (Cambridge, Massachusetts: Harvard University Press, 2017)

<sup>8</sup> By moral economy, this essay uses, E.P Thompson’s notion of moral economy which refers to the “complexities of motives, behaviours and functions” embedded in popular protests of eighteenth century England. In a corrective to economic determinism, Thompson argues how the protesting poor of the eighteenth century invoked paternalistic ties, social norms, customs and bonds of reciprocity to oppose the growing commercialisation of their surroundings and price rise. This thesis, although does not speak of social protests but what this thesis wants to take away from Thompson is the necessity to look into the social behaviour, societal ties, and customs of trade vis-à-vis mere cliometric number crunching. E.P Thompson, “Moral Economy of the English crowd in the eighteenth century”, *Past & Present*, Feb., 1971, No. 50 (Feb., 1971), pp. 76-136

<sup>9</sup> New Diplomatic histories refer to a trend in history writing of Mediterranean where the roots of inter-polity negotiations are located in non-ambassadorial negotiations, especially ad-hoc decisions, pragmatic compromises and discourses carried out by actors on the move. See, E. Natalie Rothman, “Afterword: Intermediaries, Mediation, and Cross-Confessional Diplomacy in the Early Modern Mediterranean”, *History*, Volume, 2015, 245 –259. In an essay on eighteenth century communication networks in Islamicate Eurasia, Gagan Sood refers to Pattamars, a group of specialised intermediaries and letter writers of South India who also indulged in trade, especially small scale luxury trade. Gagan Sood, “The Informational Fabric of Eighteenth-Century India and the Middle East:

commercial gifting and rituals of reciprocities in facilitating commercial exchange also have been tackled by historians of the broader Indian Ocean world.<sup>10</sup> In recent years, a number of scholars from Southeast Asia also have looked at early modern diplomatic materials from Southeast Asia, especially letters to understand development of diplomatic protocols, embassies, letter writing styles and traffic of ideas.<sup>11</sup> Situating itself at the interstices of these genres, in this thesis, I argue how centuries of intercultural commercial negotiations produced a fluid yet mutually intelligible, composite “juridical field” of textual replications, legal repertoires, repetitive diplomatic gestures and conducts. Through descriptions of mundane rituals, the thesis attempts to trace the role of oath objects and ritual objects (such as knives, seals, golden leaves) in mediating

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Couriers, Intermediaries and Postal Communication”, in *Modern Asian Studies*, 43, no. 5 (09, 2009): 1085-1116; Jurrien Van Goor, “Merchants as diplomats: embassies as an illustration of European-Asian relations” in Jurrien Van Goor, *Prelude to Colonialism: The Dutch in Asia* (Uitgeverij Verloren:2004), pp 27-48; Natalie Rothman, *Brokering Empire: Trans-Imperial Subjects Between Venice and Istanbul* (Cornell University Press: Cornell University Press, 2012); Gagan Sood, *India and the Islamic Heartlands: an Eighteenth-Century World of Circulation and Exchange* (Cambridge, United Kingdom: Cambridge University Press, 2016).

<sup>10</sup> On precolonial trading infrastructure in early Modern Kerala, see, Sebastian Prange, *Monsoon Islam: Trade and Faith on the Medieval Malabar Coast* (Cambridge: Cambridge University Press, 2018); On social rites of trade and gift exchange between the Yemeni chieftains in the highlands, the European traders and culture of commerce in seventeenth century-eighteenth century Yemen, see, Nancy Um, *Shipped but Not Sold: Material Culture and the Social Protocols of Trade during Yemen's Age of Coffee* (Honolulu: University of Hawai'i Press, 2017).

<sup>11</sup> The contrast between letter writing styles of Sultan Iskandar Thani of Aceh and Sultanah Safia has been explored by Sher Banu A.L.Khan. Sher Banu. A.L.Khan, “Kingship in seventeenth century Aceh” in Ooi Keat Gin and Hoang Anh Tuan eds. *Early Modern Southeast Asia, 1350-1800* (New York: Routledge, 2016).p 178-180; See also, R. Micheal Feener, Patrick Daly and Anthony Reid eds. *Mapping the Achenese Past* (Leiden: KITLV press, 2011); Arthur Weststeijn, “Love alone is not enough”: Treaties in seventeenth century Dutch colonial expansion in Saliha Belmessous eds. *Empire by Treaty: Negotiating European Expansion, 1600-1900* (Oxford University Press: Oxford University Press, 2014); Jose M. Escribano-Páez, “Diplomatic Gifts, Tributes and Frontier Violence: Circulation of Contentious Presents in the Moluccas,(1575–1606)”, *Diplomatica* 2 (2020) 248-269

early history of commercial negotiation and treaty making in the region. Going beyond the binary of “pure” gifts and commercial contracts, this thesis argues how traditional “non-market” forms of exchange especially gift-giving, “status” driven rituals, treaty-making, trading laws, writing and contracting intersected to form hybrid assemblages, which forms an under-studied episode in the genealogy of modern contract regimes and nineteenth century international legal regimes. In short, this thesis excavates the makings of what roughly could be called a cultural ledger of commerce in early modern insular Southeast Asia.

### **Historiography**

“One day...there came a ship from the land of Kalinga. In this ship was a man who was a Yogi...the yogi thrust the staff into the ground in front of Sultan Ahmed...then overcome by the sanctity of Sultan’s presence, the Yogi fell to the ground in a faint. Afterwards the Yogi embraced the faith of Islam and it was he who gave Sultan Ahmed, the title of Perumadal Perumal”.<sup>12</sup>

“One morning, a strong wind divided the sea. And with it thunder resounded, As if the entire Ocean was being turned upside down. After Sawerigading had offered a prayer, the sun then shone again, thousands of ships rose from the bottom of the sea, an innumerable of vessels, serving the Welentreng ship as an escort”.<sup>13</sup>

Maritime sojourning fulfils a number of functions in the ancestral memories and lived histories of the archipelagic world of Southeast Asia. The origin myths of kingdoms speak about adventurers from distant shores coming and establishing settlements and thriving port cities. The chronicles also provide images with boats

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<sup>12</sup> “*The Pasai Chronicle: a revised and annotated translation by Russel Jones*”, (ITBM: Kualalampore, 2013), p 56.

<sup>13</sup> “*The Birth of I La Galigo*”: a poem inspired by the Bugis legend of the same name, English language text by John. H. McGlynn (Bali: the Lontar foundation, 2005), p 65.

teeming in the sea, battles with interlopers, and armed raiders and divine prophecies of adventurers and messiah's emerging from the sea. Let's take the Bugi chronicle La-Galligo which speaks of the adventurer Sawaregading's punitive expeditions against his sister-wife's kingdom. The text says...

“Like birds their boats skimmed across the water pulled by the wind in their sails, pushed by the waves, followed by wind and struck by storms”.<sup>14</sup>

The same text also frequently speak of battles with pirates where invariably Sawaregading proved victorious. The text eloquently speaks,

“When battling next to La Togek Tana, Sawaerigading speared him in the chest...and made the man's head a festoon for his ship”.<sup>15</sup>

Due to an availability of vast amounts of primary source material both from pre-modern and modern Southeast Asia, the centrality of water in state formation of maritime Southeast Asia has been aptly captured by many historians.<sup>16</sup> In this land full of waterways, channels and shifting sands and shoals, even body-politic of kingdoms get represented in the form of rivers and its multiple shifting tributaries.<sup>17</sup> It is also often the sea which forms the setting and a crucial component of a ruler's quest for prestige

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<sup>14</sup> Ibid. pp 56.

<sup>15</sup> Ibid, p 65

<sup>16</sup> See articles by Boomgaard, Heather Sutherland, Sandra Pannell, and Mannon Oseweijer to understand how the sea was seen both as a life-giving force, a site of opportunities as well as a source of pestilence, epidemic and diseases in Peter Boomgaard eds. *A World of Water: Rain, Rivers and seas in Southeast Asian Histories* (KITLV press: Leiden, 2007)

<sup>17</sup> In his analysis of the Malay text called *Misa Melayu*, the author depicts how the eighteenth century state of Perak was depicted as one enclosed by rivers including imaginary rivers (*anak sungai*) and marked by channels from where ships could enter and reach the ports up stream. The map is also marked by changing place-names reflecting the H. A. Bakar, “Playing along the Perak river: Readings of an eighteenth-century Malay state” in *Southeast Asian Studies*, 4(1), 2015, 157-190.

and followers. The central idea behind these texts has been the notion of a man of “prowess” or an individual heroic ancestor.<sup>18</sup> Displacing this notion of an individual hero, modern historiography has gestured towards structures that underlined the expansion of trade in the region.

The first variant is a *longue-duree* Braudelian style history of the relationship between trade and state formation. The writings of Anthony Reid identify the fourteenth century as a rough beginning of an “Age of Commerce in Southeast Asia”. Looking at parallels between Southeast Asia and the Mediterranean, Reid charted how rhythms of maritime trade i.e., growing European demand of spices and increasing supply of silver from Europe placed Southeast Asia in the very center of a global traffic. Reid in a series of case studies demonstrated how growth of cities, military evolution and emulation of western technologies, increasing occupational specialisation irrevocably changed the texture of Southeast Asian Society. The lucrative spice trade and growing demand of maritime produces of Southeast Asia ultimately attracted Europeans in the “Eastern” seas and inaugurated new patterns of state-formation amongst Southeast Asian principalities much before formal colonisation by Europeans.<sup>19</sup> Methodologically mirroring Reid, Kathirithamby-Wells and John Villiers edited *Southeast Asian Port and Polity* gave a long term overview of the linkages between trade and formation of city states. The early history of the port-polities of Southeast Asia could be located in their

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<sup>18</sup> T Gibson, “From stranger-king to stranger-shaikh: Austronesian symbolism and Islamic knowledge” in David Henley and Ian Caldwell, eds., *Stranger-Kings in Indonesia and Beyond. A special issue of Indonesia and the Malay World* 37 (105): 307-319, 2008.

<sup>19</sup> Anthony Reid, *Southeast Asia In the Age of Commerce, 1450-1680*. (New Haven: Yale University Press, 1993); Anthony Reid, *Charting the Shape of Early Modern Southeast Asia*. (Chiang Mai, Thailand: Silkworm Books, 1999).

development as collecting centers of exotic produces of Southeast Asia which had a ready market in China. Fourteenth century onwards, these early “collection centers” and feeder ports emerged as huge marts in their own right.<sup>20</sup>

Marking a shift from Braudelian history of flows and large structures, Leonard and Barbara Andaya studied the emergence of these smaller states, and port cities which emerged in the wake of seventeenth and eighteenth century disintegration of larger, cohesive polities. For example, Leonard Andaya’s early works focused on the gradual dismemberment of the Johore Polity during eighteenth century where he acknowledges the role of Europeans in this conflict but gives much more prominence to the contingencies of courtly politics and diminishing control of Johore rulers on the expanding mining frontiers and their rebellious seafaring subjects.<sup>21</sup> Timothy Barnard’s work on eighteenth century Siak uses *Tuhfat Ul Nafis* and *Hikayat Hang Tuah* to understand the fragile consensus between Bugis and Orang-Lauts reached by Raja Kecil, the Minangkabau “pretender” to the Johore throne.<sup>22</sup> The history of Bugis has long been associated with nineteenth century colonial constructions of piracy but eighteenth century Buginese History and culture of maritime raid reflect sophisticated

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<sup>20</sup> J Kathirithamby-Wells, & John Villiers, *The Southeast Asian port and polity: rise and demise* (Singapore: Singapore University Press, National University of Singapore, 1990); Heather Sutherland and G.J Knapp edited *Monsoon Traders: Ships, Skippers and Commodities in Eighteenth-Century Makassar* (Leiden: KITLV Press, 2004)

<sup>21</sup> Leonard Y Andaya, *The Kingdom of Johor, 1641-1728: A Study of Economic and Political Developments In the Straits of Malacca*. (Ithaca, NY)1971; Anthony Reid and Lance Castles, eds. *Pre-Colonial State Systems in Southeast Asia: the Malay Peninsula, Sumatra, Bali-Lombok, South Celebes*. Kuala Lumpur: Council of the Malaysian Branch of the Royal Asiatic Society, 1975.

<sup>22</sup> Timothy P. Barnard, *Multiple Centers of Authority: Society and Environment in Siak and Eastern Sumatra, 1674-1827* (Leiden: KITLV Press, 2003)

links between predation, political ascendancy and capital accumulation.<sup>23</sup>

In a region marked by shifting boundaries, aquatic movements, ethnic identities also fluctuated with changing fortunes of trade routes. Leonard Andaya's *Leaves of the same tree* describes how definitions of "Malayuness" altered with changing patterns of trade relations and state formation. During periods of political cohesion, "*Malayu*" identity was willingly adopted by a number of locales, stretching from present day Southern Thailand to eastern Indonesia, only to be abandoned during the rise of local centres of commodity extraction and transshipment.<sup>24</sup> While studying Malayness, Andaya's emphasis was mostly on the textual archives. Tagliacozzo in his recent essay uses ethnographic material with traditional archival sources to understand how mobile population of Southeast Asia reworked their attachment to a place and projections of self in course of maritime journeys.<sup>25</sup>

Closely associated with this corpus are histories of trading diasporas, intermediaries, "stranger" kings and outsiders who entered Southeast Asian polities in the wake of a massive expansion of external trade. In the context of the eighteenth century, Engseong Ho, and Kathirithamby Wells have analysed the role of *Hadhrami* pioneers in the internal politics of the Malay states. Both, Kathirithamby Wells and Ho emphasize how Southeast Asia's entry into the ecumenical networks of Islam brought the first wave of

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<sup>23</sup> Timothy P. Barnard, "Celates, Rayat-Laut, Pirates: The Orang Laut and Their Decline in History" in *Journal of the Malaysian Branch of the Royal Asiatic Society*, Vol. 80, No. 2 (293) (December 2007), pp. 33-49; James Warren, *The Sulu Zone, 1768-1898: the Dynamics of External Trade, Slavery, and Ethnicity in the Transformation of a Southeast Asian Maritime State*. (2nd ed. Singapore: NUS Press, 2007)

<sup>24</sup> Leonard Andaya, *Leaves of the same tree: Trade and ethnicity in the straits of Melaka*, (Honolulu: University of Hawai'i press, 2008), Introduction.

<sup>25</sup> Eric Tagliacozzo, "Navigating communities: race, Place and travel in the history of maritime Southeast Asia" in *Asian Ethnicity*, 06: Volume 10, 2009.

Alawi trader-missionaries into the Straits. Acting as charismatic leaders and political brokers, they periodically supplanted the existing indigenous aristocracy of the Straits and North Java or acted as shadow king-makers in the internecine wars of succession.<sup>26</sup> Multi-directional diasporic migrations form a central axis around which the eighteenth century history of Southeast Asia revolved. Standing alongside the flamboyant *Hadhrami*, the figure of the resilient Chinese trader superficially cuts a sorry figure. However historians of maritime raiding, have written on the growing militarization of Chinese communities in seventeenth and eighteenth century Southeast Asia which complicate the depiction of Chinese as “peaceful” traders and miners.<sup>27</sup> The rise of Chinese merchants as creditors and revenue farmers also have been explored in this corpus.

In light of the very rich historiography of pre-colonial maritime Southeast Asia, it is surprising that pre-colonial commercial law, especially Malay maritime codes have rarely gained prominence in the narratives of maritime and legal historians of Southeast Asia. These codes first begun to be collected at the behest of colonial administrators of

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<sup>26</sup> Jeyamalar Kathirithamby Wells, “Strangers and “stranger-kings’: the Sayyid in eighteenth century maritime Southeast Asia”, *Journal of Southeast Asian Studies* 40, no, 3 (2009): 567-591; Engseng Ho, “Foreigners and mediators in the constitution of Malay Sovereignty” in *Indonesia and the Malay World*, 07/2013, Volume 41:120, p 146-167.

<sup>27</sup> Hamashita Takeshi, "The Lidai Baoan and the Ryukyu Maritime Tributary Trade Network with China and Southeast Asia, the Fourteenth to Seventeenth Centuries", in Eric Tagliacozzo and Wen-chin Chang, eds, *Chinese Circulations: Capital, Commodities, and Networks in Southeast Asia*, Duke University Press; Kwee Hui Kian, “The rise of Chinese commercial dominance in Southeast Asia” in Madeleine Zelin and Yuju Lin eds. *Merchant Communities in Asia* (UK: Taylor and Francis Group, 2014), pp 79-94; Derek Heng, *Sino-Malay Trade and Diplomacy from the tenth through the Fourteenth Century* (Ohio University Research in International Studies: Southeast Asia series in International Studies, 2009), pp 72-149.

the region, especially Raffles, Crawford and Farquhar, who searched for an indigenous constitution of the maritime principalities of Southeast Asia.<sup>28</sup> An analysis of these legal codes also saw a revival momentarily in the wake of decolonisation of Southeast Asia only to disappear by the time the United Nations Convention for Law of the Sea (UNCLOS) was ratified in 1982.<sup>29</sup> Instead, most scholarship have revolved around the repercussion of the Anglo-Dutch frontier of 1824, the punitive “anti-pirate” expeditions and growing ascendancy of British records and Admiralty courts.<sup>30</sup> This thesis pushes the chronology backwards and in a survey of seventeenth and early eighteenth century trading practices, demonstrates how bonds of ethnicity, mercenary intimacies and conversion were buttressed by written maritime laws and normative injunctions. Pre-colonial history writing had given an undue emphasis to the idea of a Southeast Asian

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<sup>28</sup> To understand how the collection of indigenous laws were important for colonial administrators, see, a parallel case from colonial Bengal, Thomas Robert Travers, *Ideology and Empire in Eighteenth-Century India: the British in Bengal* (Cambridge: Cambridge University Press, 2007).

<sup>29</sup> For instance, M.B. Hooker’s compendium of the Laws of Southeast Asia devote considerable attention to the personal laws especially, customs of marriage, succession and divorce. In comparison, the maritime laws rarely gain attention though Hooker critically alerts the reader to multiple versions of the *Undang Laut* and its wide circulation. M.B. Hooker, *The Laws of Southeast Asia, the premodern texts*, Volume one, (Singapore: Butterworth and Company, 1986), pp 380-381.

<sup>30</sup> An extremely rich corpus of primary source base on Malay ‘piracy’ and a very obvious relationship of these trading polities with fluid maritime boundaries can be cited as a major reason behind such a plethora of historical works. For a theoretical perspective on Piracy in the Malaysian Archipelago and pre-colonial notions of raiding, see, Jennifer.L.Gaynor, “Piracy in the Offing, The law of Lands and The Limits of Sovereignty at Sea”, *Anthropological Quarterly* 85, (No 3, Summer, 2012):817-857. One of the earliest works linking politics of British suzerainty with antipiracy operations was Nicholas Tarling. Nicholas Tarling, *Piracy and politics in the Malay world: a study of British imperialism in nineteenth-century South-east Asia* (Melbourne: Cheshire, 1963); Nurfadzilah Yahaya, “Legal pluralism and the English East India company in the straits of Malacca during the early nineteenth century”, *Law and History Review*, 33(4), 2015, 945-964. For the maritime frontier between British Singapore and Dutch dominions, see, Eric Tagliacozzo, *Secret trades, porous borders smuggling and states along a Southeast Asian frontier 1865-1915*, (Yale University Press: New Haven 2005 ).

hero or a man of “prowess” i.e. a charismatic ruler, imbued with *Daulat* (royal prestige).<sup>31</sup> I argue, that an emphasis on the amorphous “*Melayu*” ideology and fraternal bonds does not adequately explain how the Melaka Sultanate and the micro polities sought to tame the *Hadhrami* “brothers,” the *Kala* (Tamil) brokers, the “*Ferringhies*” (Portuguese) or the ‘*Benggali Putih*’ (English and the Dutch were often called white Bengalis in the local sources) who travelled in the contested waters of the straits. In a recognition of the inherent fluidity of the early modern moment, this thesis also avoids an anachronistic imposition of nineteenth century ideas on these snippets emerging from a world of seventeenth and eighteenth century maritime Southeast Asia.

Instead of historians, it has been the scholars of international relations who had tried to accommodate indigenous conceptions of maritime sovereignty in their lengthy discussions on the “Law of Nations” in the East Indies. In the wake of decolonisation, an early attempt to displace the Eurocentric notion of international law could be located in the works of C.H.Alexandrowicz. In his *Introduction to the History of the law of Nations*, Alexandrowicz offered a provocative suggestion that Hugo Grotius (and other primitive legal scholars of early modern Europe) while developing their notion of “*mare liberum*” drew from Dutch records of treaties with Asian principalities.<sup>32</sup> In the chapter titled Grotius-Freitas controversy, Alexandrowicz argued that the Grotian resolution of the status of the ships in the high seas came from Asian notions of non-armed trading and “immutable” laws of sail and trade.<sup>33</sup> Analysing early disputes between trading

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<sup>31</sup> J.H. Walker, "Autonomy, Diversity, and Dissent: Conceptions of Power and Sources of Action in the Sejarah Melayu (Raffles MS 18)", *Theory and Society* 33 (2):2004, 213-255.

<sup>32</sup> Charles Henry Alexandrowicz, *An Introduction to the History of the Law of Nations In the East Indies: (16th, 17th and 18th Centuries)* (Oxford: Clarendon Press, 1967).

<sup>33</sup> *Ibid.* p 51, 55-59, 61-66.

companies and Asian sovereigns, Alexandrowicz argued how Southeast Asian polities did not believe in the ‘permanent’ nature of contracts and often emphasized the “revocability” of treaty obligations. At least in the early years of sixteenth century, the trading polities of Southeast Asia treated the English or the Dutch, as one among many sub-sovereigns and outsiders who flocked to their ports. Alexandrowicz’s suggestion has led to a vibrant debate between historian and scholars of international law especially Peter Borschberg and Eric Wilson.<sup>34</sup> This thesis, instead of going into a semantic analysis of Grotius materials, builds on C.H Alexandrowicz’s idea of commensurability between early modern Europe and maritime Asia and revisits the promise and semblance of equality that the early modern moment held before it was eclipsed by positive and utilitarian recasting of international law in early nineteenth century.

### **“Encountering an Ocean of law”**

A series of individual case studies from secondary sources and English memoirs indeed provide a glimpse of the anti-monopolistic impulses of the smaller courts of maritime Southeast Asia. Early Modern Southeast Asia was a crossroad of cultures and a vibrant centre of early modern spice trade. The micro-polities often courted competing European Companies for advantage and resisted the demands of European monopolists. Gilbert Hamonik in his description of the Bugi-Makassar merchant network refers to

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<sup>34</sup> Peter Borschberg, “The Seizure of the Sta. Catarina Revisited: The Portuguese Empire in Asia, VOC Politics, and the Origins of the Dutch-Johor Alliance (c. 1602–1616),” *Journal of Southeast Asian Studies* 33 (2002): 31–62; While Eric Wilson draws from Alexandrowicz to argue that Grotius indeed had access to the V.O.C. treaty archives and drew from it, Borschberg concludes that the Grotian resolution was distinctly Eurocentric in focus. For the debate see, Eric Wilson, “The Alexandrowicz Thesis revisited” in Ooi Keat Gin and Hoang Anh Tuan edited *Early Modern Southeast Asia, 1350-1800* (New York: Routledge, 2016) pp 28-48.

the “free trade” policy during the reign of Prince Wajo. Following Dutch occupation of Mollucas, the Dutch briefly pressurized Karaeng Matatoya, the grand chancellor of Goya to break of all relations with the Portuguese yet the Makassar elite did not drive away the Portuguese. By late seventeenth century, there were an English and a Danish factory in Makassar, as well.<sup>35</sup> John Jourdain’s memoirs during his tenure in an English Factory in Bantam also refers to his arrangement with ‘Arancaye’/ Orangkaya’s of Hitu, a settlement near Dutch Amboyna which witnessed a horrific massacre of the English by the Dutch (1623). The Dutch Company anxious about English presence in the area, promptly ‘advised’ the settlement to stop the sale of pepper to the English. The Orangkaya’s however stood resolute. In words of Jourdain (1612)...

“The Arancaye cared not for these threatings (sic)...sayeing farther, if the Dutch took not the better heede, the Arancaye will shortlie have all their heads.”<sup>36</sup>

These repeated mentions of supposed adherence to “free trade” and congeniality, especially in English memoirs may give an impression that the pre-colonial polities of Southeast Asia were city states akin in texture to modern day Singapore. However, presence of maritime law codes, royal monopolies and port institutions reveal the delicate balance between prohibition and permission. This balance would time and again get disrupted during the disintegration of regional polities and rampant marauding by contending factions.<sup>37</sup> The regional polities of Southeast Asia either maintained

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<sup>35</sup> Gilbert Hamonik, “The Bugis-Makassar merchant networks: The Rise and fall of the principle of the freedom of the seas” in Denys Lombard and Jean Aubin eds. *Asian merchants and Businessmen in the Indian Ocean and the China Sea* (New Delhi: Oxford University Press, 2000).

<sup>36</sup> *The Journal of John Jourdain, 1608-1617*, Second Series, no XV1. Works issued by the Hakluyt Society eds. William Foster (Cambridge: MDCCCCV)

<sup>37</sup> Robert J. Antony, “Turbulent Waters: Sea Raiding in Early Modern South East Asia”, in *The Mariner's Mirror*, 99:1, 23-38, (2013)

formal navies or as mentioned earlier, bound the roving Orang Laut's in an informal patron client bond. As early as thirteenth century, Chou Ja- Kua a superintendent of marine in Fujian provinces referred to a "great chain" to keep the thieves and pirates out of the vicinity of the port. If a ship entered the harbour, the "cunning device" was lowered. Chou-Ja-Kua also referred to use of punitive expeditions and brigandage if the ships violated the rules of the port.<sup>38</sup> By sixteenth century, these simple devices have metamorphosed into an elaborate machinery of rewards and punishments. Codification of *Undang-Undang Laut* and its circulation in the port polities of the straits of Malaya is emblematic of this trend.

Linguist, historian, and one of the earliest translators of *Undang Undang Melaka*, Richard Winstedt attributes the formation of *Undang Undang Melaka* to Sultan Muzaffar Shah (1446-1456).<sup>39</sup> Haji Buyong Adil's brief dynastic history give us a brief overview of the reign of Muzaffar Shah. The period under consideration saw a momentous expansion of the Melaka Sultanate and victory of Malacca over Siam (1456).<sup>40</sup> The expansion of Melaka Sultanate and arrival of a large number of "klang" or the Tamil Chulia merchant-mercenaries and Chinese merchants also led to the creation of two predominant parties in the court. Winstedt reduces the codification of *Undang Undang Melaka* to courtly rivalries and fragile hold of Muzaffar Shah. Anthony Reid's *Southeast Asia in an Age Commerce* and historians of Portuguese expansion help

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<sup>38</sup> Chau Ju-Kua, Friedrich Hirth, and William Woodville Rockhill. *Chau Ju-Kua: His Work On the Chinese and Arab Trade In the Twelfth and Thirteenth Centuries, Entitled Chu-Fan-Chi* (St. Petersburg: Printing office of the Imperial academy of sciences, 1911), p 62.

<sup>39</sup> Richard Winstedt, "The Date of the Malacca Legal Codes", *Journal of the Royal Asiatic Society of Great Britain and Ireland*, No. 1/2 (Apr., 1953), pp. 31-33

<sup>40</sup> Haji Buyong Adil, *The History of Malacca: During the period of the Malay Sultanate* (Kualalampur: Dewan Bahasa Dan Pustaka, 1974) p 26.

us discerning larger structural motives behind such a move.<sup>41</sup> The prosperity of sixteenth century Melaka was bolstered by a strong connection with the Ming court. In this vibrant trading metropolis, there were about hundred junks supplied rice alone with total volume of Melaka's trade reaching about 2.4 million cruzados.<sup>42</sup> *Undang Undang Melaka* in all probability was an attempt of the crown to impose an order in the increasing volume of commerce and revenue.<sup>43</sup>

Within the law codes, an emphasis on sanctity of private property hints at possible merchant origins of the code. The structural similarities between *Undang Undang Melaka* and thirteenth- century Islamic maritime law especially rules of ship-board discipline, debt, usury and ship leasing contracts also indicates participation of Arab diasporic communities in the codification process.<sup>44</sup> Winstedt's translation of the

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<sup>41</sup> Anthony Reid, *Southeast Asia in an age of Commerce, Volume II*, (New Haven: Yale University, 1993), Chapter II; Luis Filipe Ferreira Reis Thomaz, "The Malay Sultanate of Melaka" in Anthony Reid eds. *Southeast Asia in the Early Modern Era; Trade, power and Belief* (Ithaca: Cornell University Press, 1993), pp 78-79.

<sup>42</sup> Anthony Reid, "The structure of Cities in Southeast Asia, Fifteenth to Seventeenth Centuries" in *Journal of Southeast Asian Studies* Vol. 11, No. 2 (Sep., 1980), pp. 237, 239.

<sup>43</sup> The word *undang* itself is derived from the Bahasa root word *mengundang* which roughly could be translated into "invitation" or "hospitality". The codification of *Undang Undang Melaka* was not an exceptional occurrence. During the 'Age of Commerce', several Southeast Asian port polities including mainland ports formulated legal codes of their own. The law code of late seventeenth century Cham ports has recently been translated by Gregory Mikaelian into French titled "La Royaute d'Oudong Reformes des institutions et crise du pouvoir dans le royaume khmer du XVIIe siècle" or "The Reform of Institutions and the Crisis of Power in the Khmer Realm of the 17th Century". Gregory Mikaelian, *La Royaute d'Oudong Reformes des institutions et crise du pouvoir dans le royaume khmer du XVIIe siècle* (University of Sorbonne Press, Asie collection: 2009). Historian of early modern Japan, Adam Clulow also refers to the way in which Tokugawa Bakufu used the system of maritime passes and closed country edicts and *Shuinzo* reforms to contain the V.O.C and Japanese smugglers. Adam Clulow, *The Company and the Shogun: the Dutch encounter with Tokugawa Japan* (New York: Columbia University Press, 2014), pp 141-146.

<sup>44</sup> Hassan Salih Khalilieh, *Islamic Maritime Law: An Introduction*. (Leiden: Brill, 1998), pp 37-78; See also, Hassan S. Khalilieh, "Maritime law" in *The Oxford Encyclopedia of Islam and law*, Oxford Islamic Studies online.

*Undang Undang Laut* refers to a group of five sea captains who consulted, wrote the corpus and handed it over to the Bendahara (vice-regent). Among the captains, one finds the names of Muslim traders, one Tamil Klang and a possible Eurasian named Elias.<sup>45</sup> The manuscript itself faced a number of omissions and revisions, with the last revision coming during the Bugi ascendancy in the “Empire” of Johore. The *Undang Laut* clauses list extensive regulations with regards to ship board discipline and compares the captain of the ship to a king/ raja of the land while the officer in charge of taking soundings was compared to the Bendahara. The law code says,

“The Captain is, as it were a Calipha/ king on board of his own ships”<sup>46</sup>

The *Nakoda* or the captain possessed absolute legal authority over his subordinated and *Undang Laut* lists a number of progressive punishments for insubordination. Section seven details the four crimes which led to the punishment by death in the seaboard. The four crimes were use of disrespectful language to the captain, insults, ‘disloyalty’ and ‘conspiracy’ to kill the captain or the agents of merchants who had stake in the supercargoes. Hypothetically, even wearing a dagger or carrying an arm during prayers attracted punishment. Section fourteen even prohibited movement of sailors to the cargo-hold and captain’s chamber. These various subsections of the *Undang-Laut* were undoubtedly crafted to combat the ever-present threat of mutiny on board. Yet the system of penalties was also counterbalanced by rewards. For instance, if a ship completed its voyage to Java, the sailor was rewarded with money, sail clothes and a share in the cargo. A peculiar clause in the code also indicates potential of

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<sup>45</sup> “The Maritime laws of Malacca,” Prepared by Sir Richard Winstedt and Joscelin de Jong, *Journal of the Malayan Branch of the Royal Asiatic Society* 29, 3 (1956), 51.

<sup>46</sup> *Ibid.* p 51, 56.

inversion by a display of individual prowess. In this section of the text, the early modern conception of the Southeast Asian hero or a man of prowess stealthily enters the technical legal treatises. The text says in a quote,

“Whoever is ‘caught’ in this way becomes the angler’s property, even if it were the captain’s wife or concubine”.<sup>47</sup>

Keeping in mind that adultery on board was punished with death, a mere angler catching the “Captain’s wife” was indeed an aberration. This line itself could be interpreted as a conflict between stricter Islamic maritime laws and the relatively fluid maritime system of Southeast Asia.

Anthony Reid writes how concept of credit, debt and partnership was deep rooted in the early modern organisation of commerce.<sup>48</sup> The maritime states of Southeast Asia indeed had a commenda like arrangement where the *Kiwi* (resident merchant) entered into an arrangement with the Nakhoda for transporting trade items. At times, the Nakhoda, himself fitted a voyage and invested in trading goods. The Captain’s role as a primary stakeholder in the ship also gets reinforced by the section 20 of the *Undang Laut* code. The law makers were aware of the possible conflicts between owner of the cargo and the captain. In cases of conflicts between a supercargo ie. Kiwi and a captain, a captain’s writ reigned supreme. For instance, a supercargo approaching the Captain “aggressively” near the stern of a ship attracted death penalty. When a ship reached a port, the Captain was given the right to trade for the first four days and his negotiations were binding on the minor claimants of the cargo. With such

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<sup>47</sup> Ibid. Appendix 1. P 59.

<sup>48</sup> Anthony Reid, *Southeast Asia in an age of Commerce*, (New Haven: Yale University, 1993), Chapter II.

huge perks, also came responsibilities, *Undang Undang Melaka* contained elaborate provisions to ascertain the responsibility of the captain in cases of collision, shipwreck, murder on board and most critically, missing of the monsoon winds due to negligence.<sup>49</sup>

Furthermore, clauses about the shoreline and salvage claim in the *Undang Laut* give an alternative notion of territorial waters. Contemporaneous European Admiralty Statutes generally gave the right of salvage to the landed authority. The immense privileges of the seafarer in the *Undang Laut* hint towards an alternative notion and also reveal the centrality of water in the territorial imagination of the port-polities of Southeast Asia. While camping in the shoreline, if the sailors located a treasure trove, the proceeds of that finding was to go to the Nakhoda or the captain if the sailor was “on shore on captain’s business”. Otherwise, the sailor was given one third share of the plunder. The turbulent straits of Malacca was a hotbed of shipwrecks and consequent wreck plunders by the seafaring inhabitants of the shore. *Undang Undang Melaka* contained provisions about shipwreck restitution and rescuing of ships and people in distress. As a reward of rescuing goods, the rescuer was given ten percent of the value of the ship’s cargo. Similarly, the code gave the Nakoda elaborate authority to capture runaways, mutineers and deliver them to their owners. The Nakoda also had the authority to rescue people and bind them to the ship as slaves. Here, *Undang Undang Melaka* introduces a differentiation between propertied merchants and a non-propertied person. While the propertied people had the right to negotiate a settlement with the captain, the non-propertied were destined to become slaves.

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<sup>49</sup> “The Maritime laws of Malacca,” Prepared by Sir Richard Winstedt and Joscelin de Jong, *Journal of the Malayan Branch of the Royal Asiatic Society* 29, 3 (1956)

A catalogue of the various variants of the *Undang Laut* also provides a clue of its wide circulation. A prominent translator of the Undang Undang Melaka, Liaw Yock Fang cites the presence of about forty-three versions of the text. He diagnosed structural similarities between *Undang Undang Johore*, *Undang Undang negeri*, *Undang Undang Palawan* and *Undang Undang Kedah*. During early eighteenth century, the text also circulated in the name of *Risala-e-Hukum-e Kanoon* in Aceh. An early history of the procurement of the text by colonial administrators also reveal its wide circulation. For instance, the *Undang Undang Negeri* was copied by a Buginese captain called Encik Said during early nineteenth century. The Achenese version of the *Undang Undang Melaka* dated back to 1788 and was compiled during the reign of Sultan Jamal-Al-Munir of late eighteenth-century Aceh. The authorship of these various versions vary as the text travelled from Melaka to the further shores. The authorship of the Patani version has been attributed to Kadi Sadar Jehan, a hakim in the Malacca Kingdom. As the legal text travelled from one site to another, the text accumulated new layers and reflected changing geopolitics of the period. Thus, the Pahang version ends by evaluating a border agreement conducted between Johore and the Portuguese while a minor Aceh version changes the name of the text to *Cerita Sultan Iscandar*. As the text reached nineteenth century, the lines were also laced with religious fervor. In the manuscript titled *Adat Orang Menjadi Raja* (How an ordinary person can become a king), the text adds additional proscriptions against adultery and blasphemy along with the pre-existing ones. Melaka was often portrayed as a spiritual progenitor by many monarchies in maritime Southeast Asia and by adopting the rough outlines of the Malacca code, it is possible that the monarchies in Southeast Asia was attempting to establish a tenuous

link with Malacca Sultanate.<sup>50</sup>

From the straits of Malacca, as one moves towards the Straits of Celebes, (near Borneo) one finds evidence of another seventeenth century law code compiled by Amanna Gappa, the ruler of Sulawesi. Much like *Undang Undang Melaka*, the law had possibly mercantile origin as the laws were consulted and ratified by chiefs of Sumbawa and Pasir.<sup>51</sup> Written in palm leaves, the first section of the law code speaks about different sea routes and freights. While *Undang Undang Melaka*, compiled at an earlier stage gave a lot of emphasis to kinship or familial bonds, the laws of Amanna Gappa introduce a distinction between people who were “friends of the owners” and contractual bondsmen in cases of steering of the boat and managing the rigging.

In a shift away from patron-client bonds, the laws of Amanna Gappa also prohibits the captains from taking influential people or sovereign entities as sleeping partners in a ship, keeping in mind the possibility of miscarriage of justice. In fact, creation of elaborate checks and balances between the many claimants and stake-holders remains the hallmark of the laws of Amanna Gappa. While the *Undang Melaka* imagined the captain as a Calipha on board, laws of Amanna Gappa carefully laid out the qualities of a captain and the skills that an ideal captain was supposed to possess. The skills of a captain included possession of weapons, pious and righteousness and diligence, ability to command respect, business acumen and last but not the least, his

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<sup>50</sup> Liaw Yock Fang, *Undang-Undang Melaka: the laws of Melaka*, (Hague: Bibliotheca Indonesia & KITLV Press, 1976), pp 9-15, 29, 119.

<sup>51</sup> A truncated translation of these laws could be found in Amanna Gappa, and Philip Oder Lumban Tobing, *Hukum Pelajaran Dan Perdagangan Amanna Gappa: Pembahasan Philologis-Kulturil Dengan Edisi Jang Diperpendek Dalam Bahasa Inggris*. Makassar: Jajasan Kebudayaan Sulawesi Selatan dan Tenggara, 1961, pp 150-160. Wherever possible, I have compared the translation with the main text transcribed in Indonesian by the authors.

ability to defend the crew militarily, if necessary. The Captain was also instructed not to transfer the vessel to other people without permission of the owner. Similar to European laws concerning shipping registers, the space of a ship was also to be divided in a meticulous manner among the many claimants and merchants. Keeping in mind the similarities between laws of Amanna Gappa, the Oleron's codes from early modern Europe, and the early Admiralty codifications from England, one can tentatively argue how these contemporaneous developments could be traced back to first globalisation and expansion of commerce.<sup>52</sup>

In case of the sea journeys the laws of Amanna Gappa had clauses of compensation if the captain changed the course without the permission of the passengers and was obligated to provide an alternative vessel. While running the ship, the duty of scooping water out of the hold was one of the most important duties and the law codes of Amanna Gappa devised elaborate compensations and fines in case of dereliction of duties on board. While *Undang-laut* from Melaka provided the captain with enormous powers, the laws of Amanna Gappa also devised protections for sea-men and except for

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<sup>52</sup> Simultaneous to the codification of Amanna Gappa's laws, seventeenth century Europe was also a site of vigorous enquiry about the foundations of the law of Nations. A cursory reading of the texts reveal similarities with these parallel movements and codifications happening in South-east Asia. See, for example, John Godolphin one of the earliest compilers of Admiralty law does not bring any distinction between England's law of Admiralty and the admiralty customs of other places. In a curious sentence, Godolphin even argues that the post of Admiralty came from the eastern seas, and was drawn possibly from the Arabic word Amir. In Godolphin's book the laws on marine debt or *Pecunia Trajectia* has startling similarities with the laws of Amanna Gappa. A more detailed comparison is beyond the scope of this thesis. John Godolphin, *A View of the Admiral Jurisdiction: Wherein the Most Material Points Concerning That Jurisdiction Are Fairly and Submissively Discussed: as Also Divers of the Laws, Customes, Rights, and Priviledges of the High Admiralty of England by Ancient Records, and Other Arguments of Law Asserted: Whereunto Is Added by the Way of Appendix an Extract of the Ancient Laws of Oleron* (London: Printed by W. Godbid for Edmund Paxton and John Sherley, 1661).

rarest circumstances the captain was not allowed to take them to court. The laws also divide the crew among regular crews, passenger crews and the casual crews and it seems that every crew member had the right to trade. Shipwrecks, stranding in uninhabited islands or drowning in the water was a reality that every sea-farer in maritime Southeast Asia had to negotiate with. The laws also laid out clear rules for hospitality, rescue and support to stranded people where the rescuee had to pay money to the Captain of the ship. In case of damages to the ship or wrecks, the laws also reckoned with natural factors where the Captain was not to be held liable, especially in cases of shipwrecks due to storms in the high sea or submerged rocks.

Following the etiquettes and laws followed in the “high seas”, the laws of Amanna Gappa also divided existing debt-credit partnerships into four subtypes. *Samatula* was a subtype where laws of Amanna Gappa devised how damages and charges of damages were to be divided between the dealer and the owner of the goods. Next came *Inreng Teppe* where instructions were given to the debtor about specific dates where debt had to be repaid. In case of another kind of bond, ie. *Inreng Merwe*, the commutation of goods into their monetary values was encouraged.

Among these many mechanisms, *Bagi laba pada* was possibly most important where the owner and the dealer had equal claims in both profit and loss. To safeguard the rights of an absentee owner, the laws of Amanna Gappa laid down elaborate clauses on damage of goods, loss of good to the sea, losses incurred due to carelessness of the dealer and so on and so forth. While *Undang laut* merely had one clause concerning adultery on board, the laws of Amanna Gappa lays out around seven to eight instances where an absentee owner may take legal recourse against the dealer. Apart from usual

prohibition against gambling, opium smoking and fraud and intentional damage, the laws suggested that a sleeping partner may take a dealer to the court if the dealer kept “bad women” or marries and uses the goods as a bride price and purchases a wife. Temporary marriages, “platonic” wives or *pagallies* were critical in cementing trading bonds and in the words of Barbara Andaya, “a continuum between hospitality, gift and sex” was well established.<sup>53</sup> It is possible that the laws of Amanna Gappa were devised to put a check on profligate spending on temporary wives. In a maritime region rife with accidents and temporary marriages especially among the lower echelons of the society, Amanna Gappa’s code also laid out safeguards for children from the first marriage. For instance the gifts or dowry earned during the first marriage was to be kept aside for the safeguard of children produced out of the “legitimate” union. By eighteenth century, as Barbara Andaya contends, the system of temporary wives had gone through a sea-change. While in earlier centuries, temporary marriage or concubinage, especially with Europeans were considered to be a vehicle of upward mobility, by eighteenth century a distinct impulse towards commodification and monetisation of bodies could be seen in sources where instead of a temporary wife and her clan, trading men found it easier to deal with slaves. Although the laws of Amanna Gappa does not directly refer to female slaves, a preliminary reading pushes me to conclude that a turn towards conservatism and an exalted status of legitimated, monogamous marriage and family property was given in laws of Amanna Gappa. For instance a distinct differentiation between

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<sup>53</sup> Barbara Watson Andaya, “From Temporary Wife to Prostitute: Sexuality and Economic Change in early Modern Southeast Asia”, *Journal of Women’s History*, 9(4): 11-34, Michael Peletz, *Gender Pluralism: Southeast Asia since Early Modern Times* New York: Routledge, 2009. 86-124

individual liability and familial liability is given on almost every page of the laws of Amanna Gappa. In case of damage done by a *kalula* or an intermediary, the cost incurred was treated as an individual responsibility and not a familial one. In another instance, if the dealer had not returned from the sea or was dead, the sleeping partner had rights to claim money from the family but the limits to such exactions were laid out clearly in the laws of Amanna Gappa.

In a perilous sea, death was an ever-present specter looming on the horizon hence even in case of four mechanisms of extinction of debts, there were safeguards for the family. In case a man dies without providing instructions to the family, the family was not liable for his private debt. If a dealer or a trading partner dies on board, laws of Amanna Gappa instructs how the captain was to find an heir and transfer the dead man's property in presence of witnesses. In case of non-availability of an heir, the captain had the right to trade with the dead person's goods but in case of the ship's return, the profits and proceeds were to be shared with the dead man's family. In case of non-payment of debts too, a differentiation was made between personal liability and familial liability. In case of non-payment of debts, serving as a temporary slave to the creditor was always a possibility. However unlike *Undang-Undang Melaka* where slaves had lesser rights and there were clear gradations of physical punishment to the slave, the laws of Amanna Gappa had more liberal approach to slavery.<sup>54</sup> For example, following the repayment of the debt, even if the former slave obtained wealth and property, their former master was

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<sup>54</sup> For example, in case of laws of Melaka, one of the clauses were if the slave abused a free-man, his 'teeth was to be extracted'. In some cases amputation of hands also was considered. Liaw Yock Fang, *Undang-Undang Melaka: the laws of Melaka*, (Hague: Bibliotheca Indonesia & KITLV Press, 1976), p 77.

to have no claims on them. Instead of reducing a debtor to the position of a chattel, the Makassarese laws also held provisions where the slave could also become a protégé of the master in rarest circumstances. In another clause, in cases where the debtor even after selling all his property, could not pay of his debts, the laws argued how it was not advisable for him to transform into a slave. Instead laws of Amanna Gappa asks the creditor to help the debtor and gift him some trading articles so that he could recuperate his fortunes and pay off the debts without indulging in slavery. It is possible that in *Undang-Undang Melaka*, the harsh punishments meted out to the slave was a result of growing islamisation of the straits of Melaka while in South Sulawesi, situated at the edge of the Islamic “Nusantara,” the Southeast Asian man of prowess stealthily entered the corpus in the form of a slave turned a redeemable hero.

This hero however is not a noble nor a king but a trader as in laws of Amanna Gappa repeated admonitions were given to idiosyncratic behaviors of men of royal birth. How far were these laws effective on ground? A curious clause compels me to conclude that the laws were used to cement bonds between the members of the Wajorese diaspora, once again reemphasizing how law was used to buttress diasporic belongings. In case of conflicts, the Captain was asked specifically to not take the dispute to foreign courts. Instead, it was the village council which was responsible for dispute arbitration. In case of early modern Wajorese diaspora, Kathryn Anderson Wellen writes how from late seventeenth and early eighteenth century onwards South Sulawesi rulers were motivated to harness the international contacts, expertise and trans-regional links that members of

the diaspora cultivated.<sup>55</sup> It is possible that this instruction to Wajorese captains to return to their homeland emanated out of the need to create a nominal Wajorese sphere of influence in an era of internecine struggles to capture trade routes.

The brief comparisons between the sixteenth century *Undang Undang Melaka* and the laws of Amanna Gappa reveal some structural transformations that had happened in insular Southeast Asia from the sixteenth till the seventeenth century. Let's take the law of slavery as an example. *Undang-Undang Melaka* while describing the role of a captain in capturing a runaway slave argued how in case of capture the Captain had an exclusive right to enjoy the slave.<sup>56</sup> However laws of Amanna Gappa clearly states that the captain of a ship had the duty to return the run-away slave to its owner in case of capture. While the *Undang Laut* clearly depicted the sea-captain as a parallel authority in the sea unencumbered by royal protocols and the captain had the right to mete out death on board without royal permission, the laws of Amanna Gappa placed important checks and balances against a captain's untrammled authority. This slow tussle between the captain and the sovereign in land reflects how by seventeenth century the balance had shifted in favour of the monarch in Southeast Asia. Our next example, *Majlis Aceh* also reflects the slow bolstering of royal authority vis-à-vis the sea faring subjects of the Sultan.

It is not surprising that the site of codification of the *Majlis* was Aceh. Among the kingdoms of Southeast Asia, Aceh witnessed a number of anti-nobility purges and a

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<sup>55</sup> Kathiryn Anderson Wellen, *The Open Door: Early Modern Wajorese Statecraft and Diaspora* (DeKalb, IL: NIU Press, 2014), Chapter III, pp, 39-66.

<sup>56</sup> Liaw Yock Fang, *Undang-Undang Melaka: the laws of Melaka*, (Hague: Bibliotheca Indonesia & KITLV Press, 1976), pp 45-50, 77.

vigorous centralisation attempt under Sultan Iskandar Muda. Anthony Reid writes how under both Alau'ddin Riyat Shah al Mukumal and Iskandar Muda the power of *Ulubelangs* (minor nobility) was curbed. The minor nobility indeed once again obtained power under the reign of the three Sultanas and a decentralisation took place.<sup>57</sup> The version of *Majlis Aceh* consulted here was possibly written under Jauhar Al Alam and Sultan Jamal Munir of late eighteenth century. This codification in all probability was an attempt to revive royal authority in the wake of further disintegration, wars and onslaught of European companies.

The *Majlis Aceh* or *Perintah Segala Raja-Raja* was part of an extended textual corpus called broadly *Adat Aceh* or the rules of the conducts of kings. These laws were partly textualised under Iskandar Muda (1607 AD) who after his accession to the throne ordered the laws of Aceh to make a certified copy of the *sarakata* or the laws. This codification was probably an attempt by the ruler to bolster his position as a monopoly trader.<sup>58</sup> The eighteenth century version of *Majlis Aceh*, retained the basic tenets of *Undang Laut* but attacked the enormous autonomy enjoyed by sailors in the high seas. The fourth *Majlis* of the text consisted of the ruler's duties to sailors and harbour masters. The *Majlis*, written in a style of Persian Mirror of the Princes, instructs the king to obtain regular intelligence from traders and harbour masters and also instructs to keep the same in tight leash via a system of royal messengers. In late eighteenth century political set-up, prominence of royal messengers instead of ship master's reflect a

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<sup>57</sup> Anthony Reid, "Trade and Royal Power in Aceh: three stages c.1500-1700" in *An Indonesian frontier: Acehnese and other histories of Sumatra* (Singapore: Singapore University Press, 2005)

<sup>58</sup> Amirul Hadi, *Islam and State in Sumatra: a Study of Seventeenth-Century Aceh* (Leiden: Brill, 2004), p 120.

growing impulse towards centralisation.<sup>59</sup> *Majlis Aceh* also brings into view a massive reorganisation of the port bureaucracy in the face of a European onslaught and erection of royal monopolies by the Acehnese monarchs. The *Majlis Aceh* describes a number of royal privileges including a stamp tax on merchants carrying clothes and condiments and luxuries. The traders from western coast of India were the worst victims of such a reorganisation. In exceptional cases, the merchants could have purchased an immunity from taxes in exchange of an exorbitant amount. On 1767, the Sultan of Aceh issued a decree to grant exemption to a Danish captain from Tranquebar and a Gujarat merchant Muhammad Qasim.<sup>60</sup>

It is indeed difficult to reconcile the idealised world of text and practical dimension of maritime journeys. A collection of fragments from the English and Portuguese memoirs can lead one to conjecture that *Undang Undang Melaka* possibly represented a set of rough normative guidelines, especially in matters of shipwreck and slavery. In the late sixteenth century, a Portuguese shipwrecked sailor, Ferdinand Mendez Pinto was sold to Jambi as a pearl diver. While narrating his woes, Pinto briefly refers to the fact that rescue of shipwrecked people and their transformation into slaves was in accordance with the “existing laws”.<sup>61</sup> Alexander Hamilton’s early eighteenth century memoir refers to the Raja of Sumbas (situated in present day Kalimantan of

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<sup>59</sup> Yahya Jusoh and Kamarul Azmi Jasmi translated. *A commentary on the rules for Kings (Majlis Aceh)*, (Kualalumpur: Universiti Teknologi Malaysia, 2008) p 10.

<sup>60</sup> Ibid. p 38. For the broad description of the code, also see, Yahya Jusoh, and Kamarul Azmi Jasmi, *Perintah Segala Raja-Raja (Majlis Aceh)*, Ed. 1. (Skudai, Johor Darul Ta'zim: Penerbit Universiti Teknologi Malaysia, 2007)

<sup>61</sup> “*Voyages and adventures of Ferdinand Mendez Pinto, the Portuguese, done into English by Henry Cogan, with an introduction by Arminius Vambert*”, (London: I Fisher Unwin, MDCCCXCVII), p 57.

Borneo) and his assistance to an Armenian merchant from Madras. Following a rescue, the king, not only gave the trader material provisions of pearls and marine produces but also arranged his repatriation to Manila.<sup>62</sup> In an isolated instance, the *Undang Laut* also became a malleable legal resource in the hands of a crafty English captain. In a case fought in the Penang recorder's court between an English captain and a Penang resident merchant, the captain justified his private trade and interloping journey's by invoking the rights and liberties of the captain in what he called "traditional customs of Malaka".<sup>63</sup> By focusing on the office of Shah-Bandar, this thesis attempts to provide some snapshots of how inter-cultural trading was carried on ground beneath the normative proscriptions suggested by the laws.

### **Shah-Bandars in the archipelago**

This spread of legal texts was also complemented by replication of certain institutions and offices. The office of the Shah-Bandar was a common feature in every major port of early modern Southeast Asia. In a small article on Shah-Bandars in the archipelago, Purnadi Purbatjaraka furnishes a list of Shah-Bandars in early modern

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<sup>62</sup>Alexander Hamilton, *A new account of the East Indies*, Volume I (New York public library: digitized by Google books, 1725). p 149.

<sup>63</sup> The case was initiated by a certain Murray against Captain Burns regarding breach of contract and unsold cargoes in the hold of the ship Captain Wellesley. Burn was a country trader operating in Penang, Borneo and Burma. During the voyage, the ship Wellesley had deviated from his usual course and had indulged in ship captures. The captured cargo was in turn sold in markets of Pontiniak and Banjar Massin. Amid the privateering exploits, Murray's cargo of cotton remained unsold. Responding to the suit, Burns framed his defence as Captain's 'discretion' and authority to facilitate sales and purchase. In his justifications, Burns further pointed how his actions were in accordance with the Malacca trading laws. "Extracts from Prince of Wales Island Government Gazette dated 2<sup>nd</sup> July 1808", Cornell University Library, Micro-form.

Southeast Asia.<sup>64</sup> As an intermediary between the foreign merchants and the monarch, Shah-Bandar's were mostly foreigners. In bigger ports of the western part of the archipelago, the post of Shah-Bandar was held by a Chinese, a Chulia merchant and a Gujarati, reflecting the close commercial ties between the ports and their predominant trading links. The Malay chronicles *Sejarah Melayu*, celebrated the arrival of Rajah Meendaliar (Mudaliar caste from Tamilnadu) in Melaka who supposedly had no equal in terms of wealth and was elevated to the position of Shah-Bandar. Shah-Bandar itself is a Persian term but Southeast Asian roots of the office could be traced back in the *Sejarah Melayu*. While narrating about the rule of early Sultans of Melaka, the chronicler gives instance of an Oriya merchant called Baginda Mani Purindan: whose ship was stranded in great storm came and he entered the services of the King of Melaka. He went back to his homeland, conducted marriages and brought back a number of settlers from Kalinga. The king rewarded him by giving him the post of Nara'dhi Raja or a treasurer.<sup>65</sup> The links between the post of *Naradhi* Raja and the network of Shah Bandars of Melaka also could be established from Toma Pires's narrative. While travelling through ports of western Java, Toma Pires referred to a harbour master called Raja Cucuf (Yousef) who was also the de-facto sovereign authority of the river mouth. Claiming to be a 'second cousin' of Melaka's Naradhi-rajah, Raja Yousuf was probably framing an exalted genealogy for self-valorisation. Metaphorically, the "second cousin"

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<sup>64</sup> Purnadi. Purbatjaraka, "Shahbandars in the Archipelago" in *Journal of Southeast Asian History* 2, no. 2 (1961): 6-8

<sup>65</sup> "Sejarah Melayu or Malay Annals, a translation of Raffles M.S. 18 in the library of the Ras London with a commentary by C.C.Brown", (Singapore: Malaya publishing house, 1953), p 60

status could also mean a replication of offices of status and styles.<sup>66</sup>

In certain prominent centers of Islamic learning such as Kutai, an Arab enjoyed the post of the Shah-Bandar, while, a Japanese acted as a Shah-Bandar in the port of Batavia. In rare cases, even Dutch men (Ceribon, Ternate) and English acted as Shah-Bandars too. Among the English Shahbandars, the Samuel White's elevation to the post of Shah Bandar under King Narai (1680's) and Thomas Best's recruitment as the *Orang Kaya Putih* of Aceh deserves a special mention. As we move eastwards towards Mindanao, Banjarmasin and Moluccas, the Bugis gradually supplanted the Indian Chulia intermediaries.<sup>67</sup> This division may enable us to construct an imaginary boundary between the zones of Indian influence and the slow making of an alternative trading system in South Sulawesi.

At times, the lucrative office of Shah-Bandar also became a bone of contention between two important trading groups. In early seventeenth century Junk Ceylon (southern tip of present day Thailand), possession of the Shah-Bandar's office led to a conflict between the Mughal trader Shah Ismael Beg and the Chulias. The Chulias, in alliance with the Orangkayas sought to supplant the Mughal trader and in turn, was slaughtered by the Bendahara.<sup>68</sup> In rare circumstances, the entangled alliances between

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<sup>66</sup>Toma Pires, "The Suma Oriental of Toma Pires, translated from Portuguese edited by Armando Cortesao(1512-1515), Volume 1.( London: Printed for the Hakluyt Society, 1944), 193.

<sup>67</sup> Purnadi. Purbatjaraka, "Shahbandars in the Archipelago" in *Journal of Southeast Asian History* 2, no. 2 (1961): 6-8

<sup>68</sup> By Mughal trader possibly they meant Persian traders. Thomas Bowrey, *A geographical account of countries around the Bay of Bengal 1669-1679*, (London: London Haklyut Society, 1903), p 242, 256. On Persian influence in Southeast Asia, see Leonard Andaya, Leonard Andaya, "Ayutthaya and the Persian and Indian Muslim Connection" in Kennon Breazeale edited. *From Japan to Arabia: Ayutthaya's maritime relations with Asia* (Toyota Thailand

Shah-Bandar's and trading minorities even subverted the purpose of the office. During his stay in the kingdom of Kedah, Bowrey referred to the controversy which erupted when a group of Orang Lauts confiscated a ship. The stolen goods appeared in the markets of Kedah and the proceeds went to the Maraikkar (Tamil merchant) and the Surati Shah-Bandar, Sarajah Khan.<sup>69</sup> My historiographical review has already mentioned how raids and naval expeditions performed a crucial role in sustaining the political economy of small kingdoms of Southeast Asia. The close alliance between Maraikkar merchants and the Orang Lauts expose the creative intermingling of predation and legitimate commerce and resonates clearly with Jim Warren's suggestion that the creative traffic between raiding and procurement of capital was an integral part of the political economy of the coastal polities of eighteenth century.<sup>70</sup>

The memoirs of early English and Portuguese voyages narrate in detail Shah-Bandar's pivotal role in issuing incoming traders sailing pass and facilitating purchase of Southeast Asian marine produces and spices. The Shah-Bandar, at times also entered into negotiations with the European merchant ships, on behalf of a ruler. Often, the negotiations about gifts and dues contained seeds of potential conflict. Mid seventeenth century Batavia Dagh registers narrate such an instance with granular detail. In 1640,

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Foundation: the foundation for the promotion of social science textbooks project, 1999), pp 119-136.

<sup>69</sup> Bowrey, *A Geographical Account*, p 264.

<sup>70</sup> Deconstructing the rhetoric of Sulu piracy, historian James Warren argues how the immense labour demands of the Sulu sultanate was satiated by the annual slave raiding conducted by the Illanoon, a seafaring warrior class, employed by the Sultanate. With the advent of 'universal' laws of Piracy such actions were criminalized by the Dutch and English establishment. But seen from the perspective of the Sulu Sultanate such raids were not "law-less" violence but was closely related to the larger political economy of the region and growing demand of exotic marine produces. James F Warren, *The Sulu zone: the world capitalist economy and the historical imagination*, (Amsterdam: VU University Press, 1998)

conflict erupted between a new Shah-Bandar and the Dutch factors regarding the day to day market transactions of the Dutch. The Dagh registers portray the conflicts as a factional tussle regarding the amount of customary gifts and dues. A careful reading of the Dagh registers point to the Shah-Bandar's discomfort regarding the informal dealings of the Dutch with a section of Siamese Court (bypassing him). Ultimately the Shah Bandar's petition to King Narai led to a diplomatic impasse, only to be solved by an elaborate cycle of remonstrance and petitions.<sup>71</sup>

In port cities the Shah-Bandar was also responsible for presiding over mixed tribunals, dispute resolution and passing of verdicts and also was responsible for taking care of orphans who lost their fathers to the sea. Last but not the least, he also overlooked what an anonymous early eighteenth century commentator called a register of 'contracts, sales and bargains'.<sup>72</sup> Lockyer describes in graphic detail, how the Shah-Bandar of Aceh confiscated property and ship of a "Moghul" Surati trader, accused of sodomy. The Shah-Bandar of Aceh was also partially responsible for ratifying treaties on behalf of the ruler. While revising the treaty clauses of the English with Aceh, the Shah Bandar of the port promised restitution of ship wrecks and an exchange of captives and runaway mutineers.<sup>73</sup>

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<sup>71</sup> "Extracts from the "Dagh Register", 1624-1642, (Vajiranana National Library: Bangkok, 1915), pp 67-93; Bangkok also witnessed a palace revolution in 1688 where most of the foreign traders were massacred. On Siamese diplomacy, see, Bhuwan Ruangslip, *Dutch East India Company merchants at the court of Ayutthaya: Dutch Perceptions of the Thai Kingdom c. 1604-1765* (Brill: London, 2007), pp 111-148.; "Four unpublished letters from Desfarges, Beauchamp, and Vollant, survivors of the siege of Bangkok, 1688" in Michael Smithies eds. *Seventeenth Century Siamese Explorations* (Bangkok: Siam Society, 2012), pp 231-268

<sup>72</sup> Anonymous, *A historical Description of the Kingdom of Macassar in the East Indies*, London: Printed in St Paul's courtyard, 1701)

<sup>73</sup> Charles Lockyer, *An account of the Trade in India* (London: 1711), pp 59-60.

By the late seventeenth and early eighteenth century, the bureaucratic organisation of the ports had changed considerably. The early seventeenth century Shah-Bandars of Aceh were partially responsible for overlooking military levees and construction of war ships.<sup>74</sup> Even under Iskandar Muda, as Ito Takeshi, suggests the port organisation was rather simple and consisted of Nazir, Kotwals, and Karkuns.<sup>75</sup> By late seventeenth and early eighteenth century, the relative freedom of the Harbour master was curtailed in favour of bureaucratisation. The Shah-Bandars of the port of Aceh was presided by an official called *Pangalima Bandar*. In late seventeenth century Aceh, there were two Shah bandars, respectively known as *Seri Rama Setia* and *Syaf-ul-Malook*. There were also separate officials who looked after the export of horses. Ito Takeshi using Dutch sources also contend how under the *Penghulu Kawal*, there were officials who looked after specialised trading boats known as *Penghulu Jung* (head of the junks), *Penghulu Balak* (head of the boats) and so on.<sup>76</sup> Takeshi using the Dutch Dagh registers also point out that the security of the port itself rested on separate officials also known as *Tandil Kuala* or overseer of the river mouths. There were also possibly gunners from the Middle East who acted as protectors of the river mouth or were recruited as specialised intermediary officers. In Aceh, the traders had to register their cargoes, pay a duty for unloading goods, and surrender the key of the ship to the

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<sup>74</sup> Thomas Bowrey, *A geographical account of countries around the Bay of Bengal 1669-1679*, (London: London Haklyut Society, 1903), p 242.

<sup>75</sup> Ito Takeshi, "The World of the Adat Aceh: A Historical Study of the Sultanate of Aceh." Dissertation, Australian National University. Australian National University, 2007, pp 280-282; Yahya Jusoh and Kamarul Azmi Jasmi translated. *A commentary on the rules for Kings (Majlis Aceh)* (Kualalampur: Universiti Teknologi Malaysia, 2008).

<sup>76</sup> Ito Takeshi, "The World of the Adat Aceh: A Historical Study of the Sultanate of Aceh." Dissertation, Australian National University. Australian National University, 2007, pp 282-288.

harbour master. In every phase, a ship had to pay anchorage duties and inspection duties to the various arms of the port administration. Along with the Shah-Bandar, the *Majlis Aceh* lists a number of officers such as the key master, the royal scribes, the letter writers, the junior prince ie. Raja Setia Muda and the inspector.<sup>77</sup> In each step the ships had to pay duties to these minor officers.

What the Europeans regarded as blackmail or rapaciousness of the local merchant hierarchy, in fact represent a curious interface between ritualised gift giving, diplomatic dialogue, western styled contract and a very basic notion of social contract. An example from seventeenth century Banda Aceh clearly illustrates these overlaps. This extract, drawn from the journals of an English captain Mohan describe how the Shah-Bandars in Aceh enjoyed customary gifts and often the foreign traders also utilised a mixture of verbal promise and bribery with the Shah Bandars to wrest special concessions from the *Panghalima*. While the customary “gift” of five yards of expensive clothing that the English Captain gave to the Shah-Bandar were part of the rules enshrined in *Majlis Aceh*, the informal bribes were negotiated verbally. In a kingdom where the king was the supreme authority responsible for presiding and providing concessions, the written registers, gradations of payments also coexisted with socially accepted informal payments and “bribes” which was used to gain special audiences with the monarch.<sup>78</sup> In port cities of Southeast Asia, the conduct of commerce was often cemented by elaborate performance of rituals of reciprocity and verbal promises. But as the century progressed,

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<sup>77</sup> Yahya Jusoh and Kamarul Azmi Jasmi translated. *A commentary on the rules for Kings (Majlis Aceh)*, (Kualalampur: Universiti Teknologi Malaysia, 2008).

<sup>78</sup> Anthony Farrington, “Negotiations at eceh in 1684: An unpublished English document”, *Indonesia and the Malay World*, 27:77, 1999, pp 19-33.

a series of subtle changes were occurring where written injunctions, registers were slowly replacing verbal promises and professions of “friendship” and informal dealings. How early law-making in Southeast Asia jostled between verbal promises, written artefacts and elaborate rituals of friendship will be taken up in the next section.

### **“Performing Contracts”**

In recent years, decentering the focus from consular or ambassadorial diplomatic materials, scholars and practitioners of international diplomacy has gestured towards what could roughly be called a ‘material’ or a material “performative” turn in international relations.<sup>79</sup> In the wake of the “material turn” the practitioners of Indian Ocean history have also attempted to question the nineteenth century division between an archival historian and the archaeologist on one hand and the tenuous division between art history and history on the other.<sup>80</sup> Especially, historians of Indian Ocean have attempted to go beyond the textual contents of the early modern documents and have focused on calligraphic styles, embellishments and minutia additions that the scribes performed on the body of the letters or have undertaken a study of quotidian

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<sup>79</sup> Jason Dittmer, *Diplomatic Material: Affect, Assemblage, and Foreign Policy* (Durham: Duke University Press, 2017), Introduction; On use of Geertz and performativity in Southeast Asian diplomacy, see, Naoko Shimazu, “Performing ‘freedom’: the Bandung conference as symbolic post-colonial diplomacy” in Jason Dittmer and Fiona McConnell, eds. *Diplomatic Cultures and International Politics: Translations, Spaces and Alternatives* (Abingdon, Oxon: Routledge, 2016)

<sup>80</sup> Article by Kee Choi Jr. on a Qing imperial cup sent to the court of Louis XV is a classic illustration of such an approach. In the same volume, Catherine Richardson analyses the sixteenth century inventories and wills in the Cologne archives. In a careful analysis, she concludes how the material analysis of wills, especially placement of words can reveal fluctuating careers of families and interpersonal dynamics rarely captured by the early modern epistolary correspondences. Anne Gerritson and Giorgio Riello eds. *Writing Material Culture History* (UK: Bloomsbury, 2015), pp 33-59.

practices of gift-giving that accompanied diplomatic negotiations.<sup>81</sup> In colonial frontiers, attention also have been given to how diplomacy was performed on ground, how were bodies organised in a space, what meanings did the gift-giving grand rituals invoked?<sup>82</sup> These works have also tentatively established a link between gift-giving and contracts in an effort to question the binary between performative aspects of law and positivist reinterpretation of international law. Drawing from Michael Callon's theory of performativity in the making of economic relations, attention also has been given to the "interactive and iterative" procedures that brings the "economy" into being.<sup>83</sup>

Memoirs on early modern Southeast Asia are filled with such examples where verbal communications, meetings, ritual gift-giving, formal treaty-making and writing intersected to form hybrid assemblages. Scholars of pre-modern Southeast Asia frequently refer to the manner in which written word or written artefacts were valued as sacred heirlooms by common inhabitants and subjects of a monarch. Barbara Andaya and Leonard Andaya in their works routinely refer to the interplays between orality and literacy. In a region where most people were largely non literate, Andaya demonstrates

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<sup>81</sup> An example of such an approach is Giorgio Riello, Zoltán Biedermann, and Anne Gerritson, eds. *Global Gifts: the Material Culture of Diplomacy in Early Modern Eurasia* (Cambridge, United Kingdom: Cambridge University Press, 2018)

<sup>82</sup> Jeffrey Glover, *Paper Sovereigns: Anglo-Native Treaties and the Law of Nations, 1604-1664* (Philadelphia: University of Pennsylvania Press, 2014). In a parallel to Glover's work on Powhatan diplomacy, Bodhisattva Kar's recent article also provide evidence of 'contracts' between the British joint stock Companies and the 'tribes' of the frontier districts of Assam. In Assam, the early history of contracting converged with the indigenous ransom notes and debt bonds known as *Posa*. Bodhisattva Kar, "Nomadic capital and speculative tribes: A culture of contracts in the North-eastern Frontier of British India", *The Indian Economic & Social History Review* Vol 53, Issue 1, (February, 2016). pp. 41 – 67.

<sup>83</sup> Micheal Callon, "What does it mean to say that economics is performative?" in Donald A MacKenzie, Fabian Muniesa, and Lucia Siu, edited. *Do Economists Make Markets? On the Performativity of Economics*. (Princeton: Princeton University Press, 2007), p 311.

how instead of silent reading, treaties were frequently read out and were announced. Such treaties were also frequently stored as sacred regalias in the villages of feudatories. The treaty documents were seen as one imbued by the “*daulat*” or spiritual prowess of the king and in a predominantly population deficit zone were treated as objects binding the subjects to their ruler.<sup>84</sup> In a description from *Hikayat Hang Tuah*, the many meanings of treaty making could be gleaned very clearly. The act of making treaties, ie *Berjanjian*, in the text was frequently conflated with meeting, handshakes, hospitality, acts of taking food from the port officials and was followed by the act of describing the body of the Ferringhies defying the division between writing, gestures and bodily conducts and comportment.<sup>85</sup> By *Berjanji*, the pre-modern chronicler also meant appointment or consultations where the Dutch (*orang wilanda*) claims were cross-checked by the head of the Batak community or *Menteri Batak* before giving away the concessions for the jungles to the Dutch. Existing works on *Hikayat Hang Tuah* has focused on how under the instruction of the Johorese monarchs, the treaty (*surat/janji*) was engraved in gold (*emas*) frames, and exhibited in the court.<sup>86</sup>

“Maka janji itu disuruh taruh oleh raja Johor, ditempanya emas, dititiknya seperti

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<sup>84</sup> Barbara Watson Andaya, *To live as brothers: South East Sumatra in the Seventeenth and Eighteenth centuries* (Honolulu: University of Hawai’I press, 1993), pp 7-10; Leonard Y Andaya, *The Kingdom of Johor, 1641-1728: A Study of Economic and Political Developments in the Straits of Malacca* (Ithaca, NY:1971), p 56.

<sup>85</sup> Kassim Ahmad, *Hikayat Hang Tuah*. Cet. 1. (Kuala Lumpur: Terbitan bersama Yayasan Karyawan /Karya Agung series, Dewan Bahasa dan Pustaka, 1994), pp 487-488, 517-518.

<sup>86</sup> Kassim Ahmad, *Hikayat Hang Tuah*. Cet. 1. (Kuala Lumpur: Terbitan bersama Yayasan Karyawan /Karya Agung series, Dewan Bahasa dan Pustaka, 1994), p 592. I thank Ibu Jolanda for correcting some critical errors in the translation and for alerting me to various synonyms of gold in Bahasa Malay. Many scholars have used *Hikayat Hang Tuah* to describe how the Dutch was depicted on the imagination of Southeast Asian monarchs. G.W Koster, “Of treaties and unbelievers: Images of the Dutch in Seventeenth and eighteenth century Malay Historiography”, *Journal of the Malaysian Branch of Royal Asiatic Societies*, Volume 70, part 1, 2005.

kertas. Maka kertas emas itulah dipahat suratnya janji itu...Maka surat itu pun datang kepada Paduka Raja Johor ada menaruh surat pada kertas emas itu”.<sup>87</sup>

What some of the existing works on reception of the Dutch in Asia have missed are the elaborate rituals and the many meanings of treaty-making or *Berjanjian* that preceded the act of display to bolster the royal prestige. Possibly not of this scale but a number of smaller rituals were enacted in Southeast Asian ports to greet and domesticate the *Ferringhies* as well.

In this context, one witnesses a remarkable combination of Islamic oath taking via a Southeast Asian sacred object or the *Kris* in Aceh. In eighteenth century Aceh, issuing a pass or a trade registry was cemented by performance of a ritual where the Shah-Bandar held a dagger on top of the captain’s head and extracted an oath. In courtly cultures of archipelagic Southeast Asia, the Javanese dagger/ *Kris* or the Rantau Seal were treated as objects of ritual significance, precious gifts or symbols of royal authority.<sup>88</sup> Historians of Islamic law have referred to the critical role that verbal oaths played in Islamic jurisprudence. Scholars of Islamic law have painfully excavated how Islamic law provided no single definition of legal oaths nor was the practice closed. In fact, an authority on Islamic law, Guy Bechor argues how the subject of oath depended on the factional squabbles between the various schools of law about the definitions of

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<sup>87</sup> Kassim Ahmad, *Hikayat Hang Tuah*. Cet. 1. (Kuala Lumpur: Terbitan bersama Yayasan Karyawan /Karya Agung series, Dewan Bahasa dan Pustaka, 1994), p 592. Cited also in G.W Koster, “Of treaties and unbelievers: Images of the Dutch in Seventeenth and eighteenth century Malay Historiography”, *Journal of the Malaysian Branch of Royal Asiatic Societies*, Volume 70, part 1, 2005, footnote number 33.

<sup>88</sup> Annabel Teh Gallop, “Royal Minangkabau Seals”, *Indonesia and the Malay World*, (43:126, 2015), pp 270-297; Isaac Groneman, *The Javanese Kris*: Preface and introduction by David van Duuren. (Leiden: Zwartenkot Art Books/KITLV Press, 2009)

permissibility, innovation and haram. The laws of testimony or *Shahada*, however make a sharp distinction between personal oath and courtroom oath.<sup>89</sup> In the domain of personal and commercial oath, as Guy Bechor states Islamic legal authorities combined the “literal formula of oath and the accepted and the prevailing norms of custom” or *Urf*.<sup>90</sup> My preliminary research indicates that the dagger ceremony in Aceh can be seen as a site where Southeast Asian regal authority, as signified by the Kris intersected with the Islamic oath taking. This intersection also gets apparent in the process of how Aceh issued sailing passes to the foreigners. Instead of a paper, what Aceh Shah-Bandars issued was a small metal kris with the name of the monarch and the cap engraved in the hilt.<sup>91</sup>

In a long description, another contemporary of Hamilton and Beeskman, described his encounter with the Sultan of Banjarmasin. The Sultan of Banjarmasin then was embroiled in a war with the pepper cultivators in the highlands. The early negotiations between the Sultan and the British failed as the great seal to validate a contract was taken away by his ‘upland cousin’. The sudden disappearance of the seal leads one to mainly two conjectures. Firstly, the instance refers to the nature of shared sovereignty but also an entrenched *Ulu-Illir* divide, where the upland would recurrently resist contractual obligations demanded by the lowland. In the end, negotiations between the Sultan and the English captain failed due to lack of pepper in the downstream ports. Finally, the king gave the British a concession promising future

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<sup>89</sup> Guy Bechor, *God in the Courtroom: the transformation of Courtroom oath and Perjury between Islamic and Franco Egyptian law* (KITLV: Brill, 2009), p 26-27.

<sup>90</sup> Ibid. p 49.

<sup>91</sup> Ito Takeshi, “The World of the Adat Aceh: A Historical Study of the Sultanate of Aceh.” Dissertation, Australian National University. Australian National University, 2007, p 290.

supply of pepper. The king order engraving of three gold plates and a cap with the names of the captains as a token of friendship and a grant. The plate with the stamp supposedly gave the individuals an access to ports and coasts of the king's dominions.<sup>92</sup> In a predominantly non-literate society, an acute veneration of written words or innovative combinations of verbal utterances, objects and nonverbal gestures is also not surprising but a palpable shift could be diagnosed.

In her analysis of the early eighteenth century, Jambi and Palembang, Barbara Watson Andaya argues how indigenous "cultural ledger" and symbiotic brotherly relation (*Tolong Menolong*) between upland and lowland *Ulu* and *Ilir* was coming under an immense strain in the wake of Dutch expansion. Dutch and English insistence on contracts was on one hand leading to an emphasis on written commercial communications, on the other hand it was instrumental in transforming the image of a Malay king from a benevolent "brother" to a merciless creditor.<sup>93</sup> Barbara Andaya also refers to how this upland-lowland integration was crucial in spreading uniform weights and measures and monetisation of cash crops were contributing to a tussle over human resources and slow spread of writing.

Anthony Reid also writes how the Gujarati style of merchant ledgers influenced Javanese, Malays and Mons to write down their contract in palm leaves or Chinese

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<sup>92</sup> It is important to consider in this context, the meaning of Cap. In Malay, Cap also means head-dress. It is possible that the embodied authority of the king was being fused with the written document here. Captain Daniel Beeckman, *A voyage to and from the Island of Borneo in the East Indies with a description of the said Island* (London: 1718). Pagination incorrect.

<sup>93</sup> Barbara Watson Andaya, *To live as brothers: South East Sumatra in the Seventeenth and Eighteenth centuries* (Honolulu: University of Hawai'i press, 1993), pp 75-95; Jeyamalar Kathirithamby Wells, "Western Intrusion as a Catalyst for Political Economic Resurgence in the Western Archipelago during the 16th & 17th Centuries", Occasional Papers, 1981. Cornell University Library.

papers.<sup>94</sup> Despite the long tradition of writing down contracts in barks or seals or copper plates, Andaya thinks that influence of written words was limited. Anthony Reid however thinks otherwise. In an essay on Early Southeast Asian encounters with Europeans, Reid refers to rulers such as King Narai of Siam, Kaerang of Makassar as important participants in a creative dialogue with European scientific and geographic texts. Using seventeenth century Tagalog author Tomas Pinpin, Reid refers to the writing of a Portuguese grammar book as early as 1610.<sup>95</sup> This book was supposed to be used in translation from Tagalog to Portuguese.

In the spread of writing both Portuguese and Islamic calligraphy, especially Ottoman and Persian trading influences played a very significant role. Writing on an extant manuscript from eighteenth-century Palembang, Annabel Teh Gallop comments how *Kitab Terasul* (writing manual and code of conduct) from eighteenth-century Palembang employed clearly Persian models of kingship and drew from Persian *Inshah* or epistolary correspondences.<sup>96</sup> While letters between Muslims were generally opened with Koranic quotations or Islamic phrases, the letters between Muslims and Non-Muslims adhered to the Malay honorifics. Much like the Southeast Asian scribe's minute addition to the embellishments that surrounded the written word of Quran, the diplomatic letters and protocols subtly introduced a religious divide amongst its audiences and recipients.<sup>97</sup> In a recent article, Annabel Gallop also argues how the

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<sup>94</sup> Anthony Reid, *Southeast Asia in an age of Commerce*, Volume II, (New Haven: Yale University, 1993), 114

<sup>95</sup> Anthony Reid, *Charting the shape of early Modern Southeast Asia* (Chiangmai: Silkworm books, 1999), p 167.

<sup>96</sup> Annabel Teh Gallop, *Warisan Warkah Melayu* (London: Published by the British Library, for the National Archives of Malaysia, 1994), p 23.

<sup>97</sup> *Warisan Warkah Melayu* (London: Published by the British Library, for the National

shifting style of honorifics displayed the growing influence of Islam in the region. While Sultan Iskandar Muda's letter to Stuart monarch James-I was marked by an Indic style, his descendant Iskandar Thani's boisterous embracing of long winding Islamic titles was mediated by the Sufi Syakh Shams-Al-Din of Pasai.<sup>98</sup> Annabel Teh Gallop further writes how Southeast Asian courtly culture lacked the idea of a legal signature. In absence of a legal signature, the *Cap Mohor* or seals of a professional scribe was treated as a marker of authenticity. In some cases, the seals from minor nobility contained a religious inscription such as Allah Muhammad but also talismanic symbols and magical esoteric formulas signifying local Islamic beliefs.<sup>99</sup>

Isolated instances from British memoirs also reveal this slow spread of writing. As early as mid-sixteenth century, a letter from the Batak Highlands reached Pedro de Faria, the Portuguese governor of Malacca. The letter written in a bark of a palm tree demanded Portuguese assistance and fire arms in an ongoing conflict against regional strongman Aceh.<sup>100</sup> William Dampier in his memoir, speaks of his encounter with Rajah Laut of Mindanao who was extremely well versed in Spanish books on law and natural history. As a fluent speaker of Spanish and Portuguese, Rajah Laut invited the privateer Dampier to settle in Mindanao.<sup>101</sup> Travelling through Pahang, Alexander Hamilton

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Archives of Malaysia, 1994), pp 16-17. See also, Annabel Teh Gallop, "Royal Minangkabau Seals", *Indonesia and the Malay World*, (43:126, 2015), pp 270-297

<sup>98</sup> Annabel Teh Gallop, "Gold, silver and Lapis Lazuli; the royal letters from Aceh in the seventeenth century" in R. Micheal Feener, Patrick Daly and Anthony Reid eds. *Mapping the Acehnese Past* (Leiden: KITLV press, 2011), pp 105-135.

<sup>99</sup> *Warisan Warkah Melayu* (London: Published by the British Library, for the National Archives of Malaysia, 1994) pp 47.

<sup>100</sup> *Voyages and adventures of Ferdinand Mendez Pinto, the Portuguese, done into English by Henry Cogan, with an introduction by Arminius Vambert*, (London: I Fisher Unwin, MDCCCXCVII), p 57.

<sup>101</sup> "A collection of voyages in four volumes. Containing I. Captain William Dampier's

writes that the King of Pahang invited Hamilton and a French captain to establish a factory in Pahang. The king was indeed conforming to the time honoured tradition of inviting outsiders into the realm. But the king was possibly aware of the European obsession with written words. As a consequence, they entered into a provisional agreement which was in turn written down in Malayan and translated into Chinese and Portuguese.<sup>102</sup>

From these isolated instances as one reaches late eighteenth -century Aceh, one finds how Aceh developed a sophisticated network of royal envoys, couriers and writers (*seri purba khan*) and scribes (*bentaras*).<sup>103</sup> Sultan Jawhar Al Alam's reforms (1815) even imposed taxes on cycles of written correspondences and petitions from the "foreigners". The *Majlis Aceh* and the secondary sources also indicate how ceremonial gifting, cycles of remonstrance, petitions and writing intersected in early modern Aceh and a distinct shift from ritualistic to contractual was under way.

When a foreign ship entered the Aceh harbour, a series of grand ceremonies greeted him. The outer court of Aceh Istana was a site where cock-fighting, elephant fights took place and the middle court was where the successive kings gave audience to the foreign dignitaries. In this middle court (*dalam*), the foreigner was asked to remove his shoes and bowing with the body was instructed to utter the word "Daulat".<sup>104</sup> The

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Voyages round the World: describing particularly, the coasts and islands", (London: Printed for James and John Knapton: 1729, p 346.

<sup>102</sup> Alexander Hamilton, *A new account of the East Indies*, Volume I, (New York public library: digitized by Google books, 1725), p 156.

<sup>103</sup> Yahya Jusoh and Kamarul Azmi Jasmi translated. *A commentary on the rules for Kings (Majlis Aceh)* (Kualalampur: Universiti Teknologi Malaysia, 2008) p 22.

<sup>104</sup> Amirul Hadi, *Islam and State in Sumatra: a Study of Seventeenth-Century Aceh* (Leiden: Brill, 2004), pp 96, 98, 107.

British or the Portuguese memoirs give an undue emphasis to these rituals which in turn has led to the creation of an orientalist image of the trading principalities of the Indian Ocean as “status” driven societies which had no notion of formal written contracts. However, a continuum between ritualistic and contractual could be located in eighteenth-century Aceh and its description of the royal secretariat which governed the quotidian workings of trade. Instead of mere goodwill and ceremonies, the *Majlis Aceh* specifically instructed the foreign ship master to give gifts to the Raja *Setia Muda* and obtain a certificate with a number of registry, written on it. In case of late eighteenth-century Aceh, Acheenese legal text, *Majlis Aceh* contained specific charts, tables and grades determining the amount of customary payment and gifts. (For example, the Gujarati ships were required to pay the duty in white embroidered clothes while the Bengali ships were instructed to bring fine “white muslin with gold borders”) establishing a continuum between gifting and written contracts. The junior prince or the Raja *Setia Muda* received the bulk of the gifts and was responsible for issuing the keys of the warehouse and a certificate with a “number of registry” written on it.<sup>105</sup> At least in Aceh, the rituals of gift-giving were intertwined with an emphasis on written registers and numbers bellying any differentiation between a gift and a contract. The emphasis on written registers and numbers hint towards a far reaching transformation in organisation of trade and also textualisation of oral contracts and gift giving protocols. Instead of an exalted novelty, the written word had indeed been domesticated as part and parcel of commercial traffic in the port cities of Southeast Asia.

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<sup>105</sup> The Fourth Majlis in Yahya Jusoh and Kamarul Azmi Jasmi translated. *A commentary on the rules for Kings (Majlis Aceh)* (Kualalumpur: Universiti Teknologi Malaysia, 2008) pp 10-14.

In European sources, these gifts were often listed in dry financial registers with their political meanings being eroded from the archival correspondences. However, in an exceptional document concerning Raffles Embassy to Java, the mutual traffic between royal gifts, schedules of payments, status-markers and formal contracts could be located. This document, compiled on the eve of Raffle's embassy to Java provide a glimpse of the gifts that the V.O.C generally provided to the Javanese princes. The most accepted presents, according to British intelligence gatherers were guns with silver mounts, swords, saddles and bridles for horses associated with what the archival document calls "statelytrappings".<sup>106</sup> There were also specifications about how plating, gilding were not appreciated by the inhabitants of the royal court. Instead, the Javanese court mostly dealt with pure silver objects. As gifts, the Javanese also appreciated small palanquins, small carriages and heavy gold brocaded silks. Beneath the silver jewellerys, what this document reveals is a gradation of clothes that the European companies used as gift objects in their diplomatic negotiations with the courts of Southeast Asia. There were, according to the British intelligence agent, demand for chintz, fine light green clothes, yellow satin, broad clothes, Cashmere, and Gold laced clothes. In commercial transactions with Southeast Asia, the British had repeatedly used Indian clothes in exchange for exotic commodities from maritime Southeast Asia. Hence the dominance of clothes in the list of gifts is not surprising. In Indian Ocean trading world, however, clothes or gifts of clothes also meant a little more than a mere intersection between trade and diplomatic negotiations. Stewart Gordon's work on

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<sup>106</sup> "Memorandum respecting presents to the native princes" in Expedition to Java: Letters from the Governor General, 27 April, and June to Oct, 1811. IOR/G/21/13, pp 299-312, India Office Records, British Library, London, United Kingdom.

*Khilat* or robes of Honour argues that since the time of Iban Batuta, gifting of expensive and high value clothes, robes were intrinsically associated with the diplomatic negotiations conducted in Islamicate courts of Eurasia. Even in the diplomatic negotiations with the Golden hordes, Stewart Gordon points out that weaponry and fine clothes formed a component of gift-giving. As Stewart Gordon writes, the gifting of robes in front of a royal audience often entailed a “recognition of the personal authority and largesse of the giver” and in return the recognition of the “honoured position of the receiver”.<sup>107</sup> As new entrants to the political gift-giving set up in Eurasia and Islamicate Southeast Asia, it is possible that the British or the Dutch emulated the practices of Islamicate courts to establish their hegemony over their Javanese recipients, especially through the gifting of clothes. In some cases, the gift-giving and distribution of small technical gifts such as maps, compasses or magic lanterns and camera obscuras, as described in Raffles dispatch on Java, could have been also used as a way to test consumer preferences and choices and barometers of consumer demand. Following a description of the gifts, in the colonial document itself, one finds a table of payments where the colonial authorities created a gradation of the gifts, the social status of the recipients and their commensurable monetary value. According to the table, Sultanate of Madura, Palembang, was to receive gifts whose monetary value exceeded 2000 dollars. Beneath the Sultans, the hereditary princes were to receive gifts worth 1000 dollars while the royal officers such as Temmenggongs and the Kapitans were to receive gifts worth 500 dollar and 300 dollars respectively. The sum total of the gifts amounted to a 36,500

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<sup>107</sup> Stewart Gordon, “Robes of Honour: a transactional kingly ceremony”, *The Indian Economic & Social History Review* 33, no. 3 (September 1996), p 228

dollars. From the tabular form in the archival correspondence, where a relationship between monetary tribute, gifts and social gradations in the court was established, it is clear that the lines between ,monetary obligations, formal contracts, social contract between equals, and gifting were relentlessly blurred in course of quotidian diplomatic negotiations. Beneath the level of royal gifts too, a critical overlap between gifting and contract could be diagnosed, In West Sumatra, the British also started to practice of extending small gifts to the pepper planters under the Companies jurisdiction to encourage cultivation of pepper. On 1750's from a dispatch from Fort Marlborough, one finds the British governor extending small gifts to an industrious planter Nebbee at Bantal. It was argued that "occasional and well-timed presents" encouraged the activities of pepper planters who were otherwise contract-bound revenue farmers in Companies jurisdiction.<sup>108</sup>

As the century would progress, it is these blurring lines which would in turn get tamed by a utilitarian recasting of Company diplomacy and laws. The changing political constellation of the post-Napoleonic war conjuncture will also contribute to a growing erosion of these intimate bonds of patronage, a process which will be briefly described in the next section.

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<sup>108</sup> Court to Fort Marlborough, 29<sup>th</sup> December, 1756 reproduced in John Bastin eds, *The British in West Sumatra (1685-1825): A selection of documents (Mainly from the East India Company Records Preserved in the India Office Library, Commonwealth Relations Office, London* (Kuala Lumpur: University of Malaya Press, 1965), pp 69, 71.

## Conclusion

### Brotherhood disrupted?

“An epistle of sincerity with varied gifts, written with reverential variation, candour and affection, as long as the heavenly sphere, the sun and the moon, shall continue to revolve”<sup>109</sup>

(Excerpts from a letter addressed from Sultan Tajuddin of Kedah to Lord Minto in Bengal is part of a large oeuvre of warkah’s or letters exchanged between the Malay Islamic Sultanates and the European Companies)

This ornate letter sent to Raffles as late as 1819 may give the reader an impression that “brotherly” love and emotions as expressed in written words still retained some currency in the diplomatic proceedings of nineteenth century Malaya. However in nineteenth century Malaya subtle changes were taking place. The Napoleonic wars and British ascendancy had changed the geopolitics of the region considerably. On a superficial level, the ascending colonial powers still conformed to the letter-writing protocols or gift giving but their substantive meanings were hollowed out.

Since seventeenth century, an insatiable European demand for Asiatic produces had pushed the European East India Companies in a series of alliances with the maritime micro-polities and the local trading groups.<sup>110</sup> However, the mid eighteenth-century

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<sup>109</sup> “Letter of Sultan Ahmad Tajuddin Halim Syah of Kedah with red seal inscribed in Jawi addressed to Lord Minto at Bengal with endorsement verso in Raffle’s hand” in Ahmat Adam eds. *Letters of Sincerity: The Raffles Collection of Malay Letters (1780-1824): A descriptive account with notes and translation* (Kualalampore: MBRAS, 2009)

<sup>110</sup> For a brief over view of the British country trade or the British private trade in eighteenth century Malaya, see, D.K Bassett, “British country trade and Local Trade Networks in the Thai and Malay States, c. 1680- 1770, *Modern Asian Studies* ,Vol. 23, No. 4 (1989), pp. 625-643

wars, especially the Seven Years war (1756-1763) followed by the Napoleonic war (1803-1815) and post-Napoleonic war era reconfiguration of European sovereign landscapes had its political and legal reverberations across Asia. As contested sea-lanes and coastal stretches in Asia became a bone of contention between the competing European powers and Asian polities, the jurisdictional conundrums often triggered in vigorous debates about definitions, applicability, efficacy, subject-hood and limits of early-modern inter-polity arrangements. Furthermore, the same decades also witnessed a slow decline of mercantilism, eclipse of ties of early-modern brokerage and an emergence of a free-trade based economic order and a credit crisis in Indian Ocean economies. The liquidity crisis, entry of European actors in the fragile credit market as revenue farmers and bankruptcy of various Asian ruling houses were followed by rise of new commercial groups.<sup>111</sup>

In Southeast Asian waters, the most immediate ramification of the Napoleonic wars were an increase in violence between the Asian maritime principalities and the European sea-captains, the interlopers and fortune hunters who exploited the political vacuum produced by Dutch withdrawal from Java.<sup>112</sup> Thus from 1809 we have a letter from the King of Aceh complaining about the conduct of a Captain Sippialat who sailed under

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<sup>111</sup> For a case study from Java, see Kwee, Hui Kian, *The Political Economy of Java's Northeast Coast, c. 1740-1800: Elite Synergy* (Leiden: Brill, 2006)

<sup>112</sup> This is not to suggest that violence was not one of the currencies of early modern commerce. When the balance between “foreign” and indigenous nobility was disrupted, the mainland kings occasionally resorted to blanket massacre of the foreign traders. But this is the first time that the balance was shifting in favour of the European merchant classes and free traders, especially in maritime Southeast Asia. For the Bangkok purge of 1688, See, “Four unpublished letters from Desfarges, Beauchamp, and Vollant, survivors of the siege of Bangkok, 1688” in Michael Smithies eds. *Seventeenth Century Siamese Explorations* (Bangkok: Siam Society, 2012), pp 231-268

Danish colours and provoked the minor nobility of the Aceh to plunder ships and was also carrying an ‘illicit’ trade from the coasts of Pedir, a region nominally under the control of the king of Aceh. The same Captain had also plundered a vessel from Sulawesi carrying pepper and 15,000 Spanish dollars.<sup>113</sup> Evading capture of by the Aceh king, Sippiliat ultimately fled to Manila. From Borneo, we have instance of another set of military skirmishes between the King of Sumbas and a certain Captain Burnside who plundered the king of Sumbas ships and cargoes in Java. In the letter, the King of Sumbas, a long standing ally of the British in Borneo bemoaned the loss of confidence and also accused the Captain Burnside of paying the compensation for the plundered ship in adulterated gold. In an effort to check these violent skirmishes in a region where jurisdictional boundaries between Spanish Manila and the “British” or the “Dutch” seas were not clear, the government of the Prince of Wales Island highlighted the necessity of formulating clear laws of contracts and adoption of a “line of conduct more suitable to mercantile pursuits and creditable to national character.”<sup>114</sup> As a solution, the British colonial authorities also highlighted the need to issue security bonds which would make the individual ship captains liable to the King’s courts or the Admiralty courts in Calcutta, Madras or Bombay. In case of civil breaches also, the offending party was liable to persecution at the King’s courts. Simultaneously, in cases of disputed jurisdictions, the offending party was to be transported to Europe and was to be held liable in their respective “national” courts. Even when formal jurisdiction

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<sup>113</sup> Extract Public letter from Bengal dated 30<sup>th</sup> June, 1809, Boards Collection, IOR/F/4/298/6892, British Library, London, United Kingdom. See also, Extract dated 5<sup>th</sup> August, 1808 in *ibid*.

<sup>114</sup> *Ibid*.

rested with the Asian principalities, the Napoleonic wars had shifted the tenuous legal balance in favour of the King's Courts of Admiralty and the Prize courts in the Indian littoral. An oath extracted from the *Ferringhie* captain, as was the case in seventeenth century Aceh was perceived as merely ceremonialism with no substantive legal value.

As more and more private ships entered the commercial circuits of Indian Ocean, conflicts surrounding restitution, debts and cycles of retributive violence marked the relationship between Asian maritime principalities such as Aceh, Asian merchants, and the "British" subjects.<sup>115</sup> By the 1830's, the diplomatic embarrassments reached such a level that the Bengal council momentarily flirted with the possibility of creating an autonomous legal code for Indian Ocean. In this envisaged autonomous legal code, the principalities such as Aceh were merely seen as "subjects" to the order and not equal participants. In some cases, especially in case of nineteenth century Johore, these developments contributed to a retreat of Asian principalities from the domain of maritime trade. As Historian of nineteenth century Johore, Carl Trocki and Iza Hussin have shown, maritime principalities such as Johorese monarchs slowly reoriented their revenue base from trade to revenue farming, and politically refashioned themselves as 'law abiding' subsidiaries of the expanding Empire.<sup>116</sup> Simultaneously, historians of the English Straits Settlements and Dutch East Indies have spoken about the emergence of a class of new intermediary or a "go-betweens" who emerged as arbiters of petty

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<sup>115</sup> From the Secretary to the Government of India to the Secretary to the Indian law Commissioners dated 17<sup>th</sup> March, 1835. IOR/F/4/1746/71068, British Library, London.

<sup>116</sup> See, Carl A Trocki, *Prince of pirates: the temenggongs and the development of Johor and Singapore, 1784-1885* (Singapore: NUS Press, 2007); Iza. R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The University of Chicago Press, 2016)

disputes between local potentates, enforcers of anti-piracy treaties, international travelers, writers of hybrid legal constitutions or negotiators between the royal courts and the colonial authorities.<sup>117</sup> Unlike the Shah Bandars of the old, these treaty enforcers were merely subsidiary servants of a colonial order and not autonomous subjects of the Asian maritime principalities.

These problems of overlapping jurisdictions of early nineteenth century Southeast Asia were also partly redressed by the creation of the two separate spheres of influence in maritime Southeast Asia following the Anglo-Dutch treaty of 1824 which placed straits of Malacca under British suzerainty and the domains south to the straits, especially, Java under the Dutch. Treaties with Aceh or Borneo were considered as legal exceptions to the general norm of respecting great power influence zones.<sup>118</sup> Resonating

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<sup>117</sup> Anthony Milner's successive publications clearly display this shift. Analysing Munshi Abdullah's correspondences and writings, Milner concludes how Munshi Abdullah was attempting to forge a new notion of *Bangsa Melayu* in opposition to the local royalty. Heaping scorn on ceremonialism, Munshi Abdullah was effectively displaying early reformist impulses. Anthony Milner, *The Invention of Politics in Colonial Malaya: Contesting Nationalism and the Expansion of the Public Sphere* (Cambridge, UK: Cambridge University Press, 1995); Keng We Koh's article argues how royal sojourning in early nineteenth century maritime Southeast Asia was reworked to accommodate changing realities of the time. Focusing on the Rhiau-Lingga branch of the Johore Empire, We Koh argues that the Sultans travelled to the older dependencies continuously to buttress ceremonial bonds. Courting powers such as Japan, Ottoman Empires and a manipulation of Haj routes also indicate how the YTM family used the steamship links to bolster their prestige. Intervention of YTM family in the succession struggles of Pahang indeed strengthens We Koh's point. Jean Van Der Putten's new work focuses on the Bugi Viceroy Haji Ibrahim in the court of *Pengyemat*. He argues that the old branch of Shahbandars continued to act as envoys between the Dutch and the royal branches, acted as arbiters and assumed role of superintendents to curb Piracy. K. W. Koh, "Travel and survival in the colonial Malay world: Mobility, region, and the world in johor elite strategies, 1818-1914", *Journal of World History*, 25(4), 559-582(2014); Jan van der Putten, *His Word Is the Truth: Haji Ibrahim's Letters and Other Writings* (Leiden: Research School of Asian, African and Amerindian Studies, Universiteit Leiden, 2001), pp 176-225.

<sup>118</sup> On how, these treaties altered the commercial landscape of maritime Southeast Asia and created corridors of contraband, see Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling*

with these broader geo-political changes, what the British colonial authorities proceeded to create was a tentative separation between domains of commerce and the domain of state-craft and a rationalisation of commercial law in the colonies. In a region like insular Southeast Asia where separation between royal power, prestige and trade was an impossibility. From 1820 onwards, such an impossibility would time and again produce legal conundrums and anomalies. The Napoleonic war years and retreat of the Dutch also had triggered fissiparous tendencies in the kingdoms of insular Southeast Asia. From 1816 onwards, a series of factional struggles erupted between two claimants of the throne of Aceh. The ensuing wars also made the respective Kings hostage to the British creditors. By 1838, we find a petition from a merchant John Rivelli who was a creditor to the King of Aceh. The bond was originally in the name of a Chinese debtor Lim chin and how the bond came in the hands of John Rivelli remains unclear. Following a series of letters to the king of Aceh, when the debt remained unpaid, the belligerent creditor thought to involve the Royal Navy ship *Andromache* to settle the debts. In response, ruler of Aceh frequently depicted the relationship between the merchant John Rivelli and the throne of Aceh as a relationship of friendship and promised to pay the sum in goods by assigning him the revenue of the betel nut fields of Aceh. The King may have perceived the debt as a tribute from a friend or a vassal whom he sought to repay by the countries produce but for the British creditor, it was the monetary value of the bond which remained more important than a status of a revenue

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*and States along a Southeast Asian Frontier, 1865-1915* (New Haven: Yale University Press, 2005); On the disputes between the English and the Dutch during these years, see, H.R.C.Wright, "The Anglo-Dutch dispute in the East", *The Economic History Review*, New Series, Vol. 3, No. 2 (1950), pp. 229- 239

farmer or even a “friend.” Ultimately diplomatic embarrassments were avoided when the British government in the Straits settlement intervened and chastised the merchant John Revely for involving the Royal Navy in what the British company state decided to be “private” mercantile transactions between a trader and a monarch. The Government also instructed the British merchants to enter into “mercantile” engagements with the foreign potentates at their own risk and not mindlessly drag the government into the “private” mercantile matters.<sup>119</sup> In another instance, from 1809, the Council at Penang or Prince of Wales Island had to prevent the imminent seizure of King of Cambodia’s ship by the creditors, a British Agency house called Abbots and Maitland by a liquidation of the debt worth a whopping 1,03,317 dollars.<sup>120</sup>

In an early modern diplomatic culture, the boundaries between debt/tribute or the notions of public or private was not clearly demarcated. In course of early nineteenth century the emerging British colonial dispensation at the Prince of Wales Island, Penang time and again would be at pains to determine the boundaries between public and private transactions, royal debt and normal commercial conduct and lastly, the differences between mercantile transactions and tribute. This disentanglement was especially difficult for a trader turned sovereign, British East India Company whose own “constitution” and “protection” edifice in the Indian Ocean had rested on these jagged edges, jurisdictional overlaps, ambiguities and ambivalences.<sup>121</sup> In 1817, possibly to

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<sup>119</sup> Foreign Political Proceedings of the Government of India, July, 1838, National Archives of India, New Delhi, India.

<sup>120</sup> IOR/E/4/905, Collection no 11, pp 207-208, British Library, United Kingdom.

<sup>121</sup> For early modern protection arrangements in Indian Ocean see, Philip J Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (New York: Oxford University Press, 2011); Essay by Ravi Aravind Palat in Abdul

prevent such “scandals” emerging from the disappearing boundaries between private and public conducts, the British authorities banned the custom of giving and receiving gifts from indigenous rulers. The custom of giving gifts which had proved to be a cornerstone of early modern diplomacy was treated as an “anomaly,” a misdemeanor and a “corrupt” bargain.<sup>122</sup> In the decades of 1830’s & 1840’s, successive British East India Company interventions in the domains of, principal-agent contract, bankruptcy, remittance, relations of debt and credit, and sovereign debt would sought to disentangle these messy, interconnected and overlapping spheres of early modern commerce.<sup>123</sup> In isolated instances, the growing jurisdictional authority of the British courts in the Straits and the power of British legal precedents would be mobilized at the expense of an often cosmopolitan and composite maritime “constitution”. Let’s take the case of the Penang convict vessel *Freak* which was seized by a set of mutineers and convicts and was taken to Aceh, located in present day Sumatra. The ship was supposedly a “gift” to the King of Aceh. In fear of possible diplomatic troubles, the ruler of Aceh returned the ship to Penang and applied for compensation. Drawing parallels with shipping laws of Aceh and restitution clauses in maritime laws of Mediterranean, Aceh’s legal counsel claimed

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Sherrif and Engseong Ho eds. *The Indian Ocean: Oceanic Connections and the Creation of New Societies* (London: Hurst & Company, 2014)

<sup>122</sup> IOR/A/2/2, A Collection of Charters and Statutes Relating to the East India Company, 1817, British Library, United Kingdom. On a similar corruption scandal from 1830’s Delhi see, Margot Finn, “Material Turns in British History: Imperial power, Princely Politics and gifts gone rogue”. *Transactions of the Royal historical Society*, 2019.

<sup>123</sup> See introduction and articles by Philip Harling, Michael Lobban in Arthur Burns and Joanna Innes eds. *Rethinking the age of reform Britain 1780-1850* (The Past and Present Society: 2003); Lea Heimbeck, “Discovering Legal Silence: Global Legal History and the Liquidation of State Bankruptcies (1854–1907)”, in *Entanglements in Legal History: Conceptual Approaches* eds. Thomas Duve, vol. 1, Max Planck Institute for European Legal History, Frankfurt Am Main, 2014, pp. 461–488.

that the King as a rescuer had right to claim the entire cargo as a fee of his service. This claim was hotly contested by the Penang based owners of the ship who alluded to missing chests of opium and mysterious disappearance of the Muslim mutineers. In a clash between Mediterranean laws of restitution and British precedents, the British precedent reigned supreme and the King of Aceh was given merely one sixth share of the cargo.<sup>124</sup> In 1760's a crafty English captain, could have used the precedents of the shipping laws of Malacca to justify his authority and "first right" to sell his cargo.<sup>125</sup> By 1830's however the juridical field has become restricted and streamlined to fit utilitarian straitjackets imposed by the Age of Reforms in Europe and Asia.

As the century progressed, especially by the middle of the nineteenth century, the colonial lawgivers would also often indulge in a wilful amnesia where these micro-historical vignettes, memories of inter-cultural negotiations, and mutually intelligible repertoires would come to be treated as a detritus of European diplomatic history and commercial law.<sup>126</sup> Simultaneously what the idealised descriptions of western contract,

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<sup>124</sup> Straits law reports: Being a report of cases decided in the Supreme court of the Straits Settlements, Penang, Singapore and Malacca:(Straits Settlements, Penang: Commercial press, by H. Lee, 1877), pp 31-40.

<sup>125</sup> For the case, see, Footnote number 61 in this thesis.

<sup>126</sup> Jennifer Pitts in her analysis of the early historians of international law, especially the works of early historians of international law G.F. Von Martens, Robert Ward demonstrates that these early historians erected a distinct and restrictive European genealogy of the law of nations in the name of placing it on a firmer positivist footing. These explicit positivist reinterpretation also by nineteenth century had taken a form where the simultaneous extra-European developments were exiled from the canons of international law. The ambiguities and ambivalences of older law of nations had often been exploited by the "non-European" states. This reformist early historians of international law sought to tame this universalizing potential and argued that the law of nations had a distinct and more specifically a WestPhalian genealogy. By mid-nineteenth century, the historians of international law, especially Travers Twiss would also regard the "European" law of nations as a marker of civilizational superiority of Europe over "non-European" colonies and these materials depicting centuries of inter-cultural negotiation would be reduced to

and self-regulating market would indulge in is a discursive purging of intimate patron-client bonds, gifts and this fluid cultural ledger of commerce from the central body of the early texts of political economy. This clamor for codification and a quest to disentangle the domain of commerce from the domain of state-craft or the intimate patron-client bonds would by the beginning of mid nineteenth century, render the early modern protocols and performative political economies redundant and obsolete.<sup>127</sup>

From the vantage point of mid nineteenth century, these historical vignettes as explored in this thesis may seem like anomalies, exceptions and eccentricities. Why study them then? Much like nineteenth century compilers of legal codes, these restive assemblages of verbal oaths, rituals and written deeds routinely confound the modern historian and resist classification or simplistic reading. While economic history, especially Neo-classical economics have frequently spoken of an ideal economic actor and economic contracts as an *organic* development of modern, commercial societies with gift relegated to the domain of “social” and essentially “private” dealings. These hybrid assemblages frequently demonstrate that history of an ideal commercial actor or contracting are not as straightforward as it seems. They stand at the interstices between what anthropologists have called the Kula or the gift-exchange system and modern contract based regimes.<sup>128</sup> Neoclassical economics of twentieth century or utilitarian,

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the position of “customs”. Jennifer Pitts, *Boundaries of the International* (Harvard University Press: 2018), pp 118-184. Contemporary to Travers Twiss, in British India, Henry Sumner Maine also would create a similar binary between customary and contractual where customary was reduced to a reification, a vestige of older times.

<sup>127</sup> Sandra M. Den Otter, “ Rewriting the Utilitarian market; colonial law and custom in mid nineteenth century British India”, *The European Legacy* volume, 6 nos 2 (20010401): 177-188

<sup>128</sup> Early works on kula exchange does not ascribe any direct economic function to the Kula

nineteenth century promoters of “Free-trade” might have indulged in deliberate amnesia and forgetfulness. This study is a preliminary attempt to question the mythologies that have long been associated with economic history as a discipline.<sup>129</sup> An excavation of the continuum between gifts and contracts also perform what Karl Polanyi has called re-embedding: a critical epistemological move which situates actors in their immediate social milieu in place of idealistic descriptions of economies of scale.<sup>130</sup> In a similar vein, these historical vignettes are also frequently exiled from the main stream narratives of mid-century International law making which takes the canonical thinkers, especially the works of Grotius, De Vattel or Puffendorf as the point of departure at the expense of these alternative routes to law-making that existed in early modern world. A recovery of these alternative genealogies is not only critical for going beyond the canonical/customary binary that have long dominated the history of international law but also contain potential routes to disrupt and decolonise the canon of Eurocentric international law. This Master’s thesis is a first step in that direction.

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exchange and gift-exchange continuum is generally regarded by anthropologists as a ritual cementing social cohesion. Substantivists and sociologists of Asian economies, especially Janet Tai Landa however theoretically establishes a link between gifts and the incipient exchange economies. Janet Tai Landa, *Trust, Ethnicity, and Identity: beyond the New Institutional Economics of Ethnic Trading Networks, Contract Law, and Gift-Exchange* (Ann Arbor: University of Michigan Press, 1994), pp 141-169.

<sup>129</sup> Historians working on the nineteenth century recasting of the discipline of political economy argue how the binary, antithetical relationship between “contract”, “reason” and “custom” was specifically a product of the mid-nineteenth century utilitarian discourses of political economy. Andrew Sartori, "A Liberal Discourse of Custom in Colonial Bengal." in *Past & Present*. (212: 2011): 163-97.

<sup>130</sup> In an older masterpiece, Karl Polanyi calls the process of discursively producing the economy as a kind of “disembedding” where the social ties that form an economy is exiled in favour of an idealistic description of “economy” as imagined by intellectuals and proponents of free trade. It is this disembedded discourse which leads the capitalist economy to come into being. See, Karl. Polanyi, *The Great Transformation* (New York: Farrar & Rinehart, 1944).

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