

ORIGINAL ARTICLE

# “Lost in Translation”: Extraterritoriality, Subjecthood, and Subjectivity in the Anglo–Yemeni Treaty of 1821

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## Abstract

In 1821, an expeditionary force of the Bombay Marine imposed an unequal treaty upon the imam of Sana‘a, sovereign of the Yemeni port of Mocha. Previous accounts, depicting the incident as a standard rehearsal of British gunboat diplomacy, have overlooked an important legal innovation enfolded in the treaty wherein the East India Company’s claim for extraterritorial jurisdiction over British subjects in Mocha was expanded to include not only British European subjects of the Crown and certain native dependents of the factory, but also the entire Indian merchant population of the port. Bombay’s claim stood on shaky ground, however, as the legal boundaries of British subjecthood in the Indian subcontinent were anything but clear, not least to colonial administrators themselves. Prosaically enough, the intervention was foiled by an inaccurate translation of the treaty from English to Arabic, demonstrating the extent to which Company officials were at the mercy of non-Western middlemen and translators who brokered between them and local rulers and administrators. A second line of inquiry in this article thus looks at the structural vulnerabilities of legal imperialism, reflecting upon the potential of contradictions and untranslatabilities between British-imperial and Arab-Islamic legal and epistemological assumptions in shaping the outcomes of the imperial encounter in the western Indian Ocean.

“Bheemjee is a treacherous and perfidious man,” an envoy from Mocha vehemently protested in Bombay. “At present he carries on much business and has many dealings within the Mocha territories and acts as Broker to nearly all those who frequent these parts; [but] when the duties on Brokerage are demanded from him, he declares that he is a servant of your government.”<sup>1</sup>

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<sup>1</sup> Undated appeal by an envoy of the daula of Mocha, October 24, 1821, IOR/F/4/745/20303, British Library [hereafter BL].

The envoy was sent to Bombay in October 1821 by Amīr Fathulla, the daula (governor) of Mocha, to inveigh against the personal conduct of Bhimji Kalyanji, an affluent Gujarati merchant who served as the East India Company's principal broker in Mocha. More than a simple mercantile disputation, however, as the daula's appeal to British metropolitan authority suggests, Bhimji's claim to Company protection was embedded in a heated ongoing dispute about imperial jurisdiction and the right to exercise sovereignty in south-western Arabia, fanning anxieties in Mocha, Sana'a, and Istanbul about the looming threat of British "legal imperialism."<sup>2</sup>

Commonly couched in claims of extraterritorial jurisdiction over its subjects, the imposition and enforcement of British legal authority, principles, and institutions in foreign territories played a significant role in the expansion of Britain's informal empire.<sup>3</sup> Claims to protection based on ethnicity, religion, or shared moral values provided a basis on which to establish arrangements of layered sovereignty and legal pluralism, often evolving into "intrusive and intimate colonialisms,"<sup>4</sup> which in turn allowed political and economic ends to be effected without recourse to territorial conquest.<sup>5</sup> Indeed, as Callie Wilkinson has recently argued, no less significant than histories of colonial seizure and exploitation was the "nebulous" history of Britain's "empire of influence."<sup>6</sup>

In the Indian Ocean, a battery of fortified coastal trading posts known as "factories" served as islands of domestic jurisdiction, allowing Europeans to trade while remaining insulated from unfamiliar and potentially unfavorable local legal systems.<sup>7</sup> While Europeans in the domains of the Ottoman Empire enjoyed extraterritorial privileges based on blood lineage (*jus sanguinis*) or place of birth (*jus soli*), in the Indian Ocean factory context, the corporeal premise of the Capitulations was mapped onto a spatial logic whereby any European merchant trading in a foreign territory would fall under the

<sup>2</sup> Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010).

<sup>3</sup> James Onley, "The Raj Reconsidered: British India's Informal Empire and Spheres of Influence in Asia and Africa," *Asian Affairs* 40, no. 1 (2009): 44–62; John Slight, *The British Empire and the Hajj: 1865–1956* (Cambridge, MA: Harvard University Press, 2015); Marek Pawełczak, "British Jurisdiction and Legal Protection of Non-Europeans in the Sultanate of Zanzibar, 1841–1888," *Journal of Indian Ocean World Studies* 4 (2020): 52–74.

<sup>4</sup> Laurent Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge, MA: Harvard University Press, 2016), 88; Umout Özsu, "The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory," in *The Oxford Handbook of the Theory of International Law*, eds. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016), 123–37; George Williams Keeton, *The Development of Extraterritoriality in China, vol. 1* (London: Longmans, Green & Co., 1928).

<sup>5</sup> Richard J. Ross and Lauren A. Benton, "Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World," in *Legal Pluralism and Empire, 1500–1850*, eds. Richard J. Ross and Lauren A. Benton (New York: New York University Press, 2013), 1–20.

<sup>6</sup> Callie Wilkinson, *Empire of Influence: The East India Company and the Making of Indirect Rule* (Cambridge: Cambridge University Press, 2023), 2.

<sup>7</sup> Kirti Chaudhuri, *The Trading World of Asia and the English East India Company 1660–1760* (Cambridge: Cambridge University Press, 1978), 457.

jurisdiction of the nation whose factory they were operating in, regardless of their own nationality.<sup>8</sup> By the mid-nineteenth century, however, events like the First Opium War (1839–42) and the Don Pacifico affair (1850) had vividly demonstrated that extraterritorial rights could be militarized and, when politically expedient, enforced at the barrel of a gunboat.<sup>9</sup>

In this evolving landscape, British Indian subjects—namely Gujarati Muslim, Hindu, and Parsi merchants and administrators—served as vital conduits carrying British law into “frontiers” of informal empire where ethnic Britons could not or would not operate.<sup>10</sup> The politics of protection could be a double-edged sword, as when Indians “embarrassed” the British vis-à-vis local authorities, or appealed to the latter to evade British law.<sup>11</sup> Indians had good reasons to both assert and deny their ties to the British, moving within and across jurisdictions as it suited their interests.<sup>12</sup> As this suggests, the politics of protection were often barbed and contentious.<sup>13</sup> In Zanzibar, for example, Britain struggled for more than three decades to impose its jurisdiction over a resistant Gujarati merchant community disinclined to forgo access to enslaved labor, until an act of parliament passed in 1876 put the matter to bed by formally making the subjects of Indian Princely States into British Indian subjects in East Africa.<sup>14</sup> There was more than abolition at stake for Britain, as “the transformation of the Indians from an indigenised merchant class to an entrenched alien body through which [to] go for the economic jugular of the Omani state” facilitated the de facto subjugation of the Sultanate of Zanzibar, several decades before the formal institution of the East Africa Protectorate in 1895.<sup>15</sup>

While significant scholarship has been devoted to extraterritoriality in the western Indian Ocean, southwestern Arabia has not received much treatment in this literature, despite the region’s deep and long-standing ties with India. The Mocha trade, crucial to financing Bombay’s struggling treasury, was so

<sup>8</sup> Keeton, *The Development of Extraterritoriality in China*, 87–88; Özsu, “The Ottoman Empire.”

<sup>9</sup> Carl Trocki, *Opium, Empire and the Global Political Economy: A Study of the Asian Opium Trade 1750–1950* (New York: Routledge, 1999); John Aldred, *British Imperial and Foreign Policy, 1846–1980* (Oxford: Heinemann, 2004), 12–13.

<sup>10</sup> James Onley, *The Arabian Frontier of the British Raj: Merchants, Rulers, and the British in the Nineteenth-Century Gulf* (Oxford: Oxford University Press, 2007); Michael Christopher Low, *Imperial Mecca: Ottoman Arabia and the Indian Ocean Hajj* (New York: Columbia University Press, 2020); Fahad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017).

<sup>11</sup> Huntington Lyman Stebbins, “Extraterritoriality, Nationality, and Empire in the Persianate World, 1890–1940,” *Journal of the Economic and Social History of the Orient* 64, nos. 5–6 (2021): 752–91.

<sup>12</sup> Hollian Wint, “‘From Desh to Desh’: The Family Firm as Trans-Local Household in the Nineteenth-Century Western Indian Ocean,” *Journal of World History* 34, no. 2 (2023): 209–10; Mitra Sharafi, “The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda,” *Law and History Review* 28, no. 4 (2010): 979–1009.

<sup>13</sup> Ziad Fahmy, “Jurisdictional Borderlands: Extraterritoriality and ‘Legal Chameleons’ in Precolonial Alexandria, 1840–1870,” *Comparative Studies in Society and History* 55, no. 2 (2013): 305–29.

<sup>14</sup> Hideaki Suzuki, *Slave Trade Profiteers in the Western Indian Ocean: Suppression and Resistance in the Nineteenth Century* (Cham: Palgrave Macmillan, 2017), 141–66.

<sup>15</sup> Abdul Sheriff, *Slaves, Spices and Ivory in Zanzibar: Integration of an East African Commercial Empire into the World Economy, 1770–1873* (Ohio: Ohio University Press, 1987), 207.

thoroughly in the hands of Gujarati merchants that officials in India would have considered Viscount Valentia's 1805 remark that banias "nearly monopolise [Mocha's] trade" as mundane and obvious.<sup>16</sup> Valentia had been sent by Bombay to southwestern Arabia with the objective of expanding British influence in this consequential commercial and strategic hub, but, like a previous mission dispatched by the Foreign Office in 1802, the Irish peer's efforts had come to nought.<sup>17</sup> Consequently, it should come as little surprise that a decade after Valentia's failed expedition, Mocha, along with its entrenched Indian merchant communities, became an experimental site for the development of new typologies of British legal imperialism.

This article traces an early attempt at the extraterritorial penetration of southwestern Arabia. In the wake of an "outrageous attack" on the British factory in July 1817, an expeditionary force of the Bombay Marine was dispatched to blockade and bombard Mocha; subsequently, an unequal treaty was imposed upon Imam al-Mahdī 'Abdullāh of Sana'a, the sovereign of Mocha, restructuring commercial relations and jurisdictional boundaries in the port. Previous accounts have depicted the incident as a standard rehearsal of British gunboat diplomacy, overlooking an important legal innovation enfolded in the Anglo-Yemeni treaty wherein the Company claimed jurisdiction not only over Britons and other dependents of the factory, but also over the entire Gujarati merchant population of the port—a full two decades before similar claims would first be made in Zanzibar.<sup>18</sup>

Prosaically enough, however, Bombay's intervention was foiled by an inaccurate translation of the treaty from English to the Arabic. That something as seemingly banal as a document's translation was enough to throw a spanner in the works of the imperial legal apparatus brings into sharp relief the degree to which Company officials were at the mercy of non-Western middlemen—often drawn from the same groups and communities co-opted as instruments of legal imperialism—who brokered between them and local rulers and administrators.<sup>19</sup> Indeed, as in the field of commerce, so too did cross-cultural political intercourse require native mediators to bridge epistemological gaps, rendering one set of values legible to another "so as to produce

<sup>16</sup> George Viscount Valentia, *Voyages and Travels to India, Ceylon, the Red Sea, Abyssinia, and Egypt, in the Years 1802, 1803, 1804, 1805, and 1806*, vol. II (London: William Miller, 1809), 378.

<sup>17</sup> Jonathan Parry, *Promised Lands: The British and the Ottoman Middle East* (Princeton: Princeton University Press, 2022), 67–79.

<sup>18</sup> Pawełczak, "British Jurisdiction and Legal Protection," 52–74. Previous accounts can be found in Robert Lambert Playfair, *A History of Arabia Felix: From the Commencement of the Christian Era to the Present Time; Including an Account of the British Settlement of Aden* (Bombay: Education Society's Press, 1859), 134–39; Charles Rathbone Low, *History of the Indian Navy (1613–1863)*, vol. I (London: Richard Bentley and Son, 1877), 209–308; Thomas Marston, *Britain's Imperial Role in the Red Sea Area, 1800–1878* (London: Shoe String Press, 1961), 38–39; Parry, *Promised Lands*, 131–32. A notable exception is Caesar Farah's excellent account of the affair from the Ottoman perspective. See Caesar E. Farah, *The Sultan's Yemen: Nineteenth-Century Challenges to Ottoman Rule* (London: I.B. Tauris, 2002), chapter 1.

<sup>19</sup> Ronald Robinson, "Non-European Foundations of European Imperialism: Sketch for a Theory of Collaboration," in *Studies in the Theory of Imperialism*, eds. Roger Owen and Bob Sutcliffe (London: Longman, 1972), 117–42.

commensurability and allow for conversions to take place.”<sup>20</sup> A second line of inquiry in this article thus looks at the structural vulnerabilities of informal empire, reflecting without aiming to be definitive upon the potential of contradictions and untranslatibilities between British-imperial and Arab-Islamic legal and epistemological assumptions in shaping the outcomes of the imperial encounter in the western Indian Ocean.

### Brokering Empire: Banias and the East India Company in Mocha

Situated at the mouth of the Bab al-Mandab Straits in the southern Red Sea, the port of Mocha (Arabic: *al-Mukhā*) rose to prominence in 1538 following the Ottoman conquest of Yemen, propped up as the empire’s primary Red Sea foothold and a key administrative, commercial, and communications hub.<sup>21</sup> The port continued to thrive under the Qāsimī imams of Sana’a, who threw off the Ottoman yoke in the seventeenth century.<sup>22</sup> A regional entrepôt of consequence, Indian Ocean merchants flocked to Mocha to participate in the trade of Arabian coffee, Indian textiles, and South and Southeast Asian spices, aromatics, medicinal products, and bulk metals.<sup>23</sup> English and Dutch trading establishments had been present in Mocha already by the seventeenth century, but it was only in the eighteenth century that the port became marked by the presence of settled Europeans, including the English, Dutch, and French East India companies.<sup>24</sup>

Serving as the primary redistribution center for markets in southwestern Arabia as well as Abyssinia and the Horn of Africa, Mocha provided a key outlet for Indian and European manufactures in the Arabian Sea. In addition to the highland Yemeni coffee trade, the bulk of the merchandize bought and sold in Mocha was imported by the predominantly Bohra (Ismā’īlī Muslim) merchants from the Gujarati port of Surat, whose mercantile fleet departed India every fall laden with foodstuffs, bulk metals, European manufactures, and textiles from Gujarat, of which only a small portion was consumed in Mocha itself, the rest being reexported to regional hubs such as Jeddah, Massawa, and Berbera on returns of skins and hides, incense, ivory, and bullion.<sup>25</sup>

<sup>20</sup> Fahad Bishara and Hollian Wint, “Into the Bazaar: Indian Ocean Vernaculars in the Age of Global Capitalism,” *Journal of Global History* 16, no. 1 (2021): 46; James Onley, “Britain’s Native Agents in Arabia and Persia in the Nineteenth Century,” *Comparative Studies of South Asia, Africa and the Middle East* 24, no. 1 (2004): 129–37.

<sup>21</sup> Giancarlo Casale, *The Ottoman Age of Exploration* (Oxford: Oxford University Press, 2010), 145.

<sup>22</sup> Playfair, *A History of Arabia Felix*, 111–12.

<sup>23</sup> Nancy Um, *The Merchant Houses of Mocha: Trade and Architecture in an Indian Ocean Port* (Seattle and London: University of Washington Press, 2009), 4.

<sup>24</sup> Eric Macro, *Bibliography on Yemen and Notes on Mocha* (Miami: University of Miami Press, 1960), 38.

<sup>25</sup> Michel Tuchscherer, “Coffee in the Red Sea Area from the Sixteenth to the Nineteenth Century,” in *The Global Coffee Economy in Africa, Asia, and Latin America, 1500–1989*, eds. William Gervase Clarence-Smith and Steven Topik (Cambridge: Cambridge University Press, 2003), 55; Richard Pankhurst, “Indian Trade with Ethiopia, the Gulf of Aden and the Horn of Africa in the Nineteenth and Early Twentieth Centuries,” *Cahiers d’Études Africaines* 14, cahier 55 (1974): 457. For an authoritative study of Ismā’īlī Muslim merchant networks in the Indian Ocean, see

Consequently, throughout the early-modern period, Mocha was deeply imbricated in the colonial economy of western India. The port was indispensable for the financial viability of Bombay, as the Red Sea trade brought in large annual consignments of bullion which were then transmitted from Surat through native remittance networks. So complete was Bombay's reliance on Red Sea bullion that Company authorities provided armed convoy services to Gujarati merchant fleets in the transportation of bullion from Mocha to Surat.<sup>26</sup> By the middle of the eighteenth century, however, a protracted civil war in Yemen significantly reduced Mocha's trade, while the emergence of first cotton and later opium as lucrative export commodities to China relieved Bombay of its dependence on Mocha's diminishing markets.<sup>27</sup> By the end of the century, the decline of its interests in the region prompted the Company to significantly reduce its presence in the Red Sea.

In addition to the Surat merchants who traded seasonally with the port, a settled community of banias from Gujarat and Kachchh lived permanently in Mocha.<sup>28</sup> Bania merchants carried an extensive trade in export items, most notably in piece-goods, conducted through a system of cash advances funneled down a hierarchical chain of middlemen, extending from the productive inlands of western India to port cities throughout the western Indian Ocean. Bania shroffs, the region's most considerable purchasers of bullion and foreign coin, built up elaborate transregional networks, with credit in the form of *hundis* (a financial instrument similar to a bill of exchange) traveling through its sinews to finance oceanic trade ventures and remit its proceeds.<sup>29</sup> Bhimji Kalyanji's operations in Mocha are instructive here: his firm was known in Mocha by the appellation Bheemjee & Co., but the bania was in fact an agent of the prominent Bombay shroff Nanji Seskurn. Like other "portfolio capitalists," that is, entrepreneurs who spread their investments into many areas, including banking and shipping as well as trade in a host of commodities, Seskurn did not travel himself but rather deployed a network of agents like Bhimji across the port cities of the Indian Ocean, from Mocha to Canton, who handled an extensive import/export trade and provided financial services to companies and private merchants to facilitate their trade.<sup>30</sup>

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Michael O'Sullivan, *No Birds of Passage: A History of Gujarati Muslim Business Communities, 1800–1975* (Cambridge, MA: Harvard University Press, 2023).

<sup>26</sup> Lakshmi Subramanian, *Indigenous Capital and Imperial Expansion: Bombay, Surat and the West Coast* (Delhi: Oxford University Press, 1996), 45–46.

<sup>27</sup> Ashin Das Gupta, "Gujarati Merchants and the Red Sea Trade, 1700–1725," in *The Age of Partnership: Europeans in Asia Before Domination*, eds. Blair B. Kling and Michael N. Pearson (Honolulu: University Press of Hawaii, 1979), 143–44.

<sup>28</sup> Comprising both Hindus and Jains, the term bania (derived from the Sanskrit word *vāṇijya*, meaning "trader" or "merchant") signified a caste-cum-occupational category incorporating both a specific caste group (*jāti*) and a professional category, accommodating a wide range of social groups engaged in specialized commercial activity. Subramanian, *Indigenous Capital and Imperial Expansion*, 120–21.

<sup>29</sup> Lakshmi Subramanian, "Capital and Crowd in a Declining Asian Port City: The Anglo-Bania Order and the Surat Riots of 1795," *Modern Asian Studies* 19, no. 2 (1985): 207.

<sup>30</sup> *Third Report from the Select Committee Appointed to Consider the Means of Improving and Maintaining the Foreign Trade of the Country, East Indies and China* (London: House of Commons, 1821), 420. On

As in other major ports in the Arabian Sea, banias like Bhimji ran the show in Mocha, handling all the land-based functions of the trade and its accounting through a monopoly over various commercial functions, including brokerage and banking.<sup>31</sup> Barring coffee, all commercial transactions at the port were conducted exclusively in the Mocha dollar, a fiduciary coin of account devised by bania brokers whose value was fixed at 21% below the port's favored currency, the Spanish dollar, while the schedule for clearing accounts was regulated by the Gujarati monsoon-based *nowruz* calendar.<sup>32</sup> Banias in Mocha provided an interface between the Indian Ocean and the burgeoning world economy, mediating sales of Yemeni coffee and Indian goods between an eclectic array of terrestrial merchants and maritime customers, including Arab, American, and European buyers. European East India companies employed brokers like Bhimji to conduct their affairs, inspect potential goods for sale, make bids and arrange delivery of purchased items, and lend capital for purchases upon bills to be repaid in India.<sup>33</sup>

At the same time, being wealthy, foreign, and easily othered as "heathen," banias were easy prey for rapacious *daulas* seeking to replenish their perennially pinched government coffers or to line their own pockets. Viscount Valentia observed the *daula's* habit of "squeezing money from the Banians," employing a cruel repertoire of extortion mechanisms ranging from beatings to confining merchants in a room and fumigating them with sulfur until they complied with his demands.<sup>34</sup> Another European observer described banias as the "milk cows of the Arab government."<sup>35</sup> The "duties" evaded by Bhimji according to the *daula's* envoy to Bombay referred to such *ad hoc* levies exacted on Gujarati brokers and merchants who were compelled "to contribute whatever sums may be annually required to meet the exigencies of the state."<sup>36</sup> Bhimji had been compliant in the past, but had recently begun to refuse these impositions. Amīr Faṭḥulla was inclined to make him comply "by harsh measures," but upon the intercession of the British resident decided to take up the matter with Bombay.<sup>37</sup> The *daula* was furious that Bhimji should invoke

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"portfolio capitalists," see Sanjay Subrahmanyam and Christopher Bayly, "Portfolio Capitalists and the Political Economy of Early Modern India," *Indian Economic and Social History Review* 25, no. 4 (1988): 401–24.

<sup>31</sup> Successful merchants trading to Mocha were known as *Bhakhāi* (derived from *Bhakhā*, a corrupted form of *Mukhā*), a respected surname in Gujarat and Kachchh indicative of the prestige associated with the Red Sea trade. Sorabji Cursetji Gandhi, *Ahevaḷe Eḍan [Gujarati: History of Aden]* (Bombay: Sām̄j Vratmān, 1907), 235. I thank Chhaya Goswami for illuminating the origin of the vernacular form.

<sup>32</sup> Um, *The Merchant Houses of Mocha*, 33. For the *nowruz* calendar, see Nidhi Mahajan, "Seasons of Sail: The Monsoon, Kinship, and Labor in the Dhow Trade," in *Reimagining Indian Ocean Worlds*, eds. Smriti Srinivas, Bettina Ng'weno, and Neelima Jeychandran (London: Routledge, 2020), 73–86.

<sup>33</sup> Valentia, *Voyages and Travels*, vol. II, 362; Das Gupta, "Gujarati Merchants and the Red Sea Trade," 137, 144.

<sup>34</sup> Valentia, *Voyages and Travels*, 335.

<sup>35</sup> Quoted in Um, *The Merchant Houses of Mocha*, 166.

<sup>36</sup> Undated appeal by envoy of the *daula* of Mocha, copied in extract Bombay political consultations, October 24, 1821, IOR/F/4/745/20303, BL.

<sup>37</sup> *Ibid.*

British protection to shirk his charges. In fact, it was thought by some in Bombay that Amīr Faḥulla and his counselors believed that Bhimji himself was “the very instrument” which occasioned Bombay to blockade and bombard Mocha the year before.<sup>38</sup>

### **British Subjecthood and the Politics of Protection: The 1821 Anglo–Yemeni Treaty**

A serious diplomatic incident had taken place 4 years prior involving, in the words of its hapless protagonist, “the grossest villainy and cowardice that ever were known perhaps in the annals of modern history.”<sup>39</sup> On October 10, 1817, in reprisal for an attempt to thwart an act of collusion between the nakhoda (captain) of a Arab-flagged vessel chartered to the Company and the incumbent daula, Ḥajjī Fātiḥ, Lieutenant Bartholomew Dominicetti of the Bombay Marine was brutalized by a mob of the daula’s soldiers who stormed into the British factory, severely beat and bludgeoned him, and dragged him half-naked through the streets of Mocha to the daula’s residence where he was further humiliated, spat on, and “saluted by the name of coffer [sic, *kāfir*] and dog.”<sup>40</sup> Nearly 3 years had elapsed in fruitless negotiations, but in August 1820, emboldened by the recent naval rout of the Gulf sheikhdoms and the signing of a “General Treaty” with its Arab rulers, Bombay dispatched Captain William Bruce, the Company’s resident in Bushire, to demand indemnification and an apology from the imam for the indignities shown to the British flag at his port.<sup>41</sup> Bruce was instructed to employ any means necessary to secure these objectives, but Bombay had no intention of simply reverting to the *status quo ante* upon satisfaction of its demands, determined instead to use the affair to restructure commercial and political relations in the region.

After having largely vacated the Red Sea in the late eighteenth century, the British had recast their eyes on the region following the French conquest of Egypt and prospective move on India in 1799. The affairs of the Government of India in the Arabian Sea were subordinated to an imperial geostrategic policy of employing British trade as leverage to compel local rulers in the Red Sea and Persian Gulf areas to align with British interests.<sup>42</sup> Mocha emerged as a key

<sup>38</sup> Dangersey Iadowjee to Secretary to Government of Bombay, copied in extract Bombay political consultations, October 24, 1821, IOR/F/4/745/20303, BL.

<sup>39</sup> Dominicetti to Meriton, copied in Meriton to Secretary to Government of Bombay, August 30, 1817, IOR/F/4/690/18908, BL.

<sup>40</sup> *Ibid.*

<sup>41</sup> Hastings to Court of Directors, June 6, 1820, IOR/F/4/690/18908, BL; Elphinstone to Imam of Sana’a, August 9, 1820, IOR/L/PS/5/369, BL; John Barrett Kelly, *Britain and the Persian Gulf, 1795–1880* (Oxford: Clarendon Press, 1968), chapter 4.

<sup>42</sup> The plan envisioned a series of defensive trade alliances with local potentates with a view to knitting these rulers into a network of commercial allies dependent on British trade for their prosperity and British military might for peacekeeping. In the event of a future war with an imperial rival, dependency on British trade could be leveraged through the threat of embargo to compel local rulers to withhold provisions or shelter from rival navies. Parry, *Promised Lands*, 42, 67. A treaty signed with the ruler of Oman in 1798, for example, stipulated that that in times of war between European nations, the French and the Dutch would not be allowed “a place to fix or



site in the prospective Red Sea network, but successive missions dispatched by the Foreign Office and Bombay to extract trade concessions from the imam of Sana'a had failed comprehensively to secure any advantage for Britain.<sup>43</sup> Although strategically Britain was left pleased with the conclusion of the Napoleonic Wars, which had left its navies unrivaled in the Red Sea, the factory in Mocha proved ineffective in projecting British might through commerce, largely due to the port's coffee trade having fallen into the hands of American merchants who enjoyed a favorable tariff schedule not extended to their British counterparts.<sup>44</sup> The attack on the factory presented Bombay with a window of opportunity and a convenient pretext to compel Imam al-Mahdī to sign a commercial treaty favorable to British interests, including a reduced 2.25% flat duty on all imports and exports, down from 3.5% and 7.5% levied on Britons and Gujaratis, respectively.

Forcing unequal commercial treaties upon foreign polities was by then an established British practice, but Bruce was sent to Mocha with more than just commercial imperialism on the agenda. Rather, Bruce's treaty was to stipulate that the imam recognize British legal custodianship not only over British European subjects of the Crown and certain native dependents of the factory, but also over the entire Indian community of Mocha. The assertion of extraterritorial jurisdiction over non-Britons was not new in itself: in the Ottoman context, subjects of the sultan recruited as dragomans (interpreters), warehousemen, brokers, and moneychangers had for centuries shared certain fiscal and juridical privileges afforded to their European employers<sup>45</sup>; crucially, however, these privileges (*berats*) extended only to non-Muslim subjects of the sultan.<sup>46</sup> Bruce's treaty, in contrast, demanded jurisdiction over all Indians—from settled banias like Bhimji to the itinerant, predominantly Muslim merchants of Surat.

The novelty of the treaty can be gleaned by comparison with a treaty signed in southwestern Arabia 18 years prior. Following one of the aforementioned failed missions to the imam of Sana'a, the Company's "Ambassador to Arabia," Sir Home Popham, left Mocha in 1802 for neighboring Aden to strike terms of amity with the port's independent sultan.<sup>47</sup> As with Bruce's later

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seat themselves in, nor shall they ever get ground to stand upon, with this state." Quoted in Mohamed Reda Bhacker, *Trade and Empire in Muscat and Zanzibar: The Roots of British Domination* (London: Routledge, 2003), 36. The plan had first been formulated in the Atlantic following the Seven Years' War. Randal Grant Kleiser, "An Empire of Free Ports: British Commercial Imperialism in the 1766 Free Port Act," *Journal of British Studies* 60 (2021): 334–61.

<sup>43</sup> Parry, *Promised Lands*, 67–79.

<sup>44</sup> American merchants were happy to pay a premium to secure coffee consignments as the direct Cape route spared them the transshipment expenses that encumbered the Company trade, which had to first pass through Bombay before being exported. Tuchscherer, "Coffee in the Red Sea Area," 56.

<sup>45</sup> Maurits H. van den Boogert, *Capitulations and the Ottoman Legal System: Qadis, Consuls and Beratlis in the 18th Century* (Leiden: Brill, 2005), 63.

<sup>46</sup> Abdul Ghaffar Mughal and Larbi Sadiki, "Shari'ah Law and Capitulations Governing the Non-Muslim Foreign Merchants in the Ottoman Empire," *Sociology of Islam* 5 (2017): 138–60.

<sup>47</sup> Aden, once the preeminent entrepôt of the Red Sea area, was by then a dilapidated, subsidiary port handling a low volume of Mocha's residual trade; the sultan was eager to deal with Popham in

treaty, Popham's objectives were to secure for British subjects in Aden a favorable tariff regime, assurances for personal safety, and jurisdiction for a British resident to oversee their legal affairs. In Popham's formulation, "British subjects" referred specifically to ethnic Britons and European subjects of the Crown, as implied by an article dedicated to securing their freedom to employ "a broker or interpreter [of] their own choice." Moreover, British protection over "natives" was articulated as a form of patronage or sponsorship, requiring certificates issued in "either of the Presidencies in India" to be registered "in the office[s] of the Cadi and the British Resident."<sup>48</sup>

Popham's formulation, then, distinguished between two separate notions of subjecthood: a "natural," ethnic subjecthood and an acquired (and, implicitly, impermanent) subjecthood contingent upon a declaration of association to be ratified by both Islamic (the qadi) and imperial (the resident) legal authorities. By 1820, however, the two-tiered approach was jettisoned: in listing the beneficiaries of "the protection of the British flag," Bruce notes "all subjects of the British Government trading to Mokha, and particularly the merchants of Surat," explicitly demarcating Indians as British subjects proper, doing away with contingent procedure such as registration or, for that matter, personal consent.<sup>49</sup> The unwavering confidence of Bruce's assertion, however, belies a far more nebulous legal reality, as the conceptual boundaries of British subjecthood in the Indian subcontinent were anything but clear, not least to colonial administrators themselves.<sup>50</sup>

The ambiguity over the legal identity of Indians stemmed from the East India Company's own peculiar legal standing: the Company owed its constitutional status to the British Crown and Parliament, but as its legitimacy as a governing power was invested by the power of Mughal sovereignty, the determination of subjecthood—which presupposes the question of sovereignty—remained equivocal or, as Suparna Sengupta argues, kept deliberately vague by the Company-as-state.<sup>51</sup>

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the hopes of both increasing his fortunes and staving off potential encroachment by regional powers, R. J. Gavin, *Aden Under British Rule 1839–1967* (London: C. Hurst & Company, 1975), 24; Marston, *Britain's Imperial Role*, 65.

<sup>48</sup> Charles Umpherston Aitchison, *A Collection of Treaties, Engagements, and Sanads Relating to India and Neighbouring Countries*, vol. XI, *Containing the Treaties & c. Relating to Aden and the Southwestern Coast of Arabia, the Arab Principalities in the Persian Gulf, Muscat (Oman), Baluchistan and the North-west Frontier Province (Revised and Continued up to the End of 1930 under the Authority of the Government of India)* (Delhi: Manager of Publications, 1933), 53–56.

<sup>49</sup> An "opt-out" clause was inserted for Muslims, namely Surati Bohras, who preferred to remain under the jurisdiction of an Islamic polity and face trial or arbitration by the local qadi in accordance with shari'ah law. The treaty is reproduced in Aitchison, *A Collection of Treaties*, 171–74. Emphasis added.

<sup>50</sup> Sudipta Sen, "Imperial Subjects on Trial: On the Legal Identity of Britons in Late Eighteenth-Century India," *Journal of British Studies* 45, no. 3 (2006): 543–48. Gujarat had come under direct Company rule and incorporated into the Bombay Presidency in 1800. See Pamela Nightingale, *Trade and Empire in Western India 1784–1806* (Cambridge: Cambridge University Press, 1970).

<sup>51</sup> Suparna Sengupta, "The Sovereign Exception: Interpreting 'British Subjects' in the Queen's Amnesty of 1858," *Social Scientist* 46, nos. 5–6 (2018): 21–38. The instability of subjecthood as a legal category and its social and political implications was manifest across the empire, cutting

Judges in the Calcutta Supreme Court of Judicature wrangled over the legal status of European, Hindu, and Muslim residents,<sup>52</sup> while the “uncertainty of colonial law” saw debates about the proper (and desired) interpretation of subjecthood as a legal category rage on even after the imposition of Crown rule and the dissolution of the Company in 1858.<sup>53</sup> Bruce’s treaty thus stood on shaky ground as it sought to extend the scope of subjecthood—and, with it, the legal premise of extraterritoriality—to encompass not only ethnic nativity or personal prerogative but also a looser, novel construction one might term “mandated territorial affiliation.” The state of legal ambiguity in the subcontinent meant that Indians in Mocha were in effect to be *made* British subjects by imamic fiat rather than *acknowledged* as such—ironically reproducing the very process by which non-Muslim Indians were afforded subject status in Yemen under Islamic law.<sup>54</sup>

Bombay instructed Bruce to stipulate a dual system of arbitration by which all internal disputes involving Britons and Gujaratis trading in Mocha would be adjudicated by the resident under British law. Even in arbitration of cases involving a subject of the imam, the treaty posited, British subjects would hold the right to trial by a mixed tribunal including the Company resident.<sup>55</sup> Owing to the Mocha government’s habit of leaning heavily on the merchant community, the authority to represent Indians trading in the port would secure Britain unprecedented power to intervene in disputes potentially involving the highest echelons of Mocha’s administration, up to and including the daula. Crucially, the treaty stipulated that all individuals employed by the Company, “from broker downwards,” were to come under the *exclusive* control of the resident who alone would possess the power of punishing them and redressing complaints against them, thus fully excising men like Bhimji Kalyanji from the juridical remit of the daula and qadi. If an earlier commercial imperialism was intended to foster dependence on Britain, legal imperialism in Arabia amounted to a direct challenge to the authority of local rulers.

Bruce arrived in Mocha in October 1820, where he was met by a delegation of the incumbent daula, Faqih Hassan, followed shortly by a representative from

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across ethnic and religious divides even within British and European communities. Hannah Weiss Muller, “Bonds of Belonging: Subjecthood and the British Empire,” *Journal of British Studies* 53, no. 1 (2014): 29–58.

<sup>52</sup> Hannah Weiss Muller, *Subjects and Sovereign: Bonds of Belonging in the Eighteenth-Century British Empire* (Oxford: Oxford University Press, 2017), chapter 5; Rahul Govind, “The King’s Plunder, the King’s Justice: Sovereignty in British India, 1756–76,” *Studies in History* 33, no. 2 (2017): 151–86.

<sup>53</sup> Sally Engle Merry, “Colonial Law and Its Uncertainties,” *Law and History Review* 28, no. 4 (2010): 1067–71; Sengupta, “The Sovereign Exception.” For an analysis of subjecthood as defined by case law and other sources to which colonial administrators turned in the colonies, see Muller, *Subjects and Sovereign*, chapter 1.

<sup>54</sup> As Nancy Um notes Qāsimī Yemen presents a relatively unique case in which Hindus and Jains were granted by the imams *dhimmi* status, i.e., a sanctioned non-Muslim subject of an Islamic state, comparable to India in the period of Mughal rule. Technically, banias could not be granted *dhimmi* status on account of not being part of *ahl-al kitab* (people of the book). 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), 151, fn. 26.

<sup>55</sup> In Popham’s treaty of 1802, in contrast, the resident was empowered to adjudicate over dispute between registered British subjects, but disputes also involving a subject of the sultan were “to be settled by the established law of the country.” Aitchison, *A Collection of Treaties*, 55.

Sana'a who assured Bruce that all demands would be acceded to. When it quickly became clear that the Sana'a delegation was merely filibustering, a blockading squadron proceeded to bombard the town. After 2 weeks of shelling, a second representative from Sana'a, Amīr Faṭḥulla, conveyed Imam al-Mahdī's disavowal of the daula's conduct and tendered an unconditional surrender. On January 6, 1921, Ḥajjī Fātiḥ was delivered to Bruce who, to the surprise of the crowd present and not least to the erstwhile daula himself, proceeded to pardon him. A week later, Amīr Faṭḥulla, officially instated as daula, produced a letter from al-Mahdī enclosing a firman reducing duties to 2.25%. Over the course of the next day, copies of Bruce's treaty were returned, signed, and sealed by the imam and the members of his council. Bruce returned to Bushire, and Lieutenant George Robson of the Bombay Marine was left in charge as temporary resident.<sup>56</sup>

It quickly came to light, however, that there had been some major discrepancies between the wording of the English and Arabic versions of the treaty regarding the scope of its remit and the identity of its beneficiaries.<sup>57</sup> The reduced rates of duty to be levied on "the English and all their subjects," for one, applied in the Arabic version to "the English Government [and] the English merchants" alone. The crux of incongruity lay however in the formulation of jurisdictional boundaries: the clause stipulating that "all differences among [British subjects] shall be decided by the Resident" was omitted, while the proposed dual system of arbitration was circumscribed in a peculiarly phrased Arabic translation stating that in any dispute concerning the people (*jamā'ah*) of the resident and a subject of the imam, "a person may come (be present) on the part of the Resident" to the court of the qadi who alone would decide "in what manner the wrong has been committed and by whom;" should "the English military" (*uskur*) be found guilty, the resident was empowered to determine the offender's punishment, but only following a criminal procedure conducted by the qadi according to shari'ah law. Finally—and, as we shall see later, crucially—the stipulation that all individuals employed by the Company "from the broker downwards" were to come under the exclusive control of the resident was omitted entirely.<sup>58</sup>

The Anglo-Yemeni treaty thus neither extended a tariff reduction to the Gujarati merchants nor bore any mention of extraterritorial jurisdiction over anyone other than Britons.<sup>59</sup> To Francis Warden, chief secretary of the Government of Bombay, every advantage held out by the original treaty seemed to have been lost: "It may be questioned," he wrote acerbically to Bruce in Bushire, "whether the British trade is not left in a worse state than it was before the treaty."<sup>60</sup>

How did an ostensibly straightforward process of translation end up producing a document so widely at variance with the original? For Bruce, the answer

<sup>56</sup> A detailed account of the blockade and bombardment can be found in Low, *History of the Indian Navy*, 302–6. See also IOR/F/4/690/18908, BL.

<sup>57</sup> Robson to Warden, May 27, 1821, IOR/F/4/745/20303, BL.

<sup>58</sup> Aitchison, *A Collection of Treaties*, 171–74. Aitchison produces an English translation of the Arabic version; the original Arabic can be found in Political Department, 1837, vol. 24/910, SM-179-SM-224, Maharashtra State Archives.

<sup>59</sup> Undated letter from Amīr Faṭḥulla to Elphinstone, IOR/F/4/745/20303, BL.

<sup>60</sup> Warden to Bruce, June 10, 1822, IOR/F/4/745/20303, BL.

was clear: he had fallen victim to an act of subterfuge. Writing to Bombay from Bushire, he insisted that he had painstakingly gone over every stipulation with Amīr Fathūlla, and that the Arabic version of the treaty being anything other than an exact copy “could only have arisen from my being deceived by the Arabic Moonshee who accompanied me, and who no doubt has had his reasons for deviating so much from the original draft.”<sup>61</sup>

### (Mis)translating Empire: Epistemologies of the Imperial Encounter

British expansion into maritime Asia was fraught with the pitfalls of incommensurability. From the Malay Archipelago to the shores of coastal southern Arabia, the Company needed to navigate alien political, legal, linguistic, and cultural landscapes in which it had to “find ways of ‘making joins’ between different systems of laws, regulations, or just ‘ways of doing things’ where they encounter[ed] them.”<sup>62</sup> British officials in the western Indian Ocean were thus dependent upon an elaborate human infrastructure comprising a cadre of non-Western middlemen possessing the knowledge and practical skills required to articulate and render legible local idioms and practices.<sup>63</sup> Like their counterparts in India, British officials in Arabia—commonly possessing some command of vernacular languages but seldom of their epistolary form nor the cultural proficiency to directly engage local officials—were dependent on munshis to mediate their interaction with foreign environments.<sup>64</sup>

Like other largely faceless Indian Ocean literate intermediaries, munshis were “simultaneously everywhere and nowhere,” rarely imprinting their name on the written record while shaping nearly every document in the archive.<sup>65</sup> The omnibus term *munshi*—derived from the Arabic verb *inshā*, meaning “to compose” (as in a written document) and “to educate” (as in a youth)—denoted a wide array of literary, political, and scholastic functions in the Company’s administrative apparatus, including writer, secretary, political assistant, adviser, interpreter, translator, and language instructor.<sup>66</sup> Munshis

<sup>61</sup> Bruce to Farish, September 22, 1822, IOR/F/4/745/20303, BL.

<sup>62</sup> Michael Gilson, “Translating Colonial Fortunes: Dilemmas of Inheritance in Muslim and English Laws across a Nineteenth-Century Diaspora,” *Comparative Studies of South Asia, Africa and the Middle East* 31, no. 2 (2011): 355.

<sup>63</sup> So extensive was this indigenous infrastructure that one could argue, as James Onley does, that Britain’s residencies and agencies in Arabia “were not ‘British’ institutions at all, but multinational collaborative organizations run for Britain by non-Britons.” Onley, *The Arabian Frontier of the British Raj*, 219.

<sup>64</sup> Christopher Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780–1870* (Cambridge: Cambridge University Press, 2000), 75.

<sup>65</sup> Bishara, *A Sea of Debt*, 131.

<sup>66</sup> In many ways, munshis were the Indian Ocean equivalent of the *dragomans*, Ottoman subjects recruited as interpreters around the Mediterranean. As Maurits H. van den Boogert explains, “not only did the *dragomans* interpret and translate Ottoman speech and text [but] they also guided their foreign employers through the mazes of Ottoman protocol, gave advice, gathered intelligence, and mediated in disputes between Europeans and Ottomans.” Boogert, *Capitulations and the Ottoman Legal System*, 8.

employed by the Company in the Gulf and Arabia hailed from merchant families boasting extensive social and commercial contacts throughout the region.<sup>67</sup> Men like the Mocha residency's Arabic munshi were thus key personages in spaces of informal empire, capable of reading and drafting materials in particular languages (e.g., Arabic munshi, Persian munshi, etc.), possessing in-depth knowledge of social etiquette, political norms, and literary conventions, and holding a firm grasp over the realities and dynamics of regional politics.<sup>68</sup>

More than simply translators and informants, however, as the Anglo-Yemeni treaty reveals, as they received information in one language and translated it to another, munshis actively shaped the meanings and, ultimately, the outcomes of the imperial encounter. By dint of a set of non-transposable, embodied knowledge, munshis often acted in the stead of their employers who mostly lacked the requisite lingual and cultural proficiency to carry out official affairs unmediated, revealing an inherent structural vulnerability in the administrative apparatus of Britain's informal empire: echoing the logic of material infrastructures, the legal and cultural work of translation across boundaries and spheres of value formed transmission chokepoints, rendering munshis into "nodes of [knowledge] circulation, but equally importantly of capture and constriction."<sup>69</sup> Bruce's suspicion of the Mocha residency's Arabic munshi, an Indian Bohra named Sayyid Hussein, was thus anchored in widely held anxieties by Company officials of being misled or misrepresented by their munshis.<sup>70</sup>

The Bushire resident had, somewhat vaguely, stated in his dispatch to Bombay that Sayyid Hussein "had his reasons" for deviating in his Arabic translation from the English original. Given the circumstances, it was not beyond reason for Bruce to suspect that Amīr Fatḥulla, presumably conscious of the checks on his powers that the treaty's articles would impose, might have attempted to convince Sayyid Hussein to doctor and defuse the document. We have already seen the capriciousness with which oppression was meted out by the daula; possessing equally unchecked powers of patronage, the daula had a wide remit of benefits to bestow upon the munshi and his commercial network in return for collaborating, ranging from exclusive government contracts and access to premium buyers and sellers, to differential tariffs at the customs house and exemptions from the *ad hoc* levies sporadically demanded of Indian merchants at Mocha.

<sup>67</sup> The Company initially drew upon Indian merchant communities to fill its ranks, but Arabs and Persians were also employed no later than the mid-1820s. *The Arabian Frontier of the British Raj*, 75, 136, 143.

<sup>68</sup> Callie Wilkinson, "Weak Ties in a Tangled Web? Relationships between the Political Residents of the English East India Company and Their Munshis, 1798–1818," *Modern Asia Studies* 53, no. 5 (2019): 1576, 1589; Muzaffar Alam and Sanjay Subrahmanyam, "The Making of a Munshi," *Comparative Studies of South Asia, Africa, and the Middle East* 24, no. 2 (2003): 61; Onley, *The Arabian Frontier of the British Raj*, xxvii, 41.

<sup>69</sup> Jatin Dua, "Ambergris, Livestock, and Oil: Port-making as Chokepoint Making in the Red Sea," *ETHNOS: Journal of Anthropology* 88, no. 2 (2023): 228.

<sup>70</sup> Wilkinson, *Empire of Influence*, 187–90.

Yet, even with the potential motivation of currying favor with the governor of the region's primary commercial hub, how likely was Sayyid Hussein to have willfully deceived his employer, as the resident insisted? Hailing from an entrenched regional commercial elite, and almost certainly an economic actor in his own right, the munshi would have been keenly aware of the tremendously advantageous position he held as regulator of information flows to and from Britain's senior-most officer in the region.<sup>71</sup> Moreover, as an expert in southern Arabian politics, he would have known about the rapid turnaround in governance at the port, and that future governors would not be bound by the incumbent daula's personal pledges. It seems unlikely then that the munshi would have jeopardized his privilege for such marginal benefits, knowing full well that once word of the tampered treaty had reached Bombay he would immediately be dismissed from Company service.<sup>72</sup>

Perhaps rather than an act of deliberate subterfuge, Sayyid Hussein's mis-translation was simply down to human error. After all, it was not without precedence that a munshi should unintentionally misrepresent or "fail to give the force" of a treaty article he was drafting.<sup>73</sup> But the scope of the munshi's elisions in this instance exceeded mere accentuation. Unlike South Asian munshis who, owing to a long precolonial history of bridging regional Brahmanical traditions and a wider Indo-Islamicate culture, were accustomed to negotiating religious and cultural difference, Company munshis in the Gulf and Arabia operated in an emphatically Muslim landscape.<sup>74</sup> If indeed "any comparison of two languages implies an examination of their mutual translatability," it is worth considering then whether the incongruity between the Arabic and English document might have arisen not from incompetence but rather from substantive contradictions and untranslatabilities between British-imperial and Arab-Islamic legal and epistemological assumptions.<sup>75</sup>

<sup>71</sup> Bayly, *Empire and Information*, 74. Indeed, munshis and other classes of native middlemen across the western Indian Ocean leveraged their positions to great personal and communal gain. David L. White, *Competition and Collaboration: Parsi Merchants and the English East India Company in 18<sup>th</sup> Century India* (Delhi: Munshiram Manoharlal Publishers, 1995).

<sup>72</sup> Upon learning of the debacle, Warden demanded from Bruce "the name and present employment of the person who made the Arabic translation of the treaty in order that he may be immediately dismissed from the Company's service." Warden to Bruce, September 6, 1821, IOR/F/4/745/20303, BL.

<sup>73</sup> Wilkinson, *Empire of Influence*, 191.

<sup>74</sup> Kumkum Chatterjee, "Scribal Elites in Sultanate and Mughal Bengal," *Indian Economic and Social History Review* 47, no. 4 (2010): 463.

<sup>75</sup> Roman Jakobson, "On Linguistic Aspects of Translation," in *On Translation*, ed. Reuben A. Brower (Cambridge, MA: Harvard University Press, 1959), 234. Cultural differences and lingual incongruities were not always impediments to communication and exchange: as Ronit Ricci has shown in the Indian Ocean context, translational liberties and departures in the interpretation of Arabic-Islamic texts in Southeast Asia assisted rather than hindered local readership in the process of religious conversion and connection to the global *ummah*, while successfully "assimilating" such texts in the societies in which they circulated. Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011).

For one, the very word “subjects” as the Bushire delegation would have understood it had no natural Arabic equivalence: the word, appearing four times in the treaty, was translated alternately as “dependents” (*tābi‘ūn*), “people” (*jamā‘ah*), and “merchants” (*tujjār*), and only once, in reference to subjects of the imam, as *ra‘iyyah* (pl. *ra‘iyyā*)—a collective noun best translated as “subjects” invoking a paternalistic relation of the ruler as shepherd (*rā‘ī*) and that of his subjects as flock (*ra‘iyya*).<sup>76</sup> Moreover, territorial conceptions of sovereignty and the attribution of subjecthood to secular notions of blood lineage and land of birth, as understood in British common law and in extrajudicial approaches practiced in colonial settings,<sup>77</sup> was fundamentally at odds with Islamic political theology, wherein subjecthood emanated from one’s belonging to the community of believers (*ummah*) and residing in the domains of a temporal ruler sanctioned by- and adhering to the precepts of Islamic law (*dār al-Islām*).<sup>78</sup> Nor was this temporal ruler sovereign in the sense of “having a free hand to make laws” but rather, according to Usaama al-Azami, operated within “a legal framework that was in the charge of jurists who worked in concert with the ruler but maintained their independence.”<sup>79</sup>

Certainly, there was much more to Muslim political history than strict adherence to doctrinal theory,<sup>80</sup> but such a division of labor between religious and royal authority was particularly pertinent to Qāsīmī Yemen during the period under review, conforming to the 40-year reign of Muḥammad bin ‘Alī al-Shawkānī (d. 1834) as the imamate’s *qādī al-quḍāt* (Arabic: “the judge of judges”). A scholar, judge, and reformer who played a central role in reshaping the religious landscape in Yemen in the early nineteenth century, according to historian Bernard Haykel, Shawkānī rivaled (if not exceeded) Imam al-Mahdī in influence, his judgments carried out “whatever they may be and whomever

<sup>76</sup> Clifford Edmund Bosworth and Suraiya Faroqhi, “Ra‘iyya,” in *Encyclopaedia of Islam*, 2nd ed., ed. Peri Bearman. [http://doi.org/10.1163/1573-3912\\_islam\\_COM\\_0905](http://doi.org/10.1163/1573-3912_islam_COM_0905) (accessed March 25, 2024).

<sup>77</sup> Muller, *Subjects and Sovereign*, chapter 1 (“The Laws of Subjecthood”).

<sup>78</sup> Andrew F. March, “Genealogies of Sovereignty in Islamic Political Theology,” *Social Research* 80, no. 1 (2013): 293–320. As noted earlier, certain non-Muslim minority groups, namely Jews and Christians but also Hindus and Jains in Qāsīmī Yemen and Zoroastrians in other territories, were granted protection in return for certain taxes, affording them subject status without belonging to the community of believers. Yohanan Friedmann, “Dhimma,” in *Encyclopaedia of Islam*, *Three*, eds. Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, and Devin J. Stewart. [http://doi.org/10.1163/1573-3912\\_ei3\\_COM\\_26005](http://doi.org/10.1163/1573-3912_ei3_COM_26005) (accessed March 26, 2024).

<sup>79</sup> Usaama al-Azmi, “Locating *Hākimiyya* in Global History: The Concept of Sovereignty in Premodern Islam and Its Reception after Mawḍūdī and Quṭb,” *Journal of the Royal Asiatic Society* 32, no. 2 (2022): 355–76.

<sup>80</sup> Ruth Miller, “The Legal History of the Ottoman Empire,” *History Compass* 6, no. 1 (2008): 286–96. For late Ottoman engagement with Western international law, see Aimee M. Genell, “The Well-Defended Domains: Eurocentric International Law and the Making of the Ottoman Office of Legal Counsel,” *Journal of the Ottoman and Turkish Studies* 3, no. 2 (2016): 255–75. Overseers, recourse to shari‘ah law could provide a means to legitimate certain actions deemed objectionable by international law. Will Smiley, “Rebellion, Sovereignty, and Islamic Law in the Ottoman Age of Revolutions,” *Law and History Review* 40, no. 2 (2022): 229–59. On “pragmatism and expediency” in response to thorny questions straddling Islamic law and international law, see Selim Deringil, “‘There Is No Compulsion in Religion’: On Conversion and Apostasy in the Late Ottoman Empire: 1839–1856,” *Comparative Studies in Society and History* 42, no. 3 (2000): 547–75.



[they concern], even if the imam himself was implicated.”<sup>81</sup> A towering figure of Islamic reform,<sup>82</sup> Shawkānī’s scriptural conservatism permeated every walk of Yemeni political life: “not an order by the imam was promulgated,” Haykel recounts, “without Shawkānī’s advice being taken.”<sup>83</sup> Shawkānī instituted his reforms by placing his students in positions of influence across the imamate; it is reasonable to speculate then that one such disciple, the qadi of Mocha, held equal sway over his political counterpart, the daula. Considering the symbiotic conservative alliance between *‘ulamā’* (Islamic scholars) and rulers, how legible would Sayyid Hussein have found the stipulations of Bombay’s treaty—conceding legal authority over Hindu and Muslim subjects to a Christian officer whose very rights to reside and trade at the port were invested by imamic fiat—within the religio-political lexicon of early nineteenth-century Yemen?

To Warden, such questions were moot either way, as mistakes “such as [this] could only originate in corruption or a degree of neglect which on an occasion so important is nearly equally culpable.” Bruce offered to return to Mocha in order “to tender a literal translation” of the contested article, but was instructed by the governor, Mountstuart Elphinstone, to remain in the Gulf.<sup>84</sup>

### “A Faithless and Ambitious Government”: Foregoing Protection

Upon discovery of the discrepancies, Robson immediately applied to Imam al-Mahdī to amend the treaty, but the latter dismissed the request out of hand.<sup>85</sup> The extended scope of the treaty would be difficult to claw back, but Bombay was unwilling to cede its basic claim for jurisdiction over dependents of the factory, a claim which Warden argued “did not depend on any treaty but on the laws and usages of all civilized nations.”<sup>86</sup> Robson’s permanent replacement, Captain Gideon Hutchinson, wrote to Imam al-Mahdī, enjoining that since Governor Elphinstone had agreed to relinquish significant portions of the treaty “in token of [...] friendship and cordiality,” he might “be actuated by the same sentiments” and agree to the disputed clauses.<sup>87</sup>

Any such hopes were dashed, however, upon the arrival from Sana’a of Hussein Gulla, a representative of the imam deputized to confer with Hutchinson about the omission. All disputes involving non-Britons, he informed the resident, including dependents of the factory and certainly the Gujarati merchant community, would be adjudicated by the qadi according to Islamic law. Were all complaints of brokers and merchants like Bhimji

<sup>81</sup> Bernard A. Haykel, “Order and Righteousness: Muhammad ‘Ali al-Shawkānī and the Nature of the Islamic State in Yemen” (DPhil diss., University of Oxford, 1997), 77.

<sup>82</sup> Johannes Juliaan Gijbert Jansen, “al-Shawkānī,” in *Encyclopaedia of Islam*, 2nd ed., ed. Peri Bearman. [http://doi.org/10.1163/1573-3912\\_islam\\_SIM\\_6875](http://doi.org/10.1163/1573-3912_islam_SIM_6875) (accessed March 27, 2024).

<sup>83</sup> Haykel, “Order and Righteousness,” 77.

<sup>84</sup> Warden to Farish, October 28, 1822, IOR/F/4/745/20303, BL.

<sup>85</sup> Imam al-Mahdi to Robson, January 10, 1821, IOR/F/4/745/20303, BL.

<sup>86</sup> Undated minute by Elphinstone; Warden to Hutchinson, September 26, 1821, IOR/F/4/745/20303, BL.

<sup>87</sup> Hutchinson to Imam al-Mahdī, September 5, 2021, IOR/F/4/745/20303, BL.

Kalyanji “alone to be cognizable by the resident,” they would be “rendered independent of the [qadi] and [daula].” Undoubtedly echoing Shawkānī’s voice in Sana’a, Gulla concluded that conceding this point would not simply contravene “the laws of Yemen [but] the precepts of the Koran” and would be “an abrogation” of the imam’s duty and of “the authority of the [shari’ah].”<sup>88</sup>

In an attempt to break the deadlock, Elphinstone wrote directly to the imam. Changing tack from an appeal based on imperial subjecthood to one anchored in international diplomatic law, the governor argued that the British resident in Mocha was in fact performing an ambassadorial role and was therefore entitled to the privileges of a public minister, to which the imam tersely and conclusively replied: “It is my resolution to hold by what is written in Arabic [...] The tenor of the Arabic version may not be contravened by either [you nor I] and that which has not been written cannot now be inserted.”<sup>89</sup>

While this triangulated legal debate was being hashed out between Sana’a, Bombay, and Mocha, events on the ground deepened and broadened the scope of the affair. Shortly after Bruce’s arrival in Mocha, Bhimji had appealed to the officer about an outstanding debt owed to him of \$31,500, adding that daulas had habitually exacted yearly loans of \$1,100 which they never repaid.<sup>90</sup> When a request for a further loan of \$20,000 was later made upon the broker, this time from the imam himself, Bhimji notified Hutchinson that he intended to refuse the loan, petitioning for protection against the imam’s anticipated wrath.<sup>91</sup> It was against this backdrop that Amīr Faṭḥulla’s envoy left Mocha for Bombay to protest Bhimji’s conduct and dispute his appeal for British protection—ironically taking up the bania’s case in Bombay while refusing British jurisdiction over Indians in Yemen.<sup>92</sup> Bhimji’s petition, however, could hardly have come at a less opportune time. While Bombay and Sana’a were wrangling over the fine print, the bombardment of Mocha and the stipulations of the treaty that followed were the subject of uproar and controversy in Istanbul.

The ground had for some years been shaking under the feet of Sultan Mahmud II (r. 1808–39). The young sultan endured a tumultuous first decade to his reign, beginning with the loss of the mouths of the Danube and Bessarabia to Russia in 1812; the assertion of Serbian independence between 1804 and 1815; and the commencement of the Greek War of Independence

<sup>88</sup> Hutchinson to Warden, March 27, 1822, IOR/F/4/745/20303, BL.

<sup>89</sup> Elphinstone to Imam al-Mahdī, undated, enclosed in Bombay political consultations, August 21, 1822; Imam al-Mahdī to Hutchinson, January 9, 1823, IOR/F/4/745/20303, BL.

<sup>90</sup> “Translation of letter from the Broker at Mocha,” March 22, 1821, IOR/F/4/745/20303, BL.

<sup>91</sup> Hutchinson to Warden, August 31, 1821, IOR/F/4/745/20303, BL.

<sup>92</sup> As Laurent Benton has posited, the paradox of pursuing anti-colonial strategies that at the same time reinforced colonial rule “must have been as apparent to participants as it was unavoidable.” Lauren Benton, “Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State,” *Comparative Studies in Society and History* 41, no. 3 (1999): 574. I thank one of my anonymous reviewers for pointing this out.

mere months prior to the signing of the Anglo–Yemeni treaty.<sup>93</sup> The specter of territorial reversal boded even more menacingly in Arabia, where an ascendant Saudi emirate occupied in 1803 and 1804 the sacred sites of Mecca and Medina—the main source of legitimacy for a sultan claiming spiritual overlordship over the global Muslim *ummah*.<sup>94</sup> Ottoman–Egyptian forces dispatched by Mahmud II managed to quash the Wahhabi insurgency (albeit well over a decade later), but for the beleaguered sultan, the purported encroachment on Arabian soil by Britain, an imperial power governing more Muslims around the globe than did the sultan-caliph himself, was interpreted as the opening gambit of a broader move to unseat the Ottomans in Arabia.

The Porte warned the British ambassador, Viscount Strangford, that the sultan, who retained a contented claim to sovereignty over the Yemen, perceived the affair to be an indication of Britain’s ambitions in Arabia. An Egyptian–Ottoman agent in Mocha, one Rustam Āghā, had sent alarm bells ringing in Istanbul by reporting that Bombay had imported chains to Mocha in a bid to block the Bab al-Mandab (a rather fanciful idea, considering the distance) and that the resident attempted to bribe the imam with an annual stipend of 100,000 piasters to allow the Company to extend its authority over both Muslims and non-Muslims. Bombay and Calcutta categorically rejected the accusations, but Mahmud II, distrustful of an Indian government “as faithless and as ambitious as that of Russia,” was at pains to stress that he would not yield an inch of territory “which has been sanctified by the footsteps of the Prophet.”<sup>95</sup> The Porte demanded the British government disavow its resident in Mocha and acknowledge full and exclusive Ottoman sovereignty over the Yemen, leaving London scrambling for explanations from Bombay.

As historians of the late Ottoman Empire have shown, the acceleration of imperial expansion in the latter decades of the century forced Mahmud II’s successors into an urgent and increasingly elaborate engagement with international law and Western claims for extraterritorial jurisdiction over foreign (i.e., non-Ottoman) Muslims.<sup>96</sup> For the time being, however, the sultan could breathe easy as Britain, long eager to facilitate “a more liberal commercial intercourse [...] in the Black Sea,” had much more to lose than

<sup>93</sup> Nor were these upheavals, it was feared in Istanbul, confined to the edges of empire: rumors swirled around Topkapı Palace that the Greek Revolt was part of a wider Russian-backed conspiracy to resurrect the Byzantine Empire with “Constantinople” as its capital. Ozan Ozavci, *Dangerous Gifts: Imperialism, Security, and Civil Wars in the Levant, 1798–1864* (Oxford: Oxford University Press, 2021), 119.

<sup>94</sup> Madwadi al-Rasheed, *A History of Saudi Arabia* (Cambridge: Cambridge University Press, 2002), 21.

<sup>95</sup> Farah, *The Sultan’s Yemen*, 4–7 (quotations on 7).

<sup>96</sup> Lâle Can, “The Protection Question: Central Asians and Extraterritoriality in the Late Ottoman 886 Empire,” *International Journal of Middle East Studies* 48, no. 4 (2016): 679–99; Michael Christopher Low, “Unfurling the Flag of Extraterritoriality: Autonomy, Foreign Muslims, and the Capitulations in the Ottoman Hijaz,” *Journal of the Ottoman and Turkish Studies Association* 3, no. 2 (2016): 299–323; Will Hanley, “What Ottoman Nationality Was and Was Not,” *Journal of the Ottoman and Turkish Studies Association* 3, no. 2 (2016): 277–98; Will Smiley, “Freeing ‘The Enslaved People of Islam’: The Changing Meaning of Ottoman Subjecthood for Captives in the Russian Empire,” *Journal of the Ottoman and Turkish Studies Association* 3, no. 2 (2016): 235–54; Fahmy, “Jurisdictional Borderlands.”

to gain.<sup>97</sup> It was feared in London that the Ottomans, who straddled the maritime chokepoints regulating vital flows of Black Sea grain to Europe, might attempt (as they ultimately did) to hurt the Greek insurgents by checking the trade carried by Greek merchants and ship-owners.<sup>98</sup> Had Bhimji's claims for British protection stood on a more solid legal footing, it is plausible that Britain might have been dragged into a conflict it wished to avoid; in the event, however, Bombay quietly retracted its claim for jurisdiction over Bhimji and other Indians in Mocha for fear of further antagonizing the Porte, heeding Viscount Strangford's warning that the disputation could have "a most serious effect" on British influence and credit at Istanbul.<sup>99</sup>

Anglo-Yemeni relations had thus been left in a state of ambiguity, but the matter of protection over Indians in Mocha persisted.<sup>100</sup> The new resident, Captain Michael Bagnold, reported in 1825 that not only were injustices being carried out in the customs house—the daula had overtaxed the Surati merchants' goods and requisitioned a portion of their merchandize under the assurance that he would repay later in the season, a promise he then reneged on by staling until the shifting monsoon forced the merchants to depart Mocha for Surat—but that loans were again forcefully exacted from banias at the port.<sup>101</sup> According to the resident, the daula was "emboldened" by "silly reports" that the Burmese War being fought on the other side of the Indian Ocean was keeping the British navy fully occupied.<sup>102</sup>

Periodic exactions and oppressive conduct against Gujaratis had forced successive residents to intervene,<sup>103</sup> but in 1826 Bagnold's vigilante action to claim redress for Gujaratis at the port nearly ended in another diplomatic collision with the Porte.<sup>104</sup> To Bombay's relief, the incident passed without notice in Istanbul,<sup>105</sup> but still was enough to make the governor rethink the cost-benefit trade-off of its Red Sea commitment. Finally, in October 1827, Bagnold was informed that Elphinstone had decided to withdraw the residency from Mocha and to leave British commercial interests under charge of a native

<sup>97</sup> Quoted in Ozavci, *Dangerous Gifts*, 113.

<sup>98</sup> Constantin Ardeleanu, "The Opening and Development of the Black Sea for International Trade and Shipping (1774–1853)," *Euxeinos: Governance & Culture in the Black Sea Region* 14 (2014): 37; Carmel Vassallo, "The Maltese Merchant Fleet and the Black Sea Grain Trade in the Nineteenth Century," *International Journal of Maritime History* 13, no. 2 (2001): 23–24.

<sup>99</sup> Farah, *The Sultan's Yemen*, 7.

<sup>100</sup> Bagnold to Newnham, October 1, 1825; Bagnold to Greenhill, September 2, 1826, IOR/F/4/1148/30305, BL.

<sup>101</sup> The forceful exaction of loans, according to Bagnold, caused at least eight bankruptcies among the most respectable of the Surat merchants. Bagnold to Newnham, October 10, 1827, IOR/F/4/1148/30305, BL.

<sup>102</sup> This conclusion, however misconstrued, provides a remarkable example of Indian Ocean connectivity, the information almost certainly having passed through the Gujarati networks which, besides capital and credit, circulated news and intelligence as well.

<sup>103</sup> Petition from several merchants, inhabitants of Surat, February 29, 1823; Bagnold to Newnham, October 1, 1825; Bagnold to Greenhill, September 2, 1826, IOR/F/4/1148/30305, BL.

<sup>104</sup> Minute by Elphinstone, April 26, 1827; Newnham to Canning, April 26, 1827; Newnham to Bagnold, May 10, 1827; Bagnold to Newnham, October 10, 1827, IOR/F/4/1148/30305, BL.

<sup>105</sup> Canning to Elphinstone, September 17, 1827, IOR/F/4/1148/30305, BL.

agent.<sup>106</sup> The resident was instructed to facilitate the withdrawal and to appoint a successor agent, for which position he designated a young Bohra merchant “of respectable standing in Surat” whose character and reputation, it was hoped, would place British interests “on a more respectable footing than our late useless Banyan broker,” Bhimji Kalyanji.<sup>107</sup>

On March 15, 1828, nearly a decade after Bruce’s expedition had first reached the Mocha roadsteads, the removal of the residency was finalized. The failure of British gunboat diplomacy to impose itself on the political landscape of southwestern Arabia and the inability of successive residents to cultivate vested interests devoted to the elevation and preservation of British supremacy in Mocha meant that the Red Sea region remained for Britain a disordered arena offering little scope for influence. The reassertion of direct Ottoman sovereignty over Mocha in 1833 further limited Britain’s maneuverability, just as strategic stakes in the region were increasing.<sup>108</sup> By the end of the decade, the failure of British legal imperialism to bring Mocha to heel left Bombay with little choice but to change course and establish a colony to be administered under direct rule in the nearby port of Aden.<sup>109</sup> To Bombay’s dismay, negotiations in Aden were impeded by the sultan’s appeal for nested sovereignty, insisting that while the British could control the harbor, he would retain jurisdiction over the Arabs, Jews, and banias of the port; the Company officer negotiating the transfer immediately rejected the sultan’s proviso, rejoining that it was inconceivable that two legal regimes might exist side by side—the irony clearly having escaped him.<sup>110</sup>

## Conclusions

Alongside standard commercial clauses regulating customs charges and anchorage fees, the provisions of the 1821 Anglo-Yemeni treaty aimed to exempt “British subjects”—intended by Bombay to include Indian Hindu and, provocatively, Muslim merchants—from the jurisdiction of the *daula* and *qadi* in Mocha. A case of mistranslation, however, followed by Sana’a’s obdurate refusal to relitigate the treaty and Istanbul’s emphatic demurral meant that, unlike the juridico-political dynamics that developed in the western Indian Ocean later in the century, British primacy could not be established, nor could the Indian community of Mocha be co-opted as an instrument of legal imperialism.

While recognizing the imam’s and the sultan’s agency helps rehabilitate a history of empire in the Indian Ocean persistent in prioritizing British

<sup>106</sup> Newnham to Bagnold, October 8, 1827, IOR/F/4/1162/30464, BL. On the British native agent system in Arabia, see Onley, “Britain’s Native Agents in Arabia and Persia.”

<sup>107</sup> Bagnold to Newnham, October 18, 1827, IOR/F/4/1162/30464, BL.

<sup>108</sup> This was as a result of the perceived threat to the security of British India by an Ottoman-Egyptian expedition to the Gulf, and the concurrent need to establish a permanent coaling station in the region for Bombay’s budding steam-navigation infrastructure. Parry, *Promised Lands*, 153–58.

<sup>109</sup> Gavin, *Aden Under British Rule*, 24–38.

<sup>110</sup> Stafford Haines to the Sultan of Aden, January 24, 1838, no. 35 in *Indian Papers, No. IX: Correspondence Related to Aden* (London: House of Commons, 1839), 26.

perspectives, viewing the affair strictly through the prism of governors, residents, imams, and sultans nevertheless perpetuates a reading of history anchored in the actions and decisions of political leaders, governments, and elites. In this article, in contrast, I have argued that local agents and merchants played an outsized role in shaping and determining the outcomes of imperial interventions. Recurrent petitioning by the Surat merchants and the Company's bania broker's insistence on invoking British protection serves to illustrate that, rather than just passive beneficiaries, non-Western merchants, brokers, and other intermediaries were in fact key agents of legal imperialism, in that by holding the Company up to its own claims regarding territorial sovereignty in India and its attendant legal obligations abroad, they pushed the British to take on additional diplomatic responsibilities beyond the subcontinent.<sup>111</sup> Moreover, as the treaty's contested clauses demonstrate, knowledge gaps and linguacultural barriers meant that works of translation were indispensable at every level of imperial operation. Munshis, brokers, and agents formed nodes of knowledge circulation as well as of capture and constriction, serving not only as the eyes and ears but often as the mouths of imperial administrators; their sparse mention in the colonial record thus belies an underlying ubiquity.

Bearing this in mind, the foregoing allows us to throw into relief an understudied facet of legal imperialism, namely that the imposition of legal systems, structures, and practices on colonized or otherwise influenced regions was predicated upon legal and cultural works of translation. The influence of British authority, then, while crucial, can only be fully understood in the context of its dependence upon networks of indigenous commercial, political, and legal brokers to empire. The imposition of verbal constructs could, and did, shape outcomes with equal force to the violent coercion of a gunboat.

The disruptive consequence of linguistic contestations should not however be perceived as belonging to an earlier, unripened stage of empire: more than a century after Bruce and Imam al-Mahdī put pen to paper in Mocha, a treaty signed in Sana'a in 1934 between the British Political Resident in Aden and the seventeenth successor of the imam again rehearsed a semantic divergence, this time revolving around differing interpretations of the Arabic word *hudūd* (understood as "border" or "frontier" by the British and as "region" by the imam) a "subtle and perilous difference" which nevertheless militated against Anglo-Yemeni accommodation for decades to follow.<sup>112</sup>

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<sup>111</sup> John Darwin, "Imperialism and the Victorians: The Dynamics of Territorial Expansion," *English Historical Review* 112, no. 447 (1997): 614–42. Once again, I'd like to thank one of the anonymous reviewers for this observation."

<sup>112</sup> While the British believed that the imam had undertaken to accept the status quo on the frontier, the imam thought that the British had agreed to maintain the status quo in the whole region and, consequently, "not to move out of Aden." To British eyes, the Yemenis were interfering mischievously across the frontier while, for the imam, by signing advisory treaties and penetrating new regions, the British were upsetting the status quo they had undertaken to maintain. Kennedy Trevaskis, *Shades of Amber: A South Arabian Episode* (London: Hutchinson & Co., 1968), 17, 54.

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