

Chapter XII

The Spread of Waqfs Following British Colonial Trade in the Indian Ocean: A Comparison with the Atlantic Trade

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Introduction

In this article, the author explores the spread of the practice of waqf founding through networks established and strengthened as a ramification of British colonial trade in the Indian Ocean. It is the hypothesis of this paper that British colonial trade affected the incidence of certain waqf practices in the trading ports of the Indian Ocean.

Some research questions that arise out of this are whether British colonial trade had any effect on the behaviour of Muslims who had inhabited some trading ports of the Indian Ocean, specifically with respect to the founding of waqfs, and if so, what particular factors arose from this colonial trade that lent to or limited waqf practices. For comparison and as a control against generalisation, the author examines similar questions for the Atlantic Ocean where the British were trading actively during the period in question.

The author has conducted this research by a literature review of research into human transmigration and trade in the regions under inquiry. The framework for enquiry is set out thus:

1. Demarcation of the trading region, time period and the trading activities involved;
2. The people that contributed to the spread of Islam in the trading region at the time ("the agent");
3. Evidence of waqf practices
 - a. in the homeland or the culture whence came an agent; and
 - b. at a selection (and not an exhaustive list) of trading ports where the agent(s)' has migrated or been transplanted to along the trade route.

What follows are five sections. In Section 1, some definitions of the colonial

period, the waqf and the agent must be determined to ensure that both author and reader have the same understanding of the nature of what is being referred to. In Section 2, British Indian Ocean trade covering the research framework aforementioned is addressed, and a similar treatment for British Atlantic Ocean trade is given in Section 3. The comparison and findings of this work are set out in Section 4, before ending with the Conclusion.

1. Definitions

1.1. Colonial Period

The British colonial period covered a specific duration of time and space. British merchants began to travel beyond Britain to Asia and North America from the early sixteenth century, seeking spices and raw materials.

Initially British merchants ventured into the Indian Ocean and the Atlantic Ocean after receiving royal charters. The first of these was the East India Company, a joint stock company established with 125 shareholders and a capital of £72,000, which was granted a charter by Queen Elizabeth I on December 31, 1600. The Company set out to India on several voyages with increasing success and by its third sailing in 1608, had established trading posts in India. It later profited through the unravelling of the Mughal Empire and the disaffection of Hindu rulers, and continued to establish posts in Surat (1612), Madras (1639), Bombay (1668), and Calcutta (1690). By the end of the seventeenth century, the Company had its own armed forces, fleets, administration, tax collection, judiciary, and coinage [Mantle 2008] and in 1757, it had control of all of India. The whole of the Indian sub-continent became a province of Britain, and together with Penang off the Malay Peninsula, was divided into three presidencies (Bombay, Madras, and Bengal) and the North-Western Provinces. After the First World War, “mandates” were given by the League of Nations to various European countries, including Britain, over pieces of carved up Ottoman lands.

The British established an illegal opium trade in Canton, with events escalating to culminate in the Opium Wars of the 1840s. On its way to China, the Company established more trading ports at Penang, Dinding, Malacca, and Singapore on the Malay Peninsula and by 1786 they decided to combine these under the name of Straits Settlements, which were initially under the control of the Company but were later handed over to the Crown as colonies. These trading ports were strategic to them and afforded them a layover during the monsoon and a base from where to combat piracy. The Straits Settlements were also used as a penal settlement for Indian civilian and military prisoners.

Exploration to the West began around the same time, when in 1606 King

James I granted a charter to the London Company (later known as the Virginia Company) to explore North America. More royal charters were granted afterwards, particularly to aristocrats, which led to the “founding” of New Jersey, Maryland, the Carolinas, Georgia, and Pennsylvania. Soon, the British found themselves further south in the Caribbean and South America, where they established a trading port at Bermuda (1609) and 18 trading ports in the Caribbean including St. Kitts, Barbados, Bahamas, British Virgin Islands, and Trinidad and Tobago. In South America, the British were found at Belize, Mosquito Coast, British Guyana, and as far south as the Falkland Islands (off modern Argentina).

Later followed the Royal African Company in 1660, which was given the charter to trade in Africa and the Caribbean. These companies established trading ports that were governed by company policies, judges, and laws. By the mid-1800s, these companies were dissolved and the trading ports became settlements and possessions of the British crown.

By 1922, more than 458 million people were subjects of the British Empire, which straddled a quarter of the land area of the world. British colonisation of foreign lands lasted over four centuries, ending at different times, beginning with Britain’s forcible ejection from its North American colonies, through wars of independence, and later after the end of the Second World War, through grants of independence when it realised that it was no longer able to afford its overseas possessions.

1.2. *Waqf*

In classical Islamic tradition, there are two categories of waqf: waqfs which are those by operation of divine law, and waqfs by declaration and endowment. A third category, of more modern beginnings, is the *jam‘iyya* and the cash waqf.

In the first category falls solely the mosque (*masjid*). A human founder creates the *masjid*, but its operation is totally independent of him. The founder may no longer control its operation. The Qur’an declares mosques as belonging to God,¹ and they can neither be sold or rented nor put to private use [Makdisi 1981]. A *masjid* can also be a centre of learning, with its teachings being devoted to law.

With respect to the second category of waqfs, it means the endowment of property whose use would be put towards righteous purposes. Fundamentally, the waqf is an endowment of private property, and its income or usufruct is applied towards charitable or public purposes, without depleting the principal or corpus of the endowment. This second category is traced back to a hadith of the Prophet

¹ [Qur’an, Surah 72: verse 18].

(PBUH)² whereby three things will carry on earning blessings for the Muslim after his death: knowledge from which people benefit, pious children who offer prayers for him, and recurring charity. The waqf is an ideal instrument by which to achieve the three objectives simultaneously.

The madrasa or college, often found within the *masjid* complex, belongs to the second category of waqf whereby it is created by endowment and its operations may be decided and operated by the founder, and therefore it provided for a wider learning base. The syllabus of the madrasa included Islamic jurisprudence and law, the science of the hadith, and other related subjects. As the basic law course took four years to complete, a residential college (*khan*) was required to provide residence to its scholars. Other cognate institutions include those dedicated to the study of the al-hadith (*dar al-hadith*), to the study of the Qur'an (*dar al-qur'an*) and the monastery colleges (*ribat*, *khanqah*, *zawiya*, *turba*, or *duwaira*). According to Makdisi [1981: 34], all Islamic institutions of learning were founded on the basis of a waqf.

Over time, in addition to waqfs established for religious purposes and for the support of the masjid-madrasa-khan complex, other types of waqf were created through declaration of endowment including waqfs for public benefit (such as poor houses, soup kitchens, bath houses, water fountains, travellers' lodgings, and hospitals), private waqfs for the benefit of one's family or specific family members and waqfs of mixed private/family and public purposes.

Depending on the corpus endowed, there can be different types of waqf: real property waqf, moveable property waqf, cash waqf and waqf of stock. During Ottoman times, the cash waqf, was commonly endowed, referring to the endowment of cash whereby the revenue from the investment of the cash would be used towards charitable purposes [Cizakca 2004: 1] although in modern times this has evolved to include the endowment of shares in incorporated joint-stock companies resulting in a waqf of stock.

Another form is the *jam'iyya*. According to Freitag [2003: 240] the *jam'iyya* is "a volitional organisation [where it is typical] that its members pursued a common goal and stemmed not only from one (more or less extended) family nor [sic.] even from only one status group." In the *jam'iyyat al-khayr*, subjects such as reading, writing, and the principles of Arab grammar and religion were taught. An example is the Alsagoff Arab School in Singapore. A modern modified form of the *jam'iyya*, the community cash waqf founded by a group of people or individuals contributing small amounts of capital each, has found popularity in Muslim

² Abu Hurairah reported Allah's messenger as saying: when a man dies his acts come to an end except three things, recurring charity, knowledge by which people benefit or pious offspring who pray for him. (Narrated by Abdel Raham in *Sahih Muslim*, Kitab al-Wassiyah: Hadith No. 3084).

countries.

Therefore, taking into account usage and custom over the centuries, for the purposes of this paper the term waqf (pl. *awqaf*, but in this paper, “waqfs”) can refer to either or both the establishment of a mosque, the endowment of property in accordance with Islamic principles, and the *jam'iyya* or its modern version, the community waqf. Thus, it is important to understand the multiple roles (religious, social, economic, community, and familial) and implications that can be ascribed to this institution and which we will see in the discussions following.

1.3. Agent

In this paper, the term “agent” refers to the people or category of people who might have been responsible for transmitting the religion of Islam and waqf practices to the various ports along the trade routes in question. These include Arabs, arabised peoples (including Arab-Africans and Arab-Indians), and Muslims of other ethnicities. They also refer to different types of personages such as merchants, traders, moneylenders, religious scholars (including *fuqahas*, *marabouts*,³ and *ulamas*), slaves, and labourers.

2. British Colonial Indian Ocean Trade

2.1. The Indian Ocean Trade

When the British and other Western traders entered the Indian Ocean, it was already a Muslim dominated trading region since at least the thirteenth century, as observed by Ibn Battuta during his travels and later reported by Oriental scholars [Jenkins Jr. 2000; Karashima and Hirose 2017]. The commodities traded within the Indian Ocean were frankincense, myrrh, and coffee from Yemen in South Arabia, pearls and dates from the Arabian Gulf, musk, oud, and spices from Asia (specifically

³ The term “*marabout*” is French and derived from the Arabic *al-murabit* (Almoravid) a reference to the soldier-monks of the eleventh and twelfth centuries responsible for the Islamisation of the Berbers of the Western Sahara. One meaning is a cleric or religious person, or a person of knowledge. Another meaning in North Africa refers to the tomb of a saint. See [Mustapha 2012]. In West Africa, the term refers to a religious teacher with esoteric knowledge and practices, including amulet-making and divination. See also [Jenkins, Jr. 2000]. There are those *marabouts* who delve in the darker arts, but these are not approved of in the society. However, most *marabouts* are religious teachers who teach children to read and understand the Qur'an and other religious knowledge. They teach on-site and their students come to them.

India and Southeast Asia), cloves, ivory, ebony, gold, ostrich feathers, cowry shells, camels, and slaves from all parts of Africa through Zanzibar and Cairo on the East Coast, and silks and ceramics from China. Later British interests added cotton, textiles, rubber, tin, and opium to this list.

2.2. Agents of the Spread of Islam to Indian Ocean Ports

It was first Arab merchants, and later sultans and lower level sheikhs along the trading ports in the Indian Ocean that were instrumental in the spread of the religion and who provided support for the establishment of mosques and madrasas, essentially the first waqf practices. As we shall see shortly, during a period of instability in the Middle East, there also occurred mass emigration of Yemenis from Hadhramaut to the other ports along the trade route. Other individuals included the Muslim slaves that accompanied their masters. Both Arab and Indian traders were involved in slave trading and slave owning during this time. After slavery was abolished, the British brought indentured labour from India and China, including a number of Indian Muslims to work on British plantations in the hinterland.

2.2.1. Arab and Arabised Traders, Merchants, and Religious Teachers

Before the Portuguese, the Dutch, the British, and other Europeans arrived in the East, Arab and Indian merchants and traders had been travelling to this region for many hundreds of years. There is evidence that Nabatean⁴ Arabs had been trading along the coasts of India since the first centuries in the Common Era. Another group of Arab traders, the Sabeans from southern Arabia (Yemen), also traded with the Nabateans during this time. Nabatean primacy over trade ended around the sixth century.

Scholars have found Chinese testimony that Arab and Hindu traders were already arriving at Canton in large trading vessels laden with goods in the eighth century [Chaudhuri 1985: 50]. In other words, the Arabs were master merchants for centuries before the Europeans learnt mercantiling in the sixteenth century, and they controlled the trade between the East and Europe in the Indian Ocean.

⁴ The Nabateans were a nomadic Arab tribe found from 1900 BCE to 600 BCE in small tent colonies around north Arabia, Mesopotamia, and the Levant. They are attributed with the founding of the city of Petra, Jordan and are most known for their trading activities along the central and east Arabian desert routes. Around 600–250 BCE, they began to use boats on the Red Sea and later in the Mediterranean. Afterwards they ventured further and further afield to the coasts of east Africa, India, Asia, and as far as China. Mada'in Saleh, a UNESCO World Heritage site near Madinah, is attributed to the Nabateans.

2.2.2. *Emigration from Hadhramaut*

Although Hadhrami traders had been migrating for hundreds of years, the increase in migration to other parts of the British Empire was accelerated in the early 1870s due to increased political instability in Hadhramaut [Freitag 2003: 81].

These migrant Hadhramis resided permanently in the trading ports, with some returning to their homeland at the end of their lives. Many of them came from the Sayyid stratum of Hadhrami society, and they were amongst the economic elite who owned enormous wealth [Freitag 2003: 44]. Some South Arabian Hadhramis had even established themselves in the governments of some Malay states, becoming Sultans themselves in some states, for example in Perlis (Sayyid Husayn Jamal al-Lay I [1805–1873]), or marrying into royalty in Terengganu (Sharifah Nong Fatimah al-Sagoff married Sultan Mahmud al Muktafi Billah Shah [1930–1998]) [Freitag 2003]. Along with immense wealth and power, they brought with them wealth management knowledge including institutions such as *jam 'iyya* (society) or *jam 'iyyat al-khayr* (charitable society), presses, and waqfs.

2.2.3. *African Slaves in the Indian Ocean*

Slavery was a common practice in many parts of the world for thousands of years and only very recently abolished by most modern nations. The originating slave ports in the Indian Ocean trade were at Mozambique, Zanzibar, and Madagascar. With the expansion of Islam in the eighth century, the trade in slaves took on an even bigger dimension due to the increased need for labour and military soldiers [Klein and Vinson III 2007]. In 1512, the Portuguese traveller Tome Pires noted a significant number of slaves present as far as Malacca, mostly from East Africa [Jenkins Jr. 2000].

Between 20,000 and 30,000 slaves were sold annually, shipped to Yemen before being taken to the Arab and Gulf areas as well as to the Sindh and Gujarat in India. Arab and Indian merchants were major slaveholders [Ali 2011] in the Indian Ocean trade. The slave trade in the Indian Ocean proliferated in the nineteenth century due to a combination of factors including the fact that the main exports of the Gulf at the time were labour-reliant pearls and dates, the increase in the number of plantations in Zanzibar and Pemba owned by Omani Arabs, and the occupation of Madagascar by the French. In 1807, the British passed the Slave Trade Act that abolished the slave trade in Britain and also encouraged British action to press other European states to abolish their slave trade. In September 1822, the British signed the Moresby Treaty with the Sultan of Muscat and Oman, the effect of which was to prevent the importation of slaves into British holdings in India and elsewhere in the Indian Ocean from lands ruled by the Omani Arabs in East Africa

and the installation of a British advisor in Zanzibar, in exchange for recognition of the Sultan's dominions. In December 1839, the treaty was expanded, making the enslavement and sale of Somalis illegal. Despite this, slave trading continued until 1873 [Hopper 2006] when the Sultan was forced to sign an edict making sea-borne slave trading illegal under threat of bombardment, and the slave market in Zanzibar was finally closed. Notwithstanding this, the practice continued in Tanzania until after the First World War.

2.2.4. Muslim Indentured Labourers

After the abolition of slavery, indentured labourers⁵ from India worked the sugar plantations in Mauritius where this system began. Although touted as free or voluntary labourers, indentured labourers were paid fixed wages and worked long hours for five or six days of the week for the duration of their contract. They were subject to penal incarceration in the event of breach of their contract.

The Indians proved more suitable to plantation work than the Chinese, and more than 80% of indentured labourers came from India. This proved to be very convenient to the British as India was already one of their dominions and the exportation of people from India to other colonies was but a resettlement of their subjects. The majority of Indian indentured labourers were Hindus, with a very small percentage of Muslims (10–15% of Indian labourers), who generally had a lower status within the indentured labour community.

2.3. Evidence of Waqfs at Select British Trading Ports

To demonstrate the common practice of waqf founding along these trade routes, we will begin at one extreme end of the Indian Ocean trade route with the practices of Arab merchants and property owners in Zanzibar and on the East African coast. We will inquire into evidence of waqfs in Hadhramaut, Mauritius, Bombay and Calcutta in India, and Penang and Singapore in the Straits Settlements.

⁵ An indenture is a contract of services whereby the worker agrees to work for a certain minimum number of years under the service of an employer in exchange for the cost of transporting the worker to the country of employment. After the contracted time had elapsed with the worker fulfilling his part, he would then be free to pursue employment or other activity.

2.3.1. Zanzibar

The Hadhramautis had been trading in Zanzibar for many hundreds of years and they built the earliest mosque at Kizimkazi circa 1107. However, Zanzibar came under the control of the Sultanate of Muscat and Oman⁶ in 1698. As Zanzibar was a trading port, many different Islamic sects were represented: Ibadi, Shi'is, and Sunnis. It was a strategic launch pad for Arab traders to organise raiding expeditions into the interior of East Africa. At the time, it was a trading centre for ivory, spices, tea, coffee, gold, and slaves from the East African expeditions and later, in the nineteenth century the island began to produce cloves. One of the most notorious Swahili-Zanzibari Arab slavers was Hamad b Muhammad Jumah, also known as Tippu Tip (1837–1905). He owned clove plantations on Zanzibar where he used many slaves himself. After the Moresby Treaty of 1822, which prohibited the export of slaves to the east and south of a line drawn from Cape Delgado to Diu Head in India, slave traders turned their efforts to clove plantations where African slaves were used [Sheriff 1987:108].

As former slave traders turned clove plantation owners, the merchants became wealthy enough to create waqfs in favour of Mecca and Medina in the nineteenth century [Bang 2009: 8]. Wealthy Zanzibaris established waqfs towards the maintenance of various religious purposes including sending money to Mecca. One example cited by Bang [2009] was the waqf of Muhammad b Ahmad b Umar al-Hatimi of his three plantations of clove and other trees, including the slaves thereon, where one quarter of the income thereof would be used towards the upkeep of the plantations and replenishment of dead slave labourers, the second quarter for his daughter, the third for the poor of Mecca, and the fourth for Sunni mosques in Zanzibar. By 1890, Zanzibar had become a British Protectorate.

Today, there is remaining evidence of mosques from the seventeenth century. Waqfs accounted for about 20% of the building heritage of Stone Town in Zanzibar [Khalfan 2014] with family waqfs producing more income than those for the support of mosques [Lienhardt 1996]. Eventually, waqf founding affected land administration sufficiently for the British to introduce a Wakf Commission in 1905 whose powers were formalised in Wakf Property Decrees in 1905, 1907, and 1916. This was followed by the Wakf Validating Decree of 1946 [Anderson 1970; Oberauer 2008]. Waqf property in Zanzibar today is vested in Waqf Commissioners

⁶ Today, Oman (including Muscat) is a sultanate and waqf lands constitute 25,000 acres of land in the country. In addition to taxes, zakat and waqf income flow to the sultan towards the maintenance of mosques and madrasas, and payment of qadi salaries. The majority of Omanis are from the Ibadi sect with a small minority of Shi'ites (5% of the population) consisting of the Baharna, Ajam, and Lawatiyya clans. The Lawatiyyas are the dominant business community [Mommersteeg 2012].

[Lienhardt 1996].

2.3.2. *Hadhramaut, Later Annexed to the Aden Protectorate*

Hadhramaut, on the southern coast of the Arabian Peninsula, was under Ottoman rule between the sixteenth and nineteenth centuries, and later was ruled by the Qu'aiti sultans between 1882 and 1967. In 1888, when the sultan signed a treaty with the British, it became part of the British Aden Protectorate giving the British the right to post a Resident advisor to the sultan.

The practice of waqf founding was established within Hadhrami culture from Abbasid times in the tenth century [Miran 2009] and continued throughout Ottoman rule. Through their travels and trade, the Hadhramis introduced the practice of family waqfs and other endowments for religious or public purposes in accordance with Ottoman usage at the various trading ports they settled in.

In a report written in 2010 [Thompson 2010], it was found that land tenure governing farmland (consisting of 1% of the country) was divided into four: communal land (*al-bilad*), private land (*milk khaas*), state land (*aradi al-dawla*), and waqf lands. Waqf lands make up 15–20% of cultivated land in some communities, demonstrating the widespread practice of waqf.

2.3.3. *Mauritius*

Aapravasi Ghat at Port Louis was a major reception centre for slaves for the British plantations on the island of Mauritius. These slaves came mostly from East Africa. When slavery was abolished in 1835, the planters were given compensation by the government for the loss of their imported slaves. In response, the planters brought in indentured labour from India who worked on the sugarcane plantations and in construction. Today, 17% of Mauritius' population of 1.2 million people is Muslim and there exist there 377 waqfs: 105 family waqfs, 150 religious waqfs, and 122 philanthropic waqfs. About 251,000 acres of land on Mauritius is agricultural land, and 10,000 acres of that are under waqf endowments [Cahill and McMahon 2010]. The first mosque was built in 1805. In 1941, the British introduced the Waqf Act, a law similar to the others controlling waqfs in other British areas of influence. Mauritius became an independent state in 1968.

2.3.4. *India*

The earliest waqfs were sultanate waqfs of Multan, an example of which is the

waqf of Muhammad ibn-Sam, a Ghurid sultan, dedicating two villages in favour of the Jama Masjid of Multan [Kozlowski 1985]. In addition to mosques, religious institutions related to Sufi *pirs* or saints (such as their tombs, shrines, and *khanqahs*⁷) were also the beneficiaries of waqfs [Kozlowski 1985]. The Fatawa-Alamgiri law compiled in 1656 under Aurangzeb asserted the validity of family waqfs [Fratcher 1971].

Returning to the subject of sultanate and noble waqfs, British administrators faced problems arising from the mismanagement of those Hindu and Muslim religious and public endowments [Kumari 1998]. In response, the British Raj government introduced laws such as the Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817 and later the Religious Endowments Act, 1863 (Act XX). These laws transferred the rights to land owned and the control of all public Muslim and Hindu endowments initially to the Boards of Revenue and later to the local governments and managed by the respective Division or District Committee set up in the different states [Iyer 1905]. At that point in time, private endowments were not included in this legislation.⁸

Other legislation controlling endowments included the Mussalman Wakf Act, 1923 (Bombay) and the Bengal Wakf Act, 1934. In what is today Pakistan, public charitable endowments were regulated by the Charitable Endowments Act No. VI of 1890 that vested all public charitable endowments in a Treasurer as bare trustee, but were managed by individuals as managers under separate schemes. The Mussalman Wakf Validating Act 1913 validated all family waqfs founded after the date of the Act only. This statute was effective for all of India except states ruled by Rajpramukh. Later, the Mussalman Wakf Validating Act, 1930 gave retroactive validity to all family waqfs and extended the operation of the Act to all of India.

2.3.5. *The Straits Settlements*

The British East India Company founded trading ports at Penang in 1786, Singapore in 1819, and finally through a treaty with the Dutch in 1824, obtained possession of Malacca. The four trading ports became the Straits Settlements with the grant of the Charters of Justice, 1826. The land system administered in the Straits Settlements was that of the British deed system, later replaced by the Torrens system. However, in line with their Indian practice the Company agents decided that the Malay religion (i.e. Islam) and customs would be respected in areas of marriage

⁷ A *khanqah* is a combination of a hostel for the disciples of a saint as well as a school for would-be mystics [Rabi 2011].

⁸ *Delroos Banoo Begum v. Nawab Syed Ashgur Ally Khan* (1875) 23 W.R. 453; SC 15 BLR (Bengal Law Reports) 167 and affirmed by the Privy Council in ILR (Indian Law Reports) 3 C 324.

and inheritance. In April 1867, the Straits Settlements were transferred to the control of the Colonial Office in Britain and became a crown colony governed directly by the Bengal Presidency,⁹ thus beginning a policy of active British government in the Straits Settlements together with the other Malay states.

Today, there remains evidence of mosques in the Malay Peninsula built in the early part of the eighteenth century prior to British arrival. Kampong Laut Mosque at Nilam Puri in Kelantan (1730s) [Md Sharif and Hazumi 2004] and Kampung Hulu Mosque (1728) and Kampung Kling Mosque (1748) both of which are in Malacca, are waqfs by operation of law under classical Islamic tradition.¹⁰

In Singapore, Hadhrami Arabs had also become very influential and wealthy due to the nature of their shipping networks [Yahaya 2006: 15], establishing numerous public and religious waqfs. Most leading Hadhrami families in Singapore also established family waqfs in addition to public purpose waqfs [Othman 2006: 12, 13], printing presses, schools, and associations [Abaza 1997; Freitag 2003].

In Penang the first Hadhrami traders to arrive and settle there came from Aceh in Palembang, the most prominent of them being Tengku Syed Husin al-Idid who arrived in Penang with his family and retinue in 1792 [Lubis n.d.]. They too established numerous waqfs.

Despite the presence of the Hadhramis, the dominant trading group in the first hundred years of British settlement in Penang was the Maraikkayars (described as Arabised Tamils) and indeed out of 67 mosques on the island, the Maraikkayars and their descendants, the Jawi Peranakan, or Indian Muslims [Feener and Sevea 2009], established 22. In 1801, Lieutenant-Governor George Leith had appointed Cauder Mohudeen as the Kapitan Kling [Khoo 2002]. At the beginning of the nineteenth century, two of the largest waqfs in Penang were the Kapitan Kling Mosque waqf (upon which land was granted by the East India Company¹¹ and together with the Kapitan's personal waqf connected to it, was collectively referred to as "Kapitan Kling Mosque waqf") and the Acheen Street Mosque waqf which was

⁹ Bombay Regulation 4 of 1827 s. 26 "provides for the application, in default of any relevant statute, of the custom of the country, the law of the defendant, or justice, equity and good conscience" see [Kozlowski 1985: 625].

¹⁰ See also *Haji Salleh b Haji Ismail and anor. v. Haji Abdullah b Haji Mohammad Salleh* (1935) 4 MLJ (Malayan Law Journal) 26 where it was held by the court that evidence of usage as a mosque is presumptive evidence of a charitable trust.

¹¹ During the tenure of Lieutenant-Governor George Leith, the East India Company had demarcated Pitt Street (now known as Jalan Mesjid Kapitan Keling) for locating religious institutions. Accordingly, the East India Company issued grants for the Kong Hock Keong (Goddess of Mercy Temple), the Kapitan Kling Mosque, St. George's Church, the Mariamman Temple, the Khoo Kongsi, and the Acheen Street Mosque which were all laid out within the vicinity. See [Yahaya 2006]. The Maraikkayar community regarded the land granted by the East India Company for the Kapitan Kling mosque as a Muslim waqf.

endowed by Tengku Syed Husin al-Idid at some point between 1808 and 1920 [Lubis n.d.].

Numerous legal disputes amongst the descendants of the *waqif* (endower) of the various waqfs were referred to the Straits Settlements courts¹² resulting in decisions rendered in accordance with the English common law on trusts. This happened within the Tamil Hindu community as well. According to V. Sinha [Sinha 2011: 90], many problems had arisen out of the self-regulated mechanism of waqf, and both the Muslim and the Hindu communities had appealed to the British for support in their internal disputes, resorting to legal machinery, lobbies, and petitions.

Consequently a Commission of Enquiry was appointed in 1903 [Khoo 2002] resulting in a report to the Straits Settlement Legislative Council on the state of waqf lands and properties in Penang (1904). The Commission of Enquiry reported on the deteriorated conditions of the waqf lands, slums that existed thereon, and the numerous legal disputes arising from disgruntled descendants complaining against trustees.

Arising from the Report of the Committee of Enquiry and (in this writer's view) their Indian experience, the Straits Settlement Government (which by that time was situated in India) decided to legislate the Mahomedan and Hindu Endowments Ordinance No. 92 of 1905 ("MHEO").

3. British Colonial Atlantic Trade

3.1. *Atlantic Trade*

The Atlantic trade covered a large region stretching from the west coast of Africa to the east coast of North America, and extending as far south as the Caribbean and the east coast of South America. This trade involved a constant export and import of goods in a circular fashion between Britain, Africa, and the Americas. Gold, spices, and slaves were obtained from West Africa, manufactured goods from Britain, and raw materials and natural resources such as sugar, tobacco, rice, cotton, fur, iron ore, flour, and rum were extracted from the colonies in the West Indies/Caribbean and North America and traded between the ports.

British colonial Atlantic trade was indirectly connected with the Arab Trans-Saharan trade at the African end. By the sixteenth century, Arab traders started trading with the Portuguese through trading ports in West Africa. Commodities include

¹² An example is the case of *Fatimah v. Logan* (1871) Kyshe which concerned the will of a prominent Indian Muslim, Mohamed Merican Noordin who had created an endowment in 1869.

ivory and gold, but African slaves increasingly became a big commodity. The British, not to be outdone, became involved in the lucrative trafficking of human beings. The Royal African Company, chartered in 1660, had the monopoly of British trade in West Africa. It later became the Gambian Adventurers in 1668 and existed until 1752. It was reported to have been responsible for the transportation of 5,000 African slaves yearly across the Atlantic, during its existence. The main British slave ports in West Africa were at Fort James (modern Senegal), Bunce Island (Sierra Leone) [Campbell 2007], Dixcove, Komenda, Cape Coast, and Accra (now Ghana, but previously all of this formed the British Gold Coast). Under the series of British Navigation Acts starting in 1651, which ruled on British mercantiling activities over the next 200 years, all colonial exports had to be transported in British ships and to pass through British ports, whether or not the final destination was Britain. In this fashion too, London, Liverpool, and Bristol became major ports in this trade. The ships depended on the trade winds to navigate the oceans and thus African and other slaves meant for faraway places were also transited and traded at these British ports. In the West Indies or Caribbean, the British established trading ports in the Bahamas, Bermuda, Jamaica, and Trinidad and Tobago.

The British North Atlantic trade ended in the early 1800s with the American wars of independence, the introduction of steam-powered ships that did not depend on trade winds, and the abolition of slavery in 1807.

3.2. Islam and the Atlantic Ports

Unlike in the Indian Ocean, there was no spread of the religion of Islam to these areas in a definitive manner. Non-Muslim landowners occupied the east coast of North America, during the British colonial period and after. There may have been some pre-Columbian Arab or Muslim contact in these places, but the evidence is scant. However, African slaves from West Africa were imported in the millions, and a number of these were Muslims. Later, indentured labourers may have brought Islam and Islamic practices to this region.

3.2.1. Pre-Columbian Arab Traders in the Americas

There are assertions that contrary to claims that Christopher Columbus had been the first to voyage across the Atlantic Ocean to found the Americas [Ali 2011; Van Sertima 1976; Yucel 2007] there are archaeological, linguistic, and genetic plant evidence indicating that Arabs or West Africans had been undertaking these trips for thousands of years before that. Evidence based on foods, plants, and words that have transplanted themselves from one continent to the other (New World to

Old World and the converse) indicate that Arab-Africans may have travelled the Atlantic ocean on return journeys for many years before Columbus “founded” the Americas [Jeffreys 1954; Li 1960–1961].

3.2.2. *Muslim African Slaves*

Historically, some African wars acquired other African slaves through internecine. From the mid-fifteenth to the nineteenth century, the Americas were populated by African slaves traded through Portuguese ports in West Africa, most of whom were obtained through kidnapping, purchase, and African tribal wars. It is believed that the adoption of Islam in West Africa, although not abolishing slavery, did reduce the causes of enslavement whilst encouraging manumission. However, in practice this was not so, and African Muslims sold their co-Muslims especially in times of war, often on the pretext that they were lax in their practices or were “*kaffirs*” [Diouf 1998].

Between the sixteenth and nineteenth centuries, an estimated 11 million Africans were forcibly transported to the Americas (North and South America, including the West Indies) and commoditised as slaves. About 2 million of them died during the long sea voyage (ominously termed the Middle Passage). Of the number transported, 40% were sent to the West Indies and about 45% to Brazil. The remainder were sent to North America and other parts of the Americas. British participation would account for approximately 15% of all Africans transported in this manner. Scholars estimate that about a third of these forced migrants were West African Muslims, consisting of people from the Fulani, Hausa, Wolof, Vai, Mandingo (Sierra Leone), Yoruba [Diouf 1998] tribes in the Senegal-Gambia and Nigeria regions. Conservatively, this translates to more than half a million African Muslims who were forcibly transported over a course of 400 years.

There is evidence that amongst those transported were a number of princes, aristocrats, and religious scholars (jurists, teachers, and *marabouts*). Some of them have been identified including Bilali Muhammad who wrote a manuscript in what appears to be a reproduction of the *Ar-Risala*, the Maliki treatise of Ibn Abi Zayd al-Qayrawani, in a mix of the Arabic language and his mother tongue, Job ben Solomon (Ayub bin Sulaiman Diallo) the first slave to return to his homeland [Diouf 1998; Proglor 2008], and Lamine Kaba, a religious teacher [Bayoumi n.d.].

Some of the Muslim slaves in Jamaica ran away from their owners and formed communities in the jungle (known as the Maroon communities) [Afroz 2007], but due to isolationism and lack of learning, the religion metamorphosed into a Maroon or “island Islam.” Today, the culture of the Maroon bears strong traces of Islamic influences [Afroz 1999]. An island-wide slave rebellion occurred between 1831–1832, later called the Baptist rebellion, as all the slaves involved had

previously been forced into conversion to the Baptist church but had continued to practice their Islamic faith in secret. These crypto-Muslims were led by religious teachers, the most well-known being Muhammad Kaba (or Robert Tuffit/Pearl), who was a Mandingo born near Timbuktu, Mali and a religious scholar before his enslavement. The captured leaders of the rebellion were brutally put to death by the British, and this essentially wiped out the practice of Islam amongst the slaves thereafter.

In 1807, the British passed the Slave Trade Act that abolished the slave trade in Britain and also encouraged British action to press other European states to abolish their slave trade. This ended the Atlantic slave trade for the British but it did not abolish the practice of slavery itself in the colonies which ended only three decades later with the Slavery Abolition Act 1833, and only after facing bitter opposition and demand for compensation from the state by the colonial planters [Klein and Vinson III 2007]. Afroz [2011] even attributed the ultimate abolition of slavery in the Caribbean colonies to the Baptist rebellion mentioned in the previous paragraph.

3.2.3. *Indentured Labourers*

As mentioned earlier, between 1820 and 1938, approximately 12 million people left their homelands in Europe, India, and China to become migrant workers in plantations, mines, factories, and railroads within the British Empire [Dunn and Mitchell 2015]. In contrast to slave trade which was a private endeavour, indentured labourers were brought in and supervised under government auspices. One of the reasons is the colonials' refusal to pay their former slaves fairly or to treat them as freedmen, preferring to pay double the cost of a slave to the government for the contract of an imported labourer [Sewell 1861]. British Guyana became a major importer of indentured plantation labourers from Asia and Europe after the abolition of slavery. Between 1838 and 1919, almost 240,000 Indian indentured labourers arrived in British Guyana, and almost 144,000 at Trinidad. Although 85% of them were Hindus, the remainder consisted of Muslims and other religious adherents [Pillai 2004]. A similar situation occurred for the island of Jamaica [Afroz 2003].

Most of the Indians arriving as indentured labourers were fleeing the breakdown of the social fabric in India arising from the "zamindari" system. They were primarily uneducated and economically depressed, particularly the Muslims. Amongst themselves, the imported Indian labourers looked down upon the Muslims who were identified closer to the African ex-slaves. The majority were Sunni, with a few Shi'ites and Wahabbis. The Muslims kept to themselves and developed their own brand of "island Islam" based on their rudimentary knowledge brought with them from their native country [Kassim 2002], setting up make-shift "*masjids*"

wherever they settled. After some years, a few sent their progeny back to India for education, and they in turn returned with a new ideological approach to Islam under the name of the Ahmadiyyah movement.

Today, the Muslim population of Guyana consists of about 55,000 individuals (7% of the country) most of whom are descended from the indentured labourers. These, together with those of Trinidad and Tobago, represent the largest Muslim community in the Caribbean. In Jamaica, the Muslim descendants of the labourers that arrived from India account for about 0.15% of the population, numbering about 4,000 individuals only [Afroz 2003].

3.3. Evidence of Waqf or Waqf-like Practices in the Ports and Areas along the Atlantic Trade Route

This study focuses on the beginning of Islamic elements starting in West Africa (particularly the Mali-Senegal-Gambian region) highlighting Freetown in Sierra Leone, a brief overview of North America, and the Caribbean ports of Trinidad and Tobago, and Jamaica.

3.3.1. West Africa

Today, there is little evidence of waqf practices or laws relating to waqf in West Africa [Kozlowski 1985: 2; Anderson 1962] other than mosques and religious schools in Senegal, Sierra Leone, and Ghana. According to Iliffe [1987], by contrast to North Africa, in West Africa early waqfs were confined to a single region covering Timbuktu, Djenné, and Masina. According to Elias Saad [1983] Timbuktu, incorporated around 1325 into the Kingdom of Mali, was founded as a trading town of merchants and became city of learning wherein scholars and jurists constituted the highest level of status and social stratification. They headed the leading merchant families of Timbuktu of the time. Thus the social traditions of Timbuktu between 1400–1900 were solidly founded on Islamic scholarship and learning [Saad 1983]. Amongst the learned was a hierarchy of fully-fledged jurists (*fuqaha'*), scholars (ulama), elementary school teachers (*mu'allim*) and other mosque functionaries, scribes, and governmental secretaries. The locals also referred to the clerics as *marabouts* [Mommersteeg 2012]. In addition to *maktabs* who provided Qur'anic literacy to children and adults, acquisition of learning was approached through a madrasa or from an established scholar who might teach at the madrasa or at his home or one of the mosques. Some eminent scholars may accept select students to provide them with tutorials (*durus*) for which they may be accredited through a teaching permit (*ijaza*).

Ownership of cattle, camels for dairy and meat, sale and purchase of plantations and provision of urban property for storage were among the sources of wealth for the scholars. Slave trading, although occurring did not appear to be a major source of income [Saad 1983: 140].

Due to the fragile nature of the building materials in the area [Saad 1983: 137], there remains little built evidence of waqfs. One is the Sankoré Madrasa and Masjid complex¹³ in Timbuktu which was already established as an institution of higher learning in West Africa by the end of Mansa Musa's reign in 1337 [Saad 1983]. According to chronicles, there was also evidence of a waqf of a hostel in Medina for West African pilgrims by Askia Mohamad of Songhai (the ruler of the region) in the fourteenth century, and later a waqf of a casket presented to the central mosque of Timbuktu to hold copies of the Qur'an. Later in the sixteenth century, a descendant Askia Daoud founded a waqf of a plantation for the poor of Timbuktu, to be maintained by 30 slaves. Later he made a waqf of 27 slaves for the upkeep of a mosque. There were other waqfs in the form of houses, cattle, and books for students and the poor at Djenné and Masina but these disappeared by the early twentieth century.

3.3.2. *North America*

Although rare, pockets of Muslim slaves were able to both secretly and publicly hold on to their Islamic practices and hold prayers and religious classes. This occurred in the urban and port towns of the Caribbean and South America, but not in North America. Although slavery was phased out between 1800 and the 1860s and made illegal in 1833 in the northern states due to urbanisation and industrialisation, slavery continued in the rural plantation economy in the southern states.¹⁴

In these states prior to the American Civil War (1861–1865) redemption and manumission of slaves was almost an impossibility. The status of a slave was

¹³ It is also important to note the Maliki view on waqfs, as this school of law was predominant in Muslim Spain, North Africa, and Western Africa. Under Maliki law, the founder may not control the waqf and therefore the founder of a waqf cannot appoint himself as trustee-administrator. As such, it discouraged the founding of madrasas by private individuals. Accordingly, madrasas did not thrive in countries where Maliki law was observed. Only sovereigns were encouraged to found madrasas or colleges, and for this reason institutions of higher learning in Spain and North Africa were founded by kings.

¹⁴ There is evidence of the remnants of two communities of Muslim slaves on Sapelo Island, Georgia and Sea Island, South Carolina demonstrating the Islamic traditions brought by the first generation slaves from Africa in the eighteenth and nineteenth centuries. These slaves originated from the Senegambian area, a Muslim area in West Africa, and were skilled in agriculture (rice and indigo).

hereditary. Slaves were treated as commodities, the disproportionate importation of men and the selling of any children or family members made it difficult for the Africans to establish families and to accumulate assets. Accordingly it prevented the growth of a freed class of Africans, including any Muslims. The slaves were not “native” peoples to whom the Americans would allow free practice of their custom and religion. Slavery was formally abolished throughout the whole union in 1865.

In any event, according to J. N. D. Anderson [1962], it was difficult to transfer any institutional aspects of African life because the slaves had no political or state apparatus, and their familial or clan organisations had been splintered apart. If at all, only beliefs and knowledge relating to personal rituals might survive. Eventually, the practice of Islam disappeared as the Africans were assimilated into the society and religions of their masters. The last of the Muslim slaves in North America had died by the 1920s.

3.3.3. *Caribbean: Trinidad and Tobago, Jamaica*

In Trinidad and Tobago, there is anecdotal evidence of freed Muslim Mandingo slaves who had founded an association whose objective was “to maintain their religious profession, Samba acting as their priest.”¹⁵ A Senegalese named Samba Makumba who had managed to redeem himself started this association to encourage fellow religionists to use their skills to earn and save money in order to purchase land, build houses, and ensure that they had means to redeem fellow co-religionists. Another society called the Free Mandingo of Trinidad (also known as the Mandingo Society and the Free Mohammedans) had the agenda of returning to their own country and petitioned the governor repeatedly to be returned.¹⁶

¹⁵ [Makdisi 1981: 238]. Quoted in [Truman 1844: 104].

¹⁶ Similar self-organisation and solidarity occurred in Brazil by the Mina to buy the freedom of their fellow Muslims, and even secure passage back to Africa. After the 1835 Bahian (in Brazil) revolution, Sanim, a religious leader, organized a tontine or *susu* (in Yoruban language), a communal fund to which each participant contributes the same sum on a weekly or monthly basis, the purpose of which was to buy Muslim garments and help redeem the freedom of members. See [Diouf 1998]. In this writer’s view, the associations and organisations of those freed Africans are similar to the concept of the *jam’iyya* or even the Ottoman community cash waqf, although it is certain that such a term never entered the minds of these Africans when they formed their organisations. In any event, many of the Muslims were expelled and sent back to their country after the failed revolution. Additionally, a number of the African Muslims who had arrived in the Americas and the Caribbean were educated and knowledgeable, including teachers, *ulamas*, *marabouts* who were cultured and literate. There is evidence of Qur’ans in the possession of some of the slaves, and particularly after the abolition of slavery in 1888 in Brazil, many Mandingo and Fulani slaves returned to Africa, but continued themselves to trade in the Atlantic

To the extent that *masjids* and *madrastas* are the only solid evidence of waqfs in the Americas, these were founded in the Portuguese colony of Brazil and not on British territory. At a stretch, the organisations and the associations formed by the Africans in Jamaica to build assets for the purposes of redemption and assistance to free Muslim slaves might be equated to a cash waqf but for certain that was not the foremost intention of the founders. Finally, no evidence of any family waqfs has been found. The personal “island Islam” of the Caribbeans was pieced together from the rudimentary knowledge of the runaway slaves and indentured labourers [Diouf 1998]. None brought with them knowledge of waqf practices. In Trinidad and Tobago, the first mosque was built in 1850, and from the 1930s the *maktab* system played an important role in the education of the Muslims.¹⁷

British Guyana became independent in 1966, Trinidad and Tobago as well as Jamaica in 1962.

4. Findings

The preliminary findings that arose from this research brought similarities and differences between east and west to the surface, and gave out some valuable information on the effect of British trade on waqf practices.

4.1. Similarities

There are some similarities in both regions. First, the British established trading ports wherever they traded, bringing with them their infrastructure and their administrative and legal system. Secondly, there was voluntary and forced migration of people between the British ports in both the oceanic regions, consisting of Muslim

bringing back to Bahia and Benin in Brazil products such as soap, kola nuts, shea butter, fabric, and the Qur'an and wooden tablets upon which the Qur'ans rest. In Jamaica, Benjamin Larten, a slave, had written out his own copy from memory. In view of their knowledge, it was natural for the African Muslims to establish religious schools, as they had in their countries of origin. Thus in Dandaro and Bahia, even at a time when slaves' religions were illegal and Africans were Christians (at least on the surface), a number of Qur'anic schools were operating. Many of these were run by *marabouts*. Similar reports were found in Rio de Janeiro and in Lima, Peru. However, as the demographic of the Muslim slaves that were brought to the Americas came primarily from Western Africa, it would be safe to estimate that these were not waqf-madrastas formed by the individual religious teachers, as this is not approved under Maliki law.

¹⁷ http://www.islamicfocus.co.za/index.php?option=com_content&task=view&id=1351&Itemid=24, accessed on 3 September 2015.

African slaves, religious teachers (*marabouts* and *ulamas*), Arab or Arabised merchants, and indentured labourers. Finally, there is evidence of waqf practices (in differing degrees) in the homelands of the Muslims that had transmigrated.

4.2. *Differences*

However, it is the differences between the Indian Ocean and the Atlantic Ocean trade that give insight into waqf founding.

The Indian Ocean was familiar trading ground for Arab and Indian merchants, who travelled and settled down in the various ports along the route. It was essentially a “Muslim” ocean. The British approach towards the practice of “native” customs was allowed in the Indian Ocean ports, as they had found there already established systems of customary law, unlike in the Atlantic Ocean. The British permitted settlement by wealthy Muslim merchants and knowledgeable scholars and establishment of waqfs. In other words, British law had different effects on Muslims and the practice of waqf founding in both spheres.

Second, the “brand” or school of law subscribed to by the agents determined the type of waqfs that were founded. Whilst mosques and madrasas were evident in both the spheres, however it was only in South Arabia and East Africa (which saw few adherents to the Maliki school of law) that family waqfs and public purpose waqfs were founded.

Finally, the socio-economic level of the Islamic agent is an important difference. There is very little evidence remaining of the practice of waqfs in West Africa (the starting point of the Atlantic trade in slaves) by the local citizenry other than rulers, unlike those of Zanzibar and Hadhramaut. Only slaves (including Muslim slaves), but no settlements of affluent and wealthy Muslim merchants, were found in the West Indies during the colonial period. Slaves did not have the institutional or capital abilities to form waqfs, either in the East or the West and runaway slaves and indentured labourers had little knowledge of waqf practices. Muslim indentured labourers, although purportedly voluntary workers, found themselves barely higher in status than freed slaves. By contrast in the Indian Ocean, Arab or Arabised settlers had amassed their fortunes and consolidated their family positions with the founding of waqfs for both public and family purposes.

4.3. *Correlation and Intervening Factors*

There is definitively a correlation between British colonial trade and the spread of waqfs. However, British colonial trade was not the cause for their founding, but a factor that indirectly, intended or otherwise, encouraged the founding of waqfs in

the Indian Ocean.

Despite hundreds of years of prior Islamic presence in the Indian Ocean, there is minimal evidence of waqfs other than mosques prior to British trade. Although the British presence had no perceptible “add-on” effect to the spread of the religion in the region, the mercantile trade of the British had a positive effect on the wealth of the Muslims, which led to an increase in waqf founding, evident from the mid-nineteenth century onwards in Zanzibar, Hadhramaut, Mauritius, India, Penang, and Singapore. There were more private and public purpose waqfs in addition to mosques. English law only took effect to control or limit these waqfs when it became clear to the British of their interference with British interests.

In the “non-Muslim world” of the Atlantic Ocean (except for West Africa), the operation of English law from the outset had a negative effect on the spread of the religion to the Americas and the Caribbean (at least externally). As explained earlier, Muslim slaves in these regions did not have the capital or institutional ability to found waqfs, nevertheless they continued to practice their religion covertly, setting up makeshift mosques, religious schools, and associations for the purpose of redeeming the liberty of their co-religionists.

Thus, in a Muslim world, the presence of British trade created a multiplier effect to the founding of waqfs through incremental wealth of the Muslim merchants and traders who traded at the British ports. In a non-Muslim world, the presence of British trade created an additional effect to the founding of the more classical forms of waqfs through the covert practice of their faith by the Muslim slaves.

4.4. Further Research

This work is by no means exhaustive, and it is necessary for basic research to be carried out on waqfs in West Africa, the Caribbean, and South America. Additionally, this research only covers British trade, which accounted for only 15% of African slaves, and by inference, of the Muslim Africans who were forcibly transported across the Atlantic. As almost half of all slaves were imported into Brazil, it would add to the body of knowledge on waqfs if a study were made of such practices in Brazil.

Conclusion

From the preliminary findings, it is the conclusion of this author that where there are communities of Muslims, there is a natural impulse to establish mosques for worship (the classical waqf form), and a settled community may also form asso-

ciations or *jam'iyyas* or community cash waqfs. There are four influential factors affecting waqf founding: first, a healthy and thriving trading and commercial environment and second, the accumulation and surplus of wealth as a result of prosperity. Prior to that, no amount of religious piety would enable a Muslim to endow a waqf without capital. Third, the school of Islamic law predominant in the agent's native country is important to the type of waqfs founded and finally, the timing for the influence of English law on the Muslim community affects the intensity of the rate of waqf founding.

The conclusion is useful in helping communities and societies to encourage and plan the practice of waqf, whether as mosques, waqfs for public, religious, private or mixed or community purposes, and for governments to decide what policies and economic incentives are needed to stimulate this impulse to found waqfs.

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