

ISLAMIC STATEHOOD  
AND *MAQASID AL-SHARIAH*  
IN MALAYSIA

A ZERO-SUM GAME?

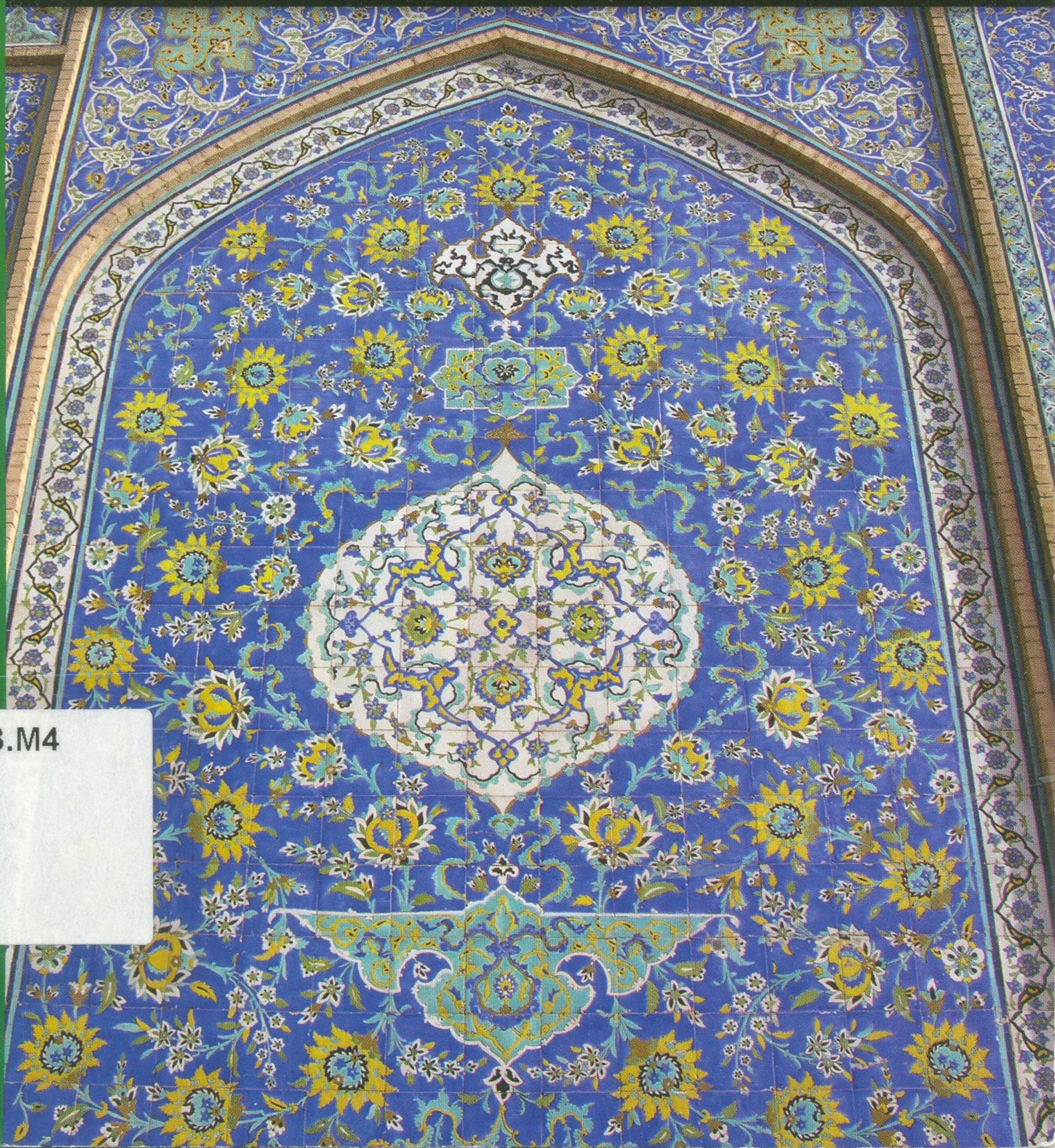
KIM BENG PHAR

ISLAM IN SOUTHEAST ASIA: VIEWS FROM WITHIN

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KIM BENG PHAR

國立台灣大學圖書館



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ASIAN MUSLIM ACTION NETWORK  
SILKWORM BOOKS

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*To my loving mother, Lim Phoe Toe*

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## FOREWORD

### Problematizing views from within “Islam(s)” in Southeast Asia

In 1953 the late Gustav von Grunebaum organized a conference of leading European scholars of Islam, the first to undertake a historical and critical self-understanding of “Islamic studies.” The conference examined relationships among Muslims, and between Islam and various cultures. It found that the assumptions and methods used in fields of study like Islamic history lagged a century behind those used in European history. One year later Bernard Lewis remarked that the history of the Arabs had been written primarily in Europe by historians with no knowledge of Arabic and Arabists with no knowledge of history.<sup>1</sup>

Half a century later, research on the subject has changed. There is an increasing number of studies on Islam written by Muslims who know the faith, the cultures, and the practices in different contexts—the works by Akbar Ahmad, Mahmoud Mumdani, Chandra Muzaffar, and Nurcholish Madjid are just a few examples among many. Also changed is the global context itself. Now perhaps more than ever, “Islam” is more than just a description of a fifteen-century-old faith shared by one-and-a-half billion people. The word has strong emotive qualities for those both within and outside the faith. Two decades ago the late Edward Said wrote, “For the right, Islam represents barbarism; for the left, medieval theocracy; for the center, a kind of distasteful exoticism. In all camps, however, there is agreement that even though little enough is known about the Islamic world there is not much to be approved of there.”<sup>2</sup> It is therefore important to understand, from their own perspectives, the contemporary problems that Muslims are facing.

Works in this series, *Islam in Southeast Asia: Views from Within*, join many other writings on Islam by authors at the periphery of scholarship, using assumptions and methods that may no longer differ from those

used in the centers of learning. But if such is the case, how is this series different from the other writings on Islam that are presently flooding the popular and academic landscapes?

To state the obvious, this series addresses Islam in Southeast Asia. In relation to the Islamic world, where the sacred geography, history, and language of the Middle East seems to have established that region as the center, Southeast Asia is clearly seen as the periphery. But it is misleading to conceptualize Southeast Asia as a single sociocultural entity. As is true elsewhere in the world, societies in Southeast Asia are heterogeneous. Muslims in Indonesia and Malaysia, for example, lead lives that differ from those in Thailand and the Philippines because of the different realities facing majority and minority populations in the respective countries. Furthermore, whether Muslims constitute a minority or a majority, their lives differ again when seen in contexts influenced by Javanese culture, British colonialism, Filipino Catholicism, or Theravada Buddhism, among other things. In short, the cultural topography of Southeast Asia is a rich multiplicity.

Consequently, Islam as believed in and practiced by people in the diverse worlds of Southeast Asia is not necessarily singular, since there could be as many Islams as the various contexts that constitute them.<sup>3</sup> The problems facing Muslims in Southeast Asia will therefore vary. Those portrayed by researchers in this series are unusual, and their analysis is at times groundbreaking, but what they underscore is that Southeast Asian Muslims struggle with multiple identities in sociocultural contexts destabilized by globalizing forces. In addition, the fact that this research is carried out by young Muslim scholars is important; the “new generation” factor could explain both the distinctive set of problems these researchers are interested in and the fresh approaches they use.

The “views from within” approach, however, is not without its own potential problems. To engage in studies claiming to be “views from within” is in some ways to guard against the study of “others” as the study of one’s own self, because in such a situation writers face other types of realities that are possibly distorted in some other ways. It is therefore important

for readers to appreciate the effort researchers make to situate themselves at a distance that gives them a better perspective on the social realities of their subject while retaining their sensitivity towards, and ability to relate to, the people they are studying.<sup>4</sup>

At a time when Islamophobia is on the rise,<sup>5</sup> it is essential to find fresh perspectives that will allow us to understand the new problems and tensions facing Muslims in contemporary Southeast Asian societies, and to articulate the ways in which they negotiate their lives as members of communities of faith in a fast-changing world. This series of studies by young Muslim scholars of Southeast Asia is an important step in this direction.

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## Notes

1. Azim Nanji, ed., *Mapping Islamic Studies: Genealogy, Continuity and Change* (Berlin and New York: Mouton de Gruyter, 1997), xii.
2. Edward Said, *Covering Islam* (New York: Pantheon, 1981), xv.
3. Aziz Al-Azmeh, *Islams and Modernities* (London and New York: Verso, 1996).
4. I have discussed the problem of alterity in conducting research on Muslim studies in Chaiwat Satha-Anand, *The Life to this World: Negotiated Muslim Lives in Thai Society* (Singapore and New York: Marshall Cavendish, 2005), 25–26.
5. Akbar S. Ahmad, *Islam under Siege: Living Dangerously in a Post-Honor World* (Cambridge: Polity Press, 2004), 36–39.

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## INTRODUCTION: THE POTENCY OF ISLAM IN MALAYSIA

Islam forms what might be called a tectonic plate in Malaysian politics because of its entrenched, yet ambiguous status in the federal constitution.<sup>1</sup> While the constitution deems it “the religion of the Federation,” its exact parameters, to this day, remain unresolved. The impact of this situation can be seen in the fact that more Muslim Malays increasingly see themselves, first and foremost, through the identity established by Islam. “When asked to choose which term defined them most: being Malay, Muslim or Malaysian, 72.7% chose being Muslim as their primary identity,” writes Patricia Martinez, senior research fellow at the University of Malaya’s Asia-Europe Institute. Martinez who conducted her research in December 2005, further explains:

As their second choice of identity, more respondents chose being Malaysian (14.4%) than being Malay (12.5%). When asked if they felt all three identities, 99.4% replied “yes”. In an effort to verify the answer to the question about which identity defined them the most, respondents were asked in a subsequent question to rank the components “Malay”, “Muslim” and “Malaysian” in importance. 79% of the respondents again ranked being Muslim first.<sup>2</sup>

As this study will show, tensions often surface in the form of some Malay Muslims calling for more Islamization of the legal and political system—to keep it aligned to the ethos and demand of austere, albeit classical, Islam as practiced in the Middle East heartland. Those opposed to this process call for an instant roll back, or a return, to the spirit of the 1957 constitution, wherein Malaysia is seen as a secular state.<sup>3</sup> Concerning the former, Martinez notes,

... a majority feel that *Shariah* laws in Malaysia are not strict enough, and 57.3% want the *hudud* (Islamic criminal law) to be implemented. However, a majority, 63.3%, also opted for the *Shariah* to remain as it is under the Constitution in Malaysia (the other answer-option given to the question was, "The *Shariah* to replace the Constitution in Malaysia").<sup>4</sup>

The outcome of these tendencies is a polarizing debate between "more" or "less" Islam in the country; with each camp trumpeting the merits of their arguments, leaving the political center hollow and unbridgeable, only to invite the state to reenter the issue with perennial calls for tolerance.<sup>5</sup> But tolerance, a word whose medieval origins lie in how much one can endure any variety of poison, only delays finding a solution. Moreover, increasing the time span of the process can encourage all sides not to give in, especially those who believe that truth and time will ultimately be on their side.

In the last administration, Prime Minister Abdullah Badawi latched on to his credentials as an Islamic scholar to promote what amounts to "Islam Hadhari" or enlightened moderation in the country.<sup>6</sup> This is another manifestation of tolerance. Yet, Islam Hadhari has yet to find a niche in Malaysia. Many in the government and opposition alike remain aloof to its clarion calls for moderation. Thus, at a time when the world is witnessing more Islamic revivalism in all its forms, Islam is bound to remain deeply entwined with the future of Malaysia.<sup>7</sup> Indeed, given the predominance of the United Malays National Organization (UMNO)—which through its continued hold on power since independence has blurred the distinction between the party and the state—the possibility of a more activist reading of Islam is real.<sup>8</sup> UMNO's competitive relationship with PAS (Parti Islam se-Malaysia), an opposition Muslim party, also puts a premium on the use and mobilization of Islam for a variety of purposes.<sup>9</sup>

As a result of Malaysia's self-professed model of "moderate" Islamic politics, the world at large has never really seen Malaysia as another hotbed of fundamentalist Islam; this is in spite of the increasing suspicions

that befell Islamic groups and countries since the terrorists' attacks of September 11.<sup>10</sup> Yet if Malaysia has avoided the fervor of fundamentalist Islam witnessed in the heartland, it has also experienced the increasing penetration of political Islam in its midst, either directly or by default (as when Malaysian students educated in Pakistan and Gulf countries return home).<sup>11</sup>

Whether or not the rise of political Islam, as opposed to fundamentalist Islam, is a form of "creeping Islamization," the fact remains that Islamic resurgence since the 1970s has percolated through political parties, state institutions, and societal organizations, affecting nearly all facets of political life in Malaysia.<sup>12</sup> In a sense, this explains the controversy surrounding the issue of moral policing. That is, whether religious groups from the government or the opposition have the "right" to decide how Muslims should publicly behave and the finality of their religious choices, which invariably comes down to whether Muslims can convert to another religion other than Islam.<sup>13</sup> Along with the domestic tilt toward Islamization, Malaysia is now more sensitive to the issues of the Muslim world, especially since the end of the Cold War, in light of the ethnic cleansing in Bosnia between 1992 and 1994. The Israeli invasion of Lebanon and Gaza in July 2006 and Israel's wide-scale military offensive in Gaza in December 2008 have further radicalized Muslim opinions.<sup>14</sup>

### Islamic Multiplicity

That Malaysia has allowed various forms of Islamic groups, movements, and parties to coexist suggests some modicum of democratic experimentation—with overt monitoring from the state, no doubt. This is a good model for countries struggling with extremism. By standard academic accounts, there are at least seven forms of political Islam represented by revivalist Islamic groups that have emerged in Malaysia over the last forty years. Some of these groups include Angkatan Belia Islam Malaysia (ABIM), Al-Maunah,



Kumpulan Mujahidin Malaysia (KMM), Darul Arkam, Jamaat Islamiyah (JI), Jamaat Tablighi, and PAS. Again, like most Muslim societies, these groups range from the pietistic/peaceful types to politically ambitious, if not militant ones.

The Malaysian government is generally sensitive to all forms of "deviant teachings." Al-Maunah and KMM, for instance, were not impervious to the use of violence to challenge the secular existence of the state, with the former group even staging two arms heists in 1999 to further its organizational goals. The moment Al-Maunah was discovered, efforts were taken to eradicate it almost instantly.

Two other groups in Malaysia that are usually not discussed in the official discourse are the Sufi sect of Naqshbandi and the Shiias. The former includes a minute number of members of the Perak Royalty. The latter are those Muslims who adhere to Shia beliefs and are treated with suspicion, although their numbers are too small to warrant action from the state as yet. In both cases, their existence does not pose a challenge to the Malaysian government at this stage. Therefore, they are excluded from this study.

Despite the existence of various groups, scholars like Farish A. Noor have tended to speak about the specter of Islamic revivalism strictly from the epic struggle between PAS and UMNO. This is understandable given the high stakes in this contest. However, the fixation with PAS-UMNO should be de-emphasized because the identity politics of Muslims now goes beyond this stricture. The Muslim Professional Forum (MPF), which has very conservative views of Islam, for instance, supports neither PAS nor UMNO.

Furthermore, Jamaat Tablighi and PAS were actually established in 1952 and 1955 respectively, while Darul Arkam was created in 1968, ABIM in 1971, and JI in 1991. The continued emergence of these groups right up to the present suggests attempts to give Islam greater social-political coherence within the confined democratic space provided. Thus, the PAS-UMNO competition, while relevant and important, must be cast on

a wider canvas still. According to Muhammad Shukri Salleh, a professor in Islamic studies at the Science University of Malaysia (USM), "Only PAS, ABIM and JIM are registered with the Malaysian Registrar of Societies. PAS is registered as a political party, ABIM as a youth movement and JIM as an Islamic NGO. Darul Arkam and Jamaat Tablighi, on the other hand, operate as unregistered *dakwah* (missionary) movements."<sup>15</sup>

### Hybridization and Hyper-Exclusivity

Although the number of Islamic groups in Malaysia has been small, ranging from seven to nine at this stage, their very hybrid nature provides a microcosm that showcases Islam's fluid nature. It is this very elusiveness, however, that impels some individuals and groups to want to establish one or another stricter version of Islam. Such versions of Islam are oftentimes punitive and patriarchal. Across the aisle, both the government and the opposition continue to support certain of these stricter variants to make sure that they are not seen as "less Islamic." It is here where UMNO and PAS have been caught in a logjam: both want to put their stamp of authority on one Islam.

Yet by using Islam in an electoral contest to gain strategic advantage, UMNO has also undermined the belief of some earnest Muslims. Muslims not confident with the Islamic credentials of UMNO and PAS have, in turn, sought to assert their own Islam. This explains the division and differentiation of Islam in Malaysia. Invariably, some have therefore sought to compensate for any perceived inadequacy by joining groups like JIM and Jamaat Tablighi. The latter is strictly non-political and its members seek to live according to the habits and practice of the Prophet Muhammad, sometimes by spending forty days and nights in the mosque. Others have even taken to joining extremist militant groups like the Jamaat Islamiyah (JI).

Those that join JI, however, are religious firebrands who, having seen through the hybrid nature of Islam in Malaysia, now seek an even purer

version of Islam that translates itself into crude militarism. The Malaysia case, therefore, offers a glimpse of the opportunities with which Muslims, seeking Islamic reaffirmation in the temporal realm, enter and exit different Islamic groups.

Of particular note are Malaysians, such as key JI lieutenant, Noordin Mohammad Top, who is now on the run from Indonesian authorities, as he attempts to answer to a seemingly higher calling by rejecting the Islamic options in Malaysia and confining himself to a path of violence. Obviously, such members do not represent anyone other than themselves. However, therein lies the danger they pose to all.

The conservative, almost exclusive, bent towards strict Islam among the government and opposition is also due to their tendency to embrace wholly what amounts to “commanding right and forbidding wrong”—often assumed as a cardinal feature of Islam—without first understanding the nuances at play. Yet, the reality is many times more complicated. This is because the simple act of “commanding right and forbidding wrong” has historically taken on a different context and meaning each time the dictum has passed through the hands and pens of different scholars. And, this has been the case over the course of fourteen hundred years of Islamic history.<sup>16</sup>

### Advocating Virtue and Forbidding Vice: The Faux Pas

While it is true that “commanding right and forbidding wrong” is derived from the Qur’an, as there are nine authoritative verses that speak of it, the actual exegesis is varied and rich. Even the Prophet Muhammad’s recorded sayings show an ambivalent thrust and tenor. This is because there are three *hadith* (records of the Prophet’s deeds and actions), each of which takes a different view of the verses.

The first *hadith* is based on separate degrees: When one cannot change things for the better with one’s hand (direct and physical engagement),

then it should be done with one’s lips (oral persuasion and admonition), and finally with one’s heart (through prayers and supplication to God). The second *hadith* looks to the three “priors” (*khisal*) that a Muslim must have before he can exercise his responsibility. Thus, according to the Prophet Muhammad, a Muslim must be “civil, knowledgeable, and fair,” before he or she can resort to commanding right and forbidding wrong. The third *hadith* attests to some links with the first. Rectifying any actions with one’s “hands,” for instance, is strictly the preserve of the political authorities. Doing it with the tongue is the domain of the scholars. And, doing it with one’s heart is the initiative of the common people.

Based on the three *hadith*, the dictate of “commanding right and forbidding wrong” is very wide yet selective. It is not something that just anyone can perform. Indeed, the Islamic tradition of *tafsir* (early Qur’anic exegesis) demonstrates that the classical scholars were split on the meaning and practice of “commanding right and forbidding wrong” almost from the start.

To begin with, early jurists could not resolve the issue of who has the duty to command and prohibit. How can these twin duties be acquired or reconciled? To whom shall the “command” be addressed? Would it be to all and sundry, or confined to rulers and religious leaders? Would the “call” be restricted to Muslims, or open to non-Muslims? On all these issues, scholars were unable to draw any firm conclusion.<sup>17</sup> This is because the three *hadith* gave glimpses of the tensions, but did not clarify them. Neither did the nine Qur’anic verses elucidate any instruction.

The handful of key Muslim scholars working in the eighth century AD did not appear too bothered with this command, unless it was linked to “enjoining belief in God and his Prophet.”<sup>18</sup> In other words, to propagate Islam and *tawhid* (the unity of one God) as well as to forbid polytheism (*shirk*) were both considered sufficient to fulfill one’s responsibility to the “command.” It was not until about two hundred years later that Abu Ja’far Muhammad ibn Jarir al-Tabari, an eminent scholar, explicitly linked “commanding right and forbidding wrong” to all things forbidden by Islam.

Even then Tabari could not create a following, due to the divisive debate over this issue.

With the consolidation of the state structure, the power of punishment grew proportionately, and the obligation of the individual and collective polity to “command virtue and forbid wrong” also came into sharp relief. A Muslim who might offer bold, albeit correct, advice to the sultans or the caliphs, for instance, might encounter instant rebuke, if not death. Thus the equally pertinent debate is about the extent to which a person must assume bodily and other risks to exercise this so-called Islamic duty.<sup>19</sup>

Scholars of the spiritual lineage of *Sufism* also differed on the best “methods” to exercise the command because of Sufism’s internal focus on changing the heart, which forms the core of one’s beliefs, rather than forbidding any outward manifestation of improper behavior. Invariably, it would be another three centuries before the subject was tackled in a systematic manner by the famed theologian Imam Abu Hamid al-Ghazali.<sup>20</sup> Even then, the command is clearly not a “universal responsibility,” as Ghazali’s doctrine excludes prepubescent boys and grown women from having this right.

Despite his early Sufi inclination, Ghazali explains who could exercise the responsibility, and under what circumstances it could be introduced. For instance, only when exhortations have failed can individuals use arms or physical force. Even then Ghazali made no mention as to how long the exhortations must continue before they can be deemed to have failed. That said, Ghazali was clear that armed brigands could not be formed unless they were first sanctioned by the legitimate authorities. Nor is merely getting permission enough. Intended actions to exercise the command must not bring about anarchy nor should the leaders be targeted, lest chaos result.

Notwithstanding the numerous caveats, because of Ghazali’s influence and systematic exegesis, Islamic reformers in the nineteenth century soon adapted the “command” to their political ideology as it happened to coincide with the attempt to create an Islamic state. Institutions like

*nasihat* (advice), *shura* (consultation), *ikhtilaf* (disagreement and difference of opinion), and *hisbah* (public accountability and ombudsmanship) were invariably neglected.

Yet in the haste to demarcate right and wrong, the Islamists in Malaysia, not unlike those in the Middle East, have taken the path to punish and police. As such, this binary approach creates a zero-sum situation, whereby the introduction of Islam is either between choosing Islamic statehood first, or alternately, sacrificing Islam altogether if one does not choose the *hudud*, or Islamic criminal law. Such stark choices have the effect of stultifying the religious and political imagination of Muslims on how to create a better society.

Thus, what is otherwise a religious issue—confined by Ghazali to individuals of sound mind and character at that—has organically become a full-fledged doctrine. This trend continues in the twenty-first century. Indeed, the prime reason for establishing an Islamic state has been to equate “commanding right and forbidding wrong” with the dictate to control human behavior.<sup>21</sup> So far, the tendency to re-appropriate this command in a centralized state is strongest in Saudi Arabia and, was at one stage, in Afghanistan under the Taliban.

This is unfortunate because it is a mark of the proponents’ arrogance to know what is good and bad, when, in fact, the command is inherently dynamic in origin and interpretation. It also renders a strictly individual responsibility in Islam to an amorphous collectivity, though one rested in the reins of the state. Whether Islamic parties and groups are aware of the nuances of the command is open to question. But anecdotal evidence seems to suggest that more and more Islamic groups are attuned to an activist-*cum*-collectivist reading of the “command,” as marked by their receptivity to moral policing in Malaysia, for instance. To further delineate the issue as to why Islam, not unlike other religions, can take a fundamentalist turn, it would help to explore the concept of religion itself.

## On the Essence and Tensions of Religion(s)

The Latin term "*religio*," which is embedded with the meaning of "connection," presupposes a spiritual relationship between God and humankind. It is a relationship that is both powerful and tenuous because of the "mysterious" or "hidden" nature of God.<sup>22</sup> Over the course of time, religions have been sustained by a diverse range of prayers, ceremony, quiet meditation, and systematic exegesis.<sup>23</sup> Yet, since "God" is not given to empirical confirmation, humans are often left to speculate on the nature of their relationship with the Divine. The great variety of religious expression in the world reflects this complicated, dynamic process.

Invariably, some individuals and religious groups have come up with ideas and elaborate programs to re-engineer societal relations and power structures.<sup>24</sup> Currently, of all the ideas being discussed, none is having a more profound worldwide impact than the concept of Islamic statehood conceived by the Islamists. It is a political-*cum*-philosophical venture that Parvez Manzoor, a leading contemporary Muslim thinker based in Sweden, calls "a totalitarian project with totalistic philosophy."<sup>25</sup> What makes it so tension filled is the Islamists' determination to force an agreement of what Islamic statehood and law are all about, and how allegiance and compliance must be totally and quickly rendered in pursuit of the best form of Islam.<sup>26</sup> It is because of the demand for forced convergence—in ideology, in institutional form, in legislative approaches—that Islamists have risked splitting society apart, as the decisions are confined to a narrow band of (religious) choices.

### The Zero-Sum Dynamic

Discourse on Islamic statehood, or alternately *shariah* (Islamic law), in Malaysia renders all discussions a zero-sum venture. Both alternatives are presented in a manner that is extremely punitive and "sanctionistic,"

leaving little space for Muslims and non-Muslims alike to integrate the best of both options, let alone consider them separately. From the perspective of legal history, this view of Islamic law as punitive can, in part, be traced back to the establishment of the Malacca kingdom.<sup>27</sup>

Although Islam had been brought to the Malay Peninsula much earlier, it was not until after the conversion of Parameswara, Malacca's first Hindu sultan, in the early fifteenth century that Islam gained a strong foothold on the Peninsula and began to spread from Malacca to other parts of Malaya. Malacca became a Muslim kingdom around AD 1403 and Prince Parameswara adopted the name and title of Sultan Iskandar Shah. From the perspective of legal history, the Malacca Sultanate is important in that it provides a context in which to understand the peculiar nature of Islamic law in latter day Malaysia. This is because it provides evidence of what is probably the first extensive legal codification in the Peninsula, including evidence of how Islamic law was perceived in this early society. The evidence lies in two digests of law dating from the end of the Malacca Sultanate's heyday that are rich in a mixture of relics of Hindu law overlaid with Muslim law and Malay indigenous law.

The two digests are *Undang-undang Melaka* (Laws of Malacca) and *Undang-undang Laut Melaka* (Maritime Laws of Malacca). The *Undang-undang Melaka* is comprised of forty-four chapters and claims that its laws were adhered to in "all large lands by all the great rulers and their viziers, and on the customs in the independent areas and villages."<sup>28</sup> It includes discussion of the responsibilities of the ruler and his chiefs, prohibitions amongst members of the community, and penalties for criminal and civil offenses, as well as family law and other matters.<sup>29</sup> *Undang-undang Laut Melaka* has twenty-five chapters and provides regulations concerning maritime matters such as the duties of a ship's crew, rules regarding sea voyage and trade, jurisdiction of the admiral, and also penalties for criminal offenses. Both digests were based on the patriarchal law of the *Adat Temenggong* and the Islamic law of the Shafi School of Law. *Undang-*

*undang Melaka* provides penalties both under Islamic law as well as under local customary law.

*Undang-undang Melaka* shows a stronger influence of Islamic law with eighteen of the sections providing penalties under Islamic law, compared to the *Undang-undang Laut Melaka*, which has only one such section. The Malacca codifications led to other Islamic codes being drawn up in the other states of the Peninsula, and also led to the historically acquired impression that law is meant to serve a "sanctionistic" or punitive function.<sup>30</sup> Later this feature was implanted into the Malaysian legal system, which has since had an important impact on how the ruling elites and opposition in Malaysia think about Islamic law or seek to project their versions of Islamic law, respectively. But more importantly, the legally pluralistic character of Malaysia also influences how Islamic law came to be so varied yet at the same time very narrow.

To a large extent, the root of erecting an Islamic state, or alternately *shariah*, to police and punish can also be traced to the reductionism spawned by the influence from the mid-twentieth century onwards of several Muslim scholars, such as Maulana al-Maududi (1903–1979) in Pakistan, Sayyid Qutb (1906–1966) in Egypt, and Yusuf al-Qaradawi (b. 1926) in Qatar. Their influence does not obviate the fact that the Muslim world, comprising some sixty countries, has progressive reformers, or what John Esposito and John Voll call "makers of contemporary Islam."<sup>31</sup> Such reformers obviously do exist, but their voices are not being widely heard.

The works and activism of these three principal figures have had greater resonance for several reasons. First, they have preached a form of "classical Islam" that seeks to be unapologetic, in that it renounces almost every societal characteristic of the West. Second, they have sought to build their respective Islamic "state" or *shariah* seemingly based exclusively on the canons of the Qur'an and Hadith. Third, they have tried to project their "religio-political" vision guided by a mythical Islamic past where history is confined to the time of the Prophet and the achievements of the first four

caliphs. Together their efforts, plus the subsequent propagation carried out by their followers throughout the Muslim world, have served to produce a very reductionist form of Islam in which the religion is rendered into lists of what is allowed and what is banned.

## MARKERS AND BOUNDARIES OF REDUCTIONISM: ISLAMIC LAW AND THE ISLAMIC STATE

Within the context of Islamic beliefs, the existential confusion about man's relationship with the Divine is not far from the surface of Muslim thinking. Since Islam is based on submission to the will of God, as revealed most clearly in the textual tradition of the Qur'an and Hadith, the hermeneutical theory and practice of the creed can, at times, be confined (somewhat too narrowly) to the idea of "the lawful and the prohibited" (*al-halal wal haram fil Islam*). This approach, systematized by Yusuf al-Qaradawi, has gained in currency, first in the Middle East, then in Southeast Asia since the 1960s, when his book of the same title was first written. In Malaysia, Qaradawi's influence is deep, even among the governing Muslim elites. When former Deputy Prime Minister Anwar Ibrahim was president of the International Islamic University Malaysia, he spent considerable time with Qaradawi, and expressed his support for the latter's *fiqh al aqalliyat* (legal theory for Muslim minorities). Moreover, even after Anwar's dismissal on trumped up charges of sodomy and corruption, Qaradawi's ideas are still current. Islamic scholars and intellectuals at the Institute of Islamic Understanding (IKIM) also look to him for various Islamic interpretations and verdicts, such as the legality of suicide terrorism.<sup>32</sup>

Indeed, Qaradawi's inspiration underlies the conceptual blueprint of the Islamic state, as conceptualized by PAS, the only Islamic opposition party in Malaysia. PAS's concept of Islamic statehood, in fact, is built entirely on the basis of the permissible and the prohibited, with no shades of gray apparent. For instance, it would have the religious council responsible, in the main, for "commanding virtue and prohibiting vice," without any qualification of the range of responsibilities.

A clear example is the "Islamic State Document" produced by PAS in 2003, incidentally the first of its kind in the history of the party, after much demand from Malaysians for an explanation of what PAS's Islamic state

actually represents. This document clearly states that PAS will implement "Shariah to achieve the five imperatives of the *Maqasid al-Shariah* (major goals/objectives of *shariah*): beliefs, life, intellect, dignity, and property." Yet, in seeking to fulfill the five imperatives, the subsequent language of the document reads: "In implementing the *Shariah* all vices and crimes that pertain to the above stated aspects will be controlled. Man-made laws have been proven a failure in securing the security and dignity of the human race."<sup>33</sup>

Judging from this line of reasoning, punitive logic is not far from the implementation of *shariah*. In fact, despite promising to keep true to *maqasid al-Shariah's* five objectives, PAS has been totally silent on the jurisprudential methodology and tradition that would be employed in fulfilling these objectives—clarifications that would have been imperative, according to Professor Michael Cook at Princeton University. Yet, anyone vaguely informed of *shariah* is aware that different methods or schools of thought, such as the Shafii school, which is customary in Malaysia and Indonesia, can produce variation to each law. Thus, clarification and qualifications are always necessary when it comes to "commanding virtue and forbidding vice," without which the statement would be purely ideological, not jurisprudential.

PAS also stated that the reason for the creation of an Islamic state is now a *fardhu ain* (necessary Islamic obligation). To justify the creation of an Islamic state, the Islamic maxim begins: "Something becomes obligatory if an obligatory injunction fails to be fulfilled without it."<sup>34</sup> To this phrase, the PAS Islamic State Document immediately adds: "Hence, since the successful implementation of the obligatory injunction of "enjoining good and forbidding vice" and the entire good governance depends on acquiring executive power, thus the establishment of the Islamic state has become obligatory."<sup>35</sup>

In accordance with the above assertion, Islamic law, in the words of M. B. Hooker, an Islamic law specialist at Australian National University, is therefore a creature of "executive institution," rather than one of Islamic

scholasticism where religious scholars debate each point of law before it is implemented. It is in this context that Manzoor, the Sweden-based Muslim thinker, argues that the Islamic state can become an “all watchful Hegelian state,” since it carries within it the administrative, theological, and bureaucratic reach to sanction and approve every mode of behavior.<sup>36</sup> How one practices Islam, in other words, boils down to observing the prescriptions (the DO’s) and proscriptions (the DON’Ts) of the Islamic state and the kind of restrictive *shariah* conceived by it—a menu put forth most succinctly by Qaradawi as early as 1960.<sup>37</sup>

Islamists (here I include any Muslims who want to introduce/integrate Islam into public life), inspired by the clarity of Qaradawi’s work, often point to the validity of this approach, especially by invoking the parallel Qur’anic injunction encouraging Muslims “to command virtue and forbid vice.” However, they fail to note that even Qaradawi, himself, openly acknowledged the difficult and unprecedented task of reducing Islam to a set of positive and negative deeds.<sup>38</sup> That this warning was not heeded, as this study will later show, is largely the result of both a superficial understanding of *maqasid al-Shariah* (objectives, imperatives of Islamic law), *fiqh* (Islamic jurisprudence), and Malaysia’s unique legal-political system.

In applying Qaradawi’s reductionist approach, the intellectual tension between Islamic statehood and *shariah* is intentionally ignored, when, in fact, it should be problematized to make the projects even more rigorous, as the introduction of Islam is already controversial enough in a modern and multiracial society like Malaysia. Instead, it has become almost fashionable for Islamists of different stripes—traditionalist, modernist, extremist, or fundamentalist—to preach, practice, and propagate Islam based on reductionism of the punitive kind. It is what Anis Ahmas, a conservative traditionalist and former dean of the Islamic Revealed Knowledge and Human Sciences Faculty at the International Islamic University Malaysia, has termed “Islam ready made to wear.” In other words, for Islamists there is nothing wrong with reducing Islam, or for that matter, *shariah*,

to a one-size-fits-all item, even though traditional Islamic scholarship is strictly against such totalitarian indulgences.<sup>39</sup>

Hence, when Islamists propose a legislative agenda, even in Malaysia, they rarely question the spirit and ethics underlying *shariah* to satisfy the five imperatives. Rather, they base their approach exclusively on sanctions and injunctions of the Islamic faith, which is, in fact, the most simplistic, if not most vulgar, rendition of Islam in the contemporary context. In Malaysia, the prints of reductionism are already apparent in all forms of Islamic discourse on politics, economics, life sciences, and philosophy. Even within the International Islamic University Malaysia, the country’s seat of Islamic learning, students and staff members cannot avoid “the claptrap of seeing Islam as a narrow prism with which all forms of behavior are screened.”<sup>40</sup> Malaysia’s International Islamic University, which is abbreviated as IIU, has been parodied by some as “Eye-Eye-You,” an obvious pun on the current tendency to pry into and judge behavior.

What is missing is an intelligent and critical assessment of *maqasid al-Shariah*, which could resuscitate Islamic social and political thinking because of its more open-ended character.<sup>41</sup> Herein lies the irony, however. Despite the call of Islamists to create an Islamic society, the current approach is heavily tilted toward creating an *Islamic state* (emphasis mine) rather than fostering a society based on ethical precepts. Islamists, especially those in Malaysia belonging to PAS, have contended that an Islamic state must come into existence first before an Islamic society can be fostered.<sup>42</sup> Although the ruling party of Malaysia, UMNO, is arguably “softer” on this position, even their Islamization program is not without its punitive elements, which are, in some cases, on par with those of PAS.

## The Concept of Islamic Statehood: Reassessing al-Maududi and Sayyid Qutb

Before one can consider more comprehensively the debate about Islamic statehood in Malaysia, and to a limited extent *shariah*, one needs to understand the ideological underpinnings of Islamic statehood beyond what Qaradawi introduced. What is the source of the idea of Islamic statehood that has somehow found its way into the discourse of Malaysian politics? In this context, the works of al-Maududi and Sayyid Qutb are crucial, as both have paved the way for other Islamists to pursue their respective political projects, even in Asia.<sup>43</sup>

Maududi, who produced his works mostly in the 1950s to augment the creation of Pakistan, believes that an Islamic state (*dawla Islamiyya*) encompasses the understanding of God's complete sovereignty (*hakimiyyat Allah*), which, in turn, is realized in the community of Muslims embracing the view that the earth and the management of its affairs belong to God alone, who is solely responsible for order, rule, and legislation therein. Such an Islamic state, Maududi believes, can only come about through the leadership of either a caliph, who is a messenger of God, or a man that follows the Prophet Muhammad in everything he brought forth in law and legislation based on what was revealed to him from God.<sup>44</sup> Maududi affirms that this transformation entails the development of an intellectual movement that instills Islamic values amongst all members of society by educating and ultimately graduating learned men, with an Islamic intellectual imprint, in the various vocational and scholarly domains. The approach is not unlike that of "a group of vanguards" created by Lenin to help preserve the integrity of the revolution first.<sup>45</sup>

Sayyid Qutb, whose ideas were influenced by Maududi and by Hassan al-Banna, the founder of the Muslim Brotherhood, became an influential thinker in his own right in the 1960s and also advocates the establishment of an Islamic state in Egypt and beyond.<sup>46</sup> He views Islam as a totality and has devised plans towards building an Islamic state that would guarantee

the formation of an Islamic society (*mujtama Islami*). Echoing Maududi, Qutb draws on Prophet Muhammad's leadership, as a model for the conduct of Islamic politics.

Qutb's version, however, is more *proactive* (emphasis mine) than that of Maududi in its emphasis on the view that the intellectual foundation of an Islamic state is linked with political activism directed towards achieving the desired intellectual goal. Islamists, in other words, have to act on their beliefs, even to the point of launching *jihad* (which Qutb translates as "religious war").<sup>47</sup> As Qutb affirmed in his famous book *Milestones*, which since the early 1970s has served as a key tract for all fundamentalist movements inspired by al-Banna and Qutb,

The dynamic spread of Islam assumes the form of jihad by the sword, not as a defensive movement, as those Muslim defeatists imagine, who subjugate themselves to the offensive pressure of Western orientalis . . . Islam is meant for the entire globe.<sup>48</sup>

The next step in this Islamization, according to Qutb, requires that those who testify that God is one and Muhammad is his messenger renounce completely their prior commitment to the "un-Islamic" or "*jahiliyah*" society from which they come, and devote their loyalty to the new organic and dynamic Islamic movement and its leadership. Maududi and Qutb deserve to be treated at length, far more than any other Islamists, because they expanded the range and the revolutionary energy underpinning the Islamist movement.<sup>49</sup> Although Maududi and Qutb, to this day, remain the most articulate examples of those who invoke the universality of Islamic politics, their ideas are not new. In fact, they echo the views of the medieval jurist Ibn Taymiyyah (d. AH 728/AD 1328), whose work is often drawn upon in Islamist discourse.

Ibn Taymiyyah's Islamic cosmology stems from the premise that people are the servants of God, and rulers act as the agents of God over his servants, and they also act as his surrogates. Rulers, in other words, are



there to execute the "Will of God" and in a manner that can benefit people as well.

Considering the importance of such a task, only the very best persons are worthy of this sovereignty (*wilaya*). Moreover, entitlement does not come by natural or divine choice, but rather should constantly be pursued through rigorous scholarship, mental exertion, and discipline. Taymiyyah is also explicit in affirming that both rulers and the ruled are enjoined to struggle (*jahada*) in the cause of God until there is no opposition to the message of God. Subsequent Islamists, especially the traditionalists, inspired by the line of reasoning of Qaradawi, Qutb, and Maududi, have latched onto the belief that Islamic statehood represents the sole legal and institutional choice with which the ideal Islamic life in this world and the next can be pursued.

Within the context of Malaysia, despite the differences between UMNO and PAS's ruling ideologies, the Islamic agenda often boils down to what ought to be done and what ought to be banned under Islamic law.<sup>50</sup> Before one can better understand the contours of such debates, one should look first at Islam's origins in Malaysia, followed by a more systematic understanding of its role under the federal constitution, which seeks to delimit how the debate on and plans to implement Islamic law should be pursued. The former will add more perspective to how Islam in Malaysia acquired its disciplinary censure. The latter will then explain the manner in which Islam is institutionalized in the legal system.

### Islam under the Federal Constitution of Malaysia

Under the federal constitution of Malaysia, Islamic law falls within the so-called "State List," that is, it is a matter over which state legislatures have jurisdiction, and not the federal legislature. This situation is an outgrowth of Dutch and British colonial legacy of trying to divide the power of Muslim rulers as completely as possible. In this regard, those

matters over which the state legislatures were permitted to make laws were designated as "Islamic law and personal and family law of persons professing the religion of Islam." Included in this category are matters such as succession, betrothal, marriage, divorce, maintenance, adoption, guardianship, trusts, Islamic religious revenue, and mosques.

With regard to offenses, or Islamic criminal law, the federal constitution goes on to provide that the state legislatures may make laws "for the creation and punishment of offenses by persons professing the religion of Islam against the precepts of that religion, except in regard to matters included in the Federal List."<sup>51</sup> Article 74, ninth schedule of the federal constitution, enumerates the matters over which the Federal Government has jurisdiction and power. These include external affairs, defense, internal security, civil and criminal law, the machinery of government, trade, commerce and industry, finance and health, labor and social security, and procedure and the administration of justice, including the constitution and organization of all courts other than *shariah* courts. Since the death penalty is under the domain of the Federal List, for instance, Islamic law should not legislate on anything that deals with offenses that lead to such punishment.

Under Article 74 of the federal constitution, state legislatures have jurisdiction over the "constitution, organization, and procedure of *shariah* courts, which shall have jurisdiction only over persons professing the religion of Islam . . . but shall not have jurisdiction in respect of offences except in so far as conferred by federal law. Thus, the doctrine underlining the federal constitution is that of constitutional supremacy."<sup>52</sup>

### *Shariah* Reform: An Idea Gaining in Currency

Academics such as the late Professor Ahmad Ibrahim at the International Islamic University Malaysia often wrote and spoke of the "inferior status" of Islamic law and the *shariah* courts, and the need to upgrade the system

and restore the status of Islamic law in Malaysia to its rightful place.<sup>53</sup> Upping the ante, PAS has long advocated for the establishment of an Islamic state, not just *shariah* reforms. The subordinate position of Islamic law vis-à-vis British common law has become a source of unhappiness and concern to many, especially in light of Islamic resurgence.<sup>54</sup>

Noticeable change within Malaysian society, however, really began to manifest itself after the Iranian revolution's success in 1979, which saw the overthrow of the shah and the establishment of an Islamic theocracy under the ayatollah. It was at this time that "Malay-Muslim students sent abroad for further studies slowly came under the influence of this new Islamic resurgence," according to Sharifah Suhanah at the University of Malaya.<sup>55</sup> The secular government in place at the time, led by Barisan National (BN, the National Front), was committed to maintaining unity in diversity and promoting social and cultural pluralism. In light of the growing popularity of PAS and its fiery leaders since the mid 1970s,<sup>56</sup> however, BN has been compelled to respond.

One of those responses was the upgrading of the *shariah* court system including the provision of infrastructure, such as new buildings and the creation of more posts for *shariah* court judges and administrative staff. A reform drive in the *shariah* judicial apparatus began in the 1980s spearheaded by UMNO. This exercise has brought about unprecedented institutional development on constitutional, legislative, and administrative fronts. The *shariah* courts' apparatus was upgraded within the country's still essentially "secular judicial system." This apparent Islamization trend has corresponded with the organizational expansion of the state machinery administering *shariah* matters, including the increased employment of better qualified *shariah* personnel.<sup>57</sup>

Another initiative was to expand the application of Islamic principles to certain commercial undertakings hitherto based solely on the Western model of banking and finance.<sup>58</sup> Whatever the source, whether Islamization is coming from the UMNO-led government or from PAS, the drive seems to be unrelenting and increasingly contentious, while the choices remain

narrow. For instance, Sheikh Tantawi of Al-Azhar University has explained that, while usury is banned in Islam, the interest rate instrument has become sufficiently moderate. Therefore, a wholesale ban on interest in banking or finance need not be the case. Curiously, this is a point also accepted by former President Dr. Mahathir Muhammad after his retirement in October 2003. Yet he would not have been able to advocate such during his tenure in office because of the conservative atmosphere that banned such flexible discussions and views.

### PAS Reaching the High Water Mark of 1999

The concern that Malaysia was lurching towards Islamic statehood was brought to bear in the 1999 general election. Riding on the abuse of former Deputy Prime Minister Anwar Ibrahim, PAS made gains in the Malay heartland, winning control over the state legislatures of Kelantan and Trengganu on the east coast, while increasing its seats in Kedah's legislative assembly. Although the 2004 general election saw PAS losing power in Trengganu and seats previously gained in Kedah, the very fact that PAS could launch such a strong electoral challenge forced everyone, especially the government, to take notice of its ideological appeal. This appeal also strengthened, once again, the competitive dynamic to out-Islamize PAS, lest UMNO lose ground again. While PAS won a substantial number of seats in the 2008 general elections, it saw those gains erode in the 2009 by-elections.

PAS, however, remains undaunted by the electoral challenge and UMNO's counter-attacks. If anything, PAS, whose political manifesto is *more* Islam, rather than less of it, seems to regale in this competition, and has become more determined to lock horns with UMNO on religious issues.<sup>59</sup> After all, PAS's most important—perhaps its only—initiative to date is the attempt at introducing *hudud* (or Islamic criminal law) in the states where it holds power, such as Kelantan. Only if UMNO is willing to compete on this issue

would PAS be able to focus its version of *shariah* against the one peddled by UMNO. This is the case even though PAS's version stretches the letter of the law by including Islamic criminal law that stipulates death by stoning and amputation, both of which are prohibited under the federal constitution. Hence, lawyer Zaid Ibrahim, who is an UMNO member from Kelantan, has challenged the validity of PAS's legislative initiative, since criminal law jurisdiction is under the federal government, a matter over which the Kelantan state legislature is not permitted to legislate.

For now, the Kelantan Shariah Criminal Code (II) of 1993 still remains on the books, as does the one passed by the Trengganu government in 2000. In a very real sense, the code is an attempt to translate an individual's obligations to God into a social duty enforced by the state, and thus make manifest "Revelation" in the temporal world of the twenty-first century. As Hooker observes, "The Code is the formal structure, chosen by the Kelantan government, through which the dictates of Revealed obligation can be implemented—made 'real'—in Muslim society."<sup>60</sup>

### Polarization of Islamic Discourse and Application

In Malaysia today the Islamic agenda is an epic struggle, conducted at the inter-party level between PAS and UMNO throughout the nation, whereas back in the 1970s it was primarily restricted to Kelantan.<sup>61</sup> Over the last decade, at least, the focus has revolved primarily on the issue of *hudud*, especially over the issue of how it ought to be implemented nationwide. Nevertheless, there exists considerable gradation even to this simplistic PAS-versus-UMNO struggle for the soul of Muslim Malaysia. This is because the Islamic machinery embedded within the ruling federal government is still hampered by the power of the individual fourteen states that form present-day Malaysia.<sup>62</sup>

Today, even a mere city council by-law in Malaysia, if taken to the extreme, can be severely harsh, as seen in the attempts of the Ipoh City

Council in the state of Perak to ban unmarried couples from holding hands, or engaging in "any acts of public affection" in public parks.<sup>63</sup> Secular Malaysian laws are therefore not subject to easy interpretation, let alone Islamic laws that have even less of a legal standing and pedigree in Malaysia.

The Department for the Advancement of Islam (usually referred to as JAKIM or Jabatan Kemajuan Agama Islam Malaysia, which used to be known as Pusat Islam) comes under the ambit of the Department of the Prime Minister, for instance.<sup>64</sup> Yet PAS's penchant for adopting its own religious code in Kelantan shows that the federal government has limited power to enact and enforce its policies on Islam. Despite the prominence given to it by the media, JAKIM is more hamstrung than is imagined.<sup>65</sup>

Thus, in spite of former Prime Minister Abdullah Badawi's insistence that Islam should be progressive and tolerant, based invariably on Islam Hadhari, he did not have the power to legislate his positions directly or enact them under *shariah*. Moreover, UMNO had a huge loss of power in the 2008 general elections (PAS and other opposition parties won five of the thirteen states). However, the 2009 by-elections saw various attempts by UMNO to stem the rise of the opposition, albeit only with limited success. Over the last decade, the UMNO-led government has indeed tried to centralize and staff the country's *shariah* courts with progressive clerics, but, as Kikue Hamayotsu points out, the onset of the Anwar Ibrahim crisis in 1998 that coincided with the death of the late Professor Ahmad Ibrahim, a crucial motivator for *shariah* reforms who hailed from the influential International Islamic University Malaysia, has stalled the process.<sup>66</sup>

As a result, the UMNO-led BN government has not yet made much progress in strengthening its administrative reach on Islamic law. Hence, JAKIM only formulates policy on Islam and drafts laws that it then sends out to the various states in Malaysia, urging them to enact legislation consistent with the federal government's policy. The reason is that under Article 95B (1) A of the constitution, read in conjunction with the ninth schedule, Islam comes under the jurisdiction of individual states and

their sultans. As such, only individual states can enact laws on Islam.<sup>67</sup> Conversely, because of the constitutional stipulations about what merits the death penalty, for example, the realm of these *shariah* laws enacted by the various states is also restricted; hence, the *hudud* that was legislated in Kelantan in 1993 cannot be officially implemented without parliament first amending the federal constitution.

That each state enacts its own laws regarding Islam results in the existence of numerous different versions of Islamic law and *shariah* in Malaysia.<sup>68</sup> Even this power over Islam within each state is complex: the Jabatan Agama (literally, Religious Office) and the *shariah* courts both administer Islam in the state. The Menteri Besar, or chief minister, who is essentially a federal appointee in BN-controlled states, has to present legislation on Islam to the state legislature and the sultan for enactment. The state legislatures have both Muslim and non-Muslim elected representatives.

This dispersed pattern of power, regarding who has control, who administers, and who legislates Islam in each state in Malaysia, significantly limits both the power of the federal government in effecting its vision of an Islamic modernity, as well as the potential of other actors and factors. Moreover, this diffusion of power over Islam is a legacy of colonialism, of a strategy to appropriate territory and power while conceding “the rights of natives” over their religion, which was the least understood element of most colonial endeavors. It was a colonial strategy to minimize Islam’s influence by fragmenting its sources of power and relegating it to personal law for Muslims, in an attempt to produce “legal pluralism,”<sup>69</sup> to use Hooker’s term.

This legal pluralism, however, has had a paradoxical effect on Malaysia’s quest for Islamization. In light of contemporary Islamic resurgence, the energy and drive towards having more Islam at the level of state and society has been strong. Since both UMNO and PAS politicians want to project a certain Islamic mission—the former to create an Islamic state by way of improving the lot of Muslims economically and otherwise, and the latter

by transforming the body of laws—their fixation on the reductionism described earlier has a major impact on legal and political discourse. As Martinez, writes,

The common premise of analysis based on the simplified dichotomy of PAS versus UMNO over Islam has, therefore, more complex fundamentals. The paradigm is more State with a capital “S” versus state with a small “s”. When an individual state is governed by *ulama* (religious scholars) they have the power to Islamize government and law, and the Federal authorities have limited ability to curtail them despite the fact that many among those interviewed in the study thought or hoped the ruling coalition could successfully mitigate or intervene. Those who constitute Islam in each state—the *ulama*, religious department officials, the Sultan and Shari’a court officials—have considerable power over how Islam evolves in Malaysia.<sup>70</sup>

Put simply, the more pluralistic the system, the more determined the UMNO-led BN government and PAS become to try to insert their Islamic agenda. This zeal, for better or for worse, would not be so counterproductive if the respective parties had not seized on such reductionist readings of Islam.

## ISLAM, ISLAMIZATION, ISLAMIC LAW, ISLAMIC STATEHOOD: WHICH WAY FORWARD?

Judging by the phenomenon of legal pluralism, it would seem that neither the legal nor the disenfranchised political system would allow PAS and UMNO combined to promote wholesale Islam—or, for that matter, an Islamization process that would lead to a genuine system of Islamic law that would, in turn, lead to Islamic statehood. The last specter of imposing Islamic statehood is therefore most questionable. But the works of Clive Hessler and M. B. Hooker, both authorities on Islamic law in Malaysia, have shown that the Islamists, especially PAS, do have popular support to introduce laws based on divine revelation. Moreover, members of UMNO and PAS are not averse to it either, as long as they feel they can control or manage the process.

Since UMNO's constituency is by and large formed of Malay Muslims—this being Malaysia where each race looks to a different party for the articulation of its ethnic interest—the UMNO leadership cannot ignore the Malay Muslims' wish for "more" Islamization. Furthermore, the cognitive universe of Malay Muslims is such that a composite religious belief has formed to affirm that *shariah*, including *hudud*, is "mandatory for Muslims," along with such other strictures as "God's laws are certain while man's are not," "the *Hudud* laws will achieve a greater degree of public order," and "*Hudud* will be freely accepted once known."<sup>71</sup>

Indeed, the UMNO-led government's ambition to outflank PAS—if need be, based on Islamic platforms, symbolism, and legislative agendas—remains considerable. Thus, even if the legal system helps to polarize the debate, the fact remains that both the government and the Islamic opposition party engage in bidding wars to render the other side religiously irrelevant and impotent. It is this zero-sum dynamic, of winners take all, that parlays into a discourse that can be characterized as an attempt

to "hegemonize" the entire spectrum of discourse of Islam, Islamization, Islamic law, and Islamic statehood.

### Battle Royale: UMNO and PAS

Why do the UMNO-led BN government and the Islamic opposition PAS wish to focus on Islam so thoroughly? The answer is twofold. First, UMNO, having enjoyed political supremacy for so long, has seen it appropriate to introduce Islam on an even more systematic basis to appeal to the Muslim electorate. Its goal is to preserve the capitalistic patronage system that it has since fostered. Second, efforts to centralize *shariah* reforms, ideally with legal experts drawn from the graduates of the International Islamic University Malaysia, are considered safe enough to strengthen UMNO's electoral position without being exposed to the Islamic assault of PAS. To understand the eventual direction of Islam in Malaysia, one has to understand the political rivalry at stake.

Up until the 2004 election that saw the defeat of PAS, the specter of PAS ruling Malaysia has always animated the political discourse in the country, regardless of whether this prospect could indeed become a reality. The November 29, 1999 general elections, for instance, raised PAS's stock considerably. While the UMNO-led BN coalition easily clinched a three-quarters majority in parliament in 1999, PAS not only held on to Kelantan, until then the only state in opposition hands, but also added neighboring Trengganu to its belt, as mentioned earlier. Of course, PAS was since displaced in Trengganu in 2004 and only narrowly won Kelantan in the 2008 general election, showing once again that voters in Malaysia, especially Muslims, are not necessarily enthralled with PAS's exclusively Islamic policy and mission. On given occasions, they can accept the seemingly more moderate Islamic programs of UMNO as well.

While Malay Muslims, accounting for more than 55 percent of the country's total population, have long been considered the bedrock upon

which UMNO stands, the party's monopolistic grip on this key constituency is eroding due to a moribund membership base. According to Tan Sri Musa Hitam, "Members of PAS are usually with PAS because they are disillusioned with UMNO."

Today, a heated political battle is still raging in Malaysia's Muslim heartland—in the northern Malay belt states of Trengganu, Kelantan, Kedah, and Perlis. How the fight is conducted will have a tremendous impact on the discourse on Islam and Islamic law in Malaysia in the future. What is certain, however, is that both sides have arrayed themselves with their respective programs of Islamization, which for PAS involves creating an Islamic state.

Given that Islam is inextricably intertwined with Malay identity (according to the constitution, a Malay is by definition a Muslim), the clearest manifestation of the contest can be seen in the way UMNO and PAS are both vying to become the standard bearer for the faith, as shown in the table on the following page.<sup>72</sup>

Indeed, when PAS controlled Trengganu between 1999 and 2003, the same practice of banning predominated as during the previous years under UMNO. Under PAS only eight of the thirty-nine liquor licenses have been renewed. And while the previous state government, led by UMNO, had begun to shut down betting shops, PAS closed the last six. It is this dynamic of trying to out-bid and out-rival the Islamic policy of the other side that has confined Islam in Malaysia in a strategic straitjacket, as the ethos of *maqasid al-Shariah* is not allowed to manifest itself in other ways.

To be sure, Kelantan state assembly speaker Wan Abdul Rahim Wan Abdullah says that PAS guarantees four kinds of rights to non-Muslims: "The right of religion—they will never be forced to embrace Islam. The freedom to speak their mother tongue. They are entitled to their own customs and dress. And they can do business without any interference."<sup>73</sup> This brief inventory of rights demonstrates the restrictive nature of the Islamic law and Islamic state that PAS seeks to introduce. And, this narrow approach has not been softened by the reality of democratic politics in

### The (Inter-Party) Islamization of Malaysia: A Sampling of "Islamic" Measures by PAS and UMNO

PAS views UMNO as a waning party that has sold out to materialism and Western values. UMNO accuses PAS of deviationist teachings.

The battle lines have been drawn and the fight is on to determine who is the true defender of the faith.

PAS	UMNO
Ban on karaoke	Creation of the National Islamic Action Council to coordinate activities to explain Islam to the public
Non-renewal of liquor licenses	
Closure of betting shops	Creation of the Malaysian Islamic Welfare Council to coordinate Muslim activities
Interest-free loans for computers and cars for state employees	
Proposes that all Muslim women at work wear veils	Implementation of compulsory religious classes for government workers
Proposes a ban on unisex hair salons	Introduction of new <i>shariah</i> laws in Johor state, covering such offenses as sodomy, prostitution, premarital sex, and lesbianism
Proposes separate counters for men and women in supermarkets and shopping complexes	
Plans to introduce the <i>hudud</i> penal code	Selangor, Kedah, and Kuala Lumpur are advised by JAKIM to follow suit
	Only state governments to be allowed to appoint mosque committees

Malaysia, nor by the demographic reality of the country, which has up to half of its population professing religions other than Islam.

Alternately, while PAS tries to turn Kelantan into a viable model of theocratic rule, UMNO has been actively promoting itself as the true defender of Islam. For UMNO, "Islam is the objective of our struggle," says Abdul Hamid Othman, former minister (for religion) in the Department of the Prime Minister. He asserts that Islam has two main components: taking care of life in this world and in the hereafter. The UMNO stance is that it deals with both components by providing for the material well-being of Malaysians and promoting Islam, while PAS only focuses on the second.

UMNO measures to spread Islamic tenets include the requirement that all Muslim civil servants attend two religious classes a week and the

introduction of new *shariah* laws in southernmost Johor state. But even this approach is not without problems. In the latter case, the new rules allow for punishment by caning and jail for offenses such as pimping, sodomy, prostitution, incest, premarital sex, and lesbianism. Selangor, Kedah, and Kuala Lumpur have been advised to follow suit, according to Abdul Hamid Othman. UMNO has also created two organizations in its efforts to outplay PAS: the National Islamic Action Council, which is run by several ministries and coordinates activities explaining Islam to the people, and the Malaysian Islamic Welfare Council, consisting of about eighty NGOs, to coordinate various Muslim activities.

Amid the political sparring between UMNO and PAS, Malaysian society is changing, becoming more "Islamized." And when the struggle for the Malay soul is finally settled, the country may be, for better or worse transformed beyond recognition. But before that happens, two other battles must first be fought: the internal battles within both UMNO and PAS over the direction they need to take.

### Broad Principles: Sources and Goals of *Shariah*

The inter-party struggle of PAS and UMNO as well as its own internal debates needs to be considered in view of *maqasid al-Shariah*. From here one can gauge if the bureaucratic expansion to regulate Islamic affairs through a stringent list of behavioral codes has indeed short-changed Islam or not.

The primary source of *shariah* is obviously the Qur'an, considered the literal word of God. The Qur'an deals with a full range of issues spanning from the establishment of the creed (*aqidah*), to defining the absolute moral standards and codes of permissible and impermissible behavior. Yet the ultimate and final rules in the Qur'an pertain only to the issues of creed (*aqidah*) and worship (*ibadat*), whereas the third area of law and other human interaction (*muamalat*) is, with a small number of

exceptions, covered by general and flexible guidelines. *Shariah* in *muamalat* is therefore limited, which has allowed the science of jurisprudence or *fiqh* (derivation of rulings) to arise and flourish, accommodating various schools of thought and amassing a wealth of opinions over the centuries that suited various places and times and proved that *shariah* is neither static nor exhaustible.

Indeed, although unknown to many Muslims, the whole body of *fiqh* is constantly open to debate and is constantly being debated to prevent resorting to blind imitation or *taqlid*. More importantly, other forms of Islamic reasoning such as *ijtihad* (independent reasoning), *qisas* (analogical reasoning), and even *ijmak* (consensus) are open to constant reformulation, as long as one does not go against the spirit of the Qur'an and Hadith.<sup>74</sup>

The second source of *shariah* is the Sunnah (tradition) of the Prophet Muhammad in what he ordered, forbade, did, or acknowledged in his capacity as prophet. The Sunnah sometimes explains the Qur'an, illustrates it, details some generalities, and complements it in some areas. The sciences of *sunnah*, especially the process of authentication of the sayings of the Prophet, are perhaps the most exact branch in the science of history in general. The tracing of the chain of reporters and witnesses and, above all, making sure that a reported *sunnah* conflicts neither with the Qur'an nor with established fact and common sense established the *sunnah* as a science of precision.

The third source of the *shariah* operates when an issue is not specifically settled by the Qur'an or the Sunnah. Analogy is resorted to through a process of deductive reasoning that equates a new issue with one already decided by the Qur'an and/or Sunnah. *Ijtihad* is the term indicating the utilization of available evidence (religious, scientific, statistical, and social) to think out the best course to be taken, provided it does not conflict with the Qur'an or the Sunnah or the goals of *shariah*. *Shariah*, therefore, is not a rigid set of rules to be copied and applied at any time or place; on the contrary, it allows for human ingenuity to address changeable situations by progressive legislation.

During the evolution of the science of jurisprudence, certain juridical rules were established to enable derivation of new rulings. Understanding them is crucial, in order to avoid being confined to a discourse that centers solely on Islamic statehood or Islamic law. One such rule is “Necessities overrule prohibitions.” For example, it is unlawful to eat pork, but if pork is the only food available for a traveler lost in the desert, eating it becomes permissible as long as necessary. (Isn’t this a *classic* example? I wonder how much pork one can find in the desert—either preserved or live.) Other rules include “the choice of the lesser of two evils if both cannot be avoided” and “public interest takes priority over private interest.” The overall rule, given no conflict with the Qur’an and the Sunnah, is wherever welfare goes, there goes the law of God.

Yet understanding the sources and ideals, from which the generic principles of *shariah* are derived, is not enough.<sup>75</sup> *Shariah’s* goals or objectives must also be examined. The supreme goal of *shariah* is the welfare of the people in this world and in the hereafter. There is even greater need for better flexibility in this area, as *shariah* involves five key goals that Islamists often fail to pay more attention to.

Broadly speaking, the needs of the community are classified into dire necessities, ordinary necessities, and complementary needs (things that make life more enjoyable), in this order of significance. Topping the list is the first category, which comprises the widely known “Five Aims of the *Shariah*,” is the preservation and protection of a person’s religion, life, intellect, purity of lineage, and property. Each of these is divided into sets and branching subsets until seemingly small details are reached, and each is serviced by appropriate moral and/or legal rulings.

Since it is not the objective of this study to step into the deep waters of this immense subject, the essential ideas behind these five goals can serve to clarify the picture.

*Religion:* Many authors give religion first place, but obviously without the integrity of life and mind, religious tasks become superfluous. Freedom of religion and worship is a basic human right, and not to Muslims only.

*Life:* This includes a person’s right to life and the duty of all to protect it. It entails the prohibition of killing and defines the permissible exceptions, such as legitimate war or judiciary sentence.

*Intellect:* The mind is the hallmark of a human being. Thinking, pondering, and reflection are religious duties. Every opportunity should be used to facilitate and foster mental activity.

*Property:* The right of ownership is inviolable and there is no objection or limit on the amassing of wealth provided it is secured in lawful ways.

*Purity of lineage:* Authentic marriage through a solemnized and documented marriage contract is the only legitimate way of pairing off to form a family and beget children. Purity of lineage and the right to know with certainty one’s parents and progeny is an imperative.

As can be seen from the five goals of the *maqasid al-Shariah*, there is nothing to suggest that Islam stands for punitive measures alone, as has been the customary approach of both PAS and UMNO. In fact, it would be perfectly acceptable to focus the party’s energy on issues such as economic justice, development, and growth in Malaysia.<sup>76</sup>

### The Marginalized Position of *Maqasid al-Shariah*

*Shariah* based on the Qur’an and the Sunnah is equally accessible and applicable to all members of society from the lowest to the highest, without any distinction or discrimination. This is standard Islamic belief. The Prophet Muhammad himself was asked to declare: “I have been commanded to maintain justice between you” (*al-Shura*, 42:15). This shows an overriding concern for justice in all its dimensions: legal, political, social, economic, and international. All people have equal rights and everyone is equally responsible before the law. It is the obligation of the rulers to ensure that all members of society, particularly the weak, are given their due rights.

Yet *maqasid al-Shariah* has historically occupied a marginal role in Islamic discourse. As a theme of the *shariah* in its own right, the *maqasid*



did not receive much attention in the early stages of the development of Islamic legal thought and, as such, it represents rather a later addition to the juristic legacy of the *mazhab*. Even to this day many reputable textbooks on *usul al-fiqh* do not mention *maqasid al-Shariah* in their coverage of familiar topics.

This omission is partly due to the nature of the subject, which is largely concerned with the philosophy of the law, its outlook, and objectives, rather than the specific formulations of its text. Although the *maqasid*, as a distinctive theme of the *shariah*, is obviously relevant to *ijtihad*, it has not been treated as such in the conventional expositions of the theory of *ijtihad*.<sup>77</sup>

Indeed, Islamic legal thought is, broadly speaking, preoccupied with concerns over conformity to the letter of the divine text, and the legal theory of *usul al-fiqh* has advanced that purpose to a large extent. This literalist orientation of juristic thought was generally more pronounced in the approach of the traditionalists, the *Ahl al-Hadith*, than that of the rationalists, the *Ahl al-Ray*. The literalists tended to view *shariah* as a set of rules, commands, and prohibitions that were addressed to the competent individual *mukallaf*, and all that was expected from the latter was to conform to its directives.

On the other hand, the precedent of the Prophet Muhammad's leading companions indicated that they saw *shariah* as both a set of rules and a value system, in which the specific rules were tangible manifestations of the overriding values. The textualist tradition of the first three centuries did not take much interest in *maqasid al-Shariah* and it was only in the time of al-Ghazali (d. AH 505/AD 1111) and then al-Shatibi (d. AH 790/AD 1388) that significant developments were made in the formulation of the theory of *maqasid*.

It was not until the early fourth century that the term "*maqasid*" was used in the juristic writings of Abu Abd Allah al-Tirmidhi al-Hakim (d. AH 320/AD 932). Recurrent references to it appeared in the works of Imam

al-Haramayn al-Juwayni (d. AH 478/AD 1085), who was probably the first to classify the *maqasid al-Shariah* into the three categories of essential, complementary, and desirable (*daruriyyat*, *hajiyyat*, *tahsiniyyat*), which have gained general acceptance ever since.

Juwayni's ideas were then developed further by his pupil, Abu Hamid al-Ghazali, who wrote at length on public interest (*maslahah*). Al-Ghazali was generally critical of *maslahah* as proof but supported it if it promoted the *maqasid al-Shariah*. As for the *maqasid* themselves, al-Ghazali wrote categorically that *shariah* pursued five objectives, namely those of faith, life, intellect, lineage, and property that were to be protected as a matter of absolute priority.

### Introduction of *Hudud* in Kelantan

One of the reasons why the debate on Islamic law in Malaysia has become so critically important lies in the actions of the Kelantan state government.<sup>78</sup> Instead of negotiating with the federal government, as they were obliged to do on the introduction of *hudud* (a class of punishments for serious crimes under *shariah* law), the Kelantan PAS government proceeded to introduce a *hudud* bill and then pass it without federal approval. To better understand PAS's version of Islamic law, to see how it pointedly and narrowly challenges the spirit of *shariah*, one has to understand the introduction of *hudud* in Kelantan.

Ever since the Kelantan state legislature ratified the bill in November 1993, it has been the focus of public debate in Malaysia. The bill has been criticized both on specific legal points and for its apparent eagerness to inflict punishment and pain. The Qur'anic outlook on punishment can be characterized by its dual emphasis on retribution and reformation, according to Hashim Kamali at the Institute of Islamic Thought and Civilization (ISTAC) in Malaysia, who also maintains:

[t]he conventional *fiqhi* approach to the formulation of the underlying policy toward the *hudud* has failed to be adequately reflective of the Qur'anic guidance on this subject. In its typically imitative and *taqlidi* orientation, the Hudud Bill of Kelantan has also failed to be reflective either of the balanced outlook of the Qur'an or of the social conditions and realities of contemporary Malaysian society.<sup>79</sup>

The Shariah Criminal Code (II) Bill 1993 (referred to as the "Hudud Bill") consists of seventy-two clauses and five supplementary schedules, divided into six parts, namely *hudud* offences, *qisas* (just retaliation), evidence, implementation of punishments, general provisions, and (*shariah*) court proceedings.<sup>80</sup> The *hudud* offenses in part one also appear under the six headings of theft, highway robbery (*hirabah*), unlawful carnal intercourse (*zina*), slanderous accusation of *zina*, which cannot be proved by four reliable witnesses (*qadhaf*), alcohol drinking (*shurb*), and apostasy (*irtidad*).

On November 25, 1993, when the state legislature unanimously passed the bill, Kelantan's chief minister made it clear that it "could not be implemented until the Federal Government of Malaysia made changes to the Federal Constitution." This statement was evidently an acknowledgement on the part of the state government that by passing the Hudud Bill, the state legislature had exceeded its jurisdiction under the federal constitution.<sup>81</sup> The state government also announced that the bill was prepared by a committee and reviewed and approved by the State Islamic Religious Council and the state *mufti* after considering it from all aspects of Islamic law.

The chief minister went on record to add that by enacting the bill, the state government was "performing a duty required by Islam" and failure to act in this regard "would be a great sin." As to the question of whether the people had accepted the state government's plan to implement the *hudud* laws, Deputy Chief Minister Abdul Halim made the remarkable announcement that "the question did not arise as Muslims in the state who rejected the laws would be considered *murtad* (apostate)."<sup>82</sup>

In its section on theft (*sariqa*), the bill penalizes the first offense of theft with amputation of the right hand from the wrist when it fulfills all the prescribed conditions (fifteen such conditions as provided under Clause 7), and the second offense with amputation of the left foot (in the middle in such a way that the heel may still be usable for walking and standing).

The third and all subsequent offenses of theft are punishable with imprisonment for such terms as in the opinion of the court are "likely to lead to repentance" (Clauses 6 and 52). The punishment for highway robbery is death and crucifixion if the robbery is accompanied by killing; and it is death if the victim is killed but no property is taken away. In the event where the robber only takes property without killing or injuring his victim, the punishment is amputation of the right hand and the left foot (Clause 9).

*Zina* is punishable upon conviction by stoning to death (with stones of medium size) for a married person (i.e., *muhsan*), and whipping of one hundred lashes plus one-year imprisonment for the unmarried. Four eyewitnesses are required to prove the act of *zina*. Each witness must be an adult male Muslim of just character. Witnesses shall be deemed to be just until the contrary is proven. The bill also states that pregnancy on the part of an unmarried woman or when she delivers a child shall be evidence of *zina*, which would make her liable to the prescribed punishment (Clauses 1, 41, and 46).

*Qadh* or slanderous accusation of *zina*, which the accuser is unable to prove by four witnesses, carries eighty lashes of the whip; and punishment for drinking liquor based on the oral testimony of two persons is whipping of not more than eighty lashes but no fewer than forty (Clauses 13 and 22).

A Muslim (adult and sane) that is accused of apostasy is required to repent within three days; failure to do so makes him or her liable to punishment by death as well as the forfeiture of his or her property. The offender will be free of the death sentence, even if it has been passed, if he or she repents; the property will be returned but the defendant would still be liable to imprisonment "not exceeding five years" (Clause 23).

The bill provides for the establishment of a special Shariah Trial Court consisting of three judges, two of whom shall be *ulama* (religious scholars), and a special Shariah Court of Appeals, consisting of five judges, including three *ulama*. These courts are to be in addition to the *shariah* courts that normally operate in Kelantan. All sentences can be appealed and sentences are enforceable, in the case of *hadd* (criminal) offences, only when confirmed by the special Court of Appeals (Clause 49).

The Hudud Bill gives rise to three types of problems, one of which is manifested in lack of jurisdiction leading to conflict with the federal constitution. Then there are problems relating to the realities of Malaysian society and politics. In the context of a multi-religious society, this bill raises questions as to whether the nation should be governed by two sets of laws—one for Muslims, the other for non-Muslims. And then the fact that only one of the thirteen states of Malaysia has charted a different plan for itself has presented the national government with difficult choices. The other problem here is that the bill fails to offer a meaningful alternative, as it raises questions over the wisdom of a literalist approach to the understanding of *hudud*. The bill exhibits no attempt to exercise *ijtihad* over new issues in a way that would fulfill the ideals of justice and encourage the development of a judicious social policy.

## MAQASID AL-SHARIAH AND IJTIHAD: A POSITIVE-SUM GAME?

Any Islamic legal reforms that do not take a more holistic view of *maqasid al-Shariah* or that distort the original spirit and message of Islam altogether are bound to find much social resistance.<sup>83</sup> While Islamists, especially extreme fundamentalists, influenced by a selective reading of the works of Yusuf al-Qaradawi or Ibn Taymiyyah tend to think that implementing Islamic law based on sanctionistic prescriptions and proscriptions alone is adequate, they are mistaken. This atomistic approach is based on an incomplete reading of the works of these jurists, especially the latter.

Even Ibn Taymiyyah, the famed medieval jurist, is misunderstood—despite being hailed by Islamic fundamentalists the world over for being the boldest jurist yet because of his relentless desire to implement Islam and to eject the Mongolian hordes by personally going into the battlefield.

Although *maqasid al-Shariah* was originally invoked one century before Imam al-Ghazali's passing (AH 505/AD 1111), it is he whom Islamic history credits for categorically stating that the *shariah* pursued the five objectives of faith, life, intellect, lineage, and property, which were to be protected as a matter of absolute priority.

Ibn Taymiyyah, building on al-Ghazali's works, was probably the first classical Muslim scholar to depart from confining the *maqasid al-Shariah* to a specific number of objectives. He added to the existing list of the *maqasid al-Shariah* such things as fulfilling contracts, preserving the ties of kinship, honoring the rights of one's neighbor in regard to worldly affairs, and honoring the acts of the love of God, sincerity, trustworthiness, and moral purity in regard to the hereafter. It was such boldness that made Islam a dynamic religion, rather than a purely literalist one.

In other words, Ibn Taymiyyah in one fell swoop revised the theory and scope of the *maqasid al-Shariah* from a designated and specified list to an open-ended catalog of Islamic values, and at the same time,

expanded the moral and legal boundaries of Islam. According to Hashim Kamali, Ibn Taymiyyah's approach is generally accepted by contemporary commentators, including Qaradawi.<sup>84</sup> Qaradawi has further extended the list of the *maqasid al-Shariah* to include social welfare and support (*al-takaful*), freedom, human dignity, and human fraternity, among the higher objectives. These are undoubtedly upheld by both the detailed and the general weight of evidence in the Qur'an and the Sunnah.

The fact that *maqasid al-Shariah* has been so neglected in Islamic legal reforms in Malaysia and other places can be explained by the marginal role it has played historically. Traditional Islamic scholarship has been God-centric, rather than Islamic-centric; it has been preoccupied with what God laid down, rather than with the meaning and message that lay pregnant in the religion. Historically, even the four or more *mazhabs* (schools of legal thought) have given *maqasid al-Shariah* the short shrift, usually contending that what matters to the community is not an explication of the general thrust of Islam, but rather the specific rules.

It is clear, however, that Islamic legal reforms cannot proceed exclusively on particularities, as these particularities are, after all, derived from a different time and context altogether. Hence, it would make more sense to consider the objectives and philosophical tenets that are part of *shariah*; nor, it should be added, is inductive and intuitive understanding of *maqasid al-Shariah* considered a weaker form of religious knowledge.

Al-Shatibi (d. AH 790/AD 1388), a religious scholar who lived two centuries after the death of al-Ghazali, emphasized knowledge of the *maqasid* as a prerequisite of attaining the rank of *mujtahid* (independent religious scholar). Those who neglect acquiring mastery of the *maqasid*, he taught, are liable to err in *ijtihad* (independent interpretation of existing law). Included among these individuals were the proponents of pernicious innovation (*Ahl al-Bidah*) who looked only at the apparent text of the Qur'an without pondering its objectives and meaning. These innovators who preferred a literalist approach, held on to the intricate segments of the Qur'an and premised their conclusions on them. They took a fragmented

approach to the reading of the Qur'an that failed to tie the relevant parts of the texts together.

### Absence of Historical Awareness

The UMNO-led federal government has embarked on its own agenda of Islamization programs, including amending the constitution to strengthen the *shariah* court to prevent it from overlapping with the civil courts. Moreover, its resort to, and reliance on, *maqasid al-Shariah* to devise the right form of rule is uneven, with excessive emphasis on punitive measures. What makes such Islamic legal reforms strong on (stultified) form but weak on dynamic substance is the general exclusion of *fiqh* or Islamic jurisprudence. More importantly, there is a weak understanding of the context and circumstances of Islamic legal history. The lack of reference and usage of *fiqh* has been a point of frustration for both Muslim and non-Muslim Islamic scholars,<sup>85</sup> who would like to see a more genuine interpretation and introduction of Islam, rather than one based exclusively on a haphazard extraction, and an injection of Islamic criminal law into the legal system. The latter practice has been in vogue in Malaysia for at least the last twenty years, as well as in other parts of the Muslim world.<sup>86</sup>

Yet *fiqh* is essentially dynamic, as it is endowed with the methodology and resources to be in accord with the realities of social change.<sup>87</sup> The introduction of Islamic law, which serves the *maqasid al-Shariah* in a real sense, must also seek to understand Islamic history, especially the background and context of how each verdict came to be.<sup>88</sup>

*Fiqh* did not exist during the period of revelation, which may explain why the distinction between *shariah* and *fiqh* is a relatively late development. Contemporary Muslims continue to speak of *shariah* at the exclusion of *fiqh*, a practice that is prevalent in Malaysia's Islamic discourse even to this day, despite signs of Islamic revivalism.<sup>89</sup> Islamic discourse in Malaysia has given short shrift to *fiqh*, Islamic history, and the impact of both on

*maqasid al-Shariah* because the emphasis in early Islamic scholarship (i.e., the first three centuries after the Prophet's demise) was on reading and memorizing the Qur'an, followed by the transmission and preservation of the Hadith.

The latter became the principal preoccupation of the *ulama* (religious scholars). This preoccupation is perhaps indicated by the fact that the earliest works on record, such as the *Al-Muwatta'* of Imam Malik (d. AH 179/AD 795), have often been characterized as works of *hadith* rather than *fiqh*. The Hadith continued to be the main focus of attention during the third century AH, even in preference to *tafsir* (the translation of the Qur'an). For example, the first major work on *tafsir*, that of al-Tabari, was only completed around the early fourth century AH.

But for present day Islamists whose frame of reference never went beyond the divine revelation received by the Prophet and the exemplary lives of *Khalifah al-Rashidun* (rightly-guided caliphs), the view has been myopic, as it is concentrated on a mere thirty-five years of the so-called "early *Ummah*" rather than focusing on the whole stretch of Islamic history that extends from the Umayyads to Abassids, Fatimids, Ottomans, and Moghuls.<sup>90</sup>

The Islamists have also resorted to imitating the lives of the Prophet and his righteous caliphs based on *taqlid* (unquestioning acceptance of prior legal decisions). Since the medieval scholars themselves did not reject or oppose *taqlid* openly, this position is also considered acceptable in modern times. This has resulted in lesser use of *fiqh* by the Islamists except to launch wars in the name of *jihad*. In the case of Malaysia, however, the thrust has mainly focused on introducing punitive measures taken from the early time of the Prophet such as stoning, amputation, and even death for apostasy.

Indeed, *taqlid*, at one point, was accepted by medieval jurists, as it was prompted by a combination of factors including the persistent alienation of the *ulama* and government throughout the many centuries of Umayyad and Abbasid rule. The *ulama* were consequently engaged in their academic

pursuits with little involvement in the business of government. The rulers coyly condoned this isolation as it left them with control over public affairs. For essentially similar reasons, one could hardly expect *fiqh*, or for that matter, *ijtihad* (independent legal reasoning), to remain a viable force in society during the colonialist domination of Muslims by European powers. It thus appears that the decline of *fiqh* in both these instances, to a large extent, resulted from lack of Islamic scholars' true participation in the development of *shariah*.

There is no historical precedent to support the suggestion that *fiqh* and *maqasid al-Shariah* can no longer be revitalized. The process of scholarly interpretation in the early days of Islam demonstrates that it is not a fixed and permanent entity, but is capable of change to fit new circumstances.<sup>91</sup>

Events in the twentieth century have shown once again that when governments begin to introduce legal reforms, they are able to find the resources of Islamic law responsive to the prevailing needs of the community. In an attempt to ascertain the relevance of *fiqh* to contemporary issues, Weeramantry has observed that,

a new era of Islamic jurisprudence lies ahead, as full of vitality as any of the ages past and as full of determination to make of the Islamic law an instrument relevant to the . . . problems conjured up by the present technological age.<sup>92</sup>

Within the context of Malaysia, it would be unrealistic to expect the renewal of *fiqh* and *ijtihad* without a change of direction in the content and style of modern legislation or in Islamic scholars' appreciation of *maqasid al-Shariah*.

## Appreciating *Fiqh* and Islamic History

*Fiqh* is for the most part an embodiment of *ijtihad* and its development is related in direct proportion to the exercise of original thought and independent personal opinion (*ra'y*) of the qualified *mujtahid*. To ensure propriety in *ijtihad*, the *ulama* developed the methodology of *usul al-fiqh*, which is basically concerned with providing a set of rational guidelines for the development of *fiqh* and the deduction of its rules from the source materials of *shariah*.

Yet it is ironic that while the methodology of *usul* not only regulated and encouraged *ijtihad*, it also set in motion a trend, almost from the outset, of increasingly subjecting *ijtihad* to a variety of restrictions. For instance, in Malaysia, a person who does not understand Arabic is deemed not sufficiently informed to render a religious opinion. Thus, while Dr. Mahathir, for instance, who does not understand Arabic, was able to articulate some ideas on how Islamic countries could go forward, such as by emphasizing the importance of acquiring scientific knowledge—a position incidentally previously taken by al-Qaradawi—there was no ready audience. This example demonstrates precisely why *maqasid al-Shariah* has to be brought in to relax some of the rigidities of Islamic law.

Indeed, the so-called closure of the gate of *ijtihad* was not an unrelated phenomenon. It occurred because the *ulama* went too far in the direction of technicality and literalism to develop an imposing edifice that impeded rather than encouraged originality in *ijtihad*.

Since the companions of Muhammad were not bound by an elaborate methodology and procedure, they were able to exercise *ijtihad* in its original and pioneering spirit. They took their lead directly from the Qur'an and the Sunnah and exerted themselves in pursuit of public benefit (*maslahah*). Their precedent and verdict (*fatwa*), often arrived at through consultation and consensus, inspired respect from the next generation of *ulama*. The latter were often emulated, in turn, by their followers in the succeeding generation, and this paved the way for the development

of *ijma'* (general consensus) as the third source of law next to the Qur'an and the Sunnah.

Succeeding generations of classical Muslim scholars further developed the existing legacy of Muhammad's companions but unlike the companions, they were faced with more complex developments: the territorial expansion of the Umayyad state, the influence of foreign traditions, the emergence of an exceeding plurality of schools and sects, and also of self-styled *mujtahids* of questionable competence. The scholars saw these developments as a threat to the unity of the *ummah* (community or nation) and the integrity of its *shariah*, hence the need for a methodology to regulate *ijtihad*—without focusing on the importance of *maqasid al-Shariah* until much later.

## UMNO and PAS's Narrow View of Islamic Law

Unless Islamic discourse in Malaysia can begin to integrate *maqasid al-Shariah*, thereby significantly broadening the scope and methodology of its Islamic legislations, chances are the legal code conceived by the Islamic jurists will prefer to err on the side of caution. That is, by rendering all judgment based on imitations of the heartland, such legal codes will only lead to an amalgamation of rules and regulations that are far too strict and inappropriate for modern times and for a multiracial society that chafes at religious intrusiveness.

Only extreme caution can explain the UMNO-led federal government's position on Islamic law and statehood. If a more complete argument has to be offered for the hyper-zealousness of PAS's position, it would be that PAS seeks to impose what it deems is the absolute good, even to the extent of infringing on the normal trappings of human rights.

That religions are concerned with the quality of life is a given. What is at issue is whether this concern falls more flatly on the scale of spiritualism or materialism, even though all religions appear to claim they seek a balance, rhetorically at least. In the case of Islam, there is also a claim

for balance. What Islamists seek to do with this interpretive position, however, is affirm *a priori* that this balance cannot be obtained without first allowing an Islamic state to come into existence.

Islamic statehood, in other words, becomes the *sine qua non* of Islam. That this is an inversion, if not a subversion, of Islam, is hardly questioned. In Malaysia, PAS contends that it is an obligation to will Islamic statehood into existence, without which Muslims would be perpetually living in the age of *jahiliyah* (religious ignorance) or *fitnah* (anarchy, rumor, and strife). The kind of Islamic state that PAS envisions is therefore closer to what political philosophers call "extreme perfectionism."

Through this endeavor, as manifested clearly by its Islamic legal reforms and philosophy, PAS has sought to specify quite narrowly its conception of the "good life" as well as its ranking of what constitutes the "good life" (such as women having to wear the veil, segregating men and women in separate lines, etc.) and the exact legality of prudential goods (such as arts, public performances, music, and entertainment). Hence, PAS has held that once in power it will adopt a comprehensive state policy and promote the "good life" in accordance with PAS's interpretation of Islam.<sup>93</sup>

That Kelantan and Trengganu both have *hudud* in their respective state legislations speaks volumes of the determination to force everyone into an Islamic moral strait jacket, one which PAS thinks best manifests the completeness of Islam. Interestingly enough, the UMNO-led federal government has yet to confront PAS on its unconstitutional measures preferring to chastise their version of extreme perfectionism as harking back to an age that is no longer appropriate to the vision and mission of modern Malaysia.

Nevertheless, in competing with PAS to introduce a raft of Islamic laws that have not integrated the *maqasid al-Shariah*, nor *fiqh*, into its proper legal reasoning, even UMNO can at best claim to avoid only the excesses of extreme perfectionism, without being able to free itself entirely from charges of peddling Islamic programs to suit its political and partisan ends.

Anwar Ibrahim's previous advice to the Malaysian government to adopt Yusuf Qaradawi's *fiqh al-awliyyat* (understanding of the priorities of Islam), as contained in his 1996 publication *The Asian Renaissance*, provides no certainty that strict and hyper-authoritarian *hudud* will not be introduced in Malaysia. What Ibrahim's advice will achieve is merely to shift slightly the attention paid to the issue of Islamic criminal law by the Malaysian people and foreign governments, when, in fact, the nub of it is left untreated.

Similarly, the philosophy of Islam Hadhari (progressive and liberal Islam), introduced by former Prime Minister Abdullah Badawi, fails to tackle the version of extreme perfectionism that PAS seeks to project, since Islam Hadhari makes no attempts to include *maqasid al-Shariah* and *ijtihad* in its jurisprudence. The end result is rhetorical flourish without significant impact to contain state legislatures caught in the throes of challenging PAS with their own Islamization programs.

## CONCLUSION

In Malaysia, Islam is practiced in a reductionist manner, unfortunate as this may be. It appears that the clear injunctions of the Qur'an and Sunnah on *halal* and *haram* (the lawful and unlawful) constitute the common feature of the form of *hudud* or *shariah* introduced by PAS and UMNO. Yet, this form is too punitive to even resemble Islam, as Islam is, after all, a religion based on God's compassion and mercy. Factors that contribute to this punitive tendency include the erroneous influence derived from the works of Qaradawi, Qutb, and Maududi.

The observations of Egyptian Islamic writer Fahmi Howeidi, who has written about this one-sided view of Islamic law, are very appropriate for Malaysia. Howeidi argues that Islamic law is about "mobilizing all the potential for good towards true progress and the betterment of life." He is particularly scornful of the singling out of criminal punishments.

As though God sent the Prophet Mohamed to convey to the people only a set of legal codes with which to punish criminals and adulterers. Such restrictions to the concept of Islamic Law only show the penal aspect of the system as if the Islamic message were primarily directed at criminals and degenerates. . . . This pitiful image of Islam is an affront to Islam itself.<sup>94</sup>

He continues,

One cannot help but be dismayed when confronted by the persistence among political leaders and proponents of Islamic law in ignoring its comprehensiveness and equity and in treating their societies as if they were collections of criminals who can only be deterred by fear and threat of the whip or the sword.<sup>95</sup>

The influence of Qaradawi, Maududi, and Qutb notwithstanding, the

very polarized structure of Islamic institutions in Malaysia also contributes to a dynamic where each party tries to out-Islamize the other with bold Islamic plans, symbols, and rhetoric, which in turn lend themselves to callous application.

In Malaysia alone, more than six actors can theoretically stake a claim on how Islam is enforced, and this nominally includes the non-Muslim politicians elected into the federal and state legislatures. From the prime ministers to the sultan, from the UMNO-led government to the state legislatures, not to mention the Islamic opposition, each has, on different occasions, exerted its impact.

The problem grows out of Malaysia's unique situation in the Muslim world, of granting each state control over religious matters. This legal pluralism has led to contradictions and differences in the interpretation and enforcement of Islamic laws, in particular family laws. More importantly, when a piece of legislation is deemed as diluted, it lends ammunition to over-zealous Islamists from the ranks of PAS and UMNO to introduce even more stringent Islamic codes.

For instance, a *shariah* court's decision in one state is not enforceable in another. As a consequence, such differences have enabled errant Muslims to circumvent the law to their own advantage. And, having allowed the circumvention to take place, there have been elements from both sides of the partisan divide calling for another round of Islamic legal reformation. Feeding on this frenzy, UMNO and PAS have increased their political zeal to launch still more Islamic programs to overcome the problem of legal pluralism.

Groups of partisan Muslims, already struggling to exert their own political presence on the system, have taken to promoting a reductionist version of Islam, which punishes and polices Muslims' day-to-day behavior. It is important for those in power to understand the broad outlines of the objectives of *shariah* before trying to move on to the specifics. An adequate knowledge of the *maqasid* that extends beyond its five imperatives, and a robust application of *ijtihad*, thus equips the student of *shariah* with



insights, and provides him with a theoretical framework in which the attempt to acquire detailed knowledge of its various doctrines can become deeper and more meaningful.

## NOTES

- 1 Harold Crouch, *Government and Society in Malaysia* (Ithaca: Cornell University Press, 1996), 36.
- 2 Patricia Martinez, "Malaysian Muslims Living with Diversity," *Malaysiakini*, August 25, 2006, <http://www.malaysiakini.com/opinions/features/55899> (accessed August 28, 2006).
- 3 Malik Imtiyaz Sarwar, "The Compromise One Cannot Make," *New Straits Times*, August 27, 2006.
- 4 Martinez, "Malaysian Muslims."
- 5 "The Inter-Faith Debate—Parts I, II, III, IV and V," Special Report, *Malaysiakini*, July 3, 2006, <http://www.malaysiakini.com> (accessed August 25, 2006).
- 6 Islam Hadhari first appeared in March 2004 during the national election. It appeared as an election manifesto of the National Front (Barisan Nasional). Nevertheless, it was not until September 2004 that Islam Hadhari was formally launched in the General Assembly of the United Malays National Organization (UMNO). UMNO is the ruling component party in the National Front. Among others, Islam Hadhari calls for the belief in God, the mastery of knowledge, and the formation of a good and just government. Critics have affirmed that Islam Hadhari lacks substance since it is basically a template that has a list of some ten enunciated principles.
- 7 Quintan Wiktorowicz, ed. *Islamic Activism: A Social Movement Theory Approach* (Bloomington: Indiana University Press, 2004).
- 8 Islam is, obviously, embedded in UMNO's struggle. Since UMNO formed an intimate part of the independence of Malaya and later what became Malaysia, this study views UMNO as a personification of the struggle of Malays and Islam, rather than a form of "political Islam" that emerged later in organizational form.
- 9 Farish Noor, *Islam Embedded: The Historical Development of the Pan Malaysian Islamic Party PAS (1951–2003)*, vol. 2 (Kuala Lumpur: Malaysian Sociological Research Institute, 2004), 484–88.
- 10 Syed Serajul Islam, *The Politics of Islamic Identity in Southeast Asia* (Singapore: Thomson Publishing House, 2005), 115–30.
- 11 There are no statistics on the number of students who, over the last twenty years, went abroad to study Islam. But some conservatively put the figure at more than 45,000, most of whom have returned and taken on roles of religious teachers in traditional schools.

- 12 Meredith L. Weiss, "The Changing Shape of Islamic Politics in Malaysia," *Journal of East Asian Studies* 4, no. 1 (2004): 139-73.
- 13 Thomas Fuller, "Letter from Malaysia: Nation's Secular Writings vs. 'Writings on the Wall,'" *International Herald Tribune*, August 28, 2006, <http://www.iht.com/articles/2006/08/28/news/letter.php> (accessed August 28, 2006).
- 14 "The Middle East Matters to East Asia," *The Asahi Shimbun*, July 22, 2006. In Japanese.
- 15 Yukiko Ohashi, "The Many Faces of Islam in Malaysia," *Asia Times*, July 9, 2004.
- 16 Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2000).
- 17 Ibid., chapters 1 and 2.
- 18 Ibid., 22.
- 19 Ibid., 366.
- 20 Ibid., chapter 16.
- 21 Ibid., chapter 19.
- 22 David Burrell, *Knowing the Unknowable God: Ibn Sina, Maimonides and Aquinas* (South Bend, Indiana: University of Notre Dame Press, 1986), 35-50.
- 23 Bill Moyers, *Genesis: A Living Conversation* (New York: Double Day, 2001).
- 24 Fred Dallmayr, "Rethinking Secularism," *The Review of Politics* 61, no. 4 (1999): 715-35.
- 25 Parvez Manzoor, review of *The Rise and Decline of the State*, by Martin Van Creveld, *Islam* 21 (October 2000): 15-16.
- 26 For an excellent discussion of this literature and line of thought, please refer to Sharifah Suhanah, "The Malaysian Legal System and Islamic Law," paper presented at the Asian Science Seminar on Law and Open Society, Kyushu University, Fukuoka, Japan, November 25-December 5, 2002. This outstanding piece of scholarship amplifies the work cited in notes 28-30, to which the author is most grateful.
- 27 Harvey C. Mansfield, *A Student Guide to Political Philosophy* (Wilmington, DE: ISI Books, 2001).
- 28 Liaw Yock Fang, ed. *Undang-undang Melaka. The Laws of Malacca* (The Hague: Nijhoff, 1976), 62.
- 29 Muhammad Yusof Hashim, "Islam dalam Sejarah Perundangan Melaka" [Islam in Malacca Legal History], in *Islam di Malaysia* [Islam in Malaysia] (Undated publication of the Historical Association of Malaysia).

- 30 R. J. Wilkinson, *Papers on Malay Subjects* (Kuala Lumpur: Oxford University Press, 1971).
- 31 John L. Esposito and John Voll, eds. *Makers of Contemporary Islam* (Oxford: Oxford University Press, 2001).
- 32 Muhammad Khalid Masud, "The Scope of Pluralism in Islamic Moral Traditions," in *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*, ed. Sohail Hashimi (New Jersey: Princeton University Press, 2002), 143-44. It was only in March 2003, during a summit of the Organization of the Islamic Conference (OIC), that the Malaysian government took a stance against al-Qaradawi. Dr. Mahathir, who was then the prime minister, rejected suicide terrorism as a legitimate tactic against Israeli occupiers in Palestine, taking an opposing view from Qaradawi. This position was not accepted by the Palestinian and Iranian delegations. For a more complete treatment of this subject, see Kim Beng Phar, "OIC Failed to Agree on Suicide Terrorism," *Asia Times Online*, March 30, 2003.
- 33 "Islamic State Document" (ISD), prepared on November 12, 2003 by PAS's Islamic party, 30.
- 34 Ibid., 11.
- 35 Ibid.
- 36 E-mail communication with Parvez Manzoor, March 2004.
- 37 Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam (Al-Halal wal Haram fil Islam)* (Kuala Lumpur: Islamic Book Trust, 1985). First published in Arabic, 1960.
- 38 Ibid., 2-4.
- 39 Various personal communications with Anis Ahmad, Dean of the Faculty of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia, 1992-1994.
- 40 Interview with academic staff member, International Islamic University Malaysia, February 2004. This was corroborated in a later interview with a different staff member at the same institution, May 2006.
- 41 Professor Hashim Kamali, a noted Islamic law expert formerly at the International Islamic University Malaysia, for instance, noted that the importance of science and technology should also be added to the *maqasid al-Shariah*. While other Islamic jurists have not embarked on this plan, it does show that *maqasid al-Shariah* is a very flexible code.
- 42 Interview with faculty member, University Malaya, May 2004.

- 43 John Esposito, ed. *Islam in Asia: Religion, Politics and Society* (New York and Oxford: Oxford University Press, 1987).
- 44 Seyyed Vali Reza Nasr, *Mawdudi and the Making of Islamic Revivalism* (New York: Oxford University Press, 1996).
- 45 Seyyed Vali Reza Nasr, *The Vanguard of Islamic Revolution: The Jama'at Islami of Pakistan* (Berkeley: University of California Press, 1994).
- 46 Paul Berman, "The Philosopher of Islamic Terror," *New York Times Magazine*, March 23, 2003.
- 47 Farhaz Kazemi, "Perspectives on Islam and Civil Society," in *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*, ed. Sohail Hashimi (New Jersey: Princeton University Press), 38–40.
- 48 Sayyid Qutb, *Milestones* (Cairo: Islamic Trust Publisher 1962), 30.
- 49 Malise Ruthven, *A Fury for God: The Islamist Attack on America* (London: Granta Press, 2002), 202–10.
- 50 Kikue Hamayotsu, "Islam and Nation Building in Southeast Asia: Malaysia and Indonesia in Comparative Perspective," *Pacific Affairs* 75, no. 3 (2002): 353.
- 51 Sharifah Suhanah, "The Malaysian Legal System and Islamic Law," 45.
- 52 Article 74, ninth schedule of Malaysia's federal constitution, as cited in *Ibid.*, 16–18.
- 53 Sharifah Suhanah, "The Malaysian Legal System and Islamic Law," 30.
- 54 Ahmad Ibrahim, "The Amendment to Article 121 of the Federal Constitution: Its Effect on the Administration of Islamic Law," *Malayan Law Journal* 2 (1989): xvii.
- 55 See Sharifah Suhanah, "Malaysian Legal System," 27.
- 56 Personal communication with Raja Aziz Addruse, May 20, 2004. According to Raja Aziz, who was speaking solely from memory recall, when the coalition between UMNO and PAS broke down in the 1970s, the UMNO-led Barisan Nasional began to use the media to portray a more Islamic platform. It was at this point that TV programs were stopped during prayer time. Raja Aziz Addruse alluded that this event led to the incipient rise of Islamic consciousness in Malaysia.
- 57 Kikue Hamayotsu, "Politics of Syariah Reform: The Making of the State Religio-Legal Apparatus," in *Malaysia: Islam, Society and Politics*, eds. Virginia Hooker and Noraini Othman (Singapore: Institute of Southeast Asian Studies 2003), 55–60.

- 58 Personal communications with Islamic banker working in Malaysia, May 2006.
- 59 Interviews with anonymous observer of PAS, May 2004 and August 2006.
- 60 M. B. Hooker, "Submission to Allah: The Kelantan Shariah Criminal Code (II)," in *Malaysia: Islam, Society and Politics*, eds. Virginia Hooker and Noraini Othman (Singapore: Institute of Southeast Asian Press, 2003).
- 61 Clive Hessler, *Islam and Politics in the Malay State: Kelantan 1838–1969* (Ithaca: Cornell University Press, 1977).
- 62 Rose Ismail, ed. *Hudud in Malaysia: The Issues at Stake* (Kuala Lumpur: SIS Forum [Malaysia] Berhad), 1995.
- 63 "Beware Whose Hands You Hold," *New Straits Times*, May 19, 2004.
- 64 Patricia Martinez, "The Islamic State or the State of Islam in Malaysia," *Contemporary Southeast Asia* 23, no. 1 (2001): 474–503.
- 65 *Ibid.*, 230.
- 66 Kikue Hamayotsu, "Politics of Syariah Reform," 62.
- 67 Mohammad Hashim Kamali, *Islamic Law in Malaysia: Issues and Developments* (Kuala Lumpur: Ilmiah Publishers, 2000).
- 68 Noraini Othman, ed. *Shariah Law and the Modern Nation State* (Kuala Lumpur: Sisters in Islam, 1994).
- 69 M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: The Clarendon Press, 1975).
- 70 Martinez, "Islamic Law and the State," 235.
- 71 Hooker, "Submission to Allah," 93–94.
- 72 Khoo Boo Teik, *Beyond Mahathir: Malaysian Politics and Its Discontents* (London: Zed: Books, 2003), 183–85.
- 73 Sangwon Suh and Santha Oorjitham, "Battle for Islam," *Asiaweek*, June 16, 2000.
- 74 Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni usul al-Fiqh*, (Cambridge: Cambridge University Press, 1997).
- 75 Personal communication with faculty member, International Islamic University Malaysia, May 27, 2004.
- 76 Kikue Hamayotsu, "Islam and Nation Building in Southeast Asia: Malaysia and Indonesia in Comparative Perspective," *Pacific Affairs* 75, no. 3 (2002): 357–64.

- 77 Personal communication with faculty member, International Islamic University Malaysia, May 27, 2004, who spoke of "the lack of confidence on the part of Muslims to exercise *ijtihad*."
- 78 Opposition leader and Islamic party PAS president, Datuk Fadzil Noor, died on June 23, 2002 after earlier heart surgery. From that point on, Datuk Seri Abdul Hadi Awang, then Trengganu state chief minister, began acting in both capacities. As it was, on July 7, 2002, the PAS-led state assembly in Trengganu tabled and approved the controversial Shariah Criminal Offences (Hudud and Qisas) Bill, which prescribed amputation for theft and death by stoning for adultery.
- 79 Mohammad Hashim Kamali, *Punishment in Islamic Law: A Critique of the Hudud Bill of Kelantan* (Kuala Lumpur: Ilmiah Publisher, 2000), 5.
- 80 Ibid.
- 81 Ismail, *Hudud in Malaysia*.
- 82 "The Hudud Law in Kelantan," *The Star*, November 26, 1993.
- 83 Douglas E. Ramage, ed. *Asian Perspectives Seminar: Democratic Transitions and the Role of Islam in Asia* (Washington, DC: Asia Foundation, 2000).
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- 85 Donald Horowitz, "The Quran and the Common Law: Islamic Law Reform and the Theory of Legal Change," *American Journal of Comparative Law* 42, nos. 2 and 3 (1994): 233-93 (Part 1), 543-80 (Part 2). Also see Patrick H. Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford: Oxford University Press, 2000); Noraini Othman, ed., *Shariah Law and the Modern Nation-State* (Kuala Lumpur: Sisters in Islam Publishing, 1994).
- 86 M. B. Hooker, "Islamic law in Southeast Asia," 222.
- 87 *Encyclopedia of Islam*, 2nd ed., (Leiden: E. J. Brill, 1960).
- 88 Glenn, *Legal Traditions of the World*.
- 89 Personal communications with Dr. Eric Winkel Alexander, former assistant dean, Faculty of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia, 1992-1993. Nothing of substance has changed since these communications were held.
- 90 Karen Armstrong, *The Battle for God* (London: Harpers Collins, 2000), 32-60.
- 91 Sadiq al-Mahdi "The Concept of an Islamic State," in *The Challenge of Islam*, ed. Altaf Gauhar (London: Islamic Council of Europe, 1978), 114.

- 92 C. G. Weeramantry, *Islamic Jurisprudence: An International Perspective* (Basingstoke and London: Macmillan Press, 1988), 123.
- 93 Joseph Chan, "Legitimacy, Unanimity and Perfectionism," *Philosophy and Public Affairs* 29, no. 1 (2000): 20.
- 94 Fahmi Howeidi, "No to Islamic Law," *Al-Ahram Weekly* (Cairo, No. 113), April 22-28, 1993. Translated by Azhari Yaakob.
- 95 Ibid.

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## ISLAMIC STATEHOOD AND *MAQASID AL-* IN MALAYSIA: A ZERO-SUM GAME?

KIM BENG PHAR



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Debates on the establishment of an Islamic state in Malaysia generally occur across partisan divides, promoting a reductionist version of Islam as a force to punish and police Muslims' day-to-day behavior. The process takes place without regard for the essential concept of Islamic jurisprudence, *maqasid al-Shariah*, which can be literally translated as "the objectives of Islamic law." Islamic jurisprudence, the author explains, is dynamic, subject to constant interpretation that allows the issue of Islamic statehood to be debated along ethical, political, and even circumstantial lines.

Kim Beng Phar analyzes the polarized structure of Islamic institutions in Malaysia, "where each party tries to out-Islamize the other with bold Islamic plans, symbols, and rhetoric, which in turn lend themselves to callous application." He argues that it is important for those in power to understand the broad outlines of the objectives of *shariah* before trying to move on to specifics.

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