



THE DEVELOPMENT OF SYARIAH LAW IN MALAYSIA IMPLICATIONS FOR MUSLIMS AND CHRISTIANS

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출처 (Source)	Muslim-Christian Encounter 11(2), 2018.9, 45-79(35 pages)
발행처 (Publisher)	햇볼트리니티신학대학원대학교 한국이슬람연구소 TORCHTRINITY Center for Islamic Studies
URL	http://www.dbpia.co.kr/journal/articleDetail?nodeId=NODE07541378
APA Style	John Cheong (2018). THE DEVELOPMENT OF SYARIAH LAW IN MALAYSIA. <i>Muslim-Christian Encounter</i> , 11(2), 45-79

햇볼트리니티신학대학원대학교
220.67.255.***
2021/02/08 (Accessed)

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THE DEVELOPMENT OF *SYARIAH* LAW IN MALAYSIA : IMPLICATIONS FOR MUSLIMS AND CHRISTIANS

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I . INTRODUCTION

Globally, Malaysia enjoys a reputation as a Muslim country with a modern multi-ethnic society where Islam is considered moderate and progressive. In light of Malaysia's implementation of *syariah* laws (or what I term syariazation), this article shall examine whether such acclaim is still deserved.¹ It will not detail Islamic law, *fiqh* nor *Quranic/Hadith* exegesis. Rather, it discusses syariazation in Malaysia's history, its transition into modernity and the effect on its multiethnic and religiously plural citizenry. It will assess its notion as the best (religious) law for everyone and the prospects for Christianity. Implications for the Malaysian Church to capably engage these realities are proposed.

II . SYARIAZATION IN MALAYSIA'S PRE-INDEPENDENCE HISTORY

Islam arrived in Malaysia around the eleventh century via Indian Sufi and Arab missionaries and through intermarriages between the locals (Milner 2008:40-41). The Malaccan empire was an Islamization watershed as these influences familiarised the lo-

1 I use the Malaysian rendering of '*syariah*' as opposed to *shari'a/shariah*, referring to a set of laws and regulations that administer Islam and Islamic law. Theologically, it is God's guidance for a complete Islamic way of life (Kamali 2008:2-7) while anthropologically, it is a "total discourse' [where] all kinds of institutions find simultaneous expression: religious, legal, moral and economic"(Hefner 2011:11 citing Messick).

cals with Muslim practices (Abdul Hamid 2002:470–471). During this period, *kadis* (Islamic judges) are mentioned though evidence of their authority to enforce Islamic law is ambiguous (Milner 1988, 24–26, 29).² Much of *syariah* was orally transmitted and decided rather than codified (Hefner 2011); the reality of the law was “not in the texts but in indigenous laws”(Hooker 1988:166).

The pre-colonial Islamic legal milieu was also characterized by a multiplicity of systems, with no fixed authoritative body of law, no set of binding precedents and no single legitimate way of applying or changing them (Yahaya 2015:507–508). Historically, three streams of laws were practiced: *Hukum Syarak* (*Shara'*), which is the body of laws derived from divine or Quranic sources which the British later termed “Muhammadan laws”, *adat per-pateh* (the widely patriarchal Malay tradition) and *adat temeng-gong* (the matriarchal Minangkabau tradition) (Mohamad 2011:3).

When the term *sharia* was used, it “was not usually invoked as the sole source of law [as] *adat* was frequently given equal status”.³ When it is mentioned, its application was “limited to the urban elites in the cities”(Chee, Jones and Mohamad 2009:4) and confined primarily to matrimonial and commercial matters. Where criminal law is concerned, “Islamic penalties are suggested only as alternatives to the customs of the land”(Milner

2 It is ambiguous because indigenous materials can “seldom be dated with accuracy” and “recensions of indigenous sources” occur in the later historical annals (Milner 1988:24, 48). Thus, modern Muslims who rely on textual sources as proof of *syariah's* daily presence tread on tenuous grounds.

3 Abdul Hamid (2002) disputes this syncretism of *syariah* law and *adat*. However, Mohamad (2009) and Peletz (2002:228; 2015) assert this exists.

1988:27); the effectiveness of these systems of law depended much on the ruler's discretion. (Milner 1988:43, Peletz 2002:29).⁴ It was this “non-institutional and non-legalistic version of the doctrine [that] many S.E. Asian Muslims ... take to be Islam”(Hooker 1988:162).

Islamization and the rise of the “*sharia*-minded” became more popular in the late Ottoman empire period when the sultan's aura and authority were eroded by British colonialism and the advent of modernity. Colonialism limited and interfered in the sultans' prerogatives (notwithstanding the British 1874 Pangkor Treaty that supposedly demarcated the boundary of authority between the colonialists and the sultans). In some cases, the sultans invited British involvement (Mohamad 2011:4). More significantly, their interference occurred at the behest of Arab Muslim migrants in the colony who desired to remove the kadis' religious authority when Arab interpretations of Islam conflicted with local Muslim laws on intermarriages with Malay women (Yahaya 2015).

From 1875 to 1895, Muslim law developed into a system of rules that were “rationalizations of what the courts took to be the law and custom of local Muslims ...”(Hooker 1988:170). This was formulated into the first statutory law for Muslims – the Mahomedan Marriage Ordinance of 1888 (Mohamad 2011:4–5).

Up until Malaysia's pre-independence period, one tension that continually prevailed was that of Hukum Syarak vis-à-vis *adat*. For example, tussles occurred when male litigants invoked

4 See also Peletz (2002:30–37) for local rulers' variation in enforcing punishments.

Hukum Syarak to establish their right to land inheritance over female adat rights or when the Malay ruling class deployed them to mitigate the adat authority of local leaders (Mohamad 2011:5–8).⁵

Tensions between law and *adat* also emerged when the sultans “initially opposed any declaration installing Islam as the established religion of the Federation, for they feared such an enactment would transfer any authority they wielded as heads of Islam in their own states to the proposed Head of the Federation. The sultans finally relented after the Alliance explained to them that the purpose of making Islam the official religion was ‘primarily for ceremonial purposes’ (Abdul Hamid 2009:160). To resolve this, postcolonial leaders upheld the colonial legal framework that syariah would not be the law for all citizens or even the whole law for Muslims was “not unique to Malaysia” (Aljunied 2016:132).

III. SYARIAZATION IN MALAYSIA’S POST-COLONIAL PERIOD

Post-independence, Malaysia’s constitution upheld the civil court’s primacy in the form of the Federal Court while the *syari-*

5 Malay adat recognizes *harta sepencarian*, the equal division of estate between male and female heirs and was “consistently proclaimed by *kadi* and *ulamas* to be in consonant with *Hukum Syarak*, even though this tradition was not present in other Muslim societies outside of the Malay world” (Muhammad 2011:10).

ah courts remained under the jurisdiction of the State legislative council and were applicable for Muslims only (Wan Muhammad 2011:246). In the 1970s, an Islamic resurgence fueled the latter passage of many Islamic legislative measures that established state *syariah* courts and various enactments for administering Islamic law (Chee, Jones and Mohamad 2009:6). In 1984, the passing of the Federal Territory Administration of Islamic Laws created a multifold Islamic bureaucratic expansion almost overnight (Mohamad, Aziz and Chin 2009:66). However, Malaysia's court system was split as it resulted in fourteen sets of Islamic family laws. Contradictions also arose from the parallel jurisdiction of the *syariah* court system at the state level and the civil court at the federal level (Abdul Hamid 2009:163). Conflicts occurred when Muslims appealed marital cases at the federal level after the *syariah* courts' decisions and the civil court quashed the latter's rulings (Wan Muhammad 2011:249). This situation prevailed until 1988 when article 121 in the Federal Constitution was amended and a new clause, 1(A) was inserted, stating the Federal Court "shall have no jurisdiction in respect of any matter within the jurisdiction of the *Syariah* Courts".⁶ However, as we shall later

6 Though many interpret this to mean "jurisdictional dualism" others believe this is 'misconceived' as "nothing in the Federal Constitution suggests that the *Syariah* Court is to compete with or be parallel to the civil court on the same subject matter"(Dahlan and Sabila Faudzi 2015:10). Ahmad Ibrahim's sophisticated counter-argument is that Article 3 in Malaysia's constitution "entitles Muslims 'to lead their way of life according to the teachings of Islam' and that 'if [they] wish to follow the Islamic law rather than the Common Law, they should be allowed to do so"(Lee 2010:79). In addition, the constitution "cannot affect the validity of the *Shariah* which is non-written and is certainly not passed after Merdeka Day"(Lee 2010:80).

see, this amendment does not fully resolve the contradictions.

Other measures enacted included the increased jurisdiction of *syariah* courts to decide on apostasy and new Islamic family laws.⁷ Indeed, “state Islamization can be traced largely to the expansion of the Islamic bureaucracy and the *Syariah* Court system”(Mohamad, Aziz and Chin 2009:64).

Table 1: Legislative reforms and the expansion of the Islamic bureaucracy⁸

Year	Enactments	Significance
1952	Administration of Islamic Laws (Selangor)	First piece of legislation which established the manifest place of <i>syariah</i> in a nascent post-colonial Malaysia.
1953–1974	Administration of other Islamic laws in other states	Post-colonial process of entrenching Muslim laws.
1984	Federal Territory Administration of Islamic Laws	Substantial centralization and augmentation of <i>syariah</i> system. Paved way for more uniform set of Muslim laws. Legislation also empowered and enlarged the <i>syariah</i> court system.
1988	Addition of Clause 1A in Article 121 of Malaysia’s constitution	Formalized a parallel system of laws and its administration by <i>syariah</i> courts. Muslims are legally bound to settle all legal matters codified under their respective state <i>syariah</i> laws.

7 On the long march towards the desecularization of Malaysia’s social and legal systems, see Peletz (2015:492).

8 On the different phases of syariaization, see Mohamad, Aziz and Chin (2009:65–66) and Mohamad (2015).

Notwithstanding these institutional restructurings, a new Islamic politico–legal elite salaried by the government and a vocal Islamic civil society resulted and began representing the conscience of this new and empowered Islamic state bureaucracy (Mohamad, Aziz and Chin 2009:66). However, because these elites are were government clients, their views were tolerated only up to the point where their presence is just enough to legitimise the established order (Abdul Hamid 2009:170. See also Martinez in this volume). The fatwas are vulnerable to political manipulation and arbitrary judgment by mufti and *syariah* government committee’s positions other than the Sunni Shafi’i school (Abdul Hamid 2009:185). We shall shortly examine how this flexing of syariazation introduces other complications.

IV. MALAYSIAN ISLAMIC REASONS FOR ESTABLISHING *SYARIAH* LAW

Before discussing the conundrums that syariazation introduces, let us observe four reasons Muslims see its importance.

Recovering Islam’s pre-colonial status: Islam has typically preferred the fusion of state and religion while the West has preferred its separation. Malaysia’s Islamists believe “Malaysia would have achieved Islamic status if not for the interference of the colonial masters and the arrival of non-Muslims”(Mo-

hamad, Aziz and Chin 2009:99). Indeed, the current Islamic resurgence worldwide indicates great popularity among Muslims for *syariah*, to infuse and inform the state with a modernistic garb (Hefner 2011, Peletz 2015).

Restoring the akidah/Muslim faith: When the British ruled Malaysia, it was not uncommon to see urban Muslims consume alcoholic drinks or intermingle openly with women. Amongst the rural Malays, *joget*, the *kebaya* (a body-hugging blouse), *wayang kulit* (a shadow puppet play with Hinduistic elements) or the *bomoh/pawang* (traditional medicine man/shaman) were popular. One motivation of Muslim revivalists was to purify Islam from accretions of religious superstition or *adat* that were considered un-Islamic (Mohamad 2008, Peletz 1993).

Repulsing anti-Islamic beliefs: In the 1950s, *syariah* was implemented to punish Muslim sympathizers of communism (Wan Muhammad 2015:33–34). Toward the late eighties and 1990s, *syariah* law targeted new enemies. The first was covert Christian proselytization. The Prime Minister's Islamic Religious Department proposed to ban the *Alkitab* due to "fear in the minds of some Muslims that the 'Alkitab' is a deliberate attempt made to proselytize Muslims through its use"(CANews 1987:3). The second was punishing non-Sunni Shafi'i teachings by so-called deviant sects such as Darul Arqam, Ayah Pin (Mohamad 2008). Lately, the *Alkitab* (recycling the same accusations of covert proselytization), has again been targeted by banning the use of Allah to refer to God even though non-Muslims are

not subject to *syariah* laws.

Reflection of the burgeoning Muslim demography: Lastly, the objective of making Malaysia an Islamic state is rationalized on the grounds of the demographic preponderance of Muslims as a contemporary fact (Lee 2010:61).

V. THE CONUNDRUMS OF SYARIAZATION IN MALAYSIA

When syariazation proceeded in the 1980–1990s, areas once considered secular became Islamized across the board, from personal family law (e.g, marriage, child custody) to banking and the workplace. However, when conflicts arose between *syariah* law and the civil, the former often triumphed. In the social–legal arena, there were three areas of conflict: (1) *adat* versus *syariah* law, (2) litigations involving religious conversions and interreligious marriage disputes and (3) applications to leave Islam. Due to space, only the first and second are examined to discuss the conundrums of syariazation and its effects on Malaysia’s Muslims and on its multiethnic and religiously plural citizenry.⁹

9 There are other conflicts between syariazation and *adat* which space does not permit elaboration, e.g., against Malay spirit beliefs and ritualistic healing performances (Mohamad 2015:10, 14f, Hoffstaedter 2014:254–262, Peletz 2002:224–229).

Conflicts In The Syariaization of Malay Kinship Culture

As noted earlier, battles between the *syaria*-minded and *adat*-keepers are evident in Malaysia's history. In 1951, Rembau (a Negeri Sembilan town) underwent an '*adat* crisis' when Minangkabau Muslim women opposed "legislative infringement on their inheritance rights or other customary prerogative"(Peletz 2002:58). When *adat* such as Minangkabau monogamy and matriarchal authority clashed with Islam, the latter eroded them (Mohamad 2011:4). These measures "alienated significant numbers of ordinary, especially rural, Malays, who perceive them as direct attacks on their basic values and key features of their cultural identities"(Peletz 2002:11).

When *adat* encourages couples to live with the wife's family, "Islam says that the wife should follow the husband"(ibid. :210). Women are "not to overvalorize their bonds with their mothers and other blood kin at the expense of their marriage ties [because] extended kinship is believed to ...interfere with the development of the seamless brotherhood enjoined on all Muslims as members of the global Muslim community, which is ... a highly valued form of family"(Peletz 2002:207-208). Conflicts also continue when Islam derecognizes the informal adoption of children that are frequent among rural Malays (ibid. :213). This is problematic because the Malays "differentiate themselves from one another on the basis of their *adat*, since Islam, in their view, is essen-

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tially the same wherever it is found. To grind down and obliterate distinctions of *adat* is to render Kelantanese Malays equivalent to Negeri Sembilan Malays, Javanese and Minangkabau (ibid.:231). This is alarming because “[d]iscrimination and injustice within the family is critically important because of the centrality of the family to women’s lives and the ways in which male control over wives, mothers, sisters, and daughters can trickle over into all aspects of society”(Anwar and Rumminger 2007:1531).

Lastly, “the more the *syariah* courts adhere to what are regarded as authentically Islamic and modern practices that entail the refashioning of new Malay–Muslim identities subjectivities, the more they contribute to the production of a Malay–Muslim citizenry whose subjectivities and forms of kinship converge with those of the … non–Muslim[s]”(Peletz 2002:206). This refashioning “implicates the courts in the erasure of the very cultural difference they are supposed to safeguard with all of the resources at their disposal”(Ibid.).

Conflicts In The Syariahization of Malay Marriages

When the Selangor Islamic Family Law of 1984 was first enacted, there was a progressive clause to restrict polygamy (in Section 23): the proposed marriage “will not directly or otherwise lower the standard of living that his …wives and dependents have enjoyed”(Mohamad 2011:11). After 2000, the Family Law statutes

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of the 1980s were replaced by legislation enhancing men's entitlements and curtailing women's rights. What angered women was a clause which allowed for polygamy without the man having to prove the marriage was both necessary and just. Thus, polygamy could even be "granted to men with very little financial means" nor show equal treatment of all his wives (ibid.:13). The current Islamic Family Law Act contains other provisions that discriminate against Muslim women. These include (Anwar and Rumminger 2007:1533-1534): (1) a lower minimum age of marriage for women than men, (2) regardless of age, a woman can only marry with her guardian's consent, whereas a man need not do so, (3) a Muslim man can marry a non-Muslim woman but a Muslim woman cannot marry a non-Muslim man, (4) a man may marry up to four wives but women can only have one, (5) a woman is supposed to obey her husband. Her failure to comply with the "lawful" wishes of her husband constitutes "*nusyuz*" and means she can lose her right to maintenance.

Not surprisingly, female activists have been greatly concerned that syariaization has become "regressively discriminatory against women"(Mohamad 2015:172). As men are given more leeway in family marriage laws, many petitioners in the courts are females suing for legal redress of their rights due to male negligence (Mohamad 2011:14).

Ironically, such Malaysian Islamist views are promulgated in spite of the Egyptian Grand Mufti's opinion that the Quran

viewed monogamy as the ideal form of marriage in Islam and that Abdullah Yusuf Ali’s widely used English translation held the same view (Anwar 2005:239).¹⁰

Conflicts In The Syariazation of Interreligious Marriages

Though ideally Article 121(3) was supposed to simplify legal decisions concerning Muslim matters, it complicated interreligious marriages when their spouse was a non-Muslim (see Table 2):

Table 2: Examples of *syariah* law complicating non-Muslim affairs¹¹

<i>Non-Muslim petitioner</i>	<i>Significance</i>
Shamala	Petitioner married as a Hindu but husband later converts to Islam, then converts two sons to Islam without her permission. Petitioner fights for custody of two sons but <i>syariah</i> court rules against her.
Subashini	Petitioner married as a Hindu under civil law but husband later converts to Islam, then dissolves marriage under <i>Syariah</i> Court. Petitioner files under the civil court but Federal Court dismisses her application.
Kaliammal Sinnasamy	<i>Syariah</i> Court decides the petitioner’s husband validly converted to Islam without her knowledge. Upon his death, wife petitions to bury him with Hindu rites but civil court defers religious status to <i>syariah</i> .

10 However, in the 1989 edition of his translated Quran, Ali’s commentary on the verse on polygamy, in which he says that the ideal and original state of marriage in Islam is monogamy “has been deleted”(Anwar 2005:239).

11 For further details, see http://www.ccmalaysia.org/news/constitution/20051228press_statement.htm and Mohamad, Aziz and Chin (2009:77–89, 98).

When a spouse's religious adherence is in question, children are torn from their parents or converted to Islam without prior parental consent and the *syariah* courts rule against the petitioners, they “do not show ...the Islamic lobby to be having a compassionate face”(Mohamad 2009:22-23).¹² In spite of such examples, vocal Muslim groups not only defended the *syariah* courts, they demonized the petitioners for insulting Islam or disuniting the *ummah*. Indeed, the “greatest challenge in realising Islamic law in Malaysia has been the wide perception that exists among Muslims and an increasing number of non-Muslims that the whole Islamic bureaucratic and judicial structures forego compassion and social propriety in their dealings with the public. State Islamic administrators, through their holier-than-thou attitudes, have cultivated the public image of abominable, witch-hunters and undisciplined office-bearers”(Abdul Hamid 2009:185).

In these instances, Article 121(3) has effectively removed the “rights of citizens (both Muslims and non-Muslims) to have access to one common, equitable and universal court system ... with the affirmation of jurisdictional distinction”(Mohamad et al 2015:67-68).

12 One wonders how faithful Muslims are to their ideals when one considers that the prophet Muhammad instructed judges and rulers to “Suspend the prescribed punishments ... as far as you can, For it is better to err in forgiveness than making an error in punishment”(Kamali 2008:293).

Conflict In The Syariaization of Non-Muslim Affairs

In spite of promises by the Islamists that non-Muslims are not subject to *syariah* law, in reality they have been broken. Table 3 lists the many examples when Islamic authority or *syariah* law was applied to non-Muslims.

Table 3: Cases of *syariah* law extending into non-Muslim affairs¹³

Social arena	Application of Islamic authority / <i>syariah</i> law	Conflicts with the non-Muslim's civil right
Church premise	Selangor Department of Islamic Affairs claims authority to raid a church in 2010.	Church civil rights are violated as <i>syariah</i> law cannot apply to raiding a non-Muslim premise.
Interreligious marriage	Non-Muslim converts to Islam to marry a Muslim but upon divorce, the desire to become a non-Muslim must be petitioned through <i>syariah</i> court.	Non-Muslim must still petition <i>syariah</i> court to leave Islam.
	Divorce occurs and non-Muslim spouse petitions for child custody. <i>Syariah</i> court rules children are now Muslim and must stay with the Muslim spouse.	Non-Muslim spouse retains little or no rights over child in violation of child custodial laws under civil laws.
Religious texts	Islamic authority denies Sikhs and Christians the right to use the term Allah in their religious texts.	<i>Syariah</i> law intrudes into religious freedom of non-Muslims guaranteed under Article 11 of the constitution.

13 See Mohamad, Aziz and Chin (2010), Mohammad (2011).

In light of the above examples, non-Muslims now cannot accept at face value any Islamist promises. In fact, non-Muslims must beware the Islamists warning that “when the time comes, [syariah] laws will be extended to all non-Muslims”(Marshall 2005:10). In this area, Islamists commonly violate the Quranic injunction to be fair to others. Justice is “generally understood to mean ‘putting everything in its rightful place’, and in the context of *Shari’ah* as ‘giving everyone his or her entitlement’”(Kamali 2008:199). Justice is the “one-overriding objective that characterizes the Qur’anic message as a whole [and] is a goal, not only of Islam, but of all revealed religions … in dealing with friends or foes, Muslim or non-Muslims, all must be treated with justice”(ibid.:31).¹⁴

Muslims and non-Muslims within Malaysia now seriously question how much is Malaysia a model Islamic state in light of syariaization’s many problems in the last thirty years. Last but not least, the status of non-Muslims as minorities in Muslim-majority Malaysia is hardly discussed, especially when *syariah* law will apply to them in the not-too-distant future. This problematic because the “primary challenge to an Islamic state is that substantive Islamic law concerning non-Muslims, as developed by classical scholars, treats non-Muslims as subjects with inferior political, legal and religious rights”(el-Gaili, cited by Lee 2010:96). Thus, unless, Malaysia’s Muslim authorities can fully address the matter of dhimmi status of non-Muslims under *syar-*

14 See Surah 4:135, 5:8, 6:152, 16:90.

riah law and hold honest discussions with them concerning their shared future as citizens in a plural nation, they risk diminishing Islam as a religion of justice and respect, but instead generate fear and loathing among non-Muslims.

VI. CHRISTIAN WITNESS CONTEXT OF SYARIAZATION IN MALAYSIA

Christian engagement with syariazation entails understanding the progressive Muslims and their opponents, the Islamists. The following is a proposed engagement based upon Jesus' incarnational ministry. Jesus' example is highlighted due to the parallels of being a minority community living under hostile religious authorities.

Jesus loved others deeply. A starting local theology is that of neighbourology (Batumalai 1995). Deep neighbourology involves not only knowing the name of others but also their culture and beliefs deeply to understand what they do and why. The Church's task for its future under syariazation is to understand, and to dialogue with pluralistic voices within Islam to comprehend the tension of *syariah* law versus *adat*, the marginalization of Muslim women, injustices in interreligious marriages, etc. By doing so, the Church may discover new friends and approaches to face the Islamists. In addition, a deeper understanding and study of the

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Quran and Hadith is required of Christians who seek to fully engage with Muslims over the conflation of *syariah* as Islamic law. Christians well-versed in the Quran or Islamic history can help locals retrieve or rediscover the rich legacy in Islam that evidence its diverse views in its development and how Islam has been ill-served by Islamists who seek to censor or ignore its pluralism. Perhaps Muslims can find solutions from within Islam and engage in *ijtihad* and produce new understandings and recover the sociohistorical context of its revelation so that the textual heritage does not become detached from the context of today's world (Anwar 2005:244–245).¹⁵ When Islam is used as a source of public law and policy, Christians working with Muslim activists should use the progressive scholarship and the diversity of laws and practices in Muslim countries to open the public discourse and challenge the dominant orthodoxy by providing alternative opinions and breaking the monopoly and authority that traditional religious figures have over religious matters.

Jesus adapted his message and teaching for his audiences. An important feature of being with religious others is to understand the idioms and categories of thought they use within their community. History has shown how such interreligious learning became a tool of creative self-theologizing and reflection upon one's own religious heritage. For example, when Islam expanded and conquered vast swathes of the Middle East during the Ummayyad Empire, Arab Christians responded to creatively construct and

15 On how to revive *ijtihad* today, see Kamali (2008:162–177).

explain new understandings of the Trinity to Muslims (Griffith 2008:53–55). Compelled to learn Arabic in order to understand and speak to the Muslims, they later became skilled translators, rendering hundreds of ancient Greek classics into Arabic. Subsequently, Muslims acquired this knowledge base for the later flowering of Islamic civilization.

Can Christians work to empower and assist Muslims who suffer under the unequal treatment of syariaization also? If so, Christians must realize the following hurdles and opposition among Muslims and why they may muffle their dissatisfactions. Key challenges include (Anwar and Rumminger 2007:1539–1540):

Being ill-informed of the Quran, Hadith or syariah laws. Due to this, Muslims abrogate responsibility of negotiating the permissible or encouraged forms of Islam to the religious authorities (Hoffstaedter 2014:259). Since the ulama are not at the forefront of reform, civil society groups and lay intellectuals assume leadership in reform movements, but their credentials/authority to engage with Islam publicly are questioned and undermined.

A belief that syariah law is God's law and is, therefore, infallible and unchangeable. This renders efforts towards reform to be regarded as un-Islamic. Consequently, many ordinary Muslims and legislators are afraid to publicly speak out on Islamic issues. They fear controversy or being labeled as anti-Islam and accused of questioning God's word by the extremists. Thus "no debates would transpire whenever any bill for Muslims were tabled in

the legislative houses”.¹⁶ This fear extends to progressive scholars with the knowledge and credibility to speak out, but choose silence for fear of jeopardizing their jobs and livelihoods, invoking community hostility, and/or facing threats to their safety.

Islamist denial of the socio-historical construction of the syariah. That *syariah* law was constructed within specific contexts in its development and application within early and classical Islam civilization is often denied (Anwar 2005:244). This stultifies reasoning and shuts down critiques of *syariah* law, even when it is unjust in today’s context.

Conservative training. In the traditional Islamic education most *ulama* are trained in the belief of *taqlid* (imitation) and that the doors of *ijtihad* are closed. This is also “based on the notion that the great scholars of the classical period who lived closer to the time of the Prophet were unsurpassed in their knowledge and interpretive skills”(ibid.).¹⁷

Underexposure to English/Western laws. Salaried officials returning from more conservative centres of learning in the Arab world or locally tertiary institutions in Malaysia with little training in this are unprepared to consider its merits and only presume

16 Ironically, “those who challenge and question the credentials of women’s rights groups to speak on Islam themselves often do not speak Arabic and have not been traditionally educated in Islam [are the] professionals, engineers, doctors, professors and administrators without any formal religious training. Their right to speak out, however, is not questioned ... but those who challenge these views [are]”(Anwar 2005:243).

17 On how the doors of *ijtihad* were closed, see Kamali (2008:93–95). On the varieties of disagreements and pluralism in *syariah*, see Kamali (2008:99–121).

syariah law as the sole option (Mohamad 2015, 174–175).¹⁸

Islamist harassment and threats towards critics of syariahization. When syariahization’s shortcomings are reported or challenged, Islamists responded by mounting lawsuits against them alleging defamation, blasphemy, apostasy, etc (Peletz 2015:492). This “lawfare” uses “duly enacted penal codes, its administrative law, its states of emergency … to silence others perceived as threatening their values and interests, or those of the ‘race’, nation, or global Muslim community”(Peletz 2015:492).

Lack of proper shura or ijma to involve the public to deliberate on syariahization. This by itself violates the proper Quranic processes of arriving at a community consensus that benefits society (Kamali 2008). This state of affairs occurs due to the UMNO–PAS conflicts that have narrowed the discursive field of dialogue and plural discussion concerning the nature of Islam and democratic debate (Liow 2007:181–182. See also Martinez in this volume).

In light of the above, the final incarnational principle the Church must consider is that *Jesus challenged and exposed the sins of the oppressors*. If Malaysia is considered to be a model Islamic state, the example and consequences of its syariahization is a failed model. A key concern is that as the syariahization wagon proceeds onward towards full harmonization (or enfolding) of Malaysia’s civil law into its ambit, when injustice occurs under *syariah* law, *who watches the watchers?* In light of these multi-

18 However, Hamayotsu (2003:65) finds that syariahization was by a “new breed of *Syariah* officials, familiar with both Islamic and common laws and procedures”.

pronged challenges, what can Malaysian Christians do? The following proposals are suggested:

Activism on common causes. Christians must work with Muslims to clearly articulate and expose sins of the poor and rich, without fear nor favour. Corruption, theft and adultery all fall within the ambit of Christian moral concerns, not just *syariah* law. Happily, the Church has now emerged to become activist in joining public protest rallies and being more pro-active during elections (Chong 2014).

Alliance-building. Christians must do sufficient alliance-building and awareness-raising to build a public and legislative constituency that supports law reform when unjust bills appear such as enactments that were ‘stealthily’ adopted in parliament (Mohammad 2015:175).¹⁹ Christian-Muslim cooperation especially becomes increasingly important “for progressive Muslims to work within the framework of Islam to advance progressive or liberal agendas”(Lee 2010:97). This work is also important for Muslims who “feel that their religion is being distorted by Islamists and politicians”(ibid.). In countries “governed by a constitutional democratic framework, public law must be opened to public debate, even if the law is made in the name of religion”(Anwar and Rumminger 2007:1542).

Accountability. A powerful accountability system is needed to

19 Such alliance-building occurred in 2000 when the IFC (Inter-Faith Council) and others were established to advocate the return to constitutionalism and freedom of religion. However, vociferous Islamist opposition emerged and the IFC failed. For details, see Mohammad, Aziz and Chin (2009:91).

highlight abuses in the system when Islamists deploy underhanded tactics, rouse mobs or issue death threats. Because the media is government-controlled, Christians should work with concerned Muslims to establish whistleblowing structures to publicize hidden agendas, to collect and give voice to marginalized voices.²⁰ Alternative sources of media such as blogs, YouTube, working with progressive Muslim groups and also international agencies to collect and immediately document and document to the world Islamist extremism are important. If syariah is to be the code by which Muslims are to live by,

The individual is admittedly required to obey the government (sura 4:59) but he obeys the ruler on condition that the latter obeys the *Shari'ah*. This is reflected in a renowned *hadith* that “there is no obedience in sin, obedience is only in righteousness” and elsewhere that “the best form of jihad is to tell a word of truth to an oppressive ruler”(Kamali 2008:61–62).²¹

For Muslims, when syariaization becomes extreme, such proponents will need to face the scrutiny of living a personal piety consistent with the norms that they publicly enforce upon others. Failure to do so not only risks great political and religious risks to

20 For a range of various activists strategies against syariaization, see Anwar (2005).

21 Kamali (2008:63–64) adds that lest rulers be complacent, the “immunities against prosecution ...that are enjoyed by this day by monarchs and heads of state, state assemblies and diplomats in other legal systems, are totally absent in Islamic law” .

them, but tarnishes the religion they so zealously proclaim.

Economic sanctions. This is a seldom tried strategy in Malaysia, perhaps due to the backlash it may engender by the government. However, under extreme cases, such as when South Africans suffered under oppressive apartheid rule, global economic sanctions called by the resistance leaders eventually brought the downfall of the racist regime. Among the resistance was a noted Christian, Bishop Desmond Tutu. Because the Malaysian government understands the importance of the economy, such a strategy will not go unnoticed. Christians should carefully pray and consider whether this option is viable in Malaysia's context.

VII. CONCLUSION

In this chapter, we see that syariaization leads to many unhappy outcomes. The coming future only promises more syariaization when Muslim demographics in Malaysia reaches the Islamists' desired supermajority status (sufficient to enforce Islamist/Muslim desires at will without non-Muslim considerations). When that point arrives, will Malaysia descend into a failed state where syariaization becomes all-pervasive and oppressive? Two final thoughts are considered here.

Too much unjust syariah will lead to unexpected outcomes. How long can ordinary Malaysian Muslims continue with syari-

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ization's assaults on their adat, marriage, sense of justice before significant counter reactions occur? Recent developments in Malaysia show that as "the state pushes for more laws, regulations and stipulations on homogeneity in order to govern the Muslim subject more definitively and less ambivalently [,] citizens are also going the opposite direction, pushing for more freedom of expression, pluralism and heterogeneity within Islam itself"(Mohamad 2009:24-25). However, when Islamists have emphasized "clean government and the provision of welfare services rather than state enforcement of Islamic law" they have done better (Hefner 2011:42). In Egypt and Iran, wholesale Islamization upon their populace produced a backlash. In Egypt, Muslim Brotherhood authoritarianism spawned a counter response that overthrew them recently. In Iran, stifling Muslim-cleric rule over three decades spurred a least a million Muslims to leave Islam (Markarian 2008).

Too much unjust Islamization leads Christians to Christ's suffering and the glory of the cross. Philippians 3:10 states, "I want to know Christ—yes, to know the power of his resurrection and participation in his sufferings, becoming like him in his death". In Malaysia, Christians still have many avenues to advocate justice when victimized by syariaization (e.g., legal challenges, activism, engaging with moderate Muslims or the voting booth. See Chong 2014, Lau 2015). However, with the host of oppressive laws, mob-like opposition, and death threats from Islamists that the state

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not punished but has foisted onto its opponents, the most rational court judgment may not win the day any longer.

In this light, the Malaysian Church must prepare itself for suffering and persecution. In recent decades, Christians have reacted with a bunker mentality or migrated overseas because they have not appreciated how God's power is manifested in weakness. Here, a history lesson in divine weakness is important to recall. In the 1960–1970s, when Malaysia ended missionary visas and expelled them, the Church faced a crisis. Accompanying this, there were mass conversions of indigenous Christians in Sabah and a serious loss of foreign Christian leaders. However, these events provoked the Church to develop local discipleship and leadership training structures such as the Bible College of Malaysia in West Malaysia and Sabah Theological Seminary to train pastors in the Malay language. Consequently many hundreds of local pastors and leaders have since been trained.

The lesson of Islamisation or syariaization for the Church is that God's kingdom is not of this world. Though Christians may see defeat, God uses the weak and foolish things of this world to humble the mighty (1 Corinthians 1:25–28). If Malaysian Christians can trust in this, the future triumph of Christianity in the nation will still occur in spite of the long odds it faces.

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■ ABSTRACT

The Development of *Syariah* Law in Malaysia: Implications for Muslims and Christians

John Cheong

The establishment of *Syariah* law in Malaysia's pre-independence history is examined with respect to Malay customs and the sultanate. Post-independence developments and legislative reforms in Malaysia's legal system that favoured *syariah* law strengthened Islamic law but weakened Malay customs (*adat*) in areas such as kinship and marriage which introduced social conundrums. Conflicts also surfaced over its authority and applicability over inter-religious relationships with non-Muslims. The article discusses Christian witness and relationships with Muslims in these areas of contestations in order to understand the hurdles. Furthermore, the article also seeks to promote specific proposals which aim to prompt cooperation from the Church to engage in Malaysia's coming future. This paper concludes with an incarnational theology

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of ministry and reasons for guarded optimism in light of recent socio-religious dissensions amongst the *ummah* in recent decades.

Keywords: *Syariah* Law, Malaysia, Muslim-Christian Relationship in Malaysia, Islamization in Malaysia