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## Debating Rights in Malaysia: Contradictions and Challenges

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The nationalist project based upon a theory of rights, national sovereignty and citizenship, is presently under challenge by current forces of democratic change and political identity in many parts of Southeast Asia.<sup>1</sup> The world is also witnessing a remarkable resurgence of cultural politics that question the universal theory of rights that is part and parcel of any cross-cultural consensus on establishing democracy.<sup>2</sup> The revived significance of cultural groups and communities has driven home the point that a discussion of liberal democracy and human rights cannot be stated only in universal terms: special rights of indigenous, religious and cultural groups need to be recognised in so far as they determine important human practices, traditions and ways of life.

As a result of domestic and external pressures against authoritarian rule, many states in Southeast Asia have gone through some sort of elections and many of them have become electoral democracies. Diminution of censorship has now permitted a more independent press to emerge in Thailand, the Philippines and Indonesia. But political liberalisation has triggered other sectarian or ethnic conflicts; in countries dominated by Muslim populations, the dual aspirations of Islamisation and democratisation have set the framework for resolving the debate on cultural rights. Local independence movements in various stages of dormancy have been emboldened by East Timor's secession from Indonesia to either struggle for separate statehood or to extract as many powers as possible from the central government. People in Aceh and Melanesian tribesmen in the province of Irian Jaya in Indonesia, the Pattani United Liberation Organization (PULO) in southern Thailand and the Islamic groups fighting for the Muslim dominated island of Mindanao in the Philippines are increasingly active, rendering state borders of these countries extremely fragile.<sup>3</sup> These movements challenge two fundamental statist notions – that of territorial sovereignty and of a unified nationality juridically administered by governmental bodies. The concept of state sovereignty continues to be hailed by political elites but it is less able to control new realities following the globalisation of markets and cultures. These two developments coupled with trends in globalisation add impetus to co-operation in the region to stop the spread of civil unrest; however it also gives credibility to states trying to control and ride roughshod over human rights.

The debate on the universal validity of human rights has concerned many countries of Southeast Asia, where governments displaying a range of ideological positions have

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*Journal of Contemporary Asia, Vol. 32 No. 1 (2002)*

used the right to national self-determination – as a defense against other states that attempt to interfere in their affairs.<sup>4</sup> These countries have called for a system of human rights based on what they call “Asian values” that also justify their claims to have a different kind of political development. Such ideological claims are treated with skepticism by social scientists and may or may not enjoy a high degree of support among the general public. But they serve the purpose of drawing cultural boundaries between the West and Asian countries – and mask a competition for power among many states in Southeast Asia, where leaders struggle to stabilize their economies and rebuild people’s confidence in their mandate.

In the context of Malaysia many schools of thought justify radically different political projects with the communitarian argument. There are some common issues that need to be grappled with in these competing arguments about cultural rights. They all defend the cultural particularity, uniqueness and specificity of their communities compared to Western societies and demand for specific treatment.

According to Dr Mahathir bin Mohamad, Prime Minister of Malaysia and the leader of the dominant party in the government, the United Malays Nationalist Organisation (UMNO), the general crisis of liberal democracy is reflected in its lack of cultural values. He highlights the importance of a political model based on “Asian values” instead of on individual rights. He also appeals to widespread fears that an active civil society erodes authoritative order.<sup>5</sup> Methodological and substantive criticisms have already been raised against the false alternatives - between democracy and political stability, or between democracy and economic growth - which often translate into authoritarian demands for disciplinary order and social control.<sup>6</sup> Here I focus on the cultural explanations given by Mahathir to challenge political rights, western democracy and globalisation.

Some leaders in the Parti-Islam Se Malaysia (PAS), the main opposition party in parliament after the November 1999 general elections, have drawn upon the textual sources of Islamic law to give them a social embodiment in the contemporary political context.<sup>7</sup> Law is a central component of Islam so it is not surprising that their attempts to come to terms with human rights should center on legal issues. But in seeking to reform the legal foundations for the implementation of a modern *shari’a*, they face challenges from modern constitutionalism and the universal concept of human rights. Meanwhile, communitarian scholars argue that cross-cultural values emanating from various religious and spiritual philosophies must be incorporated in a theory of human rights. In order to do this there is a need for institutional mechanisms that guarantee legal enforcement of rights.

The purpose of this article is to examine these communitarian arguments and clarify some of the contradictions in the democratisation process in Malaysia and the way these are manifested in a critique of a universal theory of human rights. I also discuss the implications this has for developing a theory of women’s rights and a greater role for civil society.

This section argues for the need to move from the above definition of human rights as related to the needs of political stability, Islamic law or the claims of Asian values, to

the more difficult terrain of the categories between the individual and the state, in order to overcome the conception that human rights is essentially *state-centered*. It is not only the growing centralisation of the state, its subservience to the whims and fancies of a few individuals, but also the extent to which the state plans cultural integration on the one hand, and on the other erodes community lifestyles that need to be questioned. The second objective is to question a universal theory of human rights. This is relevant in a social context where individuals identify more strongly with duties or obligations to religious and social communities than with the rights of individuals. How can one postulate liberal principles on rights if they are developed in historically and socially situated cultures? How are such rights interpreted in cultures and traditions where no compatible notion of rights exist? Can issues of community identity and rights of the people inherent in this setting be raised within the conventional framework of a universal theory of human rights?

In addressing these questions I make the following arguments: First, the protection of human rights cannot be entrusted to states or their political leaders because most states prefer protecting their sovereignty to protecting human rights. For example, defending stability, ethnic-consensus and economic development, political elites in Malaysia push aside the need for political and civil liberties on the basis of cultural relativism. Since states most frequently violate human rights, international enforcement as well as the instrumentalities to struggle for them (people's organisations, free media, constitutional guarantees of rights, independent courts, parliamentary opposition and NGOs) need to be expanded and made free from executive controls. A necessary, if not sufficient, condition for the effective protection of human rights is development of political institutions in civil society.

Second, I argue that democratic and pluralistic politics are necessary ingredients in achieving more sustainable development. Civil society, it is argued, needs to assert some normative prerogatives of its own, alongside those of the government, whether it manifests in debate over government policy on ecology, economy, role of markets, military budget or education. But it must be cautious of inter-community ethnic and religious groups who ask for group equality and thereby assert autonomy both from other groups and within the public sphere. It is a great challenge for Malaysia, which follows Islamic law as well as civil law to accommodate the democratic participation of its citizens regardless of differences of gender, religion and culture.

In this article, I first critically explore the human rights tradition and the background to the principle of non-interference in countries of the Association of Southeast Asian Nations (ASEAN).<sup>8</sup> While these countries face a wave of democratisation in the political process, the organisation's cardinal principle – that it does not interfere in its members' domestic affairs – has in the past circumscribed the debate on formalising more democratic and transparent processes in response to changes in civil society. I then examine the epistemological basis for the rejection of universal theory of rights within three groups in Malaysian politics – the nationalists, communitarians and traditionalists. Finally, I examine the implications of this debate upon the rights of women in the context of democratisation of Islamic law and the growth of civil society.

## ASEAN and The Human Rights Tradition

Natural rights and human rights are rights claimed in respect of all human beings.<sup>9</sup> They are said to be of universal rather than contextual applicability and are therefore very different from positive (legal) rights, which are limited to particular (territorial) jurisdictions, and moral rights, which are premised on particular moral and ethical codes.<sup>10</sup> To justify universal claims that are made about them it is argued that they inhere in human beings rather than in societies and states; and exist in large measure for protecting individuals against the state.

The idea that human beings can assert rights against their governments were made in the days of the Greek city-state by theorists of natural law and natural rights. In the eighteenth century, John Locke's theories had a direct influence on the thought of the founders of the American republic and on the French Declaration of the Rights of Man and the Citizens. However, the idea of inalienable rights was challenged from many quarters. Jeremy Bentham, the English philosopher, attacked the idea of natural rights and rejected them as prior to and against the state. He claimed that these rights were infused with the political philosophy of liberal individualism because these rights conceived of human beings and their freedom in negative terms and they favored the absence of state controls in individual and social life.<sup>11</sup> Till the Second World War, European socialists from various groups rejected the idea of inalienable rights because they regarded it as based upon individualistic assumptions rather than upon any conception of social needs of the citizen, that is, on any social and economic rights. The adoption by organizations and states of the idea of human rights immediately in the period between the two world wars marked a sharp change of outlook. It was the direct consequence of revulsion against the genocidal policies followed by the totalitarian leaders in Europe.<sup>12</sup>

In the international human rights system of today, the Universal Declaration of Human Rights (henceforth UDHR) stands out as a foundation and symbol of great importance because it lays down the basic institutional structure for the protection of human rights. The remarkable thing about the UDHR (1948) is that despite the huge cultural differences between the countries that ratified it, they claimed in different ways to meet certain standards safeguarding basic civil rights, such as the right to a fair trial, political rights, and freedom of expression against arbitrary interference by government. No philosophical or religious basis was claimed for the document; its basis was said to be the pledge given by member states of the United Nations to promote universal respect for and observation of human rights and fundamental freedoms.<sup>13</sup>

Over the years, queries have been raised about both the philosophical basis of the UDHR and its practical utility. The assertion that human rights inhere in all human beings irrespective of their religious belief or their social customs is clearly a very sweeping assertion. To be effective, the concept of human rights must be formulated broadly enough to cover various political and economic systems. Particularly helpful in this regard is the notion of three generations of human rights, advanced by the French jurist, Karel Vasak.<sup>14</sup>

The first generation of human rights expressed in the International Covenant on Civil and Political rights (ICCPR) – the document that attempts to put the ideas of the UDHR into action – is set forth in articles 2 to 21 of the Universal Declaration. These reflect human rights that have been developing in many Western countries to protect individuals against their states from the time of the *Magna Carta* (1215) and through the American and French revolutions. Social protests of the nineteenth century against the effects of industrialisation provided a point of departure for the socialist formulation of human rights. Out of this philosophical and political background emerged the second generation of welfare rights, in the form of the International Covenant on Economic, Social and Cultural Rights (ICESCR) whose principles are set forth in articles 22-26 of the UDHR.

In practice, the provisions of the UDHR and the two subsequent covenants on human rights were only of limited value and many countries believed that each region had to formulate rules for the protection of human rights that were based on its ideology and cultural exclusiveness. The third world's successful de-colonisation in the 1950s and 1960s saw new states pursuing a new generation of rights, among which were included the rights to development, peace, to a healthy and ecologically balanced environment and to one's cultural practices. Together they came to be called the third generation of human rights.

Although these three types of rights illustrate that the concept of human rights is not stagnant but is subject to modification and expansion in order to meet the challenges of different historical conditions arising out of the decline of the nation-state in the latter part of the 20<sup>th</sup> century, the concept has been increasingly questioned by various Islamic countries and Asian states.

The Charter of the Organization of Islamic Conference (OIC) to which many Muslim countries belong, affirms members' commitment to the UN Charter and the treaties on human rights. Yet political leaders of Islamic countries claimed that while human rights were universal, it was necessary that their application take into account diverse political systems. Since then, many Islamic countries put forward ideas that were incorporated in the Cairo Declaration on Human Rights in Islam, 1990.<sup>15</sup> For the most part, the provisions of the Cairo Declaration subject human rights and freedoms to the Islamic *shari'a*. The problems this gives rise to vis-à-vis equality rights for Muslim women are discussed in a later section. Overall Islamic legal principles throw up questions regarding the relationship between religion and universal human rights and that between Islamic law and international human rights conventions.

The world conference on human rights held in Vienna in June 1993 drew attention to differences between Western and Asian countries on the subject of rights. On the forefront was the prevailing question about whether there was a common understanding of the concept of human rights. Many Western nations resorted to the discourse of democracy and human rights to criticise developing countries and Islamic states for their violations of individual liberties. On the other hand, many non-Western nations, in particular Asian ones, criticised the universal language of human rights as ethnocentric

and in the international arena, claimed the right to not be interfered with by other states. Together with Lee Kuan Yew, former prime minister of Singapore, Mahathir has been one of the most visible and outspoken critics of the concept of democracy, rights and individualism underlying the Western liberal democratic model. They claimed that the *stress on political rights was culturally inappropriate* to countries organized on communitarian ideals of harmony and consensus.<sup>16</sup> On the basis of community values, also called “Asian values” they apparently promoted political pluralism and cultural rights. In political terms however, this discourse claimed that no legitimate cross-cultural standards were available for evaluating political models within this region. In the following sections I contend that along with this “cultural nationalist discourse,” ASEAN’s cardinal principle of non-interference, has served as an ideological refuge for authoritarian rule in an era of globalisation by providing a theoretical basis for non-scrutiny in internal affairs.

The trend in the field of human rights has been to develop *national and regional human rights protection systems* aimed at ensuring the implementation of various human rights covenants and instruments. The Human Rights Commission of the UN realised that while human rights principles are universal and standards have been negotiated and accepted at the international level, the responsibility for the implementation of these norms rests at the state level. Moreover, the procedure and the machinery for implementation depend on a country’s political system, level of economic development and political ideology. Thus, strengthening national capacities in the field of human rights has been viewed as the strongest basis for regional co-operation in various regions, including the Asia-Pacific.

Although at the Vienna Conference in 1993 foreign ministers from some 70 Asian and African states battled with American delegates over the criteria of human rights and their abuses, in the Ministerial Meeting in Singapore in the same year, they reaffirmed commitment to and respect for human rights as set out in the Vienna Declaration of 25 June that included recognition of political, social and economic rights along with the right to development.<sup>17</sup> However, they cautiously added that promotion of human rights should take cognisance of the principles of respect for “national sovereignty, territorial integrity and non-interference in the internal affairs of the state.” More significantly they took the initiative to announce the need for an appropriate regional mechanism on human rights.<sup>18</sup>

To this day, government initiatives in developing an infrastructure for human rights protection in ASEAN have focused on the development of “national institutions” – such as human rights commissions – that could act as advisory bodies, offer remedial measures for human rights violations, disseminate information and promote education in human rights. After this policy initiative there has been little enthusiasm for implementing the proposal in Singapore, Brunei, Vietnam, Laos and Myanmar. Until these countries set up national institutions, the regional mechanism is unlikely to be established.

Among ASEAN countries, the Philippines and Thailand have established human

rights commissions, Malaysia established a commission in 2000 and Thailand is in the process of developing a body.<sup>19</sup> The lack of a human rights protection system in other countries of ASEAN is due to many reasons. Many countries argue that the existence of an institution at the regional level may affect their national sovereignty. Another objection following from this claim is over the recent trend of developed countries to link development and trade policies with human rights performance. In reaction to this trend ASEAN states declared the right to development as a fundamental inalienable right, in the Bangkok Declaration.<sup>20</sup> ASEAN members found it reasonable to reduce barriers to trade and economic development. However while most of them agree to a diminution of sovereign rights in favor of regional economic co-operation, they were quick to assert that human rights observance should be postponed until economic development has been completed. Finally, the idea espoused by many ASEAN states that human rights be limited to national jurisdiction in consideration for the different political, cultural and social conditions of countries is another major obstacle to establishing a sub-regional protection system at the ASEAN level.

These criticisms raise the question: what features should a human rights system for the Asia-Pacific region have? It is argued that the Asia-Pacific Charter could give equal emphasis on civil, political and economic rights – as does the African Charter on Human and People's Rights – but unlike the European, American and African regimes that operate on the assumption that member states share a common heritage and political traditions, it is unfair to impose a set of universal principles on the countries of the Southeast Asian region. Given the geographical breadth, cultural-religious traditions and level of economic development within Asian states, there can be no common ASEAN approach towards human rights, according to this argument.

That so far ASEAN nations have unilaterally established human rights commissions seems quite an achievement given that promotion of human rights did not constitute one of the founding purposes of ASEAN.<sup>21</sup> The organisation's low institutional priority to the protection of human rights as compared to trade and security issues is further reflected in ASEAN's ambivalence towards human rights or in its selection of human rights violations to condemn. On the one hand, it displays solidarity with the self-determination of the Palestinian peoples, condemns the apartheid regime in South Africa and promotes human rights in Bosnia-Herzegovina. But on occasions in the past, ASEAN members have refused to comment on the deeds of the Marcos administration, East Timor claims of violations and on the human rights abuses in Myanmar. This ambivalent approach is inspired by the cardinal ASEAN principle of non-intervention in the internal affairs of member states, enshrined in article 2 C of the 1976 Treaty of Amity and Cooperation in Southeast Asia. However, at times ASEAN states have displayed collective solidarity towards the alleged human rights violations by other members of the ASEAN and also assisted them.<sup>22</sup> Importantly, this vacillating stance has gone a long way to reveal that economic interests are more important in this region than any commitment to civil and political rights.

Events in the late 1990s and early in the new millennium, however, challenged

ASEAN's insular nature. The end of the cold war has altered the security of the region and opened new horizons in strategic cooperation. The economic crisis, increased migration, transnational crime (including piracy and drug trafficking), the HIV-AIDS crisis and pressures of competing in trade, information and technology have pushed member states towards increased interest in their neighbor's activities. At the recent Foreign Ministers annual meeting in Bangkok, the Thai Prime Minister Chuan Leekpai reiterated the need for "ASEAN to evolve into a concert of relevance, dynamism and coherence – relevant not only to itself, but also to the outside world."<sup>23</sup>

Ironically, the weakened economies of ASEAN countries, some of which now have elected governments, have made its members more prone to criticise each other. Although a non-intervention policy is still followed and affirmed by most states in this region, cleavages were evident in ASEAN solidarity when the heads of two states openly criticised the Malaysian government for the arrest and ill treatment of former deputy prime minister Anwar Ibrahim. Both Estrada and Habibie of the Philippines and Indonesia respectively questioned Anwar's dismissal and subsequent torture. Even Lee Kuan Yew, the Singapore senior minister who is acutely aware of the delicate balance in Singapore-Malaysia affairs - described the circumstances which led to Anwar's sacking as an "unmitigated disaster."<sup>24</sup> He spoke of errors in judgment and the series of blunders that occurred before and after Anwar was placed under detention.

The cardinal principle of non-interference has been strained in recent years as the group's ineffectiveness to grapple with many problems including the haze from Indonesia fires, Islamic resurgence and democratisation surface. At one point, the Malaysian government accused the West of taking advantage of Indonesia following the downfall of Suharto and of orchestrating East Timor's independence. In recent months the former have pledged to help East Timor rebuild their country.

### **Debating Modernity and Human Rights in Malaysia: Nationalists, Traditionalists and Communitarians**

The cultural critique of human rights made by states in ASEAN has several links with the communitarian critique of Western hegemony and the values of Western culture made by the government and scholars in the Malaysian context. In recent years the functioning of state and society in the country has been shaped predominantly by constructs of local culture and religion that are deployed as bulwarks against international human rights. However, in this essay I focus only on three distinct appraisals of traditional institutions and cultural values: three schools can be identified in the contemporary discourse on human rights and democracy. According to the *nationalist* and *communitarian schools* traditional social structures and their values offer an alternative to modern systems of rationality and liberal democratic model of politics. These schools maintain that community identities are compatible with modernization. While the former argues that Malaysian society must reflect and build upon "Asian values," the latter emphasises the idea of human dignity.<sup>25</sup> The *traditionalist* attack on the idea of human

rights is premised on absolutist universal terms, in a general rejection of Western civilisation, secularism and modernity. It gives literal interpretations of the *Qur'an* with the objective of rendering certain policies in the contemporary period as having moral force and being based on universal principles.

By extolling the virtues of the patriarchal state and traditional family structure, both the nationalists and traditionalists provide a specific perspective about the lack of rights for women, ethnic minorities and indigenous groups; the discourse on “Asian values” or “Islamisation” of society reinforces conservative beliefs and means that, for example, women’s organisations arguing for gender equality and institutional safeguards are not accorded priority. Indeed, in the context of party politics between UMNO and PAS, where community rights are being reinforced, it may well be that women rights will face greater constraints in its implementation in the future.<sup>26</sup>

The distinctive feature of all these schools is that they draw upon the experience of the Western world in order to evaluate state and society in the light of modernity. Their main critique both of a liberal democratic model of politics and individual rights as reflecting western hegemony is based upon *empirical and cultural grounds*. Common to these perspectives are the following criticisms of human rights:

(a) Human rights claim to provide a foundation for moral and political thinking for people having different political and cultural identities. But by asserting there are human rights, to which all people everywhere accede to, it is assumed that some social practices and customs are universal, irrespective of their acceptance by specific cultures and nations.

(b) Human rights presuppose an ideology of possessive individualism. This claim is based on the argument that the individual is the primary bearer of rights.<sup>27</sup> By focusing on the individual as the autonomous possessor of his own person and capacity, human rights ignore the value placed on the individual vis-à-vis the social unit of which he is a part; nor for that matter is there any attention paid to “the inner freedom of the person *qua* person in terms which might make appeal to the larger *telos* of human nature, or to the harmonious order of the universe, and so on.”<sup>28</sup> Therefore, the positing of human rights poses a dichotomy between state and society by disregarding the political and social context and the communal moorings of an individual.

(c) Religious faith in public policy is inconsistent with the promotion of human rights. This claim along with the modern concept of the secular nation-state is a historical development of the powerful formation of the medieval European state.<sup>29</sup> Western societies have secularized their society, while granting almost unlimited individual freedom in public life. In the context of the Malaysian state it has been argued that the fusion of religious and political authority in public life would help to avoid the moral decadence of the West and contribute to the tolerance of different religions.

Viewing developments in Malaysian society from these perspectives, the nationalists, traditionalists and communitarians emphasise the need to affirm “Asian values,” “Islamic values” and “human dignity” respectively. Although meanings of these terms overlap, for the purpose of this section I only examine their differences.

A large number of Asian political elites and intellectuals of the *nationalist school* challenge the concept of human rights on more specific grounds. I mentioned that the “Asian way” discourse provoked important questions about cultural pluralism, nature of social and political power and modernisation of Malaysian society. We can summarise three versions of the nationalist challenge to human rights: (1) human rights follow from the self-determination of nations; (2) while there are universal human rights, substantial differences exist between international human rights norms and customs of this region; (3) that civil liberties are possible only after economic development is achieved. Significantly, these claims have been reinforced in the context of globalisation. Since I have already examined the first, I shall mainly focus on the issues arising out of the second and third points regarding the growth of civil society and its role in ensuring accountability and transparency in developing good governance.

The claim that economic development and economic and social rights are prerequisites to the development of civil and political liberties is based on two arguments: (a) as a developing nation Malaysia has not yet achieved the desired economic status to allow full realization of human rights; (b) Asian communities give greater importance to community values and moral beliefs, hence, collective rights should be given precedence over civil and political rights. This leads proponents of the nationalist school to conclude that features of democracy in non-Western countries should be based upon a set of “Asian values” and economic development requires a “constrained” democracy.<sup>30</sup> Treading the grounds of cultural relativism, Mahathir has listed the most important values of East Asian societies to be: (1) an orderly society; (2) societal harmony; (3) the accountability of public officials; (4) openness to new ideas; (5) freedom of expression; (6) respect for authority.<sup>31</sup>

The two most striking shortcomings of this school are that it obscures the reality of state-society relations and conceals the character of capitalist development followed in this region. The focus on “Asian values” and attack on globalisation has led many unwary analysts to ask the wrong questions about differences between Asia and the West. The best-known adherents of this school Mahathir and Lee Kuan Yew, have been in control of their respective countries for at least two decades and their interpretations of human rights have validity only in that specific context. To assume a correspondence between their views and the citizens of their societies would be grossly distorting. In posing a statist view of self-determination, these leaders forget that governments are the authoritative representatives of people, that it is ultimately the legitimacy of the interests of the peoples they represent that is the underlying ground of their validity.<sup>32</sup> Therefore they misconstrue the relationship between the rules of effective governance and the concept of legitimacy; policies that assert cultural and disciplined values of tradition cannot be legitimate without consent and public debate.

Time and again Mahathir has exposed contradictions in the West’s policies on human rights in Asia, especially concerning China and Bosnia: “on the one hand, non-Western governments are threatened because of some minor breach of human rights; on the other hand, when Western interests are not at stake, they are prepared to allow the

most brutal violation of human rights to take place before their very eyes.”<sup>33</sup> However, it is incorrect to assert that tolerance and freedom are important parts of the western tradition only; indeed they have strong roots in Asia too, which predate the Enlightenment notion of individual rights. Just as the proponents of the “Asian values” theory encounter difficulties in explaining their society’s contradictions, their own caricature of the West is not helpful in this analysis.

Apart from obscuring the indigenous roots of democracy that are highlighted by the communitarian school (see next section), the nationalist discourse on “Asian values” also obscures the actual roots of economic growth. In Malaysia, the government directed a form of industrialisation under the New Economic Policy (henceforth NEP) that led to the rise of a Malay capitalist class.<sup>34</sup> Along with Singapore and Indonesia, Malaysia forged close associations between the government, technocratic bureaucrats and corporate interests backed by the dominance of a single party. As a consequence of industrialisation and urbanisation Malaysian society is moving towards individualism and the nuclear family is becoming self-centered. Even though this is different from “Western individualism” there is no doubt that traditions are being undermined in the process of modernisation.

Related to this issue is that the capitalist path followed by the government is based on the exploitation of non-renewable resources and an obsessive desire for economic growth which has been achieved only by ignoring the rights of indigenous people to their land and their own path of development. Moreover, state-led growth has been very destructive of traditional communities and their values. The *orang asli* still lag behind the other communities, with reportedly 80% of these people living below the poverty line and with few educational and health facilities.<sup>35</sup>

The basis of the “Look East” policy espoused by Mahathir in the 1980s was both a critique of the West and an exaltation of indigenous values. Japan served as a model for “Asian” economic growth for many of the region’s developing countries, including Malaysia. But Mahathir has been less concerned with the importance of maintaining cultural traditions than with finding a regional variation upon the existing paths to capitalism. Whatever its strengths, this approach has its own contradictions and weaknesses in terms of pluralism and democratisation today. I would argue that his main purpose in introducing the concept was to adopt Japanese work ethics in order to make Malaysians work harder and identify themselves with the interests of their employers, thus discouraging workers from forming class-based organisations.<sup>36</sup>

Similarly, Mahathir’s attack in the 1990s on the free flows of capital under globalisation has sufficient grounds because it highlights serious abuses of the current trends in the world economy. He shares this critique with the communitarian school that has also criticised the economic aspects of globalisation for leading to a less democratic world (see Camilleri and Muzaffar 1998). But where Mahathir calls for international financial mechanisms to control capital flows, the communitarian school points out the need for diverse religions to come together in an expanded form of civil society.

In Mahathir’s attack, the contraction of developing countries’ public sector, rapid

transfers of financial capital and calls for liberalisation, are techniques to undermine the power of nation-states in order to replace them with Western dominated financial institutes. But his argument that the demand for deregulation of the market is similar to having “wolves guard sheep” is linked to another political concern.<sup>37</sup> At the core of his concern with globalisation is an anti-democratic refusal of the mediating influence of the institutions of civil society in public policy, including a role of civil society in ensuring transparency and accountability and preventing crony capitalism. Although globalisation is a very complex phenomenon, Mahathir’s claims about the danger of human rights, it can be argued, are attempts to restrain challenges to the political status quo; while pushing forward the path of capitalist development, they allude to strategies to maintain traditional subservience to authority.<sup>38</sup>

Facing the nationalist school are the ideologues and political leaders of the “*traditionalist*” school who are not content with pointing out the disjunction between the East and West and the consequent loss of moral legitimacy of the West. Their main claim is that cultural differences between the West and non-Western countries validate an interpretation of society that in Asian countries accords less value to the political and civil liberties underpinning the liberal model. They base this claim on the argument that the values of harmony, consensus, community and family are more important than the rights of individuals. Secondly, they claim that Asian cultures are based on duties and not on rights. Human dignity of the individual is achieved by excelling in the fulfillment of one’s duty or obligation by following Islam. The traditionalist school shares these two claims with the communitarian school. However, similarities end here. Traditionalists are guided by narrow, literal interpretations of the *Qur’an* and driven by the need for codification of religious laws. They reinforce the conservative and cultural traditions of an ahistorical Islam which features the construction of the “ideal woman” or the “ideal family” to be followed for all times to come as the normative model. As the most crucial institution in the molding of human character and potentially the most effective instrument for transmitting traditional patterns, the family is endowed with great religious honor.<sup>39</sup>

Set against the background of this discourse on human rights is the debate between the two political parties in Malaysia – the UMNO and PAS – over whether the Malaysian state is fundamentally a secular or Islamic entity. While not going into the reasons why this debate is being nurtured at this point, it is important to see the underlying logic that frames the contest. The traditionalists could be identified with the party members and sympathisers of PAS, who have distinguished themselves by proposing a religious-political project predicated on the values, beliefs and metaphysics of Islam, found in the sacred narrative of the *Qur’an*.<sup>40</sup> I wish to argue that the issues that are raised in this contest have moved to a very complex level involving the non-Islamic and non-Malay communities as well. Here I specifically focus only on questions about human rights related to the individual right to religion in an Islamic state and the rights of women in Islam.

While it is true that there is a lack of understanding amongst Western scholars of various aspects of human rights within Islam, there are three problems with the tradi-

tionalist approach that arise from their call for a return to an “authentic Islam.” The first is that while human rights believe in equal rights for all without discrimination on grounds such as gender and religion, Islamic law or *shari’a* accords unequal rights to categories of people classified by religion and gender.<sup>41</sup> For example, the *shari’a* family law governs the life of Muslims in the context of marriage, divorce, custody of children, inheritance and related matters and many of its provisions make women dependent on the will of their husbands. Thus, there cannot be complete equality for women in matters related to personal law unless the law itself is re-interpreted.

Secondly there is no possibility of equal rights for women, unless Islamic political and legal thought transforms and adapts itself to the radically different modern context in its administration of criminal justice. The application of *hudud* – amputations and floggings for theft, robbery and fornication – can be seen as cruel and degrading; we also find that the testimony of non-Muslims and women in the application of these punishments is either inadmissible or is given less weight than the testimony of a Muslim male. Finally, the imposition of death penalty for *rida* (apostasy) is a total repudiation of freedom of religion and belief.<sup>42</sup> Since all rights in the *Qur’an* are limited by this classification in terms of religion and gender, there cannot be a foundation for a universal theory of human rights within Islam. These dilemmas cannot be resolved easily because they throw up important questions related to the rights of women as citizens and those of citizens of religious communities.

While sharing some claims about the existence of indigenous values with the other two schools, *communitarians* acknowledge the moral equivalence of various religious and philosophical traditions in the world. Proponents of communitarian politics differ from traditionalists, who use a politics of difference as a political strategy in mobilizing the people. Setting forth the specificity of their culture and way of life, the communitarians demand recognition of cultural identities in order to reinforce their differences. The Islamists in PAS in contrast make demands on the political system in order to defend and promote the cultural interests of their Malay constituency. However, it must be noted that their political-cultural discourse, unlike the communitarian discourse, is embedded in an all-encompassing religious discourse.

Some protagonists of the communitarian school criticise the *Shar’ia* as an “obscure body of arcane answers to the contextual, actual contemporary problems,” while trying to seek alternatives with the “axioms and assumptions of the traditions and worldviews of Asia.” They defend the search for alternatives by using concepts and categories of thought and analysis that are intrinsic to the Islamic heritage. Islamic alternatives are seen as embedded in an entire “civilisational project” that includes a distinct view of human rights and of a system of community “ummatic” organisation for the enjoyment and securing of rights for all people.<sup>43</sup>

Scholars like Chandra Muzaffar have extended this argument further by discussing common grounds between different religions and suggesting strategies for accommodation and co-operation across these differences.<sup>44</sup> He makes three main claims about human rights: They are related to questions about human beings; are guided by univer-

sal moral and spiritual values; are based on a holistic vision of human dignity.

Chandra argues that according to Islam, the role of the human being is mainly as “vice-regent or trustee of God.” As God’s trustee, the human being lives life “according to clearly established spiritual and moral values and principles. The rights one possesses, like the responsibilities one undertakes, must be guided by these values and principles. What this means is that human beings and human freedoms are part of a larger spiritual and moral worldview...The individual and the community must both submit to spiritual and moral values which transcend both individual and community.” The biggest challenge according to him is to develop a vision of human dignity drawn from the various “religious and spiritual philosophies into a comprehensive charter of values and principles” acceptable to human beings everywhere.<sup>45</sup>

Chandra’s main contribution to this debate has been to highlight the significant similarities in the various spiritual traditions that are of direct relevance to equality i.e. the notion of a common humanity. While he recognises that equality expresses itself differently, he argues that the spirit of equality of all human beings has been central to all spiritual traditions. Furthermore, there is an unambiguous acknowledgment of a moral authority “that transcends the human being.” Recognition of this transcendent moral authority implies a willingness to live with certain values, which determines the idea of personal freedom and freedom of choice.<sup>46</sup>

His second contribution has been to disengage the spiritual values of Islam from the roots of authoritarianism, which also distinguishes his position from the nationalist school. In Islam, he argues, the freedom to espouse the cause of justice is recognised not only as a right, but also as a responsibility. In an impassioned article he asks whether the vested interests of the ruling elites makes them blind to “the exalted position of freedom in their own spiritual traditions,” or “is it possible that these elites who are often estranged from their own traditions do not realise that freedom and dissent are sacred values which should be accorded due respect?”<sup>47</sup>

### **A Response From the Perspective of Civil Society**

We discussed how the view of protagonists of universal human rights has been challenged in contemporary Malaysian society on cultural grounds. The former seek to separate right from good, and seek to come up with a set of human rights valid for all societies. For them as for most thinkers, human rights are a historical product of the Enlightenment and universally valid for all societies. Responding to the charge of individualism, some political theorists argue that human rights and people’s rights can be combined only with great risk to the essential character of human rights. John Donnelly goes so far to argue that since modernisation has severed the individual from the small supportive community, human rights are an alternative mechanism to protect human dignity once such communities have been destroyed.<sup>48</sup>

In the context of Malaysia a strong challenge to the universalist position comes from the communitarians who situate rights within the context of a particular commu-

nity that promotes certain values. It is a strong challenge because arguments of other schools are deeply flawed. When proponents of the "nationalist" school such as Mahathir or Lee Kuan Yew, speak out on human rights they express an essentially narrow concern for the political status quo. What is worrying is that this is a view shared by other political authorities in this region. The sharing of government strategies and tactics that infringe human rights are representative of a regional style of internal control that has been challenged in the last few years.<sup>49</sup>

For the traditionalists, all power of the ruler in a Muslim state is held as a trust and the trustee of the power is only the owner of it in name. All power and authority belongs to god. Thus, no subject could justify possessing a set of human rights because the ruler himself refuses to claim any power over any one and chooses to conduct the affairs of the realm in accordance with the teachings of the holy book.

From the communitarian perspective, rights emerge as secondary rather than primary principles. Instead of being prior to the good, rights operate in order to guide a given way of life motivated by a certain conception of the good. Rights also must be able to claim in a plausible manner the links between "right" and the "good," between the theory of basic rights and the conceptions of good that people may pursue within that framework in concrete circumstances. However, the communitarian approach has several shortcomings.

In most of their writings, communitarians stress the cultural constitution of the subject, the way an individual forms a sense of self and his or her identity. But the concept of community remains vague. How are we to combine the moral requirements of a universalist notion of Islam with the requirements of different versions of radical democracy and particular forms of life? What is overlooked here is that reactivation of traditional or spiritual institutions lead to their influence in other domains of political life; so if values and attachments of one's cultural identity lead to coherence, it also militates against self-questioning of one's culture or the capacity to reflect upon the determinate boundaries of cultural particularity.

In practical terms, however much communitarians assert a pluralistic understanding of Malaysian culture in the years to come, the non-Muslims would worry that these ideological alternatives would fulfill the aspirations of Muslims who believe in imposing not a common Asian culture but an "*Asian Islamic culture*." After the elections in 1999 there were differences within the opposition, the *Barisan Alternatif*, on interpretations of Malaysian culture. Both the Chinese Democratic Action Party (DAP) and *Keadilan* (The National Justice Party) tread a very shaky ground in their pact with PAS and had to clarify their stand on many aspects of the latter's agenda.<sup>50</sup> Despite assurances to the non-Muslims through an interpretation of Islam that emphasises pluralism, harmony, moderation and tolerance, the communitarian attempt to combine indigenous spiritual values with material development is bound to be risky. In recent years, polarisation between UMNO and PAS has further left little middle ground for debate about principles such as gender equality. Some women have found themselves in a situation where supporting the political opposition means siding with religious conservatism.<sup>51</sup>

## Religion, Politics and Women's Rights<sup>52</sup>

I discussed above the cultural relativist claims of three schools and those of ASEAN governments that human rights interfere with their rights to culture in this region. What are the implications of these arguments for developing a theory of women's rights in Malaysia?

In multi-ethnic states like Malaysia the government has allowed personal laws for different communities and thus issues related to marriage, divorce, custody of children, inheritance and maintenance are decided by specific laws governing each community. Since there is no liberal distinction between the public and private sphere in Islam, family law is defined by the *shari'a*. Therefore, Islam provides the religious and cultural context within which Malay women's rights are applied.

Some scholars claim that "sexual segregation" prescribed by Islam should not be seen as an obstacle to sexual equality. Based on their observations on the economic autonomy of women in the countryside, along with women's control over material resources, they see rapid modernisation as a source of mental and material security that leads to women's self-realization. Historically, given the Malay cultural tradition of *adat*, many scholars also believe that Malay women have enjoyed rights and roles that are far more egalitarian than in other Muslim societies. According to them, women participate in the labour force and in nation building on the basis of Islamic principles, values and norms.<sup>53</sup> However, I argue below that issues related to gender identity and culture are very complex and are determined by a variety of factors: class, accessibility to material resources, legal rights and economic processes.

Malaysia's rapid economic growth since the mid-1980s, along with changes brought about by modernisation and urbanisation, has increased the levels of literacy and economic participation of women. As I have already discussed, the New Economic Policy (NEP) was instrumental in changing the economic status of the Malay community but it brought about a significant change in the role of Malay women as well. More than half of the Malay female population between the age of 20-39 years participates in the labour force for Peninsular Malaysia. Structural changes under the NEP favored their employment in export-oriented manufacturing, community and personal services, trade and tourism, manufacturing industries and electronics. But together with the economic transformation of Malay society and social mobility of Malay women there has been a rapid resurgence of Islamisation that has consequences for the status and position of Malay women. Norani Othman argues that gender relations in Malaysia are "interwined with the politics of Islamisation, nationalism, state-building and the rejuvenation of Asian values and culture." Within this project "women are linked to the "demand" for modernization and progress, yet are also charged with ensuring cultural continuity as the basis of society's moral integrity."<sup>54</sup>

In the last decade, sexual segregation, patriarchal values and role identification defined by the traditionalist school has lead to various forms of gender subordination and control that have circumscribed the participation of women in the public sphere. Backed

by strict laws, traditionalists have tried to define the role of women in politics and the public sphere. This has given rise to an understanding that human rights must interact with religion. A more plausible theory of human rights, then, would recognize that in Islam, women are an important symbol of social life. Recognising this fact, in Malaysia, some scholars use the Islamic text in support for equality for women and try to combine socio-political and cultural realities between Islamic and human rights discourses.

The Sisters in Islam (SIS) emerged in the late 1980s to provide an alternative voice within the Muslim community that would understand and interpret the *Qur'an* from a women's perspective. The group's broad objectives are to: develop and promote a framework of women's rights in Islam that takes into consideration women's experiences and realities, and to promote a re-interpretation of the foundational textual sources of Islam and cultural practices of Muslims that would reinforce the democratic principles and equality of persons. Most of their publications have been in the form of a discourse with the prevailing interpretation of the *Qur'an*.<sup>55</sup>

This feminist interpretation of Malaysian society is different from those of the nationalist, traditionalist and communitarian schools whose degree of cultural relativism about human rights assigns women the role of bearers of cultural values and traditions of the community. Yet these schools contain contradictory views on gender rights and equality as was manifested by Malaysia's legislation on women's rights.

Since independence the federal government has endeavored to implement policies that are deemed both conducive to industrialisation and to Islamisation of its society. Despite the formal separation of powers between the federal and state administrations, these attempts have given rise to conflicts over competing jurisdictions concerning Islamic religious matters. This was evident in the way the Muslim Family Law Act of 1984 faced resistance from many states who deliberately adopted it slowly or amended legislation unilaterally. Apart from the lack of uniformity among the states' Islamic family laws, there are complaints about the *shar'iah* court system including delays in bureaucratic procedures and male bias in the administration of law.<sup>56</sup> Although there are points of convergence in the respective agendas of the nationalists and traditionalists on the need to actualise Islamic modernity and fix the Malay family as icon of a particular community, I believe, there are differences to the extent to which they pursue a nationalist-state project or an Islamic state.

The federal government under Mahathir has passed laws that appear to have shown regard for women's rights, such as liberalising the exceptions to the crime of abortion, allowing mothers to be official guardians of their children, increasing the penalty for rape and introducing the law on domestic violence and sexual harassment. These laws apply to all persons regardless of religion. The government has proposed a programme of reformulation of Islamic family laws resting on secure *Qur'anic* foundations to ensure gender equality among Muslims. The National Council of Women's Organizations (NCWO) has focused on lobbying and legal reforms in both civil and Muslim family laws to end discrimination against women.<sup>57</sup>

With regard to PAS' desire to implement *Shar'iah* and in particular *hudud*, Mahathir

has always declared that these systems conform with an interpretation of Islam but they cannot be applied in the specific historical context based on Malaysia's values of pluralism and tolerance.<sup>58</sup> Although the federal parliament rejected the implementation of *hudud* in Kelantan, it did so on grounds that the country was not ready for such laws.

Since the 1999 general elections PAS has been more articulate about introducing a series of legal reforms that are designed to set the course of Islamisation of Malay society. Measures such as promotion of Islamic laws, Islamic dress and education are building blocks of an Islamist political system. Despite the controversy that is raging within the opposition the Islamists within PAS are pressing on with their reforms that will restrict women's access to the public sphere. Meanwhile the federal government has continued to espouse a reformist understanding of Islam and its law, both to meet PAS's political challenge and to enforce women's role in national development and modernisation.<sup>59</sup>

## Conclusion

This article focuses on communitarian critiques of a universal theory of rights and the political implications of these criticisms for challenging authoritarianism and for expanding citizenship rights in Malaysia.

There is no doubt that universal moral principles underlying human rights are insensitive to important variations in the contexts in which they can be applied: they fail to capture the complex, dynamic, cultural processes in many regions of the world. I argued that the nationalist, traditionalist and communitarian schools doubt whether the individuals can act solely on the basis of rational considerations that abstract from their sense of identity as persons holding and possessing certain cultural attachments. Despite agreements about certain points among these schools, I argued that the prime advocates and proponents of the "Asian way" – belonging to the nationalist school – have been those holding power, whose positions make them critical of civil society.

Mahathir's style of authoritarian political governance that seemed to produce rapid economic growth represented an attractive model for many other countries of the South-east Asian region. The economic rise of Malaysia provided substance to his comprehensive critique of a post-Enlightenment Western democratic model of politics; the adverbial aspects of liberal politics and participatory democracy were criticized on cultural grounds as being ill-suited to countries with multi-ethnic and multi-religious groups. In recent years given the economic crisis and global trends, and charges of corruption in the government and "money politics" within UMNO, these critiques on grounds of cultural relativism have been found lacking.

In addition, analyses focusing on the relation between economic development and political democracy are no longer valid, nor are the voices that once praised Asian authoritarianism, including those of the World Bank.<sup>60</sup> It is increasingly realized that only through the simultaneous establishment of good governance with open markets that genuine social development can be achieved. Since it has been alleged that cronyism,

graft and lack of transparency may have been important factors for the economic crisis in Asia, it is argued that more political and civil rights should improve governance.<sup>61</sup>

Following the general elections in 1999 and the Anwar verdict in early 2000 there was greater activity among Malaysia's civil society organizations.<sup>62</sup> There was also renewed vigor in parties like PAS who interpreted election results to mean that democracy, cultural identity and faith went hand in hand with Islamically-inspired sociopolitical demands and economic reforms. PAS has participated in the political process by power sharing with other democratic parties in the elections, but their agenda regarding the establishment of an Islamic state raises many queries.

Many countries in ASEAN are faced with the intentional killing of civilians in bomb blasts, indiscriminate attacks, hostage incidents and the use of unlawful weapons, activities that are difficult to reconcile with any moral or religious code. The question this raises is whether religious precepts have any part to play in the respect and recognition for individual rights or minority rights in a country like Malaysia?

By raising issues related to arbitrary power of the state, the Islamic resurgence has played a great role in the democratization of civil society. However the question is: Does this also sustain social pluralism and tolerance and equal rights for all communities in Malaysia?

Any undermining of the nationalist rhetoric on cultural rights does not compel recognition of the value of civil liberties for individuals and rights of minority groups. Much depends on how the historical and structural connection is drawn between democracy and Islam in Malaysia.

One way of understanding this is to examine the particular historical conditions that have given rise to a new political party – PAS - that stands in opposition to the authoritarian state, but also relocates and appropriates some of its legal functions in the private and cultural sphere. In recent years democratization has meant increasing power to traditionalist ideologues of PAS and many other Muslim sects in the Malay community.

Many scholars argue that human rights can be developed within an Islamic framework: the rich source material and the complex legacy of Islamic civilization offers many avenues for meshing human rights law with Islamic values.<sup>63</sup> Consequently, there have been many ideological formulations of the *shari'a* by Muslim intellectuals and leaders from different socio-political contexts. Similarly, for many communitarian scholars, a common core of ethical values provides an effective foundation for understanding the relationship between Islam and other religions.<sup>64</sup> Within the Islamic world these terms are contested but they claim to provide an effective foundation for understanding the relationship between Islam and democracy in the contemporary world. I argued that eventually these religious terms provide a shared, moral background of understanding among its participants that contains conflict and meaningful dialogue with other or different cultures. Islamisation programs tend to be both "exclusivist" and "oppositional" because they often end up as political strategies that return to allegedly local, cultural roots. For this reason it is not peculiar to see them usually aimed at silencing Muslim dissidents and curbing rights of religious minorities. Moreover, to argue for a

conception of human rights to work in conjunction with religious laws is to risk reaffirming the marginalisation of women.

Adherents of democracy in Malaysia have a daunting task ahead, since the mere reformulation of democratic principles in Islamic idioms cannot be adapted to institutions of modern society. Despite the compatibility of some terms and strong affinities between Islam and democracy, there are many theoretical and practical problems to be surmounted in the democratisation process.

## Notes

1. Promotion of a national political community and an independent nation-state were some of the themes prominent in the discourse of national liberation movements in Asia.
2. Many liberal political theorists argue for a priority of rights. For various positions see R. Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977); J. Rawls, *A Theory of Justice* (Oxford: OUP, 1973). For a critique of the politics of culturalism and for the impact of its revision in liberal political theory see Brian Walker, "Plural Cultures, Contested Territories: A Critique of Kymlicka," *Canadian Journal of Political Science*, vol. 33, no. 2, June 1997, pp. 201-234.
3. Between July and August 2000 there were three major incidents involving Muslim groups which had inter-state implications: an arms heist by *Al Ma'unah* cult members in Perak, Malaysia; the hostage crisis in Jolo island, Philippines and the car explosion at the residence of Manila's ambassador in Indonesia. For different versions of these incidents see, "Deviationist groups a confused lot, says Musa," *The Sun*, 9 July 2000, p. 3; Rajiv Chandrasekaran, "Jakarta ties car bomb to rebels in the Philippines," *Washington Post Service*, 2 August 2000, Paris.
4. Many social scientists have discussed these aspects already. However they emphasise this debate as restricted to political elites. See Daniel A. Bell, "The East Asian Challenge to Human Rights: Reflections of an East-West Dialogue," *Human Rights Quarterly*, 1996, vol. 18, pp. 641-667. My argument is different because it takes into consideration the communitarian critique by other social groups in Malaysian society; it does not reduce all criticisms made by governments of human rights to only cultural arguments; I tend to see these analyses of human rights as critiques of modernity. Thus in this article I point out that the crisis of modernity in countries like Malaysia is deeper as the political elites voice a critique of the liberal democratic model of democracy while favouring rapid economic growth and development.
5. Speech by Mahathir bin Mohamad on the New World Order at "The Plenary of the Forty-Sixth Session of the United Nations General Assembly," 24 September 1991. All references to his speeches are from the website [www.smpke.jpm.my](http://www.smpke.jpm.my).
6. See Mark R. Thompson, "Late Industrialisers, Late Democratisers: Development States in the Asia-Pacific," *Third World Quarterly*, vol. 17, no. 4, 1996, pp. 625-647.
7. In the general elections held in 29 November 1999 a section of the Malays rejected UMNO's leadership and opted for the PAS. Yet the ruling coalition the *Barisan Nasional* (BN) won 148 out of 193 seats in parliament. PAS emerged the biggest winner within the opposition, the *Barisan Alternatif* (BA), by stretching its eight parliamentary seats to 27. The party now rules the states of Kelantan and Terengganu that are predominantly Muslim. For more on the elections see Hussin Mutalib, "Malaysia's 1999 General Election: Signposts to Future Politics," *Asian Journal of Political Science*, vol. 8, no. 1, June 2000, pp. 65-89.
8. ASEAN is an association of Southeast Asian states whose current member states are Brunei, Burma, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam and Cambodia. The aims and purposes as outlined in the ASEAN declaration, signed on 8 August 1967, Bangkok, reflect mainly concern for economic growth and regional peace and stability. See *The ASEAN Declaration* (Bangkok Declaration) Thailand, 8 August 1967, available on website of [www.aseansec.org](http://www.aseansec.org). Other ASEAN documents cited in this chapter are taken from this website.
9. Throughout this article I use the terms universal theory of rights and human rights as sharing

- overlapping concerns.
10. Although international documents have lent credence to the declaration of human rights, as a moral category the very notion of rights and its ethical justification has been questioned. See for related ideas Purushottoma Bilimoria, "Rights and Duties: The (Modern) Indian Dilemma," in Ninian Smart and Shivesh Thakur (eds.), *Ethical and Political Dilemmas of Modern India* (London: St Martins Press and Macmillan, 1993), pp. 30-59.
  11. For a discussion on Bentham's views see David Lyons, "Utility and Rights," in Jeremy Waldron, (ed.), *Theories of Rights* (Oxford: OUP, 1985), pp. 110-136.
  12. On the development of human rights in response to Nazi war atrocities see Thomas Buergenthal, "The Normative and Institutional Evolution of International Human Rights," *Human Rights Quarterly*, vol. 19, 1997, pp. 703-723.
  13. For more on human rights and world politics see D. P. Forsythe, *Human Rights and World Politics* (Lincoln and London: University of Nebraska Press, 1983).
  14. p. 41, Roland Rich, "The Right to Development: A Right of Peoples?" in James Crawford (ed.), *The Rights of Peoples* (Oxford: OUP, 1988), pp. 39-54.
  15. For a discussion on these aspects see Ann Elizabeth Mayer, "Islamic Law and Human Rights: Conundrums and Equivocations," in Carrie Gustafson and Peter Juviler (eds.), *Religion and Human Rights. Competing Claims* (New York: M.E. Sharpe, 1999), pp.177-197.
  16. Despite similarities there are differences between the two leaders. Mahathir has been more articulate and coherent in his attack on globalisation and its effect on developing countries.
  17. For details on the UN-sponsored Vienna conference in 1993 see "Debate over Rights. Rejecting Western Pressure, Asia Tables its own Definition," *Asiaweek*, June 30, 1993, pp. 24-25.
  18. See sections 16, 17, 18 under human rights in "Joint Communique of the Twenty-Six ASEAN Ministerial Meeting, Singapore," 23-24 July 1993. For more see *Towards an Asean Human Rights Mechanism. Proposals, Declarations and Related Documents*, by the Working Group for an Asean Human Rights Mechanism, Manila, Philippines, 1999.
  19. For a discussion on the national human rights institutions in this region see Padmaja Padman, "Shaping our Human Rights Panel," *New Sunday Times*, Kuala Lumpur, 25 April 1999, p. 16.
  20. The Bangkok Declaration, 1993 was issued at the regional conference prior to the Vienna World Conference on Human Rights.
  21. Human rights do not even fall within the provisions of the recently established ASEAN-related institutions or forums such as the ASEAN regional forum (ARF). The inaugural meeting of ARF was held in Bangkok on 25 July 1994.
  22. The Treaty on Amity and Cooperation was signed in Bali, Indonesia, 24 February, 1976. It is based on the principles of mutual respect for non-interference in the internal affairs of other nations (website [www.aseansec.org/history](http://www.aseansec.org/history)). Based on this it is instructive to recall that ASEAN accepted Burma despite its continued human rights abuses. In general we could argue that ASEAN states have protected each other on human rights abuses.
  23. Shawn W. Crispin, "Ties that Bind," *FEER*, 10 August 2000.
  24. Thomas Fuller, "Asians criticize treatment of Anwar," *International Herald Tribune*, 10 February 1998; Within Malaysia there was criticism of countries that questioned the Anwar verdict. See Anthony Spaeth, "Rough Justice," *Asiaweek*, vol. 156, no. 7/8, 21 August - 28 August 2000. From [www.cnn.com/ASIANOW](http://www.cnn.com/ASIANOW).
  25. Many analysts view Mahathir as a communitarian. I have been careful to distinguish his nationalist (communitarian) arguments from the arguments of the communitarian school that is committed to democratic values.
  26. See fnote 7.
  27. For similar criticisms see Chandra Muzaffar, "From Human Rights to Human Dignity," in Peter Van Ness (ed.), *Debating Human Rights. Critical Essays from the USA and Asia* (New York: Routledge, 1999), pp. 25- 31.
  28. Bilimoria, 1993, *ibid*, p. 35.
  29. Ziauddin Sardar, "Some Thoughts on an Alternative to the Imperium of Human Rights," in Chandra Muzaffar, (ed.), *Human Wrongs. Reflections on Western Global Dominance and its Impact upon Human Rights* (India: The Other India Press, 1996), pp. 243-254.

30. Speech by Mahathir, "The Plenary of the Forty-eighth Session of the United Nations General Assembly," 1 October 1993, United Nations, New York.
31. Speech by Mahathir, "Asian versus Western values," 15 March 1995, The Senate House, Cambridge University, UK.
32. Kim Dae Jung, "Is Culture Destiny? The Myth of Asia's Anti-Democratic Values," *Foreign Affairs*, vol. 73, no. 6, November/December, 1994, pp. 189-194.
33. See his speech on "The Future of Asia," 19 May 1995, Tokyo, Japan. Some scholars demonstrate that the Look East Policy which he propounded was closely tied to the reliance on Japanese capital see, Kit G. Machado, "Japanese Transnational Corporations in Malaysia's State Sponsored Heavy Industrialisation Drive: The HICOM Automobile and Steel Project," *Pacific Affairs*, vol. 62, no. 4, 1989-90, Winter, pp. 504-531.
34. I assume the reader is familiar with the New Economic Policy (NEP) which was implemented after the riots in 1969 between the main ethnic groups. The government felt that constitutional provisions favoring the Malays along with the political and economic bargain between the communities had not sufficiently served its twin goals of economic balance between the different communities and national unity. The NEP provided various measures for Malays: access to loans, credits, licences and contracts as well as pressure on the Chinese and foreign firms to take on ethnic Malay business partners.
35. *Malaysian Human Rights Report* (Kuala Lumpur: Suaram Komunikasi, 1998), pp. 128-130. The *orang asli* or the indigenous peoples of Peninsular Malaysia are a heterogenous group and have different cultural and religious practices from the dominant Malay community. For more see Colin Nicholas and Raajen Singh (eds.) *Indigenous Peoples of Asia. Many Peoples. One Struggle* (Bangkok: Asia Indigenous Peoples Pact, 1996).
36. This is not to deny the fact that when Japan emerged as an economic superpower it was a source of pride for many in the Southeast Asian region. Mahathir was very impressed with its industrialization strategies and management techniques that propelled high levels of economic growth. But he justified this initially on the basis of morals and ethics in his "Look East Policy" and not on grounds of efficiency. See interview with K. Das, "Mahathir restoration," *FEER*, 11 June 1982, pp. 38-41.
37. For Mahathir's attack on globalization see "Making Globalisation Work: Measures to Encourage Trade and Investment Flows," 11 October 1999, The Commonwealth Business Forum, Johannesburg, South Africa.
38. Speech by Mahathir, "The Just International Conference on Rethinking Human Rights," The Legend Hotel, Kuala Lumpur, 6 December 1994.
39. Norani Othman, "Islamisation and Modernization in Malaysia: Competing Cultural Reassertions and Women's Identity in a Changing Society," in Rick Wilford and Robert L. Miller (eds.), *Women, Ethnicity and Nationalism. The Politics of Transition* (New York and London: Routledge, 1998), pp. 170-192. For interpretations that view the Muslim fundamentalist discourse as centered mainly upon identity politics with a focus on the private sphere see, Valentine M. Moghadam (ed.), *Identity Politics and Women. Cultural Reassertions and Feminisms in International Perspective* (Boulder: Westview Press, 1994).
40. The origins of PAS can be traced to the UMNO Bureau of Religious Affairs in the 1950s when a radical group of religious leaders broke away from UMNO to form their own organization under the leadership of Haji Fuad Hassan. But it was only in the 1980s that the party could become a new political force. The last two decades have seen a transformation and radicalization of PAS policies under a new group of leaders like Nik Aziz Nik Mat, Fadzil Noor and Haji Abdul Hadi Awang. After the last general elections in November 1999 PAS has chosen to wage its ideological and political struggles in the sphere of culture. Consequently it has contributed to the changes in Malay political identity by defining it primarily as a religious community in a multi-racial society.
41. For more on this see Norani Othman (ed.) *Shari'a Law and the Modern Nation State. A Malaysian Symposium* (Kuala Lumpur: SIS Forum, 1994).
42. Rose Ismail, (ed.) *Hudud in Malaysia. The Issues at Stake* (Kuala Lumpur: SIS Forum, 1995).
43. See Ziauddin Sardar, 1996, *ibid.*, p. 249 and 246.
44. Professor Chandra Muzaffar is one of Malaysia's prominent academics. He was founder-president of the NGO Aliran from 1977-1991. In 1987 his outspokenness landed him in prison for 52 days. The University of Malaya did not renew his contract after February 1999 for he was seen to be close to the former deputy prime minister Anwar Ibrahim. Presently Chandra is the president of an NGO, International Movement for a Just World (JUST). After the university's decision not to employ him he joined the

- Keadilan*, a party formed before the 1999 elections by Anwar's wife, Dr. Wan Azizah Wan Ismail.
45. Chandra Muzaffar, 1999, *ibid.* pp. 29-30.
  46. However he differentiates between "freedom of choice exercised on the basis of individual sovereignty and freedom of choice circumscribed by a religious philosophy with a notion of right and wrong." See Chandra Muzaffar, "Human Rights Issues: European and Asian perceptions". Keynote address at the International conference on "Rights and Development", organized by Roskilde University, Denmark, 8-10 October, 1997a, pp. 1-7.
  47. Chandra Muzaffar, "A Spiritual Vision of the Human Being", *The Other Side*, vol. 17, no.7, August, 1997b, pp. 63-75.
  48. According to Jack Donnelly, such a concern for human goods and human dignity in Islam is not equivalent to a concern for, or recognition of human rights, in "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights", *The American Political Science Review*, vol. 76, no. 2, June 1982, pp. 303-316.
  49. Stephen A. Douglas and Sara U. Douglas, "Economic Implications of the US-ASEAN Discourse on Human Rights", *Pacific Affairs*, vol. 69, 1996, pp. 71-89.
  50. See Sangwon Suh and Santha Oorjitham, "Battle for Islam", *Asiaweek*, vol. 29, no. 23, 16 June 2000.
  51. Simon Elegant, "Bound by Tradition", *FEER*, 27 July 2000.
  52. I use the term "women's rights" here by which I mean the theory and practice of human rights for women has different philosophical grounds than other rights.
  53. I refer to the work of Ingrid Rudie, "Women in Malaysia: Economic Autonomy, Ritual Segregation and some Future Possibilities", in Bo Utas, (ed.) *Women in Islamic Societies* (London: Curzon Press and Humanities Press: USA, 1983), pp. 128-143; Haji Faisal Bin Haji Othman, *Woman, Islam and National Building* (Kuala Lumpur: Berita Publishing Sdn Bhd, 1993).
  54. Norani Othman, 1998, *ibid.*, p. 176.
  55. Sisters in Islam (SIS) was formed in 1988 and registered in 1991. Advocacy for reform on issues of justice and equality in Islam is an important aspect of their activity. They have submitted important memoranda to the government that influenced government policy and law reform.
  56. For a general idea of the bureaucratization of Islamic religious affairs see Sharifah Zaleha Syed Hassan, "Women, Divorce and Islam in Kedah", *Sojourn*, 1986, vol. 1, no. 2, August, pp. 183-198.
  57. This is not to deny the efforts made by NGO activists to pass these laws.
  58. Mahathir bin Mohamad, "Islam Guarantees Justice for All Citizens", in Rose Ismail, (ed.) 1995, *ibid.*, pp. 63-76. Under the PAS-led government the Kelantan state assembly passed the Shari'ah Criminal Code Bill on 24<sup>th</sup> November 1993 introducing *hudud* criminal laws in the state. Eventually the federal government did not agree to the law's implementation and it was not enforced.
  59. As leaders are seen as gender insensitive. During the 46<sup>th</sup> general assembly women criticized the party's double standards in barring women leaders from being seated on stage with male leaders. See Cindy Tham, "Winds of Change for PAS", *The Sun*, 11 June 2000, p. 6.
  60. In 1993 the World Bank issued its report on economic growth in the Southeast Asian region. For a reversal of these views see special report "Democracy and Crisis", *Asiaweek*, 9 April 1999, pp. 52-56.
  61. Due to lack of space I do not examine the development of a National Human Rights Commission (SUHAKAM) that was established in July 1999 in Malaysia. I also do not examine the basis of restricting fundamental rights to individuals provided in the Malaysian constitution. Here my argument is restricted to the critique of universal rights and its impact on the Malaysian political process.
  62. For more on the Anwar verdict see Anthony Spaeth, "Rough Justice", *Asiaweek*, 21 August - 28 August 2000, vol. 156, from website Asianow.
  63. This view is defended by John L. Esposito and John O. Voll, *Islam and Democracy* (New York and Oxford: OUP, 1996), p. 7. They argue that Islam has a full spectrum of potential symbols and concepts for support of absolutism as well as for liberty and equality. Tibi Bassam is less optimistic of these arguments in *The Challenge of Fundamentalism. Political Islam and the New World Disorder* (Berkeley: University of California Press, 1998).
  64. Chandra Muzaffar, 1999, *ibid.*