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Opening Address

Malaysia: Roots of a Democratic Society

YAM Tunku Zain Al-'Abidin ibni Tuanku Muhriz

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Introduction

Assalamu'alaikum warahmatullahi wabarakatuh, good morning and welcome, particularly to our guests from around the world. I look forward to the discourse over the next two days being hosted here at the Institute for Advanced Islamic studies which has long played an important role in highlighting the variety of discourse within the Muslim world. This is especially helpful given IAIS' historic links with the Government of Malaysia and continuing chairmanship of former Prime Minister Tun Abdullah Badawi.

I am grateful also to the Center for International Private Enterprise and the Atlas Network for coming on board as Lead Sponsor and Co-Sponsor respectively. I am of course delighted that the Istanbul Network for Liberty has decided to place this conference in Malaysia, enabling the Institute for Democracy and Economic Affairs (IDEAS) to also be a Co-Sponsor. Central to our mission is the advancement of democratic values in Malaysia, particularly those we feel were articulated at the foundation of our country but have since been forgotten. Similarly, as we discuss democratic transitions in the Muslim world and the various theological and intellectual justifications and geopolitical realities, it is worth also remembering the experiences from the rich history of our vast geographical space.

Many Muslims today, myself included, are motivated by the glory of the Islamic Golden Age. Unfortunately, for some this means subjugation of others by force. For me, and I hope many in this room, this means creating the conditions that will lead to the flowering of thinkers and philosophers, scientists and innovators, and writers and poets that so characterised that Golden Age. What are the policies and models of governance that Muslim countries could pursue to achieve this?

I can see from the agenda that much time has been allotted to exploring precisely this topic, but permit me to share some interesting tidbits from Malaysia's own history. I hope this will be of benefit not only to the non-Malaysians in the audience but also provoke and stimulate the Malaysians as well. For while many refer to incidents from the Middle East, Andalusia, the Ottoman Empire and the Mughal Empire for inspiration, Southeast Asia is less often cited.

No doubt, in Malaysia's history there were many features of the pre-modern polities or kerajaan which were autocratic, where slavery, debt bondage and punishments universally deemed barbaric by today's standards were meted out. Having said that, I believe we can find the roots of a democratic society that we continue to aspire to as well: roots situated within a cultural and religious context that is truly indigenous to our region, thus helping us avoid today's predictable but provocative accusations of neo-colonialism.

Batu Bersurat Terengganu

The first I wish to highlight is a fourteenth century text that has survived hinting at the notions of a social contract, rule of law and limits to rulers' authority. It is called in Malay the Batu Bersurat Terengganu, or in English the Terengganu Inscription Stone, dated by Syed Muhammad Naguib Al-Attas to 1303¹. If you conduct cursory research about the stone, you will see that most commentators consider its importance in confirming the practice of Islam in the Malay peninsula at that time. But to me it is also significant because it seems to place conditions on the authority of the ruler.

One panel of the stone establishes that "to decide on the right knowledge is statutory upon all the Muslim King Mandalikas, in accordance with the decrees of the Supreme God who speaks the truth."² A reading of another panel of the stone suggests that "my son, or my playmate, or my grandchildren, or my family... and whoever ignores its contents shall be damned by the Supreme God, cursed by the Supreme God." In other words, failure to obey this edict will result in punishment from a higher authority, even if you are a member of the ruling class.

¹ Syed Muhammad Naguib Al-Attas, The Correct Date of the Terengganu Inscription (Museum Department, States of Malaya, 1970)

We do not know the circumstances surrounding why the ruler, referred to as Seri Paduka Tuhan, issued this edict. One could speculate that it was either an attempt to solidify his authority citing his responsibility to the divine. But one could also speculate that, as the barons at Runnymede did a century earlier, it was written to break an impasse between the ruler and his nobles. If so, this Inscription Stone could be said to be a Malay Magna Carta that formalised limits to a previously absolutist Ruler.

Sejarah Melayu

A clearer, less speculative reference to a contract is made in one of the classic Malay texts, the fifteenth and sixteenth century Malay Annals or Sejarah Melayu, still referred to in government school history textbooks. Here, there is a story that demonstrates the concept of a social contract in a way that Jean-Jacques Rousseau would have understood.

According to John Leyden's translation, the king Sangsapurba wants to marry the daughter of a chief, Demang Lebar Daun. The latter sets certain conditions on Sangsapurba marrying his daughter:

[A]ll the family would submit themselves to him, who should engage, both for himself and posterity, that they should receive a liberal treatment; and in particular, that when they committed faults they should never be exposed to shame nor opprobrious language, but if their faults were great, that they should be put to death according to the law. Sangsapurba agreed to these conditions, but he requested, in his turn, that the descendants of Demang Lebar Dawn should never move any treasonable practices against his descendants, even though they should become tyrannical. "Very well," said Demang Lebar Dawn, "but if your descendants break your agreements, probably mine will do the same." These conditions were mutually agreed to, and the parties swore to perform them, imprecating the divine vengeance to turn their authority upside down who should infringe these agreements.³

But I think the solemnness of the contract – the janji, or wa'ad – emerges more clearly in the Malay. I hope the non-Malay speakers will indulge me to read from the Abdul Rahman Haji Ismail's Romanisation of Sir Stamford Raffles' manuscript in order to illustrate my point:

"Baiklah tuanku, tetapi jikalau anak cucu tuanku dahulu mengubah dia, anak cucu patik pun mengubah dia". Maka titah Seri Teri Buana [i.e. Sang Sapurba], "Baiklah, kabullah hamba akan wa'ad itu." Maka keduanya pun bersumpah-sumpahlah, barang siapa mengubah perjanjiannya itu dibalik Allah Subhanahu wa Ta'ala bumbungan rumahnya ke bawah, kaki tiangnya ke atas. Itulah sebabnya maka dinugerah akan Allah Subhanahu wa Ta'ala kepada segala raja-raja Melayu, tiada penah memberi aib pada segala hamba Melayu; jikalau sebagai mana sekalipun besar dosanya, tiada diikatnya dan digantungnya dan difadiahkannya dengan kata yang jahat. Jikalau ada seorang raja memberi aib, itu alamat negeri akan dibinasakan Allah Subhanahu wa Ta'ala. Syahadan segala hamba Melayu pun dinugrahakan Allah Subhanahu wa Ta'ala tiada penah durhaka dan memalingkan mukanya kepada rajanya, jikalau jahat sekalipun pekertinya dan aniaya sekalipun.⁴

The actual nature of the punishments described may seem severe, but the principle of the contract between the ruler and ruled is clearly established. A violation of the agreement will not only cause chaos in society, but also invite divine wrath, just as the Terengganu Inscription Stone indicated.

Hang Tuah

The message of this story is quite different from another story from Malay literature often used to justify authoritarianism: that of Hang Tuah, who proffers his absolute loyalty to the Sultan Mansur Shah, and is handsomely rewarded for it. The story found in the same *Malay Annals* is that the sultan had ordered Hang Tuah to be executed after being "wrongfully accused of having seduced one of the female attendants of the palace", but he was instead hidden by the Bendahara owing to his matchless prowess. Later on, Hang Tuah's childhood friend and companion, Hang Kasturi "formed a connection with one of the raja's concubines in the palace"⁵ and the only person skilled enough to carry out the punishment of death was Hang Tuah. The sultan expresses his regret at having executed him, at which point the Bendahara reveals his continued existence. The sultan pardons him and orders him to kill Hang Kasturi. He does so and is greatly rewarded in rank and title.

² Othman Yatim, 'The Terengganu Stone' in ed. Prof Dato' Dr Nik Hassan Shuhaimi Nik Abdul Rahman, *The Encyclopedia of Malaysia: Early History* (Editions Didier Millet, 1998), p.128

³ Text of John Leyden's Malay Annals, p.26 in John Leyden's Malay Annals (MBRAS, 2009), p.81

⁴ Abdul Rahman Haji Ismail, Transcription of Raffles MS No 18 in Malay Annals (MBRAS, 2009), p.86

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But the version of the story still romanticised in Malay popular culture is based on the *Hikayat Hang Tuah*⁷. Here, after the sultan orders the execution of Hang Tuah on false charges, his friend and companion Hang Jebat avenges the wrongful punishment by leading a rebellion, causing chaos in the palace. Upon discovering that Hang Tuah was not indeed executed, the sultan orders him to kill Hang Jebat for rebelling, and he does so, resulting in the same personal advancements. This story thus produces a more explicit example of unquestionable loyalty to authority. However, in recent years, the idea that Hang Jebat is the real hero – standing up to unjust leaders – has been actively promoted.

Undang-undang Melaka

Whichever version contains the greater truth, the legend of Hang Tuah belies the proto-constitution that is supposed to have governed the polity he was living in, namely the Sultanate of Malacca. Today's champions of the Undang-undang Melaka are likely to praise its religious content, typically to justify the supposed 're-introduction' of such statutes now, but a close reading of the text reveals an understanding of legal, economic and philosophical concepts that were about to be expounded in Enlightenment Europe.

The 1656 text declares itself the supreme law of the land: "ini suatu risalah besar pada menyatakan hukum kanun iaitu segala negeri yang besar-besar dan pada segala raja-raja yang besar-besar dan pada 'adatnya yang ta'luknya dan dusun supaya manfa'at atas negeri dan raja dan menteri akan memelihara segala ra'ayatnya."⁸ It establishes the rule of law, even over rulers. It then describes the roles of principal office bearers of state: the bendahara, temenggung and syahbandar: akin to a constitutional separation of powers.

Several articles point to the importance of property rights and the existence of a capitalist economy. Article 11 establishes that a thief can be lawfully killed on a second offence. Article 20 declares that there are two types of land, dead or living, and suggests that dead land may be acquired by working on it, harking to the labour theory of property that John Locke would have recognised: "jikalau diperbuat kampung atau rumah atau huma, tanah itu dalam perkataan orang, lagi dapat dida'wa orang, karena tanah itu tanah hidup." It goes on to specify the punishments for trespassing on such land.

Article 23 states if the kingdom is met with famine, then emergency clauses are activated enabling peasants to find food. Article 29 refers to standardised weights and measures, the violation of which the syahbandar will punish.

Article 30, governing the legitimacy of transactions between two parties, is quite remarkable:

Tiada sah beniaga bagi orang gila dan tiada sah beniaga dengan kanak-kanak yang belum baligh, dan tiada sah beniaga melainkan dengan kata orang berjual juga seperti katanya: "Kujual benda ini", maka kata yang membeli: "Kubeli benda ini", dan harga benda itu hendak bertentu.

This establishes that for a sale to be valid, the parties must be adults of sound mind who must explicitly agree to buy and sell the item at an agreed price: all concepts crucial to contract law today. It goes on to regulate the use of proxies, punishes misrepresentation, establishes a statutory return policy and forbids barter: this was strictly a cash economy. The subsequent clauses govern the sale of houses, land, transacting while in debt, bankruptcy, investments and trusts. This to me provides clear evidence that the Malay state undertook responsibilities to protect the individual rights of its members, and not merely to uphold the prestige of the group, which forms the battle-cry for so many conservatives today.

But it wasn't just in Malacca that these provisions occur. Similar articles appear in contemporaneous law codes in nearby kingdoms: for example, the 1650 Laws of Kedah also describe the responsibilities of defined officeholders and the use of certain weights and measures.⁹

But legal innovations continued to occur independently across the sovereign Malay kingdoms too.

⁵ Text of John Leyden's *Malay Annals*, p.172, *ibid*.

⁶ *Ibid.*, p.184

⁷ Kassim Ahmad and Noriah Mohamed, *Hikayat Hang Tuah* (Yayasan Karyawan and Dewan Bahasa dan Pustaka, 1997)

⁸ Liaw Yock Fang and ed. Zainal Abidin Borhan, *Undang-undang Melaka dan Undang-undang Laut* (Yayasan Karyawan, 2016), p.107

Kangchu system

One economic example is Johor's Kangchu system, in which the increasingly powerful Temenggong Daeng Ibrahim began the practice of issuing surat sungai from 1844 to 1862 which granted leases to planters to cultivate river banks. Armed with this authority, the kangchu, or river lord, essentially performed the functions of government and paid taxes to the Temenggong. Under Temenggong, later Sultan, Abu Bakar, the system became more structured with different types of surat issued to specify the terms of contracts and the responsibilities of the kangchu.¹⁰

Most commentary on this system, including in Malaysian school textbooks, characterises this policy in racial terms: a Malay polity inviting foreign Chinese investment, but in policy terms this is strikingly similar to more recent innovations such as special economic zones or growth corridors.

Negeri Sembilan

Next door in Negeri Sembilan, an ancient socio-political system called Adat Perpatih originally derived from the Minangkabau region of Sumatra maintained institutions distinct compared to other states. Indeed, up until today the continued existence of Ruling Chiefs, each heading districts known as *Luaks*, and each elected according to matrilineally-determined clan membership, continues to fascinate Malaysians.

A former British Resident of Negeri Sembilan, R.J. Wilkinson, wrote in 1914 that:

If any European student imagines that constitutional Government is alien to the Asiatic mind he may study the Menangkabau system with profit, for it is a genuine Malay creation and owes nothing to alien influence. Its faults and failures are those common to all democracies: overmuch disputation, irresolute and divided action, and the inertia that comes of a Government being over-weighted with checks and counter-checks. These faults were free from any oriental hankering after despotism. The Negri Sembilan Malay was a loyalist in his way, but he loved his liberty even more than he loved a lord. The 'king' or Yang-di-pertuan Besar was essentially a constitutional ruler.¹¹

Another Orientalist and colonial administrator RO Winstedt opined that "the Negri Sembilan constitution developed on similar lines"¹² as the British constitution, and local historians too have written much about the democratic, decentralised and matrilineal aspects of Adat Perpatih.¹³ At least two key concepts innate to Negeri Sembilan adat have been adapted to serve present day Malaysia: an elected monarch and the concept of federation itself.¹⁴

Conclusion

Of course, today in Malaysia – just as in so many Muslim countries around the world – the structure of government and the incentives of leaders seem a world apart from the historical backdrop I have alluded to. But when we consider that so much experimentation and development occurred in these explicitly Muslim polities, it does provide an alternative to the authoritarian mode of those who say they strive to make society supposedly 'more Islamic'.

At IDEAS, we try to show that the framers of our Constitution acknowledged both the narrative of Malay-Muslim institutional development and the democratic parlance of the day particularly in the Cold War context in which Malaya received independence. They appreciated the difficulties of governing a plural society and sought to embed mechanisms to mitigate potential conflict.

Today, Malaysians disagree vehemently with each other on what the Constitution actually means: these are divisions that could lead to violent consequences. To me the only sustainable solution lies in young Malaysians. Achieving that is the topic of an entirely different conference.

But when reference is made to a supposed 'social contract' between various races as a basis for our country, Malaysians should be able to respond with the actual social contract agreed to by Sangsapurba and Demang Lebar Daun.

When there is appropriation and abuse of power by the executive, Malaysians should be able to cite the Terengganu Inscription Stones to demonstrate that such abuses should be severely punished.

⁹ Mahani Musa, 'Origins of the Kedah royal house' in *The Encyclopedia of Malaysia: The Rulers of Malaysia* (Editions Didier Millet, 2011)

¹⁰ Carl A. Trocki, *Prince of Pirates: The Temenggongs and the Development of Johor and Singapore* (NUS Press, 2007)

¹¹ Kassim Ahmad and Noriah Mohamed, *Hikayat Hang Tuah* (Yayasan Karyawan and Dewan Bahasa dan Pustaka, 1997)

When theocratic solutions are offered to our problems, Malaysians should be able to explain the development of an advanced secular law within our greatest Muslim polity in the fifteenth century.

When there is too much interference in the economy, Malaysians should be able to cite the Undang-undang Melaka where transactions were only valid on certain conditions.

When foreign investors are seen to be intervening in our domestic politics, Malaysians should be able to cite the lessons learnt from the policies of the Sultanate of Malacca and the Kangchu system.

And when the federal government seeks to unduly appropriate power from states, Malaysians should be able to point to the long history of decentralisation and federalism that began in Negeri Sembilan.

Without a renewed national consensus of the underlying principles of our nation, involving all parties and a cross-section of citizens, these centuries-old roots of a democratic society may be poisoned and eradicated.

I hope that conferences such as this one will help equip all of us with the sun, water and fertiliser that we can apply in our respective countries.

Thank you very much, wabilahi taufiq walhidayah, wassalamu'alaikum warahmatullahi wabarakatuh.



Tunku Zain Al-'Abidin

Tunku Zain Al-'Abidin is Founding President of the Institute for Democracy and Economic Affairs. He is a Trustee of Yayasan Chow Kit, Yayasan Munarah and the Jeffrey Cheah Foundation and the Genovasi Foundation and is also an Independent Non-Executive Director of two public listed companies. An advisor and patron to numerous educational and cultural organisations. Tunku Abidin is a regular columnist. His witty observations on Malaysian culture, politics and the occasional comment on foreign policy have been compiled into three volumes, *Abiding Times I & II* as well as *Roaming Beyond the Fence*, which was nominated for the Popular Readers' Choice Awards.

Tunku Abidin was educated at the Kuala Lumpur Alice Smith School, Marlborough College and the London School of Economics and Political Science, where he obtained his MSc in Comparative Politics in 2004. He then worked in the UK Houses of Parliament before moving to Washington DC to join the World Bank as a Public Sector Consultant. Upon returning to Malaysia in 2008, Tunku 'Abidin worked at the United Nations Development Programme and the KRA Group before becoming a Research Fellow at the Lee Kuan Yew School of Public Policy at the National University of Singapore.

In 2006 he co-founded the Malaysia Think Tank which evolved into the Institute for Democracy and Economic Affairs (IDEAS) in 2010. Since 2008 he has maintained a newspaper column: firstly *Abiding Times* in the *Sun*, then *Roaming Beyond the Fence* in the *Star* and *Sin Chew*, and now *Conservatively Speaking Freely* in the *Malay Mail*, *Borneo Post* and *Oriental Daily*. Tunku 'Abidin has also authored a coffee table book for the Installation of the Eleventh Yang di-Pertuan Besar of Negeri Sembilan and led a major project to revitalise the State Anthem.

An Eisenhower Fellow, he has been selected for various leadership programmes by the governments of Australia, France and the European Union. He has been recognised with the Rotary Young Integrity Award in 2013 and a Top 10 Most Impactful Young Leaders Award in 2015.