BOOK REVIEWS

Kim Beng Phar, *Islamic Statehood and Maqasid al-Shariah in Malaysia. A Zero-Sum Game?*

(Chiang Mai: Silkworm Books, 2009), x+66 pp. ISBN: 9789749511053.
US\$13.80

Nora S. Eggen *University of Oslo*

There has been an increasing interest in and a growing literature on the concept of *maqāṣid al-sharīʿah*. The literature has leaned towards theoretical rather than empirical studies, and therefore empirical studies on the application of *maqāṣid al-sharīʿah* as a guiding principle for legal and/or political government are highly welcomed. In his book *Islamic Statehood and Maqasid al-Shariah in Malaysia. A Zero-Sum Game?* Kim Beng Phar sets out to show that as far as the case of Malaysia is concerned, such application is still far ahead.

The main argument of the author is that the Islamic discourse in Malaysia needs to integrate *maqāṣid al-sharīʿah* in order to “significantly broaden the scope and methodology of Islamic legislations” (p. 47). Although the term of *maqāṣid al-sharīʿah* has not been absent, the discourse has yet to be permeated with its spirit. In his view, the main driving forces within this discourse, UMNO and PAS, have both resorted to a simplistic, selective and reductionist reading of Islam each trying to “out-Islamize the other with bold Islamic plans, symbols, and rhetoric, which in turn lend themselves to callous application” (p. 51).

In preparing the ground for the argument, Kim Beng Phar gives brief introductions and historical background to the political and legislative situation in Malaysia and to concepts such as *al-amr bi 'l-ma'rūf wal-nahy 'an al-munkar* and the Islamic state. The author makes the observation that there are several participants in the discourse on identity politics in Malaysia. Nevertheless, it seems to boil down to the opposing views of the two main actors, UMNO and PAS, although the general public is not always confident with either one's Islamic credentials. Historically, the author traces the view of Islamic law as punitive back to the establishment of the Malacca kingdom, and after independence this view was paired with the reductionist view on Islamic governance held by influential thinkers such as Mawdūdī, Sayyid Quṭb and al-Qaraḍāwī from the mid-twentieth century onwards. The second heritage is colonial rule which divided the power of Muslim rulers by splitting up a court system into a double system of state legislatures and federal legislature with an

ongoing tension between them. This tension between secular federal law and the implementation of *shar'ī* rule has been the feed for PAS, with mixed luck since most of their field of interest falls within the Federal List. The initiatives of PAS, in turn, compelled UMNO to compete by issuing a federal policy of a call to a vision of 'Islamic modernity', which, due to the dispersed pattern of power limits, the federal government, however, has no power to enforce. In the view of the author then, when PAS is reducing Islam basically to a question of implementing the *hudūd*, UMNO is forced into the same discourse reducing it to a "bidding war" (p. 28). As a result, the ethos of *maqāṣid al-sharī'ah* is not allowed to manifest itself.

Before examining the concept of *maqāṣid al-sharī'ah*, the author clarifies his views on the *sharī'ah* as neither static nor exhaustible. Although he later accounts for the historical development of theories on the *maqāṣid*, he seemingly adopts the view that "shariah involves five key goals" (p. 34) thus endorsing a surprisingly static view. While *fiqh* is a result of human endeavour based on the sources of the *sharī'ah*, the theories of the *maqāṣid* may also be regarded as such endeavours, as is the case with many other maxims (*qawā'id*), derived from early Islamic legal thought which was to a large extent case based – although not theoretically, on some, maybe unexpressed, guiding principles. The broad discussion over the years of the precise content of the *maqāṣid* and over the priority between the different values suggested to be the basis of the *maqāṣid*, testifies to the possibility that even the *maqāṣid* may be fluctuating. Even this perspective needs to be included in a dynamic Islamic discourse.

Kim Beng Phar's brief text shows some shortcomings at the level of precision when it comes to certain concepts. What precisely does the author understand by "strict Islam" or "moderate Islam"? Sometimes discussions are blurred by tags such as these. The way the term *ijtihād* is used may serve as a case in point. As an example the author refers to Tun Dr Mahathir's idea on the importance of acquiring scientific knowledge that apparently found no ready audience (p. 46). In this regard, it would be helpful to differentiate between *ijtihād* in the general sense of rendering an opinion and in the particular juristic sense of issuing a *ḥukm shar'ī*. If Tun Mahathir, in this instance, as alleged, was discredited for not mastering the Arabic language, it is highly questionable if this can be traced back to restrictions put on *ijtihād* as a juristic method. The ideal state of affairs, according to Kim Beng Phar, was the original and pioneering spirit in which the Companions of Muḥammad exercised *ijtihād* taking their lead directly from the Qur'ān and the *Sunnah* and pursuing public benefit. There is little doubt that such direct leadership requires access to the multilayered content through the language of the original source, and hence a fundamental requirement for juristic *ijtihād* most naturally must be linguistic skills.

Islamic Statehood and Maqasid al-Shariah in Malaysia. A Zero-Sum Game? has the size and scope of an article, but resembles a pamphlet both in terms of format and contents. It raises a vital issue, not only in the Malaysian context, but, I would say, in the global Islamic discourse. In failing to discuss more explicitly how the *maqāṣid* should be included in the discourse, the author runs, however, the risk of becoming another participant in the rhetorical game he is criticising both UMNO and PAS for. It is as if the author has laid down a conceptual framework for an analysis that we are nevertheless still waiting for. For instance, he lashes out at PAS's *hudūd* initiative, but fails to demonstrate how this initiative clashes with the *maqāṣid* approach. After all, the proponents of the *hudūd* initiative may very well further the argument that these regulations are meant to protect the five key goals of the *sharī'ah*, as these are outlined by the author (pp. 34–5). Few Muslims would argue against Islam promoting general welfare and good values. That general message of the book is therefore easily brought home. The interesting argument, put forward in apt wordings, about the nature and scope of the Malaysian discourse in view of the *maqāṣid al-sharī'ah* would however benefit from further substantiations.

Saim Kayadibi, *Istiḥsān: The Doctrine of Juristic Preference in Islamic Law* (Kuala Lumpur: Islamic Book Trust, 2010), 384 pp. ISBN: 9789675062476. US\$20.00

Eric Winkel *International Institute of Advanced Islamic Studies (IAIS) Malaysia*

I received this book for review right in time for this special issue on *maqāṣid*, which is fitting, as the concept of *istiḥsān* is often interchangeable with *maqāṣid* (p. 34), as in al-Ghazālī's description of *maṣlaḥah* consisting of 'five essential values', which we tend to call today *maqāṣid* or 'objectives'. The book is a complete and well-documented history of the term and the concept. As such, it is a necessary reference for anyone studying Islamic law. I found especially valuable the author's knowledge of the lineages in the 'schools of Sunnite jurisprudence', especially in the Ḥanafī 'school'. The book will help any student trying to situate the legal scholars over the centuries.

The author shows how the concept is linked to *ijtihād* and thereby affirms the open nature of the 'door of *ijtihād*'. The author gives us a list of scholars who provided qualifications for the *mujtahid*, but points out that al-Shāṭibī "ignored these lists and reduced the conditions of *ijtihād* to one comprehensive point: the precise comprehension of the *maqāṣid* and in the light of this comprehension the ability to deduce rules from the sources" (p. 301).