ARTICLES

MALAYSIA: ROOTS OF A DEMOCRATIC SOCIETY

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Abstract: In discussing democratic transitions in the Muslim world, many turn to episodes in the history of the Middle East, Andalusia, the Ottoman Empire and Mughal Empire for inspiration. By comparison, Southeast Asia is often neglected. Looking back at Malaysia’s rich history, however, evidence of democratic leanings situated within a specifically Muslim cultural and religious context are clearly evident. This paper briefly discusses six such leanings, namely: the fourteenth-century Terengganu Inscription Stone (Batu Bersurat Terengganu), which hints at notions of a social contract, rule of law and limits to a ruler’s authority; the Malay Annals’ (Sejarah Melayu’s) story of King Sangsapurba and its concept of a social contract; the unquestioned loyalty to authority demonstrated in the famous story of Hang Tuah; the 1656 text called the Laws of Melaka (Undang-undang Melaka), which reveals an understanding of legal, economic and philosophical concepts that were first expounded in Europe only during the Enlightenment; Johor’s Kangchu System, where Temenggong Daeng Ibrahim practiced the issuing of surat sungai, granting leases to planters to cultivate river banks; and, lastly, the key concepts of Negeri Sembilan’s ancient adat pepatih, which have been adapted to serve present-day Malaysia. The democratic developments that occurred in these explicitly Malay Muslim examples provide an alternative to the authoritarian modes of thinking often advocated by modern-day proponents of a supposedly ‘more Islamic’ society. Without a renewed national consensus affirming these underlying principles of the nation, involving all parties and a cross-section of citizens, these centuries-old roots of democracy may yet be poisoned and eradicated in Malaysia.

Keywords: Batu Bersurat Terengganu, King Sangsapurba, Demang Lebar Daun, Hang Tuah, Undang-Undang Melaka, Surat Sungai, Adat Pepatih.

Introduction

Many Muslims today, myself included, are motivated by the glory of the Islamic Golden Age. Unfortunately, for some this means the subjugation of others by
force. For me, and I hope many others, it means creating the conditions that will lead to the flowering of the thinkers and philosophers, scientists and innovators, 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?

In this context, permit me to share some interesting titbits from Malaysia’s own history. I hope this will be of benefit not only to non-Malaysians, but also provoke and stimulate 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 many features of Malaysia’s pre-modern polities (kerajaan) were autocratic, where slavery, debt bondage and punishments universally deemed barbaric by today’s standards were meted out freely. Having said that, I believe we can find the roots of a democratic society that we can continue to aspire to; 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.

The Terengganu Inscription Stone (Batu Bersurat Terengganu)

First, I wish to highlight a fourteenth-century text that hints at the notions of a social contract, rule of law and limits to a ruler’s authority. In Malay it is called the Batu Bersurat Terengganu, or in English the ‘Terengganu Inscription Stone’, and has been dated by Syed Muhammad Naguib Al-Attas to 1303. ¹ If you conduct cursory research about the stone, you will see that most commentators consider it important only 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 whosoever 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.

We do not know the circumstances that motivated the ruler, referred to as Seri Paduka Tuhan, to issue this edict. One could speculate that it was 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.

**The Malay Annals (Sejarah Melayu)**

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

According to John Leyden’s translation, the king Sangsapurba wanted to marry the daughter of a chief, Demang Lebar Daun. The latter set certain conditions on Sangsapurba before he could marry 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 Damang Lebar Dawn should never move any treasonable practices against his descendants, even though they should become tyrannical. “Very well,” said Damang 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.”

But, I think the solemnness of the contract – the *janji*, or *wa’ad* – emerges more clearly in the Malay, as given by Abdul Rahman Haji Ismail’s Romanisation of Sir Thomas Stamford Raffles’ manuscript:

> “Baiklah tuanku, tetapi jikalau anak cucu tuanku dahulu mengubahkan dia, anak cucu patik pun mengubahkan dia”. Maka titah Seri Teri Buana [i.e. Sang Sapurba], “Baiklah, kabullah hamba akan wa’ad itu.” Maka keduanya pun bersumpah-umpahlah, 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

(“Yes your highness, but if your descendants change their stance, my descendants too will change their stance.” Thus Seri Teri Buana commanded [Sang Sapurba], “Very well, the promise is granted.” Hence both of them made vows that, should anyone violate the promise, Allah Subhanahu wa Ta’ala would flip his house and unearth its pillars. That is why it is bestowed upon the Malay rulers by Allah Subhanahu wa Ta’ala that no one shall be shamed; however immense a sin may be, never will anyone be tied and hanged and humiliated with evil remarks. If a king inflicts shame, that is a sign the nation will be destroyed by Allah Subhanahu wa Ta’ala. Thereupon all Malay citizens were granted by Allah Subhanahu wa Ta’ala that they shall never betray and turn their faces from their king, in spite of how evil their manners and mistreatments may be)

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

The Story of Hang Tuah

The above message is quite different from that in another Malay story often used to justify authoritarianism: that of Hang Tuah, who proffers his absolute loyalty to the Sultan Mansur Shah and was handsomely rewarded in return. The story, found in the same ‘Malay Annals’, is that the Sultan ordered Hang Tuah to be executed after being “wrongfully accused of having seduced one of the female attendants of the palace.”5 But instead, he was 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
and the only person skilled enough to carry out the punishment of death was Hang Tuah. The Sultan therefore expressed his regret at having executed him, at which point the Bendahara revealed 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.

But the version of the story still romanticised in Malay popular culture is based on the *Hikayat Hang Tuah*. 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 in fact executed, the Sultan orders him to kill Hang Jebat for rebelling. 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.

**The Laws of Melaka (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 lived in, namely the Sultanate of Melaka. Today’s champions of the law code of that sultanate, the *Undang-undang Melaka*, are likely to praise its religious content, typically when justifying 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.” (“this is a great treatise that declares the law of all the great lands and of all the great kings and the customs of the dependant lands, that kings and ministers shall protect their people”). It establishes the rule of law, even over rulers. It then describes the roles of the 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, while Article 20 declares that there are two types of land, dead and living, and suggests that dead land may be acquired by working on it, harking to a 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.” (“If someone makes it [already cultivated land] into a village or house or an uncultivated rice field, he is open for criticism and may be prosecuted, as that land is living land [as it belongs to the one who cultivates it]”). It goes on to specify the punishments for trespassing on such land.

Article 23 states that if the kingdom meets with famine, 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:


(There is no validity in business for an unsound person and there is no validity in business with children before the age of puberty and there is no validity in business except when the seller says: “I sell this”, and the buyer: “I buy this”, and the price of the goods is made clear)

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 uphold the prestige of the group, which forms the battle-cry for so many conservatives today.

But it wasn’t just in Melaka that these provisions occurred. 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.

But legal innovations continued to occur independently across the sovereign Malay kingdoms, too.
The 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* (river letters) from 1844 to 1862 granting 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 the Temenggong, and 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*.\(^\text{10}\)

Most commentaries on this system, including in Malaysian school textbooks, characterises this policy in racial terms: a Malay polity inviting foreign Chinese investment. In policy terms, however, this system 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 from those of other states. Indeed, up until today the continued existence of Ruling Chiefs in Negeri Sembilan, 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.\(^\text{11}\)

Another Orientalist and colonial administrator, R.O. Winstedt, opined that “the Negri Sembilan constitution developed on similar lines”\(^\text{12}\) as the British constitution, and local historians too have written much about the democratic,
decentralised and matrilineal aspects of adat perpatih. 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 a federation.

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, I strongly believe these early Malay, and explicitly Muslim, polities serve to provide an alternative approach to the authoritarian mode of those who claim to strive to make society ‘more Islamic’.

At the foundation of Malaysia, 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 against potential conflict.

Today, Malaysians disagree vehemently with each other on what the Constitution actually means; these are divisions that could lead to violent consequences. For me, the only sustainable solution lies in young Malaysians drawing upon their history. On that basis, I would like to make the following recommendations:

1. 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 by Sangsapurba and Demang Lebar Daun.

2. 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.

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

4. 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.

5. 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 Melaka and the kangchu system.
6. 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 concerning 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 articles such as this one will help equip us with the sun, water and fertiliser capable of sustaining them.

Notes

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5. Ibid., 123.
6. Ibid., 184.
8. Liaw Yock Fang and Zainal Abidin Borhan, Undang-undang Melaka dan Undang-undang Laut (Yayasan Karyawan, 2016), 107.