Chapter 2
One State, Three Legal Systems: Social Cohesion in a Multi-ethnic and Multi-religious Malaysia

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2.1 Introduction

Since the Second World War, Malaysia has enjoyed long periods of peace and stability, or social cohesion, punctuated by violent ethnic conflicts in 1945, 1964, 1969 and 2001. Each of these was of a different intensity, the worst being that in 1969, with a small number of deaths—according to written record, the total number was below 500. This general condition of social cohesion does not, however, mean that everything is plain sailing in Malaysia.[1]

Malaysians would be the first to admit that it has not been easy to maintain peace and stability for such long periods, but it has long-term benefits, especially in terms of economic development and quality of life. Malaysians would like to claim that they 'talk conflict but walk cohesion.' This simply means they would continue to verbally contest, protest and oppose (out in the open or in blogs) whatever they are not happy about. This is true now more than ever, hence the 'talk conflict' label. They also know that violence is never an option and has to be avoided at all costs, hence their choice to 'walk cohesion.'

In other words, Malaysians are not willing to sacrifice the prosperity and the quality of life they have enjoyed for more than 50 years since Independence in 1957. However, this doesn't mean they are unwilling to fight for their rights and to protest, potentially risking the peace and stability that they enjoy and have held so dear. Indeed they do protest, even to the point of conducting street demonstrations (albeit responsibly) if the situation demands it. This seemingly paradoxical situation has to

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do with the character and nature of Malaysian society, which exhibits, predominantly, features of—to borrow from Derrida—'social difference,' such as religious diversity, legal pluralism, and class differences. Each of these features has the potential to be a source of conflict and become the motivation for protest and contestation. At the same time, these centripetal forces are the motivation for seeking centrifugal existence in the society.

In this brief essay, I intend to examine, specifically, the interconnectedness of religious diversity and legal pluralism in Malaysia and the social consequences, cohesion and conflict that it has brought to the society.[2] I shall begin by presenting my interpretation of the embedding process of the different religious traditions and legal systems in the Malay world and in Malaysia, which is captured in the title of the essay as 'one state, three legal systems.' Following that I shall present, in the overall context of religious diversity and legal pluralism in Malaysia, an analysis of the social cohesion and conflict, both macro and micro, which have resulted from the contradictions arising from the diversity and pluralism. Through persistent negotiation and bargaining, consensus and compromise among the various interested parties in Malaysia have been achieved, which, in turn, guarantee that peace and stability in Malaysia will continue.

2.2 Embedding of Religious Diversity and Legal Pluralism in Malaysia: A Brief Historical Analysis

Historians have divided the formation of the state of Malaysia into three convenient chronological periods, namely, the pre-colonial (before 1791), colonial (1791–1957) and postcolonial (after 1957) periods.[3] Each period is characterized by a 'pluralistic' legal system in which a number of sets of rules and sanctions, relating to politics, economics, moral standards and social intercourse, co-existed and were practised as frameworks of social organization and control. In other words, Malaysia's legal system has been determined by events and circumstances that were embedded and re-embedded, spanning a period of more than six centuries, even before the famous Malacca Sultanate era.[4] Of these circumstances, three major historical events-cum-periods were largely responsible for shaping the current system: the first was the founding of the Malacca Sultanate at the beginning of the fifteenth

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[2] For an excellent analysis on legal pluralism, see Tamanaha (2008), and for a useful discussion on religious diversity, see Gross (1999).

[3] The standard text on Malaysian history is by Leonard and Barbara Andaya (1982). A number of well-known lawyers and judges (for example, Ahmad Ibrahim and Ahilemah Joned 1985 and Wu Min Aun 1990) have written, both in English and Malay, about the complex history of Malaysian legal systems, covering the period before British colonialism.

[4] See Wu Min Aun (1990) for a brief but excellent general introduction to the evolution of rules and laws in Malaysia. See, also, Suffian (1988). For a more 'technical' introduction, see Hickling (1987).

century; the second was the indigenous culture; and the third, and probably the most significant in modern Malaysia, was British colonial rule.

For more than a millennium, before the Malacca Sultanate was established (circa 1400), *adat*, or an indigenous legal system that is based upon a complex set of customary practices guided mostly by oral traditions, was the major framework within which the Malay feudal societies and numerous isolated indigenous social groups existed.[5] However, since the literal meaning of the Malay word '*adat*' is 'the accepted way,' its scope of social meaning goes beyond the legal sphere and often used to mean 'the indigenous way of life,' and, thus, Malay culture. After the arrival of Hinduism (circa first century BCE) and Buddhism (circa seventh century BCE), Hindu and Buddhist tenets were fused with *adat* and absorbed into the local cultures. So strong was the impact of both of these religions, especially amongst the ruling elites, that some of the Malay kingdoms, in fact, became 'Malay-Hindu' or 'Malay-Buddhist' kingdoms. This inevitably led to the formation of a syncretic belief system, hence also legal system, amongst the indigenous populace.[6]

Probably the most profound and lasting of the non-indigenous influences was the introduction of Islam into the Malay world from around the fourteenth century CE. It had a significant impact on indigenous *adat*. The establishment of the Malacca Sultanate and, later, its demise, is critical in our understanding of the historical origins of the plurality of legal systems in present-day Malaysia. However, the adoption of the new religion did not result in the complete elimination of the pre-Islamic *adat*. On the contrary, the more prevalent Hindu customs and animistic traditions continued unabated. Islam was merely grafted onto the existing culture. Today, the Hindu elements are still observed in the practice of indigenous cultures, such as in the celebration of marriages amongst the rural Malay folk, as well as in the pompous traditional-style coronation of rulers in a highly westernized urban context.[7]

As Islam took a firm hold in Malacca and eventually became the state religion, Muslim laws were increasingly applied alongside *adat*. In other words, through a process of syncretization, the Hindu-Buddhist-Islam elements were adapted, in parallel or rationalized to suit the pre-existing indigenous *adat*. However, since the feudal ruler became a Muslim, so, too, his court and the organization of his kingdom were dominated by Islam. The maintenance of law and order in Malacca was crucial to its prosperity as a trading port. The formal legal text of the Malacca Sultanate consisted of *Undang-Undang Melaka* [Laws of Malacca], sometimes also known as *Undang-Undang Laut Melaka* [Maritime Laws of Malacca]. The laws, as written in the legal digests, went through an evolutionary process and were improved and

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[5] Hooker's *Adat Laws in Modern Malaya* (1972) and *Native Law in Sabah and Sarawak* (1980) remain the most important contributions in the study of Malaysia's indigenous rules and laws.

[6] For an interesting account of the Hindu and Buddhist influence in a Malay kingdom around the Middle Ages, see Walters (1970).

[7] A number of interesting books on Islamic laws in Malaysia have been published, both in English and Malay. But the most important text is still that of Ibrahim (1965). Other useful recent contributions are those of Jusoh (1991) and Othman (1994).

expanded by the different Malacca sultans. The legal rules that eventually evolved were shaped by three main influences, namely, the indigenous *adat*, Hindu-Buddhist tradition, and Islam. The extent to which these laws were actually applied is unclear. However, some accounts of the administration of criminal justice can be found in Portuguese and British accounts.

When Malacca was conquered and ruled first by the Portuguese (1511–1641), then by the Dutch (1641–1824) and finally by the British (1824–1957), another non-indigenous system, namely, the western legal system, was introduced and applied in Malaysia, on top of the three traditions mentioned above. However, historians and legal scholars have argued that during the Portuguese and Dutch eras the western laws applied by them made relatively little impact on the pre-existing pluralistic legal system as a whole, other than upon the narrow realm of administrative structures. The local people continued to practise Islamic law and Malay *adat* because both the Portuguese and the Dutch did not interfere unnecessarily with local *adat* and religion. This, perhaps, was because the Malays remained Muslims and were not converted to Christianity, either by the Portuguese or the Dutch during their more than three centuries' rules of Malacca and other parts of Malaysia (1511–1824).

However, British colonial rule (1824–1957) transformed the pattern of domains of social control in Malaysia forever, because, unlike that of the Portuguese and the Dutch, British control was not localized to Malacca. British colonialism affected the whole of the Malay peninsula and North Borneo, a geographical area nearly 50 times bigger, which includes at least 10 Malay sultanates, rich mining areas (for tin, gold, bauxite), millions of acres of primary tropical forest, cash crop plantations and traditional rice fields, hundreds of towns, ports and market centres (big and small), and, most importantly, the large pool of multi-ethnic and multi-religious human resources. This inevitably demanded a systematic and more effective social organization and control system that could hold the political, economic and social diversity together.

The British, as they did in Africa, applied the 'indirect rule' system of governance in Malaya, whereby, for instance, the indigenous legal system was maintained but subsumed under the more dominant English common law.[8] Therefore, matters pertaining to religion and *adat* were put under the jurisdiction of the Malay sultans, who headed each *kerajaan negeri*, or provincial government, and their chiefs. Even in *negeri* without sultans, the British instituted Native Courts, run mostly by local chiefs under the guidance of British officers.[9] The legal rules that eventually evolved in British colonial Malaya were shaped by four main influences, namely, the indigenous *adat*, Hindu-Buddhist tradition, Islam, and English common law.

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[8] Two scholars have offered brilliant analyses of the impact of British colonialism and colonial knowledge in defining social life and social order, including in terms of religion, in the British colonies, in which the influence of Henry J. Maine (1822–1888) was pivotal in developing, in the post 1857 British empire, the concept of 'indirect rule' (see Cohn 1996; Mahmood Mamdani 2012).

[9] The experiences of Sarawak and Sabah under British rule provide ample examples on this; see, for example, Richards (1964) and Sandin (1980). See, also, Hooker (1980).

In practice, however, the legal system during the British rule was divided three ways. First, there was the 'English common law' system that was accepted as the general legal system and was responsible for dealing with all matters in the sphere of criminal justice affecting all citizens. In the sphere of personal laws it was only applied to migrant non-Muslims (e.g. European, Chinese, Indian). The Muslims, largely Malays, were subject to the Islamic laws, or *Shari'a*, particularly in matters relating to marriage, divorce and inheritance. The form of *Shari'a* accepted and practised during the British era was 'framed, blamed and renamed' according to an orientalist understanding.[10] So, the *Shari'a* laws formed the second legal system in British Malaya. The third legal system operating then was the *adat* system, or the Customary or Native legal system, applied mainly in the areas of personal laws and, in a very limited context, also in the sphere of criminal justice for some groups of native peoples in Peninsular Malaysia, Sabah and Sarawak. The *adat* legal system was a heterogeneous one because there were many distinct and large 'native' or 'tribal' groups, mostly non-Muslims, especially in Sabah and Sarawak, each having their own tribal-specific *adat* codes, mostly in the form of oral traditions, applied in a localized context.

The only Muslim indigenous community that had its own *adat* laws, based on *perbilangan* (memorized oral codes), and claimed that the communal *adat* land was its core, was the community of the so-called 'Minangkabau Malays' (a contested anthropological term), whose matrilineal society practised *Adat Perpatih*. The British recognized and accepted this claim. Members of this community were located in parts of Malacca and Negeri Sembilan.[11] To this day, this is the only community in British Malaya or Peninsular Malaysia that was affected by all three legal systems that existed then, namely, the English common law, the Islamic/*Shari'a* law and the *adat* law.

As a member of the *Adat Perpatih* community, I still remember how this situation was best summarized anecdotally by my elders. They said, "should you commit a crime you go to the *orang putih*'s (lit. white man's) court, should you want to marry you go to the *Kadi* (local Islamic official), and should you want your mother's *tanah pesaka* (lit. ancestral communal land) after her demise, sorry, you can't, it's your sister's, so says our *adat perpatih*."

During the postcolonial period, this three-tier legal system continues to rule the social lives of Malaysians, especially the indigenous population. In summary, it could be said that, sociologically, for them no single cultural strain is pervasive: each has contributed its individual piquancy to create a singular, if syncretic, fusion. Therefore, this process is critical to understanding the indigenous cultures, for present-day indigenous values are compounded of a sometimes contradictory admixture of pre-Islamic custom, the purer precepts of Islam, and western influences.

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[10] See the brilliant article by Kugle (2001) on how this happened in the whole of South India during the British period.

[11] The most recent and comprehensive account on the social history of the *Adat Perpatih* in Negeri Sembilan is the contribution by Ibrahim (1995). For anthropological accounts on the practice of *Adat Perpatih*, see Swift (1965) and Peletz (1988, 1996).

The shaping of the indigenous people's values, and, to a great extent, those of the rest of the Malaysian populace too, has been profoundly affected by these conflicting impulses.

Viewed in this context, particularly against the theme of this book, Malaysia provides an interesting singular example as to how 'religious diversity and legal pluralism' have co-existed for at least a millennium, have found expression and shaped a particular society. Observing the impact is equally important. In the Malaysian case, it is a society, a new entrant in the world group of newly-industrialized countries that has been a focus point for international mass media, not only because of its consistently high annual economic growth but also owing to the vocal, assertive, self-imposed world statesman style of its former Prime Minister, Dr Mahathir Mohamed.

For some countries of the south, Malaysia is an example they wish to emulate. For these reasons, Malaysian domestic affairs have been closely scrutinized by both local and international interests, be they investors, NGOs, or regional and international organizations. The main criticism leveled at Malaysia relates to its 'human rights' and 'ecological' records; for the former it has been described as having an 'authoritarian government' and for the latter it has been labeled a 'destroyer of nature.' While it is not my intention here to defend nor attack Malaysia, it is useful to examine these criticisms in the context of the book's theme, to allow us to analyze the situation from an alternative perspective, perhaps for a wider application, beyond Malaysia.

2.3   Social Impact of Religious Diversity and Legal Pluralism in Malaysia

It seems 'natural' to most social scientists who are keen observers of Malaysian past and current affairs to offer analysis on Malaysia from a 'conflict approach,' on the basis that it is a 'plural society' which is characterized by diversity, differences, dividedness, and fragmentation. Hence the assumption, indeed a simplistic one, is that the society, literally, 'must' be overwhelmed by conflict, contestation and contradiction.[12] During the Cold War such an approach and viewpoint in relation to Malaysia gained popularity because Malaysia has been perceived as a 'fragile and vulnerable' country, on the verge of breaking down. The sociological naiveté demonstrated by these observers, a majority of whom are political scientists, shaped the mainstream approach in creating academic and non-academic narratives on 'social conflict' in Malaysia.

This 'literal' perception of Malaysia, as a society in constant conflict, ignores and almost dismisses the possibility of Malaysia's experiencing some form of social

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[12] We are yet to read a thorough and respected Marxist- or Weberian-based study, in English or Malay, on Malaysian economy and society, but there exists a small collection of 'Marxisant' and 'Weberianistic' attempts which are mistaken by many for the real thing.

cohesion. Therefore, the fact that Malaysia has enjoyed long periods of peace and stability, through sheer hard work, punctuated by a few violent conflicts in the last 60 years, had escaped the attention of most analysts—but not of Stiglitz, winner of the 2001 Nobel Prize for economics, who said:

> I had the opportunity to talk to Malaysia's prime minister after the riots in Indonesia. His country has also experienced ethnic riots in the past. Malaysia has done a lot to prevent their recurrence, including putting in a program to promote employment for ethnic Malays. Mahathir knew that all gains in building a multiracial society could be lost, had he let the IMF dictate its policies to him and his country and then riots had broken out. For him, preventing a severe recession was not just a matter of economics, it was a matter of the survival of the nation. (Stiglitz 2002: 120)

I would like to argue that it is more beneficial, analytically, to discuss the existence of religious diversity and legal pluralism in Malaysia not immediately in terms of 'social conflict' but in terms of 'social impact,' because 'social impact' could occur in the forms of both 'social conflict' and 'social cohesion,' that is, it could sometimes exhibit strong elements of conflict and contestation, and at other times cohesion and compromise. We need to establish and register the fluidity between the varieties of social impact, so that we can capture the uncertainties, ruptures and tensions which emerge from our discourse on religious diversity and legal pluralism in Malaysia.

I would like to present a way forward in our approach to analyzing Malaysia, moving beyond the 'social conflict' obsession, by proposing that it is imperative, as the first step, to comprehend the nature and workings of Malaysia's federalism and to view its constitution as an instrument in which the country's religious diversity and legal pluralism find convergence in spite of the obvious, sometimes unresolved, social differences.[13]

2.4 The Social Impact of the Unresolved 'Federalism' Puzzle in Malaysia

One critical institutional factor that escapes the attention of most researchers analyzing 'social conflict' in Malaysia is the existence of 'federalism' as the governance structure of choice of the people. The complex nature of Malaysia's federalism has not been captured fully by any study thus far. Four major studies have been published in the last 40 years, on various aspects of federalism in Malaysia.[14] We are

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[13] It is cliché for observers and op-ed writers on Malaysia to characterize and arrogantly dismiss any analysis that does not highlight social conflict or does not give prominence to non-Muslim non-Malay viewpoints as 'a dominant, conservative Malay-Muslim perspective.' In the broader sense, such a viewpoint has been labeled 'myopic and racist.' It is not common for religious issues to be examined in the context of the Malaysian federalist system.

[14] See Balasubramaniam (1999), Shafruddin (1987), Simandjuntak (1969), Yusoff (2006).

still waiting for an overall comprehensive survey that could guide us to make sense of the socially defining impact of federalism's structurally dominant presence.

Unknown to many, there is indeed a three-tier federalism in Malaysia. What are these three federalisms, within which religious diversity and legal pluralism are accommodated and contained?

The earliest and oldest form of federalism in Malaysia is found in Negeri Sembilan (lit. a federation of Nine States) which, in 1773, had its first paramount ruler, called *Yang DiPertuan Besar* (lit. 'He Who is Made the Highest Lord'), who was an outsider invited to be the ruler by the *Undang*, or Chief, of each of the Nine States, now known as nine *luak*.[15]

I would argue that Negeri Sembilan is one of the oldest, if not the oldest, federalist entity in the world, established during the European Enlightenment era of the eighteenth century and coming into being long before European federalism officially existed, also before the notion of the nation state was introduced and consolidated in Europe in the nineteenth century.

The second tier is the Federation of Malaya, established in 1948, and which, for the first time, brought together every state in the peninsula in one federal entity. Previously, there had been many smaller versions, such as the Federated Malay States of Perak Selangor, Negeri Sembilan and Pahang. The rest of the states did not belong to a federation but were collectively called the Unfederated Malay States. The Federation of Malaya became independent in 1957 and has its own constitution, which clearly states that each of the states [*negeri*] has autonomous control over two matters, namely, land, and religion and culture.

The third and last tier is the Federation of Malaysia, which was established in 1963, with its own constitution. This constitution was based on the Federation of Malaya 1957 constitution, but considerably expanded,[16] including new provisions that allowed Sabah to have autonomous control over 20 matters, and Sarawak over 18 matters, in terms of governance—obviously much more control than was allowed to the states [*negeri*] within the former Federation of Malaya, now collectively known as Peninsular Malaysia.

For all intents and purposes, Sabah and Sarawak could be considered as autonomous states within Malaysia, because persons born in the former Federation of Malaysia had to have a passport to enter Sarawak and Sabah (now only an identity card is needed), and they cannot work in either of these states without a work permit. Sabah and Sarawak each have a separate superior court (the High Court in Sabah and the High Court in Sarawak), which enjoys a separate local jurisdiction, similar to the one enjoyed by the High Court in Malaya. Appeals from both these courts go to the Malaysian Court of Appeal, and if unsuccessful, further appeals are heard by the Federal Court of Malaysia. Of course, the *Yang DiPertuan Agong*, or the paramount ruler, has the power of clemency.

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[15] See Gullick (2003), but be warned, the Wikipedia version contains many factual errors and misinterpretations.

[16] See Gullick (1967).

2.5   Federalism and the Application and Non-application of *Shari'a* Law

Both the High Courts have unlimited jurisdiction in all criminal matters other than matters involving Islamic law, or *Shari'a*. In relation to Islamic law, each state (or *negeri*) has its own independent *Shari'a* court, as provided for by the constitution. In practical terms, a *Shari'a* lawyer has to register separately, for a stipulated fee, in each of these *negeri* courts in order to be able to operate in each state. In short, a *Shari'a* lawyer who wants to take up cases in all the states/*negeri* has to register in all the *Shari'a* courts of the Federation.

It is also a well-known fact that some parts of the *Shari'a* laws are interpreted differently in each state. For instance, the law on polygamy in the state of Selangor states that a husband must bring his wife to court to declare that she agrees to her husband's marrying a second wife. In the state of Perlis, this is not necessary at all—a husband can marry a second wife without the first wife's consent.

This factor of inter-state differences in interpretation is seldom taken into consideration in the analysis of religious diversity and legal pluralism in Malaysia. The attempts by the states of Kelantan and Terengganu to introduce strict Islamic *Hudud* laws, have, in the past, been unsuccessful because of the complicated constitutional process and the involvement of the Federal Parliament. The experts in constitutional law are of the opinion that *Hudud* can be enforced in Malaysia only after a new Malaysian constitution is drawn up to make Malaysia an Islamic state.[17]

There seems to be an assumption that the *Shari'a* laws are uniform in the whole country and that every Muslim is subject to the same interpretation of *Shari'a* rules. The following quote illustrates this assumption:

> The (Malaysian) State administers Shariah Law through Shariah courts that have authority for all Muslims in Malaysia. The Shariah court is responsible for administrating family laws and rulings on religious issues for Muslims. Islamic education is compulsory in schools for Muslim children and only private schools can offer non-Islamic religious education. All Muslim civil servants are required to attend state-approved religious classes. (Bouma et al. 2009: 72)

It is true that the *Shari'a* court is legally responsible for personal matters concerning the Muslims in Malaysia. However, it is not administered by one single federal *Shari'a* court, as the above quotation seems to assume and imply. There are individual *Shari'a* courts in each of the states/*negeri* of the Federation of Malaysia. Every Muslim is under the jurisdiction of the particular *Shari'a* court where he or she lives. A federal *Shari'a* appeals court does not exist in Malaysia. Even the Federal Fatwa Council, which issues *fatwa* [religious ruling or Islamic decree] from time to time on all aspects of Muslim life and life styles, has no power to enforce the *fatwa*. Many non-Muslims and non-Malaysians view the *fatwa* as a binding ruling upon all Malaysian Muslims, and yet in reality it is not.

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[17] See the article, '"Hudud has no place in the present constitutional structure," say legal experts' (2014). Since 1 May 2014, *Shari'a* law has been enforced by a royal decree to replace the civil law in the Sultanate of Brunei Darussalam.

The perceived homogeneity of *Shari'a* laws in Malaysia has been the biggest source of disinformation on 'religious conflict' in Malaysia. Indeed the 'conflict,' if we could label it as such, is really among the different interpretations of Islamic personal laws by different religious authorities of different states/*negeri*, besides the perceived 'Muslim vs non-Muslim' religious conflict.

This misperception is a major empirical error, that has led to an equally highly inaccurate conceptualization, which is to be found in every major country's report on Malaysia that is used as a standard reference by foreign researchers, journalists included, writing on Malaysia (for example, the CIA World Factbook, United States State Department annual country reports, UNICEF Report, non-Muslim based Global Information Network report and the like). This situation has led to the continuous active re-cycling of this major error, which is, as can be expected, believed as the 'truth,' and which is used, for convenience, by Malaysians who have, apparently, an axe to grind against Islam, Muslims, and anything to do with Malay-Muslims in Malaysia.

The best example that could be put forward here relates to the issue of the conversion of non-Muslims to Islam, in order for them to be able to marry a Muslim, and their subsequent request to return to their original religion. In the last 5 years, a number of high profile cases have been covered in the media, mostly sensationalized, and with the coverage demonstrating a distinct lack of understanding of the federalist context within which these cases have to be contextualized.

The impression given by media, and popular discussion, is that a re-conversion is totally impossible, because the person involved has to get permission from the *Shari'a* court to be 'released' from Islam. The reality is rather different. The *Shari'a* court in Penang allowed a Chinese lady, a Muslim convert, to return to her original religion after her divorce from her Muslim husband. Another Chinese lady, also a Muslim convert, died after being a nominal Muslim for many years. The *Shari'a* court in Negeri Sembilan allowed her body to be buried as a non-Muslim in a Chinese cemetery.[18] Indeed, the same Negeri Sembilan *Shari'a* court has allowed, in the last 15 years, 62 out of 840 Muslim converts to renounce Islam and return to their original religion.[19]

Yet in another case, involving a male Indian Muslim convert, who converted without the knowledge of his Hindu wife and family, the *Shari'a* court in the Federal Territory ordered that he be buried as a Muslim, against the wishes of his wife and family.

Another 'world famous' case involved one Lina Joy, a Malay convert from Islam to Christianity. She applied to the National Registration Department (NRD) of Malaysia to have her name changed from Azlina bt Jailani to Lina Joy, which was allowed. But when she applied to have her religion changed from Islam to Christianity on her identity card, her application was rejected by the NRD on the basis that she did not submit with her application a letter of confirmation from any *Shari'a* court that she had renounced Islam.

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[18] See the report in the article, 'Doing the impossible: Quitting Islam' (2007).

[19] Data from the various records, in the last 15 years, of Jabatan Agama Islam, Negeri Sembilan.

Lina Joy had decided to bypass that *Shari'a* rule because, by the time she applied, she had already converted to Christianity, and it is not difficult to understand her assumption, then, that she was no longer under the *Shari'a* court's jurisdiction. So, in 1999, she applied to the High Court of Malaya, to have her religion on her identity card changed to Christianity, on the grounds that she was already a Christian and that her name had been changed. Her application was rejected by the High Court on the same basis as the NRD's reasoning. She then submitted an appeal to the Federal Appeal Court, and, in 2006, the Court rejected her appeal and reaffirmed the decision of the High Court, hence, also, that of the NRD.

The unanswered question to this day is, could what has been described as a 'social conflict' have been avoided if, firstly, the woman had changed her home address to a location in Negeri Sembilan, and, secondly, applied to the *Shari'a* Court in Negeri Sembilan for permission to renounce Islam? Would she, like the 62 others before her, have obtained the renouncement certification letter from the Negeri Sembilan *Shari'a* court?

She never did try this process, and her lawyers did not advise her on this possibility. Instead, she, her lawyers, and her Church apparently preferred a 'trial by the media.' Is this then a 'social conflict' that has been induced before all avenues to resolve it have been explored?

However, the above-mentioned cases have, no doubt, had an impact on the relationship between believers of different religions within this religiously diverse country that practices legal pluralism—an impact mostly viewed as negative within a socially cohesive Malaysia. The first type of case above concerns the place of Islamic law within Malaysian law and how it is perceived as 'imposing' on non-Muslims, but is perceived by conservative Muslims as a 'threat' to Islam, which is the official religion of the country. Open, heated, verbal confrontation has developed from this situation. The second type of case relates to Muslims who have converted to other religions, but without first getting permission from the various state-level *Shari'a* courts. Those Muslims were either totally ignorant of the need to get *Shari'a* court permission to convert or ignorant of the Negeri Sembilan cases. Even if they were aware of the rules, the social collective pressure imposed by family and friends would often be too much for individual converts to bear. Besides, no Muslim would like to be declared 'apostate.'

However, nobody has ever launched a challenge, in the context of human rights, through civil society, that a Malay has been denied the right to follow freely his or her religion of choice. This would seem to show that the Malay-Muslim case is a foregone conclusion and that non-Malays can practice whatever is their religion of choice.

2.6 Social Cohesion Impacts

A number of other policies are implemented by the Federal and State/*Negeri* governments to peacefully 'manage' religious diversity in Malaysia, through a structural condition of its legal pluralism endorsed and accepted by its Federal Constitution.

First, the government has made a serious effort to look after the state of religion and religious diversity by offering these diverse religions both status and revenues. The government has encouraged the registration, with the Registrar of Societies (ROS), of bodies or sub-bodies of the Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism. Registration entitles the organization to government grants, including for the building of religious premises. If any such sub-body fails to qualify for ROS, it can, under the Companies Act, register with the Registrar of Companies (ROC) as a legitimate business and entity, but it does not receive any government grants. In other words, if any religious body or sub-body wants to operate in Malaysia, there is really nothing to stop it.

Second, efforts have been made to make possible, and create, a form of inter-religious dialogue. The latest result of such efforts is the setting up of the Committee for the Promotion of Inter-Religious Understanding and Harmony Among Adherents (CPIRUHAA), under the leadership of the Director General, Department of National Unity and Integration, of the Prime Minister's Department. Previous attempts to set up a National Inter-Faith Commission failed because the Muslim conservatives believe that non-Muslims cannot discuss sensitive theological matters relating to Muslims, and they do not wish to discuss theological issues relating to other religions. They argued that what was needed, before a dialogue could ever begin, was a good and comprehensive understanding, by the different parties, of each other's beliefs—hence the formation of CPIRUHAA. In spite of such opposition, inter-religious dialogues do occur through bodies like the Human Rights Commission and other civil society bodies.

2.7   Conclusion

Malaysia celebrates its religious and ethnic diversity. Most of the Malaysian public holidays are related to important religious and ethnic-cultural events. However, this diversity has been framed, mitigated, and negotiated within a set of rules called the Constitution. The interpretation of this constitution, whether in the civil or *Shari'a* courts or in the popular media, is, equally, open to diverse opinions. Because religion is an ethnic identifier in Malaysia—a Malay is defined as a Muslim by the constitution—religious diversity and legal pluralism always have a double impact, on both religion and ethnicity, when one or the other enters the purview of the public.

Interestingly, this diversity has been a hugely important commodity to Malaysia. Indeed, 'selling diversity,' for want of a better term, is one of the biggest income earners for Malaysia, upon which the travel-related service industry in Malaysia has been conceptualized and promoted—best captured in the ingenious slogan 'Malaysia Truly Asia.' The non-conflictual social (read economic) impact of this diversity is really a significant contributing factor towards the quality of life in peaceful and stable Malaysia. In 2011, travel-related activities in Malaysia earned the country US$9.8 billion and provided thousands of jobs.

Nonetheless, this same diversity that Malaysia has enjoyed also has a negative aspect. It emphasizes differences, such as those in the religious context, that could lead to potentially explosive conflicts. So diversity in Malaysia has two faces, a positive face and a negative one, which have long co-existed in Malaysia's history—hence Malaysia's 'state of stable tension,' as this essay had attempted to demonstrate.

In conclusion, it could be said that religious diversity and legal pluralism in Malaysia is the result of historical-structural events that took place during at least the last 2,000 years, in the region once known as Nusantara, the Malay world, the Malay archipelago, the Far East, Southeast Asia and, recently, as ASEAN. It shall remain an interesting and important object of investigation to those interested in social conflict and/or social cohesion studies.

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