

Islam and Civilisational Renewal

KDN No. PP 16237/08/2012(030866)

ISSN 2041-871X (Print) / 2041-8728 (Online)

A journal devoted to contemporary issues and policy research



Volume 9 • Number 1 • January 2018

705



International Institute of
Advanced Islamic Studies (IAIS) Malaysia



PERDANA
LEADERSHIP
FOUNDATION
YATASAN
KEPIMPINAN
PERDANA



19/8/2020

Islam and Civilisational Renewal

A journal devoted to contemporary issues
and policy research

Volume 9 • Number 1 • January 2018

Produced and distributed by

International Institute of
Advanced Islamic Studies (IAIS) Malaysia



PUSTAKA PERDANA



1012622



ISLAM AND CIVILISATIONAL RENEWAL

EDITOR-IN-CHIEF

Professor Mohammad Hashim Kamali

EDITORIAL TEAM

Dr Mohamed Azam Mohamed Adil Dr Alexander Wain
Ilham Ramli Tengku Ahmad Hazri Norliza Saleh Siti Mar'iyah Chu Abdullah

REGIONAL EDITORS

Americas: Dr Eric Winkel *Africa & Middle East:* Mahmoud Youness
Asia: Dr Syed Farid Alatas *Europe:* Dr Afifi al-Akiti *Australasia:* Dr. Daud Batchelor

ADVISORY BOARD

Dr AbdulHamid A. AbuSulayman, <i>International Institute of Islamic Thought</i>	Professor Carl W. Ernst, <i>University of North Carolina</i>	Professor Ingrid Mattson, <i>University of Western Ontario</i>
Professor Rüdiger Wolfrum, <i>Max Planck Foundation, Germany</i>	Professor John Esposito, <i>Georgetown University</i>	Professor Abbas Mirakhor, <i>Retired Professor of Economics and Finance</i>
Professor Azyumardi Azra, <i>State Islamic University Jakarta</i>	Professor Silvio Ferrari, <i>Università degli Studi</i>	Dr Chandra Muzaffar, <i>International Movement for a Just World</i>
Professor David Burrell CSC, <i>University of Notre Dame</i>	HRH Prince Ghazi bin Muhammad, <i>Jordan</i>	Professor Seyyed Hossein Nasr, <i>George Washington University</i>
Dr Mustafa Cerić, <i>Former Grand Mufti of Bosnia-Herzegovina</i>	Professor Claude Gilliot, <i>Aix-Marseille Université</i>	Professor Tariq Ramadan, <i>Oxford University</i>
Professor Hans Daiber, <i>Johann Wolfgang Goethe Universität</i>	Professor Ekmeleddin İhsanoğlu, <i>Organisation of Islamic Cooperation</i>	Professor Mathias Rohe, <i>Friedrich-Alexander-Universität</i>
Ahmet Davutoğlu, <i>Former Prime Minister of Turkey</i>	Professor Yasushi Kosugi, <i>Kyoto University</i>	Professor Abdullah Saeed, <i>University of Melbourne</i>
Professor W. Cole Durham, Jr <i>Brigham Young University</i>	Emeritus Professor Hermann Landolt, <i>McGill University</i>	Professor Miroslav Volf, <i>Yale University</i>
Professor Abdal Hakim Murad, <i>University of Cambridge</i>	Professor Muhammad Khalid Masud, <i>International Islamic University Islamabad</i>	Professor Tore Lindholm, <i>University of Oslo</i>

AIMS AND SCOPE

- ISLAM AND CIVILISATIONAL RENEWAL (ICR) offers an international platform for awakening the civilisational potential of the Islamic legacy. Revitalising synergies between Islamic and other civilisations in a spirit of self enrichment through discovery and research may facilitate renewal within Muslim societies and the global human community.
- ICR explores contemporary dynamics of Islamic experience in legal and religious practice, education and scientific, economic and financial institutions.
- We seek viable policy-relevant research yielding pragmatic outcomes informed by the best values and teachings of Islam as well as of other contemporary civilisations.
- ICR is inter-disciplinary, non-political and non-sectarian. It seeks to contribute to prospects of peace among all nations and assist the conceptual and societal transformation of Muslims.
- ICR encourages fresh discourse for self renewal informed by an inclusive tolerant approach to diverse schools of thought and expression of ideas. The intent is to integrate over 1,400 years of Islam's civilisational resources of diversity, dialogue and coexistence for meaningful exchanges with other world civilisations.
- ICR promotes the Malaysian initiative of *Tajdid Haqāri* or Civilisational Renewal, with its component principles: Faith, Ethics & Spirituality, 2. Just Governance, 3. Independence & Self-Determination, 4. Mastery of Knowledge & Science, 5. Islamic Economics & Finance, 6. Human Dignity & Ecological Wellbeing, 7. Cultural & Aesthetic Integrity, 8. Equity & Fraternity, 9. Diversity & Dialogue, 10. Peace & Security.
- ICR considers plagiarism a serious violation of its objectives and principles.

- This journal is indexed by Google Scholar and Mycite.

CONTRIBUTIONS AND EDITORIAL CORRESPONDENCE

Comments, suggestions and requests to: journals@iais.org.my
Online journal: icrjournal.org

Published by IAIS Malaysia, Jalan Ilmu, Off Jalan Universiti, 59100 Kuala Lumpur
Printed by Vinlin Press Sdn Bhd, Jalan Meranti Permai 1, Meranti Permai Industrial Park, 47100 Puchong, Selangor



CONTENTS

Editorial <i>Mohammad Hashim Kamali</i>	5–7
Articles	
Religion and State Are Twin Brothers: Classical Muslim Political Theory <i>Muhammad Khalid Masud</i>	9–26
<i>Takaful</i> Retirement Annuity Plan in Malaysia: A Proposed Model <i>Mohammad Mahbubi Ali, Lokmanulhakim Hussain & Faisal Haroon Zai</i>	27–47
Cryptocurrency as an Alternative Currency in Malaysia: Issues and Challenges <i>Sheila Aimon Yussof & Abdullah Al-Harthy</i>	48–65
Child Custody (<i>Hadanah</i>) in Islamic Family Law: An Anatomy of Women’s Rights in Nigeria and Malaysia <i>Hakeem Ijaiya & Hakeemat Ijaiya</i>	66–75
Preservation of the Environment by Smart Energy Consumption <i>Shahino Mah Abdullah</i>	76–96
Viewpoints	
Addressing the Haze: The Role of Local Traditional Cultures and Islamic Teachings <i>Shahino Mah Abdullah</i>	97–100
A Vision for 21 st Century Education <i>Muhammad Adha Shaleh</i>	101–103
Reinstating the Roles of <i>Maqasid al-Shariah</i> <i>Ahmad Badri Abdullah</i>	104–107
Islam, Democracy and the Middle Class <i>Tengku Ahmad Hazri</i>	108–110
Significant Speeches, Events and Developments	
Achievements of IAIS Malaysia in 2017 <i>Muthanna Saari</i>	111–114

The OIC Emergency Meeting in Istanbul: Statement on Palestine (Istanbul, Turkey, 13 December 2017)	114–119
The OIC Fatwa on Environmental Preservation (October 2017)	119–120
Leadership Enhancement and Intellectual Development (LEID 2017): Strategic Engagement on Nation Building and Contemporary Issues (London, United Kingdom, 11-12 November 2017) <i>Muhammad Fakhurrrazi Ahmad</i>	121–122
The International Seminar on Islam and Green Technology 2017 (IAIS Malaysia, 20 November 2017) <i>Muthanna Saari</i>	122–123
Istanbul Network 5 th International Conference: Democratic Transitions in the Muslim World (IAIS Malaysia, 27-28 November 2017) <i>Tengku Ahmad Hazri</i>	123–124
 Book Reviews	
Moataz El Fegierey, <i>Islamic Law and Human Rights: The Muslim Brotherhood in Egypt</i> Gowhar Quadir Wani	125–127
Raymond Farrin, <i>Structure and Quranic Interpretation: A Study of Symmetry and Coherence in Islam's Holy Text.</i> Muhammad Yaseen Gada	128–131
 Obituaries	
Tan Sri Dr Surin Pitsuwan (1949-2017) <i>Muhammad Fakhurrrazi Ahmad</i>	132–134
Tan Sri Dato' Muhammad Ali Hashim (1947-2017) <i>Apnizan Abdullah</i>	134–136
Muhammad Mustafa Al-A'zami (1930-2017) <i>Mohd Fariz Zainal Abdullah</i>	136–137

EDITORIAL

This latest issue of IAIS Malaysia's flagship journal, *Islam and Civilisational Renewal* (ICR), presents the reader with five new substantive articles, all with actionable policy recommendations, in addition to a number of viewpoints, event reports, and book reviews. It is with some sadness that we also include the obituaries of three prominent Muslim scholars. As always, I would like to congratulate our expert contributors for their success in crafting a unique body of work, characterised by honest scholarship, depth of learning and originality of thought.

Our lead article, contributed by Muhammad Khalid Masud of the Supreme Court of Pakistan, is entitled "'Religion and State are Twin Brothers': Classical Muslim Political Theory.' A necessary and important critique of Islamic fundamentalism's tendency to collapse the boundaries between religion and politics, this article interrogates classical Muslim political theory to establish that Islam has traditionally positioned the political and the religious as interconnected yet entirely separate entities (i.e. as 'twin brothers'). Although keen to promote Islamic norms, Muslim rulers have historically favoured political pragmatism, aware that the realities of governance often create a need to incorporate much wider considerations into decision making than just the religious. Demonstrating this point with an analysis of how Muslim rulers have traditionally approached the religious issues of innovation (*bid'ah*) and imitation of the infidels (*tashabbuh bi'l kuffar*), Masud finishes with a series of policy recommendations. First, he demands that Muslims distinguish between the objectives of politics and foundational political ideals, such as basic governance, basic rights, rule of law, authority of the state, administration of justice, and equality before the law. While the latter are universal and common to all religions, the former are dependent on specific circumstances and cannot be universalised. Masud also proposes that Muslims place new emphasis on consensus (*ijma'*). Historically, consensus has played an important role in Islamic legal theory. Contemporary politicians, however, neglect it. To rectify this failing, Masud proposes incorporating the principles of consensus into universities and research institutions through discursive methods, including debates, public awareness and critical analytical studies.

Turning to our second substantive article, 'Takaful Retirement Annuity Plan in Malaysia: A Proposed Model,' co-authors Mohammad Mahbubi Ali (IAIS Malaysia), Lokmanulhakim Hussain (ISRA), and Faisal Haroon Zai (Prudential BSN Takaful Berhad) draw our attention to the failure of Islamic finance experts to provide consumers with a comprehensive, Shari'ah-compliant retirement annuity plan. To

remedy this shortcoming, the authors propose combining two existing Shari'ah contracts, *hibah mu'allaqah* (conditional gift) and *wakalah* (agency), to produce a structure resembling conventional annuity plans, providing all the benefits thereof, but while avoiding the problematic issues of interest, risk and gambling. After countering various objections to the proposed structure, the authors suggest the Malaysian government begin to take active steps towards establishing it, beginning with an assessment of its commercial viability.

Sheila Aion Yussof, of the International Islamic University of Malaysia (IIUM), and Abdullah al-Harthy, an independent entrepreneur and finance expert from Oman, provide us with our third article, entitled 'Cryptocurrency as an Alternative Currency in Malaysia: Issues and Challenges.' Taking their lead from the recent global surge in Fintech (Financial Technology) utilisation, especially concerning digital currencies, the authors analyse the probable ramifications these innovations have for traditional financial power structures. Arguing that the future is likely to witness progressive fiscal decentralisation as consumers choose cryptocurrencies over traditional forms of money, thereby weakening state control over economic policy, the authors recommend that the Malaysian government forestall these challenges within its own jurisdiction by developing a cryptocurrency to be used in conjunction with traditional fiat money. If accompanied by concurrent efforts at regulation aimed at shielding users from the risk of cybercrime and fostering Shari'ah compliance, this government-sanctioned digital currency could place Malaysia at the forefront of a new wave of economic innovation.

Our fourth article, 'Child Custody (*Hadanah*) in Islamic Family Law: An Anatomy of Women's Rights in Nigeria and Malaysia,' has been co-authored by Hakeem Ijaiya and Hakeemat Ijaiya, both of the University of Ilorin, Nigeria. An exploration of *hadanah*, or the Shari'ah provision according divorced Muslim women a right to custody of their children as long as they do not remarry, this article begins with an outline of the textual basis for this practice in the Qur'an and Sunnah, before addressing how each law school has traditionally interpreted and implemented it. The article then examines the modern-day application of *hadanah* in both Nigeria and Malaysia, detecting substantial deficiencies in both locations; *hadanah* as currently practiced often hinders rather than helps women obtain custody of their children, frequently discourages divorce and affords ex-husbands an opportunity to intimidate their former spouses. The authors therefore argue that current understandings of *hadanah* be reconsidered and that both Nigeria and Malaysia legislate to address current failings, to ensure the original ideals underpinning *hadanah* are fulfilled and the rights of women respected.

Our final article, written by IAIS Research Fellow Shahino Mah Abdullah, discusses the importance and possible future directions of green technology in Malaysia. Writing under the title, 'Preservation of the Environment by Smart Energy

Consumption,' Shahino outlines the potential ramifications of Malaysia's growing energy demand. In particular, he draws attention to the country's current fossil fuel dependency and the negative implications this has for environmental preservation. Proposing a range of alternative green energy resources, Shahino concludes with a comprehensive set of policy recommendations. In particular, he stresses the importance of maintaining the environment, arguing that the Malaysian government needs to be more proactive in this regard, notably by managing fossil fuel waste more effectively, enforcing environmental quality monitoring, facilitating the development of largescale renewal energy projects, and further developing Malaysia's solar equipment manufacturing capabilities.

In addition to these substantive articles, this issue of the ICR also carries four insightful viewpoints, each contributed by an IAIS Research Fellow: 'Addressing the Haze: The Role of Local Traditional Cultures and Islamic Teachings' by Shahino Ma Abdullah; 'A Vision for 21st Century Education' by Muhammad Adha Shaleh; 'Reinstating the Roles of *Maqasid al-Shariah*' by Ahmad Badri Abdullah; and 'Islam, Democracy and the Middle Class' by Tengku Ahmad Hazri. We are also pleased to carry reviews of Moataz el-Fegiery's *Islamic Law and Human Rights: The Muslim Brotherhood in Egypt* and Raymond Farrin's *Structure and Quranic Interpretation: A Study of Symmetry and Coherence in Islam's Holy Text*.

As a final word, let me once again extend my congratulations and heart-felt appreciation to all of our authors. Their well-informed and enlightened contributions will, I feel sure, be of interest to readers worldwide.

Mohammad Hashim Kamali
Editor-in-Chief

ARTICLES

RELIGION AND STATE ARE TWIN BROTHERS: CLASSICAL MUSLIM POLITICAL THEORY

*Muhammad Khalid Masud**

Abstract: The current reluctance for democratic transition in Muslim societies is mostly attributed to Islamic political theories that do not allow a separation between religion and politics. Extremist views often reject democracy because it is perceived to be ‘anti-religion’. This paper examines the thread of classical Islamic political theory that considers religion and state to be inseparable ‘twin brothers’. Exploring the origins of this thread in Sassanid and tenth-century Islamic thought, analysis of the doctrine reveals that Muslim political thought more generally has traditionally been more pragmatic on political issues (*siyasah*), with Muslim jurists continuously marking boundaries between religion and culture in their *fatawa*, particularly concerning *bid’ah* (innovation) and *tashabbuh bi’l kuffar* (imitation of the infidels). Indeed, all definitions of religion that make it inseparable from the state are seen to be a modern phenomenon, in which religion is defined in terms of the ideology of political power, with secularism perceived as its rival. Analysing diverse interpretations of the doctrine from the Abbasid period to the twenty-first century, the paper finds that, like twin brothers, religion and politics are separate in Islam albeit united in their origin. This perspective becomes more meaningful in modern times if we recognise the role of social consensus (*ijma*), besides the political and the religious spheres.

Keywords: classical Islamic political theory, democracy, *din*, extremism, *ijma*, Juwayni, *mulk*, secularism, Nizamul Mulk Tusi, rule of law.

This paper explores the reasons for reluctant democratic transition in current Muslim societies against the backdrop of tensions between secularists, Islamists and extremists. Secularists consider an Islamic state impossible because Islam, they argue, is essentially undemocratic. Islamists accept democracy but reject secularism because they believe that secularism expels religion from the public sphere. The extremists, who reject democracy and constitutionalism as Western ideas, construct a vision of an Islamic state that is empty of any democratic content and which they seek to establish using violence and terror.

In trying to understand these multiple narratives, it is striking that the current comparative literatures and methodologies used to study them are wanting as they essentialise certain norms and practices as Islamic, religious or secular and ignore pragmatism in Muslim political thought and practice. Ernest Gellner (1996), for instance, characterises Islam as “secularism resistant.”¹ Most others regard Islamic law and legal theory as fixed, with varying Muslim practices being “un-Islamic.”

Alfred Stepan (2012), however, disagrees with Gellner as he finds “multiple secularisms” in the West and notices democratic transitions in progress in some post-Arab Spring Muslim societies. He observes that religious leaders have been prepared to grant authority to elected representatives and that state authorities have facilitated the democratic participation of religious groups in civil and political domains. He refers to this phenomenon as “twin tolerations”—that is, “the minimal boundaries of freedom of action that must somehow be crafted for political institutions vis-a-vis religious authorities, and for religious individuals and groups vis-a-vis political institutions.”²

In this paper, I will confine myself to examining the classical Islamic doctrine that perceives religion and politics as twin brothers. This doctrine argues that religion and politics are united but separate from each other. The doctrine reveals that Muslim political thought has been truly pragmatic on political issues. I propose to examine how this pragmatism has led Muslim jurists to mark the boundaries of religion and politics so that they relate to each other like brothers, united but separate. I explore this process in Islamic jurisprudence with reference to *bid'ah* (heresy), *tashabbuh bi'l kuffar* (imitation of the infidels), *siyasah* (governance) and secularism, four concepts defining boundaries of religion and politics.

The paper is divided into four sections. The first overviews the development of the doctrine of twin brothers, defining the relationship between the religious and the political dimensions of authority. The second focuses on the religious domain, analysing how Muslim jurists marked the boundaries of religion with regards to the concepts of *bid'ah* and *tashabbuh*. It is significant to observe that these boundaries continued to be adjusted in view of political and social transformations. The third section discusses the classical doctrine of *siyasah* and recent debates about secularism to see how these boundaries were adjusted in periods of crises. The fourth section suggests that a narrow focus on religious and political dimensions in studies of Islamic political thought have overlooked an important aspect: the role of society. We may say that, captivated by the two brothers, the Political and the Religious, studies on Muslim politics have disregarded the Social, or the mother. The fourth section, therefore, discusses the role of *ijma'* (consensus) as the social factor. I summarise al-Juwayni's (d.

1085) views on *ijma'*, which stress the participation of the masses (civil society) in religion and politics. While in previous centuries *ijma'* played the role of resolving conflicts, more recently it has also paved the way for democratising politics.

Twin Brothers: The Religious and the Political

Debates in Muslim society over the relationship between religion and politics began quite early. Demarcation between the roles of the political and the religious had been part of the political and religious language of the Kharijites, who claimed absolute authority in both political and religious matters but were opposed by Caliph Ali. The Kharijites argued that sovereignty (*hukm*) belonged to God alone, while Caliph Ali clarified that it was wrong to confuse human with divine sovereignty. In the eleventh century, al-Ghazali's teacher, al-Juwayni, held that the necessity of establishing the state was not a religious matter; it was a social need. He argued that the obligation of appointing an *Imam* (ruler) was not derived from the Qur'an and hadith; it was established by the consensus (*ijma'*) of the Muslim community. Obligation to obey the ruler was, however, a religious duty.

On the other hand, the Umayyad caliphs claimed absolute authority. Contrary to the practice of earlier caliphs, Umayyad and Abbasid caliphs were no longer elected by the people, with the Abbasid caliphs claiming a divine right to rule. The Abbasids tried to claim authority in the domains of theology and law and used courts to punish heretics and to unify laws. The jurists insisted on distinguishing between the authority to govern and the authority to interpret law. In the beginning they were reluctant to serve in the position of judges but gradually came to recognise the authority of the ruler to enforce law and began to serve as judges.

The secretary of Caliph Mansur (r. 754-775), Ibn Muqaffa' (d. 759), was alarmed by the religious schism in the caliphate. Freedom of juristic opinion had given rise to divergent *fatawa* and conflicting court judgments. He advised the Caliph to use his prerogative to unify the laws. The Caliph therefore approached Imam Malik (d. 795) in Medina, requesting that the latter's compilation of laws, *al-Muwatta'*, become the law of the caliphate. Imam Malik refused, however, arguing that this would deprive the jurists of the freedom of interpretation.

The doctrine "religion and kingship are twin brothers" (*al-din wa'l-mulk tau'aman*) emerged in the tenth century after a huge crisis of authority between the Caliph and the Sultan (detailed below), when the army chiefs claimed more authority than the caliph. Assuming the title of Sultan, they reduced the caliph to merely a figurehead who fulfilled religious necessity.

In this Issue

Religion and State are Twin Brothers: Classical Muslim Political Theory

Muhammad Khalid Masud

Takaful Retirement Annuity Plan in Malaysia: A Proposed Model

Mohammad Mahbubi Ali, Lokmanulhakim Hussain & Faisal Haroon Zai

Cryptocurrency as an Alternative Currency in Malaysia: Issues and Challenges

Sheila Aion Yussof & Abdullah Al-Harthy

Child Custody (*Hadanah*) in Islamic Family Law: An Anatomy of Women's Rights in Nigeria and Malaysia

Hakeem Ijaiya & Hakeemat Ijaiya

Preservation of the Environment by Smart Energy Consumption

Shahino Mah Abdullah

Viewpoints

Significant Speeches, Events and Developments

Book Reviews

Obituaries

Produced and distributed by