

Administration of Islamic Law in Malaysia: LAB2013

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Introduction: Current State of the Muslims

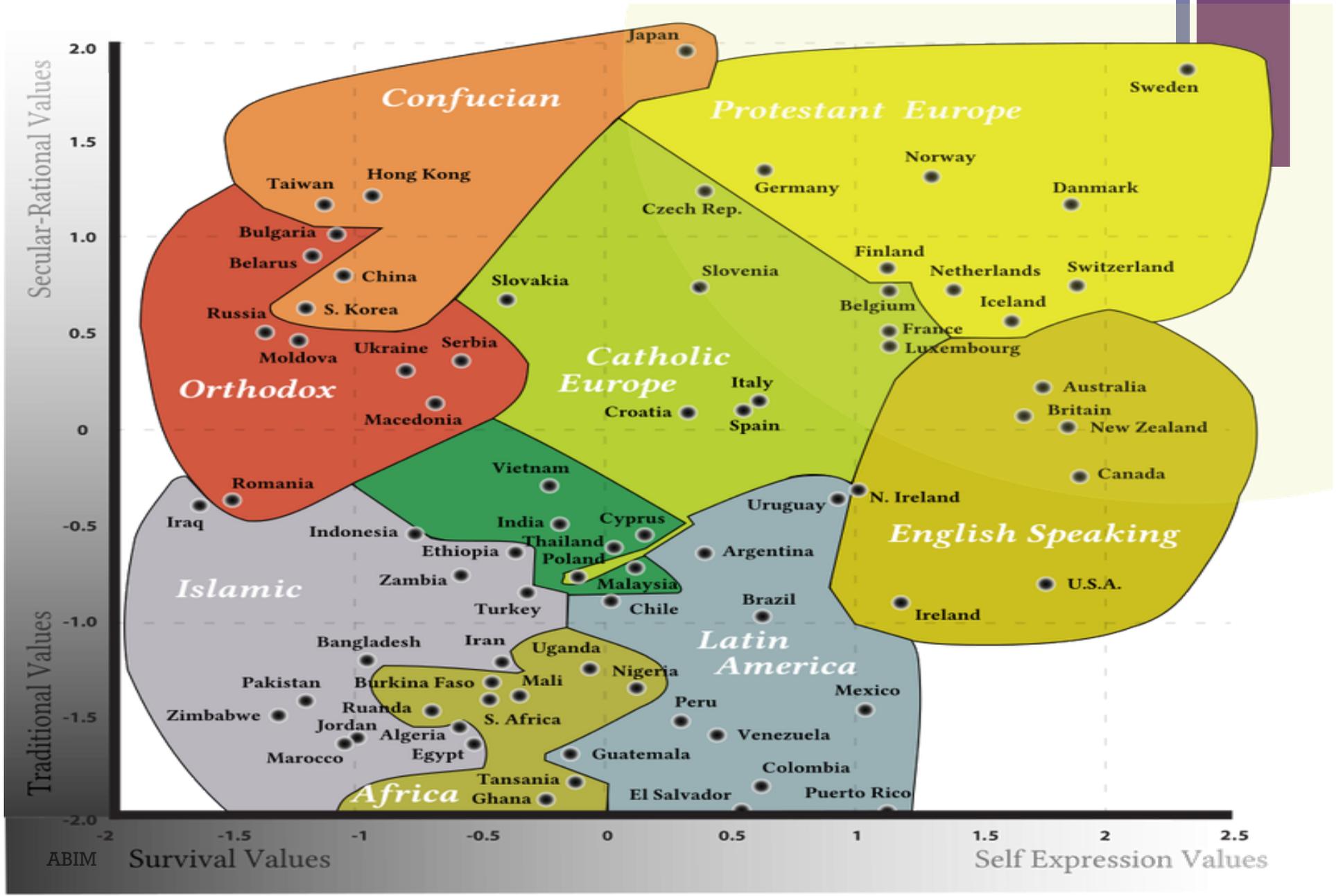
Thawban RA, narrated that the Prophet SAW said: “Soon the nations will call one another against you, just as people call one another to eat from a platter of food.” A man asked: “Will this be because we will be few in number, O Messenger of Allah?”

He peace and blessings of Allah be upon him replied: “No, you will be large in number, but you will be ghuthaa’a like the froth scum on the surface of a body of water, and Allah will remove from the hearts of your enemies their fear of you and shall place in your hearts wahn.” Those present asked: “What is wahn O Messenger of Allah?” He peace and blessings of Allah be upon him replied: “The love of this worldly life and hatred of death.” [Sunan of Abu Dawood Book 37, No 4284]

+ Muslims World



+ The WVS Cultural Map of the World



+ World Development Indicators

- More than 76% of the global R&D expenditures is spent by developed countries, 31.7% (USA), 23.2% (EU), and 10.9% (Japan).
- The OIC countries account for only 2.1% of the world total Gross Domestic Expenditures on R&D (GERD), or 8.8% of the total GERD of developing countries.
- Israel (4.39%), Finland (3.78%) and Korea (3.74%) are the top countries in terms of allocating resources for R&D. Top countries in OIC are Tunisia (1.1%), Malaysia (1.07%) and Turkey (0.84%). The Muslim world spend only 0.5% on R&D while the non Muslim world spend 5% on R&D.
- The Muslim world spends less than 4% of their GDP on education.

+ World Governance Indicators

- **Indicators.** 1) voice and accountability 2) political instability and absence of violence; 3) government effectiveness: 4) regulatory quality; 5) rule of law; and 6) control of corruption.
- **While developed countries outperform developing countries in all categories, other developing countries also do comparably better than OIC countries.**
- **In none of the categories, OIC countries as a group attain a positive score.**
- **Voice and accountability and political stability categories are the weakest categories for OIC countries.**

+ Democracy Index

- Freedom House's annual survey of political rights and civil liberties
- 4 Muslim countries are free: open political competition, a climate of respect for civil liberties, significant independent civic life, and independent media.
- 14 are partly free: limited respect for political rights and civil liberties.
- 9 are not free: basic political rights are absent, and basic civil liberties are widely and systematically denied.
- The Index of Election World: 13 Countries have democracy and 44 do not. Of these 44 countries: pseudo democracy, absolute monarchy, and dictatorship.

World University Ranking

- **The Times Higher Education World University Ranking**
 - Only 9 are in Muslim world.
 - The Top 100 Universities in the World—No Muslim University Ranked

- **QS World Ranking**
 - Only 20 are in Muslim world.
 - No Muslim University Ranked at the top 100 universities

+ The Programme for International Student Assessment (PISA)

- Among the 65 countries surveyed in the study, 5 of the 10 worst performers on the overall reading scale are the OIC member countries.
- Turkey as the best performing OIC country occupies only the 44th position.
- More than 30% of Malian youths aged 15–19 yrs who completed 6 years of schooling could not read a simple sentence.
- In Pakistan, tests of grade 3 children found that only half could answer very basic multiplication questions

+ Corruption Perceptions Index

- **Transparency International: 177 countries.**
- **Ranges from 10 (Least Corrupt) and 0 (Most Corrupt).**
- **8 Muslim majority countries were among the 10 most corrupt nations.**
- **Only 6 Muslim countries are above the borderline.**
- **Israel scored a 61 on the index and ranked 36th least corrupt.**

+ The Global Competitiveness Index

- The index covers 114 indicators under 12 pillars namely “institutions, infrastructure, macroeconomic environment, health and primary education, higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, market size, business sophistication and innovation”
- Average GCI score of 3.90 in 2013, as compared to the rest of the world 4.2 and developed countries 5.0.
- Only Qatar, United Arab Emirates, Malaysia and Brunei scores above 5.

+ The World Intellectual Property Organization (WIPO)

- The total patent applications in OIC countries reached almost 60,000; account for only 0.6% of total applications filled in the world.
- Countries with higher number of patent applications attained better positions in global competitiveness rankings.
- USA, Japan, China, and Republic of Korea accounted for almost 70% (7 million patent applications)

+ Logistics Performance Index (LPI)

- 45% of the OIC member countries had poor logistics performance with score below 2.47.
- Malaysia (3.59) and Somalia (1.77) were the two OIC member countries with the highest and lowest logistics performance index values.
- In contrast, 85% of the developed countries are considered to be logistics friendly with scores above 3.34.
- Transportation infrastructure in the OIC countries is incompetent and the transportation system as a whole offers poor connectivity.

+ OIC Economic Outlook

- The total GDP of the group of the OIC countries (1.5 billion population and 22% of the world population) is \$9.8 trillion representing only 11% share in the world total GDP.
- The number of unemployed around the world is estimated to have reached 201.8 million in 2013. Youth unemployment in OIC countries estimated at 15.6%.
- 3 out of every 4 US dollars of intra-OIC exports come from only ten countries. 4/5 of OIC exports and imports come from only ten countries representing only 9% of global exports.
- The average OIC per capita income was US\$3,600 while the average of the rest of the developing world was about US\$5,600.
- The OIC GDP of US\$3.2 while the US, US\$13.9 trillion. The entire Islamic world's GDP is only 23% of that of the United States.

+ An Economic Islamicity Index

- Measuring 208 countries' adherence to Islamic Economic principles using as proxies 113 measurable variables.
- 1) Economic opportunity and economic freedom; 2) Justice in property rights and the sanctity of contracts ; 3) Better treatment of workers 4) Higher education expenditures 5) Poverty eradication 6) Distribution of wealth and income 7) Better social infrastructure 8) Higher savings and investment 9) Higher moral standard, honesty and trust 10) Financial System: risk sharing and the abolition of interest 12) Higher trade/GDP, higher foreign aid/GDP and higher degree of environmental preservation.
- Non- Islamic, rich and developed, countries are performing well under principles embraced by Islam.
- The highest ranked Islamic country is Malaysia (33), followed in order by Kuwait (42), Kazakhstan (54), Brunei (55), Bahrain (61) and (64).

+ ICT Use in OIC Countries

■ World Bank WDI:

- With respect to mobile cellular subscriptions and internet use, OIC countries are performing fairly well. Some OIC countries show even better performance than developed countries.
- More than 85% of people in Qatar, Bahrain and UAE have internet access.

■ Google's report:

- Pakistan tops the list of most porn-searching countries and leads the way in porn searches for animals like pigs, donkeys, dogs, cats and snakes.
- Six of the top eight porn-searching countries were Muslim states. The country at number two in the list was Egypt, while Iran, Morocco, Saudi Arabia and Turkey came in at numbers four, five, seven and eight, respectively.
- Note: The sale of pornographic material has been banned in nearly every Arab country except Lebanon and Turkey.



An Overview of the Course

The Messenger of Allah (ﷺ) said, "He who goes forth in search of knowledge is considered as struggling in the Cause of Allah until he returns." (At- Tirmidhi)

+ Synopsis

- This course deals with the application and administration of Islamic law in Malaysia. It covers various topics, which include historical background, current administration and prospect of Islamic law in Malaysia. The course will further analyse the constitutional position of Islam and Islamic law, establishment and functions of religious councils, the status of Syariah courts and their structure, power and jurisdictions, the institution of fatwa and the qualifications and functions of Syariah judges and lawyers.
- Other matters that will be discussed include the legal effects of Item I of the List II (State List) of the Federal Constitution. The various enactments of Islamic law, relationship between the Syariah and civil courts and their jurisdictional conflicts. Analysis will also be made on possible developments based on current situation.

+ Historical Background of Islamic Law in Malaysia

- Before Colonisation : Islamic Law during Malacca Sultanate , Islamic Law in the Malay States, Islamic Law in Sabah and Sarawak
- After Colonisation: No significant changes under Portuguese and the Dutch, Effect of British Residential System and British Advisors and Introduction of English Common Law and its effects
- After *Merdeka* (Independence): Islamic Law is governed by the Federal and State Constitutions and recent developments

+ **Position of Islam and Islamic Law in The Malaysian Legal System Since Merdeka**

- The Meaning and Scope of Islam under Federal Constitution (Article 3)
- Article 11, 160
- 9th Schedule (State List)
- Constitutional Status of Islamic Law
- Islamic Law under Federal System
- Islam is a State Matter
- Sultan is the Head of Religion of Islam
- Islam and Conference of rulers

+ Administration of Islamic Religious Affairs and Law

- Establishment of the *Majlis Agama Islam*
- The Functions and Powers of the *Majlis*
- The Restructuring of the Administration of Islamic Law and Religious Affairs
- The establishment of JAKIM, JKSM and other institutions

+ Syariah Courts

- Historical and Theoretical Backgrounds of Islamic Judicial Institution (Qada')
- The Constitution and Structure of Syariah Courts
- Jurisdiction and Powers of the Syariah Courts
- The Administration of Islamic Personal and Criminal Laws
- The Administration of Islamic Law Before the Constitutional Amendment of Article 121
- Jurisdictional Conflict
- The Objective of Article 121(A) of the Federal Constitution
- Its Effect on the Administration of Islamic Law
- Extent of the Independence of Syariah Judiciary
- Shariah Judges

+ Position of Fatwa in the Malaysian Legal System

- Origin and Definition of Fatwa
- Composition and Functions of State and National Committees
- Issuance and Enforcement of Fatwa
- Status of Fatwa in the Syariah and civil courts.
- Appointment, functions and qualifications of a Mufti and Fatwa Committee Members
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+ Syarie Legal Profession

- Theory of *Wakalah*
- Historical Background
- Position of *Pegulam Syarie* under Malaysian Law and their qualification
- Roles and Duties
- Ethics of Islamic Legal Profession

+ **Administration of Muamalat in the Law of Malaysia**

- Definition and scope
- Law of Banking and securities
- Statutes

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- Mahmud Saedon Awang Othman. 1990. *Kadi: Perlantikan, Perlucuran dan Bidang Kuasa*. Kuala Lumpur: DBP.
- Othman Ishak. 1981. *Fatwa dalam Perundangan Islam*. Kuala Lumpur: Fajar Bakti Sdn. Bhd.



Key Performance Indicators

“God does not change the condition of a people until they change their inner selves” (al-Ra’d: 11).

+ Assessment

- Mid semester exam = 15%
- Presentation/Ethics= 10%
- Written assignment/ Publication = 15%
- Final examination = 60%



“Alone he is weak and powerless, his energies are scattered and his minds are narrow, diffuse and indefinite. It is the active and living memberships of a vital community that confers on him a sense of power and makes him conscious of great collective purposes which deeper and widen the scope for the growth of his individual self” Allama Iqbal