

# THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS

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## CHAPTER 6

# THE CULTURAL MEDIATION OF HUMAN RIGHTS: THE AL-ARQAM CASE IN MALAYSIA

ABDULLAHI A. AN-NA'IM

### INTRODUCTION

On Friday September 2, 1994, Thai police accompanied by Malaysian security agents trailed Ashaari Muhammad, the Malaysian founder and leader of the Al-Arqam Islamic group, and his entourage, who were on their way to Chiang Mai, and forced their two vehicles off the road.<sup>1</sup> Ashaari and ten of his followers were then taken into custody and handed over to Malaysian Special Branch intelligence officials. This arrest and "deportation," followed by detention without charge or trial in Malaysia, was part of a systematic campaign by the Malaysian government to eliminate the Al-Arqam group and ban its written, audio, and visual publications of any sort, in accordance with a ruling from the "National Fatwa Council" and decree by the Ministry of Home Affairs, both in August 1994. Malaysian Muslims were thereby prevented from joining Al-Arqam or participating in any of its activities. As soon as Ashaari "repented" and "retracted" his views, and complied with the banning of Al-Arqam, he and his associates were released without charge or trial.

I will use this case here to discuss what might be called the cultural mediation of human rights: Because cultural context is integral to the formulation and implementation of all state policies, including those that have clear human rights consequences, detailed and credible knowledge of local culture is essential for the effective promotion and protection of human rights in any society. Consequently, I will argue, human rights advocates must not only understand the role of cultural factors in the motivation and dynamics of

1. *Far Eastern Economic Review*, August 11, 1994, pp. 25-6, 28. There was much controversy in Thailand about the legality and propriety of the actions of the Thai police, but that is beyond the scope of this paper.

official behavior and its consequences, they must also integrate and deploy that understanding in their strategies of response. As elaborated later, this view neither takes culture to be monolithic or static, nor overlooks the role of state and nonstate actors in defining culture and manipulating its legitimizing potential at any given point in time. On the contrary, I take the pluralistic, interactive, and constantly evolving nature of cultural perspectives within all societies, however homogeneous they may seem or are claimed to be, as a valuable resource in challenging and contesting official and unofficial authoritarian claims and hegemonic tendencies. Though this chapter explores this thesis with particular reference to Southeast Asia, in accordance with the theme of this volume, I believe that its underlying premise and rationale can apply to other regions of the world.<sup>2</sup>

Human rights are always violated or respected at the local and immediate level by official decisions and action impacting on individuals or groups. Whether it is a matter of freedom from arbitrary detention without charge or trial, freedom from torture, freedom of expression or association, right to education, right to health care, or any other human right, it is always the result of deliberate action or omission by officials of the state. In the normal course of human affairs, such official actions and omissions would necessarily be prompted or rationalized by certain political, economic, social, and cultural or other considerations and calculations. Similarly, the perceptions and reactions of the victim and other individuals and groups, including local and international organizations and foreign governments, would also be prompted or rationalized by their respective considerations and calculations.

It would therefore seem clear that human rights advocates must understand the precise nature and dynamics of official behavior on its own terms and in its local and wider context if they are to devise and implement effective strategies of response. Without in any way accepting official claims at face value, human rights advocates should ask: How do politicians and officials think and behave with regard to rights issues in general? In what ways, if any, is the specific human rights violation presented as incidental to or necessary for what they claim or perceive to be the pursuit of "legitimate" objectives? How is the story told, and what images and symbols are invoked in the process to justify the action or promote the outcome, and why? How are the official story and that of the victim received and reacted to by different constituencies at home and abroad? What is the role of timing, for political or other reasons, on the calculations of official actors of the likely response

2. This thesis is explained and applied to various parts of the world in Abdullahi Ahmed An-Na'im and Francis M. Deng, eds, *Human Rights in Africa: Cross-Cultural Perspectives* (Washington, DC: Brookings Institution, 1990); and Abdullahi Ahmed An-Na'im, ed., *Human Rights in Cross-Cultural Perspectives: Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992).

of other significant actors? How do other contextual factors influence the behavior of the official actors and the perceptions and responses of others? One needs to fully understand what happened, how and why the momentum and dynamics of the situation developed in that specific way, to decide what sort of intervention to seek at any given point in time. One should also reflect, in light of all these considerations, on who should intervene and how, against which officials or element of their behavior.

Human rights advocates should also practice what they preach by examining their own perceptions of the situation as a whole and their motives and responses to the case in question: What considerations, including the nature and behavior of the victim, influenced or conditioned their view of the official action? How did they see a given case from a human rights point of view, what priority did it receive in their agenda, and why? What limitations or inhibitions affected their responses, or lack thereof, to the particular case?

The cultural mediation of human rights means that, instead of denying or underestimating the vital role of cultural context, human rights advocates should seek to claim for their own cause by questioning how and by whom social values are defined and prioritized in practice and to what conclusions. To effectively challenge claims of cultural justification of human rights violations on their own premise, one should ask: Who determines the standards of conformity with cultural values and national objectives? What are the realistic possibilities and consequences of contesting prevailing perceptions of cultural values and priorities, and their human rights implications? By raising such questions, human rights advocates would be contesting the ability of ruling elites to manipulate supposedly spontaneous social and political processes in support of their actions at home and in coopting regional and international actors.

The aforementioned case of the Al-Arqam group in Malaysia, as explained later, presents a useful illustration of the possibilities as well as the limitations of this approach precisely because it seems to raise a difficult dilemma for human rights advocates and official authorities alike. For human rights advocates, the ideological position and long-standing practices of this group are clearly problematic from a human rights perspective. As East Asia is being propelled by internal and external forces into an era of economic growth, modernization, and integration into global systems and regimes, ruling elites in the region are tempted to discard and disavow what they deem to be "regressive" religious and cultural relics like Al-Arqam. Moreover, the plight of such marginalized and unattractive victims is unlikely to generate opposition from modern sectors of civil society, who are the usual constituency of human rights advocacy.

In my view, in failing to uphold the principle of protecting the rights of

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their opponents as much as their own, these modern sectors are betraying the essence of the universality of human rights as rights due to all human beings by virtue of their humanity. Given the realities of differential power relations in human societies, the principle of universality is most urgently needed for the protection of those who hold marginal and "problematic" views because they are more likely to be attacked and less able to protect themselves than are those who are conforming to prevailing orthodoxies. In the process, modern sectors of society would be undermining the interdependence of human rights and legitimizing the ideology and mechanisms of their own persecution in the future. Because none of the charges made in justification of the suppression of Al-Arqam was ever tested or substantiated in court of law, the extrajudicial mechanisms legitimized in the process can easily be used in the future against other supposedly "undesirable" elements, as and when ruling elites deem it expedient to do so.

Although human rights factors may have also been considered by the government of Malaysia,<sup>3</sup> a more pressing concern was probably the alleged political ambitions of Al-Arqam and the group's real or assumed connections to militant Islamic activists in Middle Eastern/North African Islamic countries. In the process of suppressing this group, however, Malaysian authorities used an alleged Islamic principle of combating "deviationism," a profoundly problematic concept even by traditional Islamic standards, as explained later. Moreover, the purported rationalization of the suppression of Al-Arqam explicitly used religious institutions and processes under the guise of securing the "separation" of religion from politics, thereby in fact enhancing the "unity" of the two with greater possibilities of abuse.

Although I appreciate such concerns of human rights advocates and governments, I am concerned with the possibility of a constructive solution to such difficult cases from a pragmatic, yet principled, human rights point of view. In terms of the theme of this volume, I propose to address the implications of the Al-Arqam case for the possibilities and limitations of looking for cultural sources of human rights in Southeast Asia. For example, I wish to explore whether, and to what extent, differences in the prioritization of social values justify differences in interpretation of which rights are universal.<sup>4</sup>

3. It is important not only to give credit to political leaders for the commitment they express to human rights and humane values in government, but also to appreciate the delicate line they need to negotiate between principled position and political pragmatism. See, for example, the speech Prime Minister Mahathir Mohamad gave at the International Seminar on the Administration of Islamic Laws, *New Straits Times*, July 24, 1996, pp. 14 and 16-17. That does not mean, of course, that these leaders always live up to their rhetoric, but holding them to what they say is part of the process of implementation.
4. Joseph Chan, "The Asian Challenge to Human Rights: A Philosophical Appraisal," in James T. H. Tang, ed., *Human Rights and International Relations in the Asia-Pacific Region* (New York: St. Martin's Press, 1995). Without attempting a full discussion of Chan's thesis, I will raise some questions to clarify its utility as a promising approach for our purposes here.

How can that view be reconciled with the contention that some human rights are "undeniably universal," and how are the spheres of universality and cultural specificity to be negotiated in practice? Ultimately, I am concerned not only with defining the scopes of the universal and culturally specific in human rights regimes, and the relationship between the two, but also with the processes of ensuring the validity and efficacy of human rights regimes in achieving their presumably shared objectives of safeguarding and enhancing individual and communal life, liberty, and dignity. If human rights are to be firmly founded on local cultural sources, as they should in my view, the question is how to do so in ways that enhance, rather than detract from, the universality of human rights.

#### TAKING THE UNIVERSALITY "PROJECT" SERIOUSLY

In view of the aforementioned immediate and local nature of every instance of violation or protection of human rights, I believe that accepting and working with the notion of the cultural mediation of these rights is essential for the realization of their genuine and lasting universality. Like all normative systems, human rights regimes must necessarily be premised on a particular cultural framework (including philosophical and religious perspectives as well as material circumstances) of specific human societies in their respective historical context. In other words, the issue is not simply how to find local cultural sources for a "given and culturally neutral" human rights regime. Rather, it is that since all and every conceivable regime of rights necessarily and by definition derives from some cultural sources, what are (or ought to be) the sources of a regime of "universal" human rights? In this regard, it is necessary to consider the apparent paradox in the quest for universality of any human rights regime: Because on the one hand rights are organically linked to culture, and on the other hand human cultures are so different, how can one establish a universally valid and universally applicable set of specific human rights and enforcement mechanisms?

My approach to what I call the project of constructing a universal human rights regime begins with the acknowledgment that, historically speaking, the present system of international human rights has clearly evolved from Western cultural perspectives that were "universalized" through colonial and postcolonial hegemonic processes that were inconsistent with the fundamental collective human right to self-determination.<sup>5</sup> Nevertheless, this system should be taken as a very useful, though not necessarily definitive, framework

5. As now enshrined in common Article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of 1966, and other international instruments

for genuine and lasting universality of human rights for several reasons. First, this system has evolved in response to certain political, economic, social, and legal national and international conditions of Western societies, which have also been "universalized" through the same colonial and postcolonial hegemonic processes. As Yash Ghai has shown, neither are East Asian societies immune from the sort of economic, political, and social phenomena and serious dislocation of traditional values and institutions addressed by human rights norms in the West, nor do "official" claims of religious and cultural distinctiveness justify the relativistic priorities asserted by government.<sup>6</sup>

Second, I am in agreement with scholars who maintain that the lack of such individual human rights as freedom of expression and association in fact diminishes the existence of the community in whose name authoritarian regimes rule.<sup>7</sup> I also accept the view that fundamental improvements in the sort of economic efficacy and security sought by East Asian states require greater, not less, adherence to constitutionalism, the rule of law, and protection of civil and political human rights.<sup>8</sup> These arguments, it seems to me, reinforce the commonly accepted view of the interdependence of all human rights – civil and political as well as economic, social, and cultural rights, individual and collective alike.

In this light, I maintain that despite its Western origins, the present regime of international human rights is not only appropriate for conditions that are currently prevalent in many non-Western societies, it also appears to be necessary for creating the political and social "space" for effective participation in the cultural mediation of human rights at both the national and international levels. Thus, even the most extreme cultural relativist would need protection of his or her freedom of expression and association in order to argue for greater respect for local cultural traditions in the formulation and implementation of human rights norms.

Third, I would emphasize the fact that there has already been a significant degree of non-Western contribution to the formulation and implementation of the present international regime of human rights, not only through the work of various organs of the United Nations, but also at the nongovernmental level. Despite its problems and limitations as an intergovernmental

6. Yash Ghai, "Human Rights and Governance: The Asia Debate," *Occasional Paper No. 4* (The Asia Foundation's Center for Asian Pacific Affairs, November 1994), especially pp. 10–12.

7. Daniel A. Bell, "A Communitarian Critique of Authoritarianism," *Society* (July/August 1995), pp. 39–43.

8. See, for example, Jon Elster, "The Impact of Constitutions on Economic Performance" (unpublished paper prepared for the World Bank's Annual Bank Conference on Development Economics, April 28–9, 1994); and Sidney Jones, "The Impact of Asian Economic Growth on Human Rights," *Asia Project Working Paper Series* (New York: Council on Foreign Relations, January 1995).



"diplomatic" process,<sup>9</sup> the adoption of international human rights has in fact produced a greater degree of cross-cultural legitimacy for these rights and enhanced their relevance to concrete social and economic conditions throughout the world. Whatever may have been the vision and intention of the members of the United Nations who adopted the Universal Declaration of Human Rights in 1948, that founding document and subsequent treaties have since been adopted, adapted, expanded, and deployed by peoples throughout the world in pursuit of their own locally defined objectives. Much needs to be done to promote more effective popular appropriation and operationalization of international human rights, but it cannot seriously be argued that these rights are still the exclusive product of Western societies.

To these arguments, I would also add the practical and tactical point that it is better to try to improve an existing regime, if only as a point of departure and framework for critique, than to seek to dismantle and replace it with a new system. Given its original legitimacy in Western societies and its growing familiarity and relevance in non-Western settings, the present international regime is the best possible candidate for the proposed universality of human rights. From this perspective, I call for the deployment of a deliberate strategy of internal discourse and cross-cultural dialogue to deepen and broaden consensus on the cultural foundations of human rights. The more the concept and content of a human rights regime is accepted through internal discourse as valid within the frame of reference of each culture, the more it is likely to be implemented in that society, especially in light of its similar acceptance by other cultures.<sup>10</sup> In this way, I suggest, the *prima facie* universality of the present international human rights regime would be gradually founded on a jointly constructed cultural foundation that will progressively diminish the aforementioned apparent paradox of the organic link between rights and culture on the one hand, and the reality and permanence of global cultural diversity on the other.

This project is unlikely to succeed, however, unless it is taken seriously by all the peoples of the world as relevant and applicable to their own cultures, and not only as something non-Western cultures need to do in order to subscribe to an established "club" of European and North American countries. Each society can easily find problems with its own conceptions of human rights when compared to current international formulations — whether it is

9. See my chapter "Problems of Universal Cultural Legitimacy for Human Rights," in An-Na'im and Deng, eds., *Human Rights in Africa: Cross-Cultural Perspectives*, pp. 345–55.

10. For an example of a theological and legal argument for internal cultural legitimation in an Islamic context see, generally, Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse, NY: Syracuse University Press, 1990).

in relation to economic, social, and cultural rights or notions of collective rights in the case of Western societies, the rights of women and religious minorities in the case of Islamic societies, or of lower-caste peoples in Hindu cultures, and so forth. To take the universality of human rights seriously, each society needs to examine its own difficulties with the theory and practice of the international regime in order to establish moral authority to demand the same from other societies. Moreover, as I will argue in the final section of this chapter, the project of universality must also be pursued with an open mind and willingness to examine and renegotiate any presumed "prioritization of social values," rather than as a means of endorsing and legitimating the existing scheme of political, economic, social, and/or religious power relations and hierarchies. Engaging in this process will be extremely instructive, I submit, not only in appreciating the difficulties and dynamics of self-criticism, especially when we are confronted with the possibility of having to abandon a view that we assume to be self-evident from our own ethnocentric perspective, but also in gaining insights about how to persuade others to do the same.

To further clarify this thesis, I will now relate it to the following suggested typology of arguments for a culturally sensitive approach to human rights in relation to East Asia:<sup>11</sup>

1. That situation-specific justifications for the temporary curtailment of particular human rights can only be countered through the acquisition of substantial local knowledge from which one can show that such a claim is unwarranted in the actual case.
2. That East Asian cultural traditions can provide sufficient resources for justifying and increasing local commitment to values and practices that in the West are typically realized through a human rights regime.
3. That given the limits of Western liberal universalism, especially from an East Asian communitarian perspective, it may be necessary to consider alternative frameworks that are more sensitive to legitimate needs for governmental protection and promotion of particularistic conceptions of "vital human interests."

In commenting on these arguments, I would first note that alleged justifications of human rights violations are often made, or "appropriated," by ruling elites who are seeking to justify their repressive policies with little or no regard to genuine human rights issues and concerns. In my view, this sad reality does not necessarily negate the validity and relevance these arguments

11. See Daniel A. Bell, "The East Asian Challenge to Human Rights: Reflections on an East-West Dialogue," *Human Rights Quarterly* vol. 18 (1996), pp. 643-5.

may have in genuine debate among serious-minded human rights advocates and scholars. In fact, ruling elites attempt such opportunistic use of these arguments precisely because they believe them to have resonance and credibility with popular constituencies they are seeking to influence. That does not necessarily mean that official authorities should never be heard to make such arguments, but they should be required to demonstrate their good faith through the general policies and actions of their government. No East Asian or other government can be taken seriously in claiming the mantle of protecting culture and community against the "cultural imperialism" of Western conceptions of human rights when the policies and practice of such a government undermine and repudiate the same culture and community in whose name it claims to speak.

It should also be noted that these three types of arguments for a culturally sensitive approach are not necessarily mutually exclusive, because they may overlap in their objectives and reasoning, depending on one's view of their scope and implications. For example, to the extent that the second argument is seen as a justification of human rights as internationally recognized today, rather than proposing an alternative regime premised on indigenous "prototypes," it would share with the first argument an acceptance of the present formulation of these rights. Should the second argument be seen as proposing an alternative paradigm, rather than alternative justification of international human rights, then it would be closer to the third argument. However, even to the extent that the second and third arguments are seen as seeking to either limit or expand the scope of Western conceptions of human rights in accordance with East Asian perceptions of vital human interests, they may still remain open to human rights norms as expression of a "minimal universal moral code" that East Asia shares with Western and other societies.

The first type of argument is more in the nature of a strategy of human rights activism that can be deployed in any part of the world, and it would involve a local cultural dimension only to the extent that culture is supposed to be part of the alleged justification of a limited human rights violation that is admitted by the violator as such. That is, it simply seeks to dispute the justificatory claim through the mobilization of local knowledge of indigenous culture, which is used to support a limited short-term curtailment of a particular human right to achieve a specific public or national objective, without disputing the validity of the specific human right as such. In addition to disputing the claim that local culture justifies the "temporary" violation, one can also raise doubts about the possibility of identifying the limits of the time frame of justification and the ability to resist the violation at some point. Assuming that there is good reason for a temporary violation of certain human rights, how can one tell when the violation is no longer justified, and

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what assurance can one have that state security forces will actually refrain from further violations at that time?

Where culture as such is used to justify, for example, discrimination against women or the use of corporal punishment against children as consistent with a local conception of the "best interest of the child,"<sup>12</sup> the claim of cultural particularity would be much more radical and indefinite. Such a claim goes to the essence of the human right in question and permanently, rather than merely being an alleged justification of the curtailment of an accepted right for a limited period of time. In this case, a different type of response is required, one that would seek to challenge the validity of the claim that there is no human right at all because indigenous culture requires such treatment of women or children. That is, a different type of response is needed when local culture is used as the basis for rejecting the existence of a human right permanently, as distinguished from simply seeking to justify the temporary violation of an acknowledged right.

A cultural response to such a radical claim can be developed under the rubric of the second type of argument mentioned earlier by showing that the culture in question in fact supports, rather than repudiates, equality for women or rejects the use of corporal punishment against children. However, to be useful in response to a claim of cultural rejection of a human right, this type of argument needs to be supplemented by developing a coherent and comprehensive methodology of internal cultural discourse that is capable of challenging prevailing conceptions of indigenous culture in favor of the proposed human rights norm. As they are commonly expressed at present, claims that indigenous cultures should be used as a resource to justify and increase local commitment to human rights norms not only fall short of supporting the full range of international standards of human rights, they are highly selective in the choice of the human rights norms they choose to found on local culture and fail to address the problem of those human rights norms that the local culture is commonly believed to reject.

For instance, references to Islam as a source of human rights are usually confined to a few rights, and fail to acknowledge the fact that even these rights under currently accepted *Shari'a* (traditional formulations of Islamic law and ethics) are inherently premised on distinctions on grounds of sex and religion, rather than being provided for as inalienable rights of all human beings by virtue of their humanity. Thus, it is misleading to speak

12. See, for example, Abdullahi A. An-Na'im, "Cultural Transformation and Normative Consensus on the Best Interest of the Child," *International Journal of Law and the Family* vol. 8 (1994), pp. 62-81; also published in Philip Alston, ed., *The Best Interest of the Child: Reconciling Culture and Human Rights* (Oxford: Clarendon Press, 1994), pp. 62-81.

of freedom to found a family under *Shari'a* without accounting for the prohibition of marriage between Muslims and non-Muslims on grounds of religion.<sup>13</sup> It is also misleading to speak of freedom of religion in view of not only the inferior status of non-Muslims under *Shari'a*, but also the imposition of the death penalty on a Muslim who repudiates his faith in Islam, whether or not he adopts another religion.<sup>14</sup> In my view, these limitations of *Shari'a* as a foundation of human rights can be redressed through the modern reformulation Islamic law, but that is not yet the prevailing view in Islamic societies today. In other words, radical Islamic reform is likely to face cultural resistance similar to that presently encountered by the concept of universal human rights itself. Such resistance should be expected whenever the interests of the guardians of the status quo are threatened, whether by cultural challenge (as through Islamic reform) or advocacy of human rights, especially when the former seeks to support the latter, but there is no alternative to developing a coherent and comprehensive methodology of internal cultural discourse if prevailing conceptions of indigenous culture are to be challenged and modified in favor of the proposed human rights regime.

A reading of the second type of argument in the preceding typology that suggests that human rights were already recognized and respected in traditional needs to be qualified as follows: The present concept of human rights arose in opposition to particular forms of oppression and abuse of powers associated with those in control of the apparatus of the modern nation-state. Because the nation-state is now a global reality, despite its European origins and development, human rights are needed everywhere to protect people against oppression and abuse of power by those in control of the state. The fact that many traditional cultures have had "functional equivalents" for pre-nation-state societies neither negates the need for human rights in the modern context nor means that human rights in this modern sense are automatically accepted and supported because they had premodern antecedents in the local culture. Moreover, because of their selective and ad hoc nature, existing tentative efforts to found human rights on premodern cultural norms and institutions are unlikely to support a comprehensive regime that can fully respond to the present realities of the centralized state, social dislocations of massive urbanization, and economic consequences of globalized free-market

13. According to Islamic *Shari'a* law, as accepted and practiced throughout the Muslim world, a Muslim woman cannot marry any non-Muslim man, whereas a Muslim man can marry a woman from "the People of the Book" (mainly Christians and Jews), but not an unbeliever by *Shari'a* criteria. Asaf A. A. Fyze, *Outlines of Mubammadan Law*, 4th ed. (Delhi: Oxford University Press, 1974), pp. 96-9.
14. Mohamed S. El-Awa, *Punishment in Islamic Law* (Indianapolis: American Trust Publications, 1982), pp. 40-56.

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economies. Traditional Chinese procedural safeguards, for example, are unlikely to work as the basis of a modern system of criminal justice in today's overpopulated and increasingly urbanized China. Traditional Islamic notions of the rule of law through the supremacy of *Shari'a* over political expediency require effective enforcement mechanisms, which have always been weak in *Shari'a* as a regime designed for small traditional communities radically different from the impersonal urban centers of present Islamic societies.

It is useful and important to identify traditional cultural support for the values and institutions of human rights, but more must be done to make the connection. A possible way of doing so, it seems to me, is to argue that traditional norms and mechanisms of protection against the abuse of power or the attainment of some "human rights good," such as realization of economic or social rights to food and shelter, indicate the need to adopt and support internationally recognized human rights as the more appropriate response to those needs in the present context of the nation state and its global environment. To make that argument persuasively, however, one must have the methodology for addressing those aspects of traditional culture that are negative from a modern human rights point of view, as well as supporting the transformation of what is positive in traditional cultures to make it appropriate for present-day conditions.

Finally, if the third type of argument in the aforementioned typology means a total rejection of the human rights paradigm and its replacement with an indigenous "vital human interests" model, then the question would be whether the latter is a good substitute for the former in effectively responding to the challenges of life in a modern nation-state and its global environment. The rejection of the present human rights paradigm may be for some people something of an article of faith, rather than a matter for rational debate. This view is usually associated with some religious fundamentalist groups (whether Christian, Jewish, Islamic, or Hindu), but it can also fit or be claimed by some nationalists and adherents of an "ideology of economic development." The fundamental difficulty I have with this approach is simply to ask: How are "vital human interests" to be identified, and by whom? How can a presently dominant "prioritization of social values" ever be challenged and rearranged unless the regime of vital human interests itself includes the sort of freedoms of expression and association envisaged by the human rights paradigm? Without these freedoms, how can the proponents of this view know that the alternative conceptions of vital human interests presented in the name of their culture are valid and current?

Therefore, in concluding this section, I say that those who seek to base the universality of human rights on cultural foundations must be willing and able to challenge, as and when necessary, prevailing conceptions of the cul-

ture in question. As I have argued elsewhere,<sup>15</sup> all cultures have a certain degree of ambivalence that allows for contesting prevailing perceptions and seeking to replace them with new or formerly suppressed conceptions through an internal discourse within the terms of reference of the particular culture and in accordance with its own criteria of legitimacy. For the subject of this chapter in particular, an Islamic alternative to historical formulations of *Shari'a* can be developed by present-day Muslim scholars on the basis of a reinterpretation of the *Qur'an* and *Sunna* of the Prophet, as *Shari'a* itself was constructed by early Muslim scholars a thousand years ago on the basis of their interpretation of those sources.<sup>16</sup>

#### THE ANATOMY OF PERSECUTION IN THE AL-ARQAM CASE

A minimal "factual" account of the suppression of the Al-Arqam group in Malaysia will probably be accepted by all sides to the issue in this case, but only if other elements and factors they believe to be "true and relevant" are added to the story. It is over these other elements and factors that strong disagreement is bound to arise. In reality, every account of a story, even at the most elementary and supposedly factual level that all sides would tentatively accept, will always be influenced by the perspectives and motives of those who tell it, hence the questions raised early in this paper about who is telling the story and what images and symbols are thereby invoked in an attempt to justify specific actions or promote a certain outcome. The language and tone of a narrative can also make a significant difference in how a story is received by its intended audience. However, one must begin with some account of "what happened," even if it is to be revised through analysis of the context, sequence, and dialectic of events, as well as knowledge of the political, economic, and other factors influencing the behavior of key personalities, and so forth.

A generally accepted account would indicate that Ashaari Muhammad, a former school teacher who was a member of Party Islam (or Pas, Malaysia's main Islamic opposition party) in the 1960s, established Al-Arqam in 1968,<sup>17</sup> advocating the rejection of the secular way of life practiced by Western societies, and the creation of "an Islamic way of life, which has its own systems of education and economics."<sup>18</sup> Over the years, the organization developed

15. See sources cited in notes 9 and 12.

16. See An-Na'im, *Toward an Islamic Reformation*, especially chapters 3 and 7.

17. To note the symbolism in the name, "Dar Al-Arqam" is the house the Prophet and his early few and persecuted followers used in Mecca, before they migrated to Medina in 622.

18. *Far Eastern Economic Review*, August 11, 1994, p. 28. For the following account, see pp. 25-6; and *Far Eastern Economic Review*, September 15, 1994, pp. 14-15.

sophisticated methods of propagating its views, combined with an extensive system of business enterprises in several mostly Muslim countries and communities in Southeast Asia. By the time of its suppression in August 1994, Al-Arqam ran 48 communes within Malaysia alone, complete with their own schools and medical clinics, and had an estimated \$115 million in worldwide assets. It also claimed around 100,000 in membership throughout Southeast Asia and beyond, many among the educated and professional middle class.<sup>19</sup>

Another aspect of a minimal generally accepted account would include the mechanism and sequence of suppression, without speculating about its motivation or justification/rationalization. The immediate sequence can be taken to have begun with the August 5, 1994, ruling of Pusat Islam (the National Fatwa Council) that the teachings and beliefs of Al-Arqam contravene Islamic practice and tenets, and could lead Muslims astray. On August 25, the Ministry of Home Affairs declared Al-Arqam unlawful under the Societies Act of 1966, but arrests of scores of members had already begun by then. Following his arrest in Thailand on September 2 and handing over to Malaysian security officials, Ashaari himself was detained in Malaysia under the Internal Security Act. This Act allows detention at the pleasure of the Home Minister for up to two years to begin with, which can be extended to an unlimited number of subsequent periods of up to two years at a time, without charge or trial at any time.<sup>20</sup> In other words, a person can be detained under this Act indefinitely without ever having the opportunity to challenge the reasons for his or her detention before a court of law, as long as the detention order is renewed every two years.<sup>21</sup> Ashaari was released, subject to restrictions on his movements, on October 28, 1994, after he, his wife and six others recanted their "deviationist" views on national television on October 20, as "interpretations contrary to the teachings of Islam."<sup>22</sup>

I would also note here that Zainal Abidin Abdul Kadir, director-general of Pusat Islam, was reported to have declared at the same time that Malaysia will start a tough five-year plan in 1995 to wipe out all Muslim movements in the country that are "deemed to be deviant." The director said that at least 47 deviant groups had been identified, of which 17 were active. Describing these Muslim sects as a cancer, he prescribed that the only way to curb them

19. Reuters, Kuala Lumpur, October 28 and 31, 1994.

20. See section 8 of the Internal Security Act 1960 (Act 82) current as of March 15, 1995 (published by International Law Book Services, Kuala Lumpur).

21. Section 8B (1) reads: "There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong [the Constitutional monarch or head of state] or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision."

22. Reuters, Kuala Lumpur, October 28, 1994; Associated Press, Kuala Lumpur, October 21, 1994.



was to carry out a "full treatment"; "the new programme will check the activities of these deviant groups before they have a chance to spread."<sup>23</sup> He also indicated that Malaysia's Islamic authority will send a team to Indonesia in November (1994) to convince religious groups in that country that Al-Arqam's teachings were deviant.

The controversial part of the story would relate to the validity of claims made by various government officials in justification of the campaign against Al-Arqam, different or additional political or other "explanations" suggested by independent observers, and responses by the group and other critics of the government's behavior. Moreover, I would emphasize that evaluations of the perspectives of all sides to the issues should take into account such contextual factors as the timing of the government's action just before general elections were to be held, especially in view of the long-standing competition between United Malays National Organization (UMNO; the government's party) and Pas (the main opposition Islamic party) over the Islamic orientation of Malaysia. Another factor that might be added is the ambivalence among some elements within Umno about Islamization in contrast to the professional training and ideological inclination of Pusat and other key actors within the Prime Minister's office who are closer to Pas than to Umno on these issues.

For the purposes of my analysis here, I will focus on the case from the official perspective without accepting it at face value or discounting counterperspective(s). For example, the following claims by high government officials were reported by the media.<sup>24</sup> Prime Minister Mahathir Mohamad said: "If we do not take action, we are at fault as Al-Arqam has deviated from Islam's teachings." It is interesting to note that at that point (in July 1994, when some 41 Al-Arqam members were arrested for handing out leaflets, an activity that police said violated publishing laws) the Prime Minister also indicated that the government would wait for a ruling from religious scholars before taking further measures against Al-Arqam. Deputy Prime Minister Anwar Ibrahim maintained: "We don't have a choice, we have a responsibility. This is precisely what we've been fighting all our lives to clear . . . this extreme, intolerant, anti-modern view of Islam." Foreign Minister Abdullah Badawi said: "We have to stop it. . . . It has developed into a cult." Defense Minister Najib Tun Razak claimed: "It is a very dangerous form of teaching, which, if left unchecked, would cause a severe dislocation in Malaysian society." "Obviously they [Al-Arqam leaders] have a political agenda, kept secret all this while, to gain political power." Datuk Ismail Ibrahim, director-gen-

23. Reuters, Kuala Lumpur, October 22, 1994.

24. The statements and views are quoted here as reported in *Far Eastern Economic Review*, August 11, 1994, pp. 25-6; and September 15, 1994, p. 15; and in *The Nation*, September 22, 1994.

eral of the progovernment Institute of Islamic Understanding Malaysia chimed in: "Al-Arqam is outside the current teaching of Islam. . . . This is one thing that can divide Muslims."

Furthermore, the government alleged that Ashaari Muhammad has trained and armed a 313-man "death squad" in Thailand,<sup>25</sup> a charge denied by both Ashaari and Thai officials. The serious implications of this charge can be appreciated by recalling Malaysia's history of violence associated with religious sects in the 1970s and 1980s, especially the bloody confrontation between security forces and followers of Ibrahim Libya in November 1985, when 18 people died and 29 were injured.<sup>26</sup> It should be noted, however, that Al-Arqam maintained a completely peaceful stance throughout this period of official persecution<sup>27</sup> and fully complied with the banning order after the release of Ashaari.

An immediate precursor to the persecution is also said to have been the arrest of 19 Malaysian women students members of Al-Arqam in Cairo in March 1994 and their release after questioning about associating with Islamic extremist groups in Egypt. Some observers mention direct and indirect political and personal connections between Al-Arqam and political parties, factions, and leading personalities as relevant to understanding the timing and manner of the government's behavior. Negative perceptions of Al-Arqam's ideology and rhetoric as an obstacle to modernization and progress,<sup>28</sup> and apprehensions of the group's "hidden political agenda," may have also played a role not only in the government's decision to ban the group, but also in the muted response of other forces in Malaysian society, including nongovernmental human rights organizations. One newspaper editorial, for example, not only dismissed protests against the banning of Al-Arqam as a human rights violation, but actually applauded the actions of the government of Malaysia as "a principled bid to keep religion out of politics. The objective: to maintain the fairness and harmony that such a separation brings to a multi-racial, multi-religious country."<sup>29</sup>

There were some protests in the region, such as that by the Union of Civil Liberties (based in Bangkok), and some by Amnesty International, but little in

25. To note the symbolism, 313 is the traditionally reported number of Muslim fighters at the battle of "Badr," where the Prophet and his followers won their first decisive victory against the unbelievers of Mecca in 624, soon after their flight to Medina from persecution in Mecca.

26. *Far Eastern Economic Review*, August 11, 1994, p. 28.

27. *The Asian Wall Street Journal Weekly*, September 19, 1994, pp. 8, 11; Reuters, Kuala Lumpur, October 31, 1994.

28. Such as the group's very active advocacy and practice of polygamy, and Ashaari's claims to have regular dialogue with the Prophet of Islam predicting political developments in Malaysia, and that he is the messenger of Imam Mahdi, the leader who will rouse Islam's true believers in an apocalyptic struggle against the infidels.

29. An editorial from *Asiaweek*, Hong Kong, published in *The Nation*, October 14, 1994.

Malaysia itself. Inside Malaysia, the only publicly known protest I could find was that led by Suaram (the Voice of the Malaysian People), joined by a few others, including AWAM, the Malay Social Science Association, and Sisters in Islam. Even if there were some less-known instances of protest, my point is that there were not of the level and persistence required by the occasion.

Turning now to the possibilities of cultural mediation suggested earlier, I would first note that an Islamic and a human rights points of view would both raise similar objections and come to similar conclusions about the behavior of the government of Malaysia in this case. The essential questions to be raised from an Islamic as well as a human rights point of view include these: On what basis does the government assume the mantle of the guardian of the beliefs of its citizens to adjudicate who is a "deviationist" and who is a "conformist"? Granted that the state is responsible for maintaining national security and public safety, how can it purport to do so on the basis of vague accusations and unsubstantiated claims? If it does have the evidence to support its allegations, why not present that before the courts in accordance with the rule of law? What is the meaning of constitutional civil liberties and fundamental human rights if the state can be the exclusive judge in its own cause as to whether these safeguards are complied with under conditions of discretionary indefinite detention without charge or trial or judicial review?

To briefly elaborate on Islamic objections to the suppression of Al-Arqam, I would first note that the concept of "deviationism" as such is unknown to any orthodox formulation of *Shari'a* and has no clear basis in the present legal system of Malaysia. It seems that official justifications for the persecution of Al-Arqam made vague references to the *Shari'a* notion of apostasy (*ridda*, a Muslim repudiating his faith in Islam), which is punishable by death if the apostate refuses to repent and reembrace Islam. I am personally opposed to the concept of apostasy and its punishment from an Islamic point of view, and do not in the least want to endorse its application today anywhere in the Muslim world,<sup>30</sup> but if the government of Malaysia wishes to uphold this regressive principle of *Shari'a*, it should have explicitly enacted an "offense" of apostasy in its penal code and prosecuted Ashaari and his followers accordingly. By failing to apply even the notion of apostasy with its own legal safeguards under traditional formulations of Islamic law, the government of Malaysia has given itself license to penalize and persecute Ashaari and his followers without conforming to the demands of the principle of legality and rule of law under *Shari'a* itself.

30. See An-Na'im, *Toward an Islamic Reformation*, pp. 183-4, and "The Islamic Law of Apostasy and Its Modern Applicability: A Case from Sudan," *Religion* vol. 16 (1986), pp. 197-223. For a commentary on apostasy in modern Muslim thinking and practice in general, see Ann E. Mayer, *Islam and Human Rights: Tradition and Politics*, 2nd ed. (Boulder, CO: Westview Press, 1995), pp. 141-7.

When the state claimed the power to judge the beliefs and views of Muslims in the past, outstanding scholars (like Abu Hanifa, Ibn Hanbal, and Ibn Taymiyya) have all been persecuted – some tortured, imprisoned, and even executed – for views now accepted by the vast majority of Muslims, including those of Malaysia today. For the state to assume this power now is for Sunni rulers to condemn Shi'a Muslims as heretics and for Shi'a rulers to condemn Sunni Muslims as heretics. Because in every case, those in control of the state could be judged by some other Muslims as “deviationists,” the outcome depends on who is in political power, not who is the most knowledgeable and conforming to the “true teachings and principles of Islam.” In any case, who is authorized to speak for all Muslims on these teachings and principles?

I am not in the least favorably comparing Ashaari to leading Muslim jurists of the past or suggesting that Al-Arqam was advocating “correct” or valid views about the teachings of Islam. In fact, I strongly disagree with what I know of Al-Arqam views.<sup>31</sup> Rather, my purpose is to uphold and defend their *right to be wrong or mistaken* about the meaning and implications of Islam in their own societies. It is precisely those who hold controversial views that are rejected by the established theological or political order, or by the public at large, who need and deserve the protection of their freedoms of belief, association, and expression. Those who speak for orthodoxy already have more than ample opportunities to organize and propagate their views. By protecting the right of holders of marginal and unpopular views to be heard, all Muslims will have the opportunity to debate, agree or disagree with every shade of opinion, and make their own mind about the validity or invalidity of one interpretation or the other.

The state and its officials should be the guardians of that public space for all to participate, and not a self-appointed judge of who is right and who is wrong. As guardian of the public space of debate and deliberation, the state has the right and duty to uphold the rule of law. If and when any individual or group violates the rights of others or seeks to undermine the principles of the rule of law, official authorities would be entitled, indeed required, to investigate and, when appropriate, prosecute before the regular courts in public and fair trial. For those in control of the state to abuse their formidable powers by arbitrarily suppressing views they disagree with is a most flagrant violation of the rule of law, by Islamic as well as human rights standards. I am not suggesting that *Shari'a* and human rights perspectives always agree, but in this case they do, albeit through different conceptual frameworks and terminology.

31. For example, Ashaari is reported to have written in Al-Arqam's publication, *This is Our Way* (1994): “After Satan . . . our enemies are unbelievers [communists, Jews, Zoroastrians and Christians] and hypocrites.” I find this view totally unacceptable, from a traditional Islamic *Shari'a* point of view, let alone the modernist perspective I argue for in *Toward an Islamic Reformation*, chapters 4, 6, 7.

Both Islamic and human rights perspectives would be particularly concerned about well-grounded suspicion of the use or advocacy of violence by an individual or group of persons. If and to the extent that Al-Arqam is responsible for the use or advocacy of the use of violence, it should be held accountable under the law. Officials of the state are obliged to always protect the safety and rights of all persons and of society at large, but only in accordance with the rule of law and not through vague and unsubstantiated allegations and arbitrary exercise of power to detain persons, restrict freedom of expression, confiscate property, and/or ban organizations. To the extent that Al-Arqam's ideology and propaganda tend to undermine a culture of toleration and respect for the human dignity of all human beings, without distinction, that should certainly be challenged and discredited in public debates.

As to the view that the action of the government of Malaysia "is a principled bid to keep religion out of politics," the exact opposite is the case. This is a case of official abuse of religion for political ends by denying a group of citizens their freedoms of belief, expression, and association, and detaining them without charge or trial on the basis of a ruling from a government-appointed council of "religious scholars" (Pusat Islam) that those citizens are "guilty" of holding "deviationist" views. Why does the government refer matters of private belief to this council and refuse to consult it on its economic, penal, social, or foreign policy? Would the government accept a ruling of Pusat Islam that any aspect of these official policies deviates from the teachings of Islam, as they are understood by that Council?

In concluding this section, I wish to emphasize that my analysis does not claim that any of the human rights violated by the government of Malaysia in Al-Arqam case is absolute or to suggest that no group can ever be legitimately banned from an Islamic or a human rights point of view. Both normative systems acknowledge the need for balancing individuals' and groups' rights against the rights of others and the interests of society and the state at large. Thus, a group can be banned and its leaders and members prosecuted if it is proven in accordance with the rule of law that they are advocating the use of force to overthrow the constitutionally constituted authorities of the state or are otherwise implicated in criminal activities. In my view, the state not only failed to comply with the rule of law in Al-Arqam case, it also actively violated the human rights of members of this group by the use of arbitrary power.

CULTURAL MEDIATION AND THE  
UNIVERSALITY OF HUMAN RIGHTS

In calling upon human rights advocates to understand and deploy the cultural legitimation argument suggested earlier in pursuing their objective

through the processes of cultural mediation of human rights, I invite them to ask: How and by whom are social values defined and prioritized in practice and to what ends? Taking the relativist perspective at its own premise, who determines the standards of conformity with cultural values and "national" objectives? What are the realistic possibilities and consequences of contesting prevailing perceptions of social values and priorities and their human rights implications? More specifically, what can human rights advocates do about the ability of ruling elites to manipulate supposedly spontaneous processes of social consensus in legitimizing their behavior to the public at home, and in coopting regional and international actors, as clearly illustrated by the Al-Arqam case.

Although I support efforts to identify and enhance local cultural sources for human rights, I believe that human rights advocates must be prepared to challenge negative perceptions and manipulations of cultural norms and institutions of the culture in question. In the Al-Arqam case, for example, the government's propaganda campaign skillfully combined playing on both traditional concerns with upholding "the teachings of Islam" and modernist demands for the protection of the human rights of women and promoting the education of children. Appeal was also made to public apprehensions about an "extreme, intolerant, anti-modern view" of Islam taking hold of the minds and hearts of young people, the middle classes, and professionals. In response to such a strategy for the legitimation of oppression, those who wish to defend the human rights of Al-Arqam members as a matter of principle, regardless of one's evaluation of the views of the group as such, must engage in a similar multifaceted and culturally sensitive response.

It seems clear to me, however, that the common formulations of the three arguments discussed earlier may not provide an effective strategy of response unless supplemented in the ways I have suggested earlier. If the government is claiming that there will never be freedom to believe in or to associate for the purpose of propagating Al-Arqam views in Malaysia, then the first type of argument for a culturally sensitive approach would not be helpful. In this case, the government claim goes to the essence of the human right in question, rather than as justification of temporary curtailment while still acknowledging the binding force of these rights under "normal circumstances." Should the claim be one of limited suspension of these rights, then local knowledge of the culture and its dynamics may indeed be part of a challenge to the alleged justification of temporary curtailment of human rights in the Al-Arqam case.

Looking for local cultural sources for human rights under the second type of argument or claiming a "vital human interest" under the third type may require a challenge to certain elements of the prevailing perceptions of

Malay/Muslim culture, which might condone the persecution of Al-Arqam in the interest of the state and society at large. That is, although it is important to work within the framework of the culture in question, a clear defense of human rights may not be readily available under prevailing conceptions of cultural norms and institutions. Human rights advocates may therefore have to challenge such claims of cultural legitimacy for violations by proposing and substantiating alternative conceptions of cultural norms and institutions that are supportive of human rights.

In the Al-Arqam case, for example, human rights advocates should not only insist on the procedural safeguards of due process indicated earlier, they should also seek to address the underlying issues of tolerance of diversity and dissent. In particular, they must challenge the notion of apostasy as totally inconsistent with freedoms of conscience and belief from an Islamic point of view and/or a Malaysian cultural perspective as well as being in violation of universal human rights to freedoms of belief and expression.<sup>32</sup> To make the case for these freedoms from Islamic and Malaysian cultural perspectives, human rights advocates may need to dispute traditional interpretations of Islam and perceptions of Malay culture as proclaimed by ruling elites. More fundamentally, they must challenge the claim of the government, or any segment of the established order for that matter, to monopolize the right to speak for either Islam or Malay culture. For the cultural mediation of human rights to work at all, there must be the widest possible multiplicity of voices and perspectives on the meaning and implications of cultural norms and institutions. Otherwise, ruling elites and their allies will control and manipulate the relationship between culture and human rights, and thereby claim cultural justification for their violations of human rights instead of securing the cultural foundation of these rights.

Genuine and lasting global consensus on the principle and content of the universality of human rights can be constructed through an acknowledgment of permanent cultural diversity of an increasingly globalized world. I would further suggest that, in view of the inescapable local and cultural context of the practical protection of human rights, such an approach to developing and sustaining an overlapping consensus on a human set of social values as the basis of agreement on a concept and content of human rights is the only viable way to achieve universality. Those who subscribe to this view must of course realize that this process is neither risk-free nor secure against reversal. Engaging in the processes of the cultural mediation of human rights involves

32. For an example of how this argument can be made from an Islamic point of view, see Abdullahi A. An-Na'im, "Islamic Foundations for Religious Human Rights," in John Witte, Jr., and Johan van der Vyver, eds., *Religious Human Rights in Global Perspectives: Religious Perspectives* (Dordrecht: Martinus Nijhoff, 1966), pp. 337-60.

the risk of having to accept a prioritization, or reprioritization, of social values that one believes to be contrary to universal human rights. For example, this process may endorse the death penalty or corporal punishment, though some human rights advocates see these as cruel, inhuman, or degrading treatment or punishment. Provided opportunities for contestation remain open for all seeking to change public opinion on these matters, such outcomes must be "accepted" as legitimate manifestations of cultural mediation. That is, this approach is premised on openness of the process to challenge and reprioritization that will enable human rights advocates to "rectify" the situation in favor of their perspective. However, it would be misleading to claim that this will be easy to achieve initially or that past achievements in this regard are guaranteed for eternity.

In conclusion, I would emphasize that the search for local cultural sources must continue in East Asia and throughout the world, despite its risks and uncertainties. In my view, it is not a matter of choice between cultural mediation and other approaches to the universality of human rights. Rather, it is simply that there is no alternative to the cultural mediation approach if genuine and lasting universality of human rights is to be achieved.