



*Marching to the Beat of a Different
Drum: Royalty, Women, and
Ideology in the Sultanate of Brunei
Darussalem*

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Marching to the Beat of a Different Drum: Royalty, Women, and Ideology in the Sultanate of Brunei Darussalam

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Abstract: Unlike the other monarchies considered in this issue, where the focus was on the relationship between the monarch and gender justice within a framework of democratic constitutionalism, Brunei is a case study of monarchy and gender justice in an absolute monarchy. Although this monarchical model is out of step with reforms elsewhere it accords with familiar, albeit rejected, antecedents in western thought. Plato's *Republic* idealised rule by a philosophical, benevolent, and wise dictator and the medieval writings of Christian theologians like St Augustine and St Thomas Aquinas further developed the concept of a king ruling by divine right but with a duty to rule according to divine natural law as interpreted through Christian theology. In Muslim polities, a parallel concept is rule by Allah's vice regent: a Sultan mandated by, and answerable only to, Allah [God]. Today in the Sultanate of Brunei this ancient, and arguably anachronistic, form of governance successfully operates in an ethnic, religious, and culturally plural society. This article postulates that unlike the monarchies of Europe and Japan where "divine rule" was discarded, Brunei's Constitution endorses rule by divine will. With all power—executive, legislative, judicial and religious—consolidated in the hands of one man, the consequence is a stable and affluent society but at the expense of liberties and rights for its people. Women, along with ethnic and religious minorities, are excluded from positions of power and the throne, but all this could be reversed were it the Sultan's will.

Keywords: Brunei; Sultanate; Islam; gender; justice; ideology

"*Beraja*" [absolute monarchy] is God's Will—it is "not a choice, it is an *anugerah* (award or honour) from Allah (SWT)."¹

 Negara Brunei Darussalam is Asia's only absolute monarchy.² It self-identifies as a Malay Islamic Monarchy (*Melayu Islam Beraja*). These three descriptors create inter-supporting "pillars" and govern each and every aspect of public life in the nation with *Melayu Islam Beraja* (abbreviated to MIB), its national ideology. This

¹ *Titah* commemorating the Sultan's 64th Birthday, 26 July 2010, <http://www.jpm.gov.bn>. *Titah* are royal speeches in which the Sultan announces policy. Most *titah* can be accessed in Malay, with some translated into English, from the Government of Brunei's website: www.rtb.gov.bn/Titah/. Mocking or deriding a *titah* is a criminal offence.

² This is the nation's official title. *Negara* originates from Sanskrit and means nation. *Brunei* comes from the Sanskrit word *Varuna/Baruna* referring to a nation of seafarers and traders. It changed to Brunei in the reign of Sultan Ahmad (1408–1425). *Darussalam* is an Arabic term for Abode of Peace.

mechanism endorses and justifies an authoritarian, non-democratic, and patriarchal system. MIB ideology draws selectively on past practices delineating these as traditions that *ipso facto* are both necessary and worthy of upholding in the twenty-first century. MIB is sacrosanct and inculcated in every aspect of government and society. Bruneian³ scholars claim MIB has been the national philosophy since the fourteenth century and manifests “God’s will.”⁴ Others, particularly western scholars such as Braighlinn⁵ and Geoffrey Gunn⁶ argue it is a very recent construct, largely “fictitious”⁷ or an “invention”⁸ designed by Brunei’s power elite to legitimise royal power and negate criticism. Such a point of view cannot be expressed in the Sultanate as any debate or questioning of MIB is seditious⁹ with MIB now protected in the Constitution of Brunei Darussalam (1959) (hereafter the Constitution)¹⁰ and bolstered by a large bureaucracy dedicated to MIB inculcation.¹¹

In the Sultanate’s 650-year history, there has not been a female ruler. The prospect of a sultana (Arabic feminine of sultan) remains unlikely, despite rule by sultanas in North Africa, Maldives, and in Southeast Asia. During the seventeenth century in Aceh, four sultanas ruled, and the current Sultan and Governor of Yogyakarta in Indonesia has appointed his eldest daughter Crown Princess and heiress presumptive.¹² If she does succeed her father as sultana, she will be its first female ruler.

However, expressly excluded from the Constitution with its detailed Succession and Regency Proclamation (hereafter the Proclamation) are notions of gender equality and rule by a woman. Excluded from succession to the throne:

No person shall be considered a lawful Heir or a lawful Successor unless he professes the Islamic Religion and is a *male* lawfully begotten descendant in the *male line* of the common ancestor.¹³

Patriarchy, privilege, and hierarchy permeate monarchical rule in this small Sultanate of 5765 square kilometres located on the large island of Borneo. Its population of 420,000,¹⁴ a quarter

³ See: Muhammad Hadi Bin Muhammad Melayong, “MIB, living foundation of every Bruneian,” *Daily Brunei Resources*, 10 October 2016; and Abdul Aziz Bin Juned, *The King Who Shapes History* (State Mufti’s Office, 2017).

⁴ *Titah* commemorating the Prophet’s Birthday, 3 October 1990.

⁵ G. Braighlinn (Pseudonym), *Ideological Innovation under Monarchy: Aspects of Legitimation Activity in Contemporary Brunei* (Amsterdam: VU University Press, 1992).

⁶ Geoffrey Gunn, *Language, Power and Ideology in Brunei Darussalam* (Athens: Ohio University Centre for International Studies, 1997). See also: Mark Cleary and Shuang Yann Wong, *Oil, Economic Development and Diversification in Brunei Darussalam* (Basingstoke: Palgrave Macmillan, 1994); and Naimah S. Talib, “A Resilient Monarchy: the Sultanate of Brunei and Regime Legitimacy in an Era of Democratic Nation-States,” *New Zealand Journal of Asian Studies* 4, no. 2 (2002): 134, 142.

⁷ Talib, “A Resilient Monarchy,” 144.

⁸ Marie-Sybille de Vienne, *Brunei: From Age of Commerce to Rentier State* (Singapore: NUS Press, 2015), 286.

⁹ Sedition Act Cap 24, s4.

¹⁰ Constitution s53(1A)(a).

¹¹ MIB Supreme Council and the Academy of Brunei Studies (APB) propagate MIB through mandatory courses in the three levels of education, in all government institutions and departments, and the private sector.

¹² The Princess’ new title is *Gusti Kanjeng Ratu Mangkubumi*—The One Who Holds the Earth. See: Rebecca Henschke, “Sultan of Yogyakarta: A feminist revolution in an ancient kingdom,” *BBC*, 1 June 2018, <https://www.bbc.com/news/world-asia-43806210>.

¹³ Succession and Regency Proclamation, 1959, revised 2011, s4. Emphasis mine.

¹⁴ Economic Planning and Development: Prime Minister’s Office: Latest Key Indicators,

of whom are foreign workers¹⁵ has Brunei Malays as the majority ethnicity, then Chinese, indigenous non-Malays, and others.

Without an elected parliament, there is no need for national elections, a political opposition, political parties (except one in name only),¹⁶ or a free press. Few women are in leadership positions in government or in the Islamic religious institutions where conservative Islamic Sunni Shafii jurisprudence¹⁷ is applied. Islam is the state religion with the majority Muslim (67%), with Buddhists (13%), Christians (10%), and indigenous animistic beliefs and others (10%) comprising the rest.

Women in Brunei have benefited from a range of inclusive gender policies with equal rights and parity in education, training, healthcare, employment, maternity leave, business, and ownership of assets. Women own half of all small to medium enterprises (SMEs).¹⁸ Female literacy is higher, girls outnumber boys in secondary and tertiary levels of education and receive the majority of government scholarships, and 60-70% of graduates from the University of Brunei Darussalam are women.¹⁹ 80% of lawyers and 70% of magistrates are women.²⁰ Women head three of the four local Universities. When Brunei became a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2006, a significant milestone was attained. The reservations to CEDAW reveal dissonance between gender inclusive and exclusionary practices and the CEDAW Committee Review of the Periodic Reports in 2017 highlighted a range of discriminatory laws and policies for women.

Brunei draws extensively on its history, culture, and religion to legitimise a monarchical system out of step with constitutional governments elsewhere, so to commence the analysis Part 1 provides a short overview of the seminal events in Brunei's history. From its past comes the *raison d'être* for the present. Part 2 will outline the constitutional provisions for accession to the throne, membership of the royal family and generous, non-transparent funding for both. Part 3 will consider the interplay of "hard" masculine power and "soft" power. Hard power resides in the Sultan advised by the nation's six Councils, membership of which he controls through exclusive power to appoint and dismiss. Of the six, two—Legislative and Executive Councils—now have female members and are the focus in this Part. The notion of "soft" power is explored through the successful projection of the Sultan and the royal family as living symbols of the values, identity, and soul of the nation. Part 4 explains how and why the dynamics of "non-change" prevail. Part 5 considers recent advances in, and limits of, gender equality with focus on the ratification of CEDAW and continuing concerns with its reservations. Lastly, the article concludes that in an absolute monarchy it is for the Sultan to

www.depd.gov.bn/SitePages/National%20Statistics.aspx.

¹⁵ Dominik M. Muller, "Sharia Law and the Politics of Faith Control in Brunei Darussalam," *Internationales Asienforum* 46 (2015): 313, 316.

¹⁶ The only political party allowed under the Societies Act Cap 66 is the National Democratic Party. It expresses unconditional support for the Sultan and his government and does not advocate for representative democracy.

¹⁷ Constitution s2.

¹⁸ K.C. Patrick Low and Hajah Zohrah Binti Haji Sulaiman, "Women and Human Capital—the Brunei Darussalam Perspective," *Educational Research* 4 (2013): 91, 91.

¹⁹ Datin Hajah Adina Binti Othman, "Moving Forward—Women in Brunei Darussalam," speech at the Women's Forum 2010, Brunei.

²⁰ CEDAW/C/SR 1259.

change direction and steer his nation back to a democratic, equal, and inclusive society. Women and minorities would be immediate beneficiaries, but the nation too would be stronger especially as it heads towards a future where petro-carbon revenues may not sustain its standard of living.

Part 1: Historical Context

In Brunei, the official historical narrative is that this region of Borneo became a Sultanate in the 1360s²¹ when the then-Raja, Awang Alak Betatar, converted to Islam in order to marry the daughter of the Sultan of Johor.²² He took the title of Sultan Muhammad Shah to honour the Prophet Muhammad and to reflect his new Islamic identity and supreme authority over his subjects. The institution of divine kingship, *devaraja*, and Hindu-derived court ceremonies and class hierarchies continued but with Islamic moral and religious authority, the *daulat*, superimposed.

Many of the Raja's subjects also converted to Islam, but some tribal groupings, especially those in the rugged mountainous jungle region, retained their animistic and tribal-based beliefs. Today, 6–10% of the population are their descendants and keep their animistic ways.²³ Chinese make up the second largest ethnic minority at 15–20% of the population. There are longstanding discriminatory policies against ethnic and religious minorities that mean that women in minority groups face additional challenges.²⁴

Brunei's current Sultan and *Yang Di-Pertuan* (He who is made Lord),²⁵ Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, is Muhammad Shah's descendent and Brunei's twenty-ninth Sultan. The Sultan also claims lineage from the Prophet Muhammad,²⁶ an attribute that further bolsters his Islamic credentials and supports the claim of a "divinely" chosen ruler.

The Sultanate was at its zenith in the fifteenth century when its influence as a thalassocracy²⁷ extended throughout Borneo to the southern Philippines. By the 1880s, the Sultanate had contracted to roughly its current size comprising the two small enclaves on the northwest side of Borneo. It was beset with problems and its very existence threatened.²⁸ The

²¹ Some government publications cite 1371. See: *Annual Report Brunei Darussalam*, 2005–2009.

²² Muhammad Hadi Bin Muhammad Melayong "MIB, living foundation of every Bruneian," *Daily Brunei Resources*, 10 October 2016. The official source for the conversion to Islam by a Brunei Raja is in the *Silsilah Raja-raja Berunai* (Books of Succession), which compiled the oral stories and traditions. As there is historical debate whether the Sultanate of Johor existed before 1405, an alternative view is he married the daughter of the Sultan of Malacca. Some accounts simply say "from a neighbouring kingdom."

²³ Ann Black, "Survival or Extinction? Animistic Dispute Resolution in the Sultanate of Brunei," *Willamette Journal of International Law and Dispute Resolution* 13 (2005): 1.

²⁴ Ann Black, "Islamization, Modernity and the re-positioning of Women in Brunei," in *Mixed Blessings: laws, Religions, and Women's Rights in the Asia-Pacific Region*, ed. Amanda Whiting and Carolyn Eva (Boston: Martinus Nijhoff, 2006), 211–240.

²⁵ This is a Sanskrit title for King during the period of Hindu rule that Malays in Brunei and Malaysia retained.

²⁶ The popular narrative is that the third Sultan, Berkat, was an Arab and a descendant of the Prophet. He married the daughter of the second Sultan of Brunei.

²⁷ Although some historians and scholars do use "empire" to describe the Sultanate's dominance over the surrounding regions, Roger Kershaw prefers thalassocracy as there were no precise borders and control was based on sea not land domination. See: Roger Kershaw, "Marginality then and now: Shifting Patterns of Minority Status in Brunei Darussalam," *Internationales Asienforum* 29 (1998): 83.

²⁸ These problems included a failing economy, ongoing hostilities with the Sulus of the Southern Philippines,

Sultan needed outside assistance to save his impoverished realm and acquiesced to British demands.

A symbiotic bond was formed that, largely, explains why the British-Brunei colonial ties remained for almost a century, decades after colonial demise elsewhere in Asia. Brunei was first a protectorate,²⁹ and then a British residency³⁰ in a form assuring survival of the ruling dynasty, and finally a protectorate again in the 1950s. The current Sultan's father, Omar Ali Saifuddin III, introduced the Constitution in 1959 to provide for self-governance in all matters other than defence³¹ and foreign affairs. It blended aspects of the nation's Islamic and traditional Malay³² character but retained the inherited common law system with English-derived laws and courts. It did not set out provisions for an independent judiciary nor for individual rights and liberties, except to allow other religions to be practiced "in peace and harmony"³³ alongside the state religion of Islam.

It was not until 1984 that Brunei finally emerged on the world stage as a fully independent nation—Negara Brunei Darussalam.³⁴ The English-educated Sultan Bolkihah, who took the throne in 1967 after his father's abdication, and the Queen of the United Kingdom, Elizabeth II, appear to have a close bond. They are the two longest reigning monarchs in the world.

The post-independence direction has been one of Shariatization/Islamisation³⁵ of law, education, and government, and of strengthening Brunei's Malay heritage. However, one should not overlook the British colonial legacy. During the colonial era when the Sultan continued as ceremonial head, its State Council, the forerunner of today's current six councils, was devoid of substance. Under the 1905-1906 Agreement, the Resident's advice must be taken which made the Council fully subordinate to him. Opposition was futile. Denying debate and participation during the residency entrenched authoritarian practice in governance and left

dissatisfaction among the people and its nobles, rampant piracy in its northern waters, succession disputes following the death of Sultan Omar Ali Saifuddin I, the Brookes' (white Rajas of Sarawak) expansion in Borneo, and the presence of European powers keen to fill any power vacuum. See: Ann Black, "The Stronger Rule of the More Enlightened European?: the Consequences of Colonialism on Dispute Resolution in the Sultanate of Brunei," *Legal History* 13, no. 1 (2009): 93–122.

²⁹ Sultan Hashim signed the Brunei Protectorate Agreement in 1888. He relinquished control over matters of defence and external affairs to the British government.

³⁰ The first Resident appointed was in 1906. Under the Treaty Agreement of 1905–1906, the Sultan as the indigenous ruler was not replaced by a British governor, as in a direct colony, but was a representative of the Crown, to advise the Sultan on all matters, except those dealing with "Mohammedan religion." The Resident was the *de facto* ruler. He was subordinate only to other colonial officials, namely the High Commissioner in Singapore, and to the Colonial Office in Great Britain.

³¹ In an arrangement with Britain, a Gurkha battalion is permanently stationed in Brunei. Roger Kershaw, "Partners in Realism: Britain and Brunei Amid Recent Turbulence," *Asian Affairs* 34, no. 1 (2003): 46–53.

³² For example, the Sultan would appoint a Malay *Menteri Besar* to the Executive Council. Sultan Bolkihah abolished this position.

³³ Constitution s3(1).

³⁴ Kershaw writes that the Sultans Omar Ali Saifuddin and Hassanl Bolkihah had long resisted independence and loss of "protected status." See: Roger Kershaw, "The Last Brunei Revolt? A Case Study of Microstate (In)Security," *Internationales Asienforum* 42, no. 1 (2011): 107, 112.

³⁵ In 1990 the Sultan announced all laws would be in line with Islam and Islamic law. A Committee on the Modification of Brunei laws to accord with Islamic law was established to complete this undertaking.

no foundations for a democratic society.³⁶ The Constitution simply transferred all the powers exercised by one man, the Resident, to another man, the Sultan of Brunei.

Part 2: Expressions of Gender: the Monarchy and the Constitution

The Constitution Part 2: Succession and Regency Proclamation provides the framework for who is Sultan, the order for succession and royal consorts, and regency provisions should the heir presumptive be under 18 years of age.³⁷

As noted earlier, accession to the throne is strictly paternal and lineage based: lawful sons of the reigning Sultan, or sons of sons of the Sultan's "blood line"—sons from mothers who as consorts share the Sultan's same "blood line."³⁸ Marriage between first cousins is common and is lawful in Islamic law. Prince Al-Muhtadee Billah, the third child but eldest son of the Sultan's first wife/consort and paternal cousin (the same blood line), is the Crown Prince and "lawful Successor to the throne of Brunei Darussalam."³⁹ Should Prince Billah be unable to ascend the throne, "his lawful eldest son" will become Sultan.⁴⁰

The position of consort of the Sultan is meticulously detailed. As Islamic law allows a man to have up to four wives at the same time, there are rules for which wife will be the royal consort and *Duli Raja Isteri* (Queen). She must be a lawful wife of the reigning monarch who is also of the "blood of the Sultans of Brunei Darussalam"⁴¹ or otherwise from a "ruling house of another Malay Muslim State," or the wife whom the Sultan believes "is nearest in the direct line to such Sultans."⁴² A wife, who is a commoner, and "not of the race or blood of the Sultan," has the lesser title *Pengiran Isteri* (Princess). The children of a ruling Sultan hold the special royal title *Pengiran Muda* (Prince) and *Pengiran Anak Puteri* (Princess).

Sultan Bolkiah has had three wives. He married his first and current wife, *Duli Raja Isteri* Saleha, in 1965. They have two sons, the elder of whom is the Crown Prince, and four daughters.⁴³ In 1981, the Sultan married his second wife, Aisha Miriam, in a lavish wedding. She was a commoner and half Bruneian. These two wives were present at most official events and their official portraits, like their thrones, were set on either side of the Sultan's. In 2003, this marriage ended in divorce, by *talaq* (pronouncement by His Majesty) and reportedly was the world's largest divorce settlement.⁴⁴ Miriam lost her royal title *Pengiran Isteri* but their four children retained theirs. Living in London, removed from her children and decades of palace life, Aisha Miriam found adjusting difficult. She was vulnerable and lonely and fell victim to a fraudulent scam by a "friend and fortune teller" involving £2 million given in gifts and bank

³⁶ Ann Black, "The Stronger Rule," 108.

³⁷ The Proclamation Part III sets out that the Regent should be next eldest son (from another marriage) and if there are no sons of age, then a Council of Regency until the heir is 18. The guardian of the heir during a regency is his mother. There were two periods of regency in the twentieth century.

³⁸ Defined as a "person who is a lawfully begotten descendant of Al-Marhum Sultan Mohamed Jamalul-alam."

³⁹ Succession and Regency Proclamation s2.

⁴⁰ Succession and Regency Proclamation s3(2).

⁴¹ Succession and Regency Proclamation s3(3).

⁴² Succession and Regency Proclamation s2.

⁴³ Succession and Regency Proclamation s2.

⁴⁴ Succession and Regency Proclamation s2.

⁴⁴ "The World's Largest Divorce Settlement," *The New Scotsman*, 4 February 2003, <https://www.scotsman.com/news/world/the-world-s-largest-divorce-settlement-1-544213>.

transfers to the account of a man she had not met, but had been deceived to believe existed and moreover was in love with her. During the trial in the Crown Court at Islington for fraud against the perpetrator, the court learnt of tapes recounting embarrassing details of her life with the Sultan. Media coverage censored reporting in Brunei but it entered the public domain in Britain when three Appeal Court judges lifted the anonymity orders initially granted to the Sultan to “protect his dignity.”⁴⁵

The Sultan’s third wife, also a commoner, Azrinaz Mazhar was a young Malaysian television presenter, whom he married in 2005 when the Sultan was 58 and his bride 26. This marriage was initially a secret and the wedding was not publicly disclosed until leaked to the media by a guest. By contrast with his prior marriages, there was little public celebration or fanfare. After the birth of a son, the Sultan bestowed on her the title of *Pengiran Isteri*. They divorced by *talaq* in 2010. She lost her royal title but the two children of the marriage retain theirs and reside with the royal family in Brunei.

The Proclamation proclaims the sanctity of the Sultan and his lands and palace. Although the kingdom is one of the smallest in the world, the Sultan’s opulent palace is reported to be the largest inhabited palace in the world, exceeding the dimensions of the Forbidden Palace in Beijing and is three times larger than Buckingham Palace.

Importantly, it gives sole authority to the Sultan to provide financial allowances to himself, his consorts (also out of “compassion” after a divorce),⁴⁶ his children, and “to any person who is, in the opinion of His Majesty the Sultan and Yang Di-Pertuan, entitled thereto, either by way of a lump sum or a periodical payment out of the revenue of Brunei Darussalam.”⁴⁷ This is in addition to the “personal” wealth he has accrued.⁴⁸

The Sultan alone can “amend or revoke all or any of the provisions of “this Proclamation.”⁴⁹ Like the Sultan of Yogyakarta, he has power to de-gender the succession rules to allow rule by a Sultana. It does not need approval of any the Councils, nor would it be subject to judicial review.⁵⁰ This issue of de-gendering succession has not arisen not only because of MIB, but also because Brunei is not short of royal male successors. The Sultan has three brothers (from the mother of the Sultan’s blood line); seven sons (two from the blood line, five from commoners) and several grandsons from the bloodline. An insufficiency of male heirs has not motivated, and is unlikely in the near future to motivate, gender reform.

Nobility and social stratification support rule by a monarch. The greater the social distance of the King from commoner, the more social levels and ranks are needed to reinforce it. Except for the slave class that ended during the residency, today the social ranks, titles and

⁴⁵ Richard Edwards, “Sultan of Brunei’s ex-wife and the £2m con,” *The Telegraph*, 12 July 2007, <https://www.telegraph.co.uk/news/uknews/1557227/Sultan-of-Bruneis-ex-wife-and-the-2m-con.html>.

⁴⁶ Succession and Regency Proclamation s23.

⁴⁷ Succession and Regency Proclamation s30. In addition to his wives and twelve children, the Sultan has nine siblings, each of whom has a large family, which means financial provisions for all of Brunei’s princes and princesses is considerable.

⁴⁸ Forbes estimated his personal net worth of US\$20 billion, which earned him the position as the world’s third richest royal. Timothy Foot, “Brunei’s Bid to be the Islamic Singapore is failing,” *ASEAN Today*, 10 November 2017, <https://www.aseantoday.com/2017/11/bruneis-bid-to-be-islamic-singapore-is-failing/>.

⁴⁹ Succession and Regency Proclamation s31.

⁵⁰ If he so desires, the Sultan can appoint persons to an Interpretation Tribunal to decide any “question involving, arising from, relating to, or in connection with, the meaning, interpretation, purpose, or construction” of the Proclamation.

privileges formed in the caste-based Hindu period continue overlaid with Malay traditions and Islamic practices.⁵¹

In a detailed analysis of social hierarchy in Brunei, Brown observed a rigid division between the hereditary nobles (*pengiran*) and non-nobles.⁵² He estimated that in 1970 there were 2,000 nobles “perpetuated by patrilineal descent.”⁵³ There are rankings within the nobility. The *wazirs*, of which there are five, take precedence over all others. Next is the greater nobility, *pengiran anak*, the core nobility, *cheteria*, divided into further subsets with its four-tiers, and ordinary nobility, the *pengiran*. Men and women can be *pengiran*.

The next level of social class is the aristocracy. It is also subdivided into groups; the higher *cheteria* has aristocracy proper (*manteri*) and religious aristocracy (*manteri agama*). Aristocratic positions are reserved for twenty-four non-indigenous citizens and from each of Brunei’s four districts. Commoners are at the bottom of the pyramid and can take the prefix *Awang* (Mr) and *Dayang* (Miss). Commoners do have access to social mobility. By holding senior posts in the public service or prominence in the corporate sector, commoners can rise through the ranks of the aristocracy, but not to ranks of the nobility, as these are hereditary and kinship-based. The sultan can award to commoners the title *pehin*, the equivalent of a life peerage, or *dato*, the equivalent of a knighthood, and *datin*, the equivalent of a damehood.

Nobility, like royalty, is highly visible. Bruneians adhere to the practice of using complete full names with all titles, honorifics, and lineage included to make social rank readily apparent. Royalty, nobles, and dignitaries have their own “high status” language, *Bahasa Dalam*, for communication between superiors and inferiors. It is described as a “language of respect” to use when conversing with royalty and government officials.”⁵⁴ Social ranking dictates invitations, seating arrangements at events and ceremonies, personal flags, permissible designs of traditional dress and headdress, permissible colours for particular ranks, and the number of gold threads in embroidery.⁵⁵

The title *Haji* (for men) or *Hajjah* (for women) is included in the names of those who have made the *hajj* pilgrimage. It is visually apparent too by distinctive garments and headdress they alone can adopt. In addition to religious signalling, it shows social and economic standing given the cost of the pilgrimage to Mecca.

Social stratification based on kinship and lineage creates a stratified society that maintains the status quo and hinders liberal or reform agendas. It demands “absolute loyalty to superiors” and makes immutable Bruneian traditions and culture.⁵⁶ De Vienne suggests that

⁵¹ Fatimah binti Hj Awg Chuchu and Mukul Saxen, “Socio-Cultural Hierarchy in the Palace language of Brunei Darussalam,” *Southeast Asia: A Multidisciplinary Journal* 9 (2009): 42, 42.

⁵² D.E. Brown and Donald Brown, “Social Stratification in Brunei,” *Southeast Asian Journal of Sociology* 3 (1970): 27–38.

⁵³ Brown and Brown, “Social Stratification,” 27–38.

⁵⁴ “Keeping Brunei’s Customs and Traditions Alive,” *Brunei Times*, 1 March 2015, Bruneiresources.blogspot.com/2015/03/keeping-bruneis-customs-and-traditions.html. See also: Chuchu and Saxen, “Socio-cultural Hierarchy,” 46.

⁵⁴ Chuchu and Saxen, “Socio-cultural Hierarchy,” 53.

⁵⁵ Male and female aristocrats wear pink headwear and pink traditional two-piece clothing with gold threads used sparingly. Cheteria wear purple and their clothing feature “more gold threads to the extent that they shimmer when sunlight hits the surface of the fabrics”: <http://www.bruneiresources.com/pehinmanteri.html>.

⁵⁶ Chuchu and Saxen, “Socio-cultural Hierarchy,” 46.

the “interminable public celebrations” and ceremonial tasks prevent “subversive inaction.”⁵⁷

Part 3: Hard and “Soft” Power

Brunei has an autocratic and undemocratic system of government that is out of step with the democratization that has taken place throughout Asia, especially since the 1980s. It shares borders with Muslim-majority Indonesia and Malaysia, two successful democratic nations, with the former appointing female president Megawati Sukarnoputri in 2001. Prior to the long-awaited constitutional amendments in 2004, there was mounting optimism⁵⁸ that Brunei too would have a *reformasi* and allow parliamentary democracy under a constitutional monarch. Brunei, however, went in the other direction to retreat from, not towards, democracy, inclusivity, transparency, and accountability. This remains Brunei’s distinctive path. As the 2004 amendments consolidated, rather than lessened, the Sultan’s power, Professor Tsun Hang Tey argues that the Constitution is no longer superior law in Brunei as the 2004 amendments “doubly-fortified [the] monarchical regime” placing the Sultan “above the law.”⁵⁹

The result is hard power remains in male hands. MIB draws on centuries old practices to justify current practice, so it necessarily has implications for women. Women did not then, so arguably, in MIB terms, cannot now partake in any significant way in governing the Sultanate. To unravel one strand of the past could leave other aspects open to question. This goes to explain why participation of women in the six governing Councils is limited despite the superior educational and professional attainments of its female citizens. The six councils that advise the Sultan are the Privy Council⁶⁰ (for rank and honours); the Legislative Council⁶¹ (for enacting laws); the Council of Ministers⁶² (the executive); *Adat Istiadat* Council⁶³ (to advise on State customs); the Councils of Succession and Regency (to advise on the monarchy and royalty);⁶⁴ and the Religious Council⁶⁵ (to advise and issue fatwas on Islam). The Sultan appoints all members to the Councils, which are the six most prestigious bodies in the Sultanate. Two have female members. The Sultan appointed three women to the Legislative Council and two to the Council of Ministers. The members of the other four Councils are men⁶⁶ and the Sultan recently appointed three more Princes, his son, to the Privy Council.⁶⁷ His daughters did not receive equivalent positions, but princesses are involved in official events and some community and charity endeavours.⁶⁸ Roles allotted to royal children are stereotypically gendered.

⁵⁷ De Vienne, *From Age of Commerce to Rentier State*, 276.

⁵⁸ Mohd Yusop Hj Damit, “Brunei Darussalam: Steady Ahead,” *Southeast Asia Affairs* (2004): 63, 66, 67.

⁵⁹ Tsun Hang Tey, “Brunei’s Revamped Constitution,” *Australian Journal of Asian Law* 9, no. 2 (2007): 264.

⁶⁰ Constitution Part 1V.

⁶¹ Constitution Part VII.

⁶² Constitution Part III.

⁶³ Constitution Part II.

⁶⁴ Constitutional Matters II: Succession and Regency Proclamation, Part II.

⁶⁵ Constitution Part II with more details in the Religious Council and Kadis Courts Act Cap 77.

⁶⁶ Legislation requires that only Muslim men can be members of the Religious Council: Religious Council and Kadis Courts Act Cap 77 s13(3).

⁶⁷ Princes Abdul Azim, Abdul Malik and Abdul Mateen.

⁶⁸ For example, Princess Azemah Ni’matul and Princess Fadzilah have a role in the special needs charity *Pusat Ehsan*.

The appointment of women to the two Councils took place after Brunei became a signatory to CEDAW in 2006. Is this a coincidence? Whether it is or not, appointment is an inferior way of engendering legislative and executive bodies. Women cannot vote on who will represent them, nor can they stand for these positions and compete equally with men in the marketplace of ideas and their implementation. Instead one man “who knows best” will decide. Brunei was never a *purdah* (gender segregated) zone. For centuries, Bruneian women were fully engaged in village life, worked the fields, traded produce and goods in the market place, and were respected for their abilities. This seems to have flowed through to the present as women excel in education, small family businesses (SMEs), and in the professions, but “hard” power remains where it always has been, with the Sultan and his handpicked elite inner circle.

There was a time when Bruneians took a great interest in politics. The first and last time women and men in Brunei voted (in 1961), it was in anticipation that via the ballot box they would have input into the direction of law and policy for Brunei. The then-newly enacted Constitution provided for a partially elected legislature, with seventeen representatives appointed by the Sultan and sixteen elected by the people. In the elections held in 1961, the pro-democracy, anti-aristocratic Brunei People’s Party *Parti Rakyat Brunei* (PRB) that ran on a platform to form a Greater Borneo and to limit the Sultan’s powers won all sixteen seats. The message from the people was overwhelming but it was not acceptable to the Sultan. His block of seventeen appointed members prevented the elected representatives from forming a government. Thwarted, the PRB staged a coup against the Sultan. He proclaimed a state of emergency. Within days, British forces quashed the uprising. The coup leaders fled or were imprisoned and the PRB banned.⁶⁹

The Legislative Council (LegCo) remained suspended until 2004 when it was reconstituted but this time as a fully-Sultan appointed advisory body. It now meets once a year, with considerable pomp and ceremony. However, it is a show chamber as the LegCo has no genuine legislative power and members remain subservient to the Sultan.⁷⁰ He can appoint and remove members “at his pleasure” and since 2004, laws he enacts no longer require the LegCo’s “advice and consent.” Any member of the LegCo can introduce a bill, propose a motion for debate, then pass an act that will become law with the Sultan’s royal assent,⁷¹ but he can amend it without reference back to the LegCo, and if it fails to pass, section 47 of the Constitution gives him reserve powers to declare it has legal effect anyway.

The state of emergency instituted in 1962 to quell the PRB-led uprising has continued and is renewed every two years,⁷² mostly recently in 2017.

The constitutions of many nations contain provisions for emergency powers but, as in nearby Singapore and Malaysia, there are checks and balances to prevent misuse. This Constitution allows for emergency powers when an “occasion of public danger exists whereby

⁶⁹ The last coup member was released from prison in 2009.

⁷⁰ The thirty-three members include the Sultan and the Crown Prince, thirteen cabinet ministers (ex officio members) with eighteen other appointed members, two titled persons, seven prominent citizens, and eight representatives from the four districts who are indirectly elected. A Selection Committee appointed by the Sultan approves them and after the district vote makes recommendations to the Sultan. If he rejects a candidate, then an alternative candidate must go before the Selection Committee. See: Constitution, Schedule 2.

⁷¹ Constitution s40(1).

⁷² Constitution s83(2). Emergency (Continuation and Validation of Emergency Provisions) Order 2004.

the security or economic life of Brunei Darussalam is threatened by war or external aggression or international disturbance.”⁷³ Under a state of emergency, the Sultan can make any “[O]rders whatsoever which he considers desirable in the public interest.”⁷⁴ In this “Abode of Peace,” no preconditions such as public danger, war or international threat have occurred since the initial 1962 proclamation. Appropriation of a legislative option designed for extraordinary circumstances, belittles the intent of the Constitution. There are hundreds of such emergency orders enacted which bear no link to threats or dangers; for example, the *[Emergency] Arbitration Order (2009)* or the *[Emergency] Beauty and Health Establishment Order (2016)*. Contentious legislation such as the *Syariah Penal Code Order 2013* is passed this way, to ensure no bill was available for discussion within the LegCo. Neocleous argues that the normalization of emergency powers not only gives such powers “formal legal grounding,” but also has a discernible effect on wider political culture, creating an “emergency mentality” and “dependency” in the general population.⁷⁵ To bring in Syariah criminal law by emergency powers, to announce its implementation by *titah*,⁷⁶ to not have any white papers or consultation with the men or women of Brunei, Muslims or non-Muslims, on whose lives the Order would have major impact, exemplifies rule by royal decree. Lawmaking by Emergency Order was justified by the Sultan in his 2004 birthday *titah* as “in keeping with tradition and values” of Brunei and necessary “for the country’s peace and stability” when facing “future challenges.”⁷⁷

By Brunei tradition, women were not included in governing but the Constitution does not exclude them as it does non-Malays and non-Muslims by stating that “Ministers and Deputy Ministers shall be made from among the Malay race professing the Islamic Religion,” “save where the Sultan otherwise decides.”⁷⁸

The local media expressed enthusiasm at the lessening of patriarchal hold on the country when in 2010, Datin Adina Othman became the first woman given a cabinet position as Deputy Minister for Culture, Youth, and Sports. She held this role for five years and led the country’s delegation to the United Nations for the CEDAW Committee review on implementation of the Convention. There was a hiatus until 2018 when “history was made”⁷⁹ when the Sultan appointed two women to the outer ministry.⁸⁰ Media reports said the appointments “demonstrated that women in Brunei have the capacity and opportunity to break the glass ceiling through dedication and hard work,” and “that perhaps this move will pave the way for Brunei’s first [female] minister.”⁸¹ The optics of the Sultan appointing two women, even to the outer ministry, are positive but also pragmatic. They allow Brunei to tick off another CEDAW requirement and show a progressive side to counter the gender setbacks arising from the implementation of Syariah criminal law.

⁷³ Constitution s83(1).

⁷⁴ Constitution s83(3).

⁷⁵ Mark Neocleous, “The Problem with Normality: Taking Exception to Permanent Emergency,” *Alternatives: Global, Local, Political* 31, no. 2 (2006): 191.

⁷⁶ Announced in a *Titah* for His Majesty’s birthday on 15 July 2013.

⁷⁷ Azlan Othman, “His Majesty Announces Big Changes for Brunei,” *Borneo Bulletin*, 16 July 2004.

⁷⁸ Constitution s4(5).

⁷⁹ “Brunei Makes History with Two Female Deputy Ministers,” *New Brunei Daily*, 30 January 2018.

⁸⁰ In the Prime Minister’s Office and the Ministry of Education.

⁸¹ “Brunei Makes History with Two Female Deputy Ministers” *New Brunei Daily*, 30 January 2018.

Despite optimism and optics, realistically the two female deputies may not have significant impact on decisions. First, they are both deputy ministers. One news outlet reported a retired senior government officer (who wished to remain anonymous) expressed concern that as deputy ministers they will succumb to the “deputy syndrome”⁸² and limit themselves based on their title. Second, the Sultan is not required to act with the advice of Cabinet,⁸³ and third, like all members they hold their position at his pleasure.⁸⁴ The Sultan can revoke their appointment at any time without showing cause,⁸⁵ as was evident in the removal of his brother as Minister of Foreign Affairs and Trade.

The Sultan has a tight rein over the executive. The Constitution stipulates that he shall be the Prime Minister and the Supreme Commander of the Armed Forces.⁸⁶ Sultan Bolkiah also assumed other key portfolios. He is Minister of Defence, and Minister of Finance—following his brother Prince Jefri’s misappropriation of state funds alleged to be in excess of B\$40 billion and the collapse of the Amedeo construction company that he headed with billions of dollars of debt owed. There was a long-running trial ending in an out-of-court settlement upheld by the Privy Council.⁸⁷ In mid-2015, the Sultan also took over as Minister of Foreign Affairs and Trade with just a *fait accompli* announcement with no explanation for Prince Mohamed’s sudden departure. Unsubstantiated rumours abound.⁸⁸

Although not members of Cabinet, two other women play prominent roles in the Sultanate with a role and rank equivalent to that of a Minister. The Sultan’s sister, Princess Masna, was ambassador-at-large for many years with the Ministry of Foreign Affairs and Trade and undertook a range of formal ambassadorial roles, always in acting positions. Given the failings of the Sultan’s brothers who were Ministers with significant portfolios, the decision to limit Princess Masna’s contribution was possibly misguided.

Datin Hayati was appointed in 2009 as the first female Attorney General. Prior to becoming Attorney General, she was a judge of the Supreme Court. There is no bar in the common law courts for women, or for non-Muslims, to have a judicial appointment, although in accordance with Shafi’i jurisprudence, judges for Syariah Courts are Muslim and male.

In the realm of the symbolic and ceremonial, the soft, smiling, warm, “caring Sultan” is the symbol of the nation, loved and supported by his wife/wives and large family. This is not the “playboy Sultan,” the “king of bling,” the “companion of hedonism,” or the “Sultan of swing” as the Sultan and his brother Jefri are frequently portrayed in western media. He is the beloved, generous, and revered father of the nation, to whom loyalty and gratitude must flow.⁸⁹

⁸² “Brunei Makes History with Two Female Deputy Ministers,” *New Brunei Daily*, 30 January 2018.

⁸³ Constitution s4.

⁸⁴ Constitution s4(6).

⁸⁵ Constitution s4.

⁸⁶ Constitution s4.

⁸⁷ *State of Brunei Darussalam & Brunei Investment Agency v HRH Prince Jefri Bolkiah and others* [2001] UKHL 67; [2002] 2 AC 357.

⁸⁸ One rumour is a power struggle between the two brothers over control of “trade” via the oil and gas economy—90% of the country’s revenue. Another is that Prince Mohamed misappropriated \$2 billion in funds. See: “Power Struggle in Brunei?” *Asia Sentinel*, 8 February 2011, <https://www.asiasentinel.com/politics/power-struggle-in-brunei/>; Maureen Callahan, “Inside the wacky sex obsessed world of Brunei,” *New York Post*, 10 May 2014, <https://nypost.com/2014/05/10/inside-the-wacky-sex-obsessed-world-of-brunei/>.

⁸⁹ Adjectives including beloved, benevolent, caring, and generous generally precede the Sultan’s name in newspaper, television, and media coverage.

A government controlled and docile press is unabashed in lauding the Sultan. Members of the royal family join him in a crowded calendar of events, and provide the model for Malay and Muslim family life. He is a dutiful son who annually visits his parents' mausoleum to perform prayers (*tabliḥ*) and rituals for the deceased, accompanied by members of his family, nobility, the six councils, and many photographers.⁹⁰ The twelve children from his three wives, ranging in age from 50 to 10, together with a young and glamorous generation of royal grandchildren, add to the colour, excitement, and pageantry of Brunei royalty. All are fashion icons. The princes have their father's love of expensive cars, playing polo,⁹¹ and other masculine pursuits, whereas the princesses represent a more caring royalty at charitable and state events. Births, engagements, marriages are all celebrated in grand style. Many of the young royals have extensive followers on Instagram and Facebook,⁹² and the unmarried royals feature prominently in "most eligible" marriage lists.⁹³ There is an annual public holiday for the Sultan's own birthday marked by a large public celebration that thousands attend. Similarly, the 2017 Golden Jubilee anniversary of his coronation was a showcase event with a large procession with the Sultan and Queen in a golden chariot drawn by fifty royal guards.

The Sultan too is the symbol of Islamic unity and its practice in Brunei. As head of Islam, he is the figurehead and leader for all Islamic events and images of the Sultan at prayer in a mosque or participating at such events recur in the daily media. He is presented as a pious and devout Muslim, whose aim is to make Brunei a *zīkir* nation, that is, one in which Allah's laws and Islamic values are upheld. Since independence, the Sultan has overseen the re-Islamisation/Shariatisation of Brunei culminating in Orders for Syariah criminal law and procedure.⁹⁴ Only a handful of conservative, also authoritarian Muslim nations apply Syariah criminal law today and Brunei is the first Asian nation to join their ranks.⁹⁵ However, it demonstrates to Bruneians and the world his full commitment to the *zīkir* nation, but has courted international controversy. The International Commission of Jurists (ICJ) denounced the Order "as a blueprint for human rights violations,"⁹⁶ and Amnesty International claimed it took Brunei back to the "dark ages," making "mockery of the country's international human rights commitments" and called for its revocation.⁹⁷ However, the Order is strongly defended by the Sultan, the Mufti, and all his appointees to the Councils. Criticism, even questioning

⁹⁰ Ubaidillah Masli, "HM pays Respects to Late Parents," *Borneo Bulletin*, 16 September 2010.

⁹¹ Princess Azemah Ni'matul is also a polo player: <http://nbd.com.bn/2018/07/16/brunei-defeats-singapore-in-polo-final>.

⁹² Karim Raslan, "How Facebook era made the Monarchies of Malaysia, Brunei Relevant again," *This Week in Asia*, 19 October 2017.

⁹³ Prince Mateen has 773,000 Instagram followers. See: Allison Millington, "The incredible life of Brunei's super-rich Prince, who flies choppers, chills with tiger cubs, and plays polo," *Business Insider*, 14 December 2017, <https://www.businessinsider.com/the-life-of-super-rich-instagram-star-prince-mateen-of-brunei-2017-12/?r=AU&IR=T>.

⁹⁴ Syariah Penal Code Order 2013 and the Syariah Courts Criminal Procedure Code Order 2018.

⁹⁵ One Indonesian province, Aceh, has Syariah criminal law under a regional autonomy agreement.

⁹⁶ ICJ, "Brunei: New Penal Code a Blueprint for Human Rights Violations, 27 January 2014," <https://www.icj.org/brunei-new-penal-code-a-blueprint-for-human-rights-violations/>.

⁹⁷ Amnesty International, "Brunei Darussalam: Revoke new Penal Code allowing stoning, whipping and amputation," 30 April 2014, <https://www.amnesty.org/en/latest/news/2014/04/brunei-darussalam-penal-code/>.

some of its provisions, is seditious. One blogger who posted that rather than stoning for *zina*⁹⁸ (adultery), whipping was more in keeping with Quranic passages was arrested and charged with heresy.⁹⁹

The Sultan's *titabs*—royal speeches—frequently draw on Islam in support of his view, and mark significant events in the Islamic calendar. He leads grand celebrations with his Muslim subjects for occasions such as the Prophet's birthday, *Isra* and *Miraj* and *Nuzul Al Quran*. He also attends mosques and *surau* throughout the country to join the male congregations for the obligatory Friday prayers. As mosques in Brunei are segregated, he prays with men but the celebratory public events are for both genders.

Part 4: Non-Change: Dynamics for Preserving and Strengthening the Status Quo

The concentration of power—executive, legislative, and religious—in the hands of one male monarch is atypical in Southeast Asia. It raises the question of why a literate, educated, affluent population acquiesces, even applauds, this type of autocratic and undemocratic rule. Women are denied a vote and access to the higher echelons of power, yet Brunei's women defend the status quo and remain grateful.

The Sultanate may be small in size and population but its monarch, who in the 1990s was the “richest man in the world”¹⁰⁰ lives in splendour, in a lavish glittering-with-gold palace, reportedly the world's largest inhabited palace with 1,800 rooms.¹⁰¹ He has a private car collection with 3,670 elite cars including 230 Rolls-Royces and 325 Ferraris; owns his own gold-plated Boeing 747; and on every measure exudes a lifestyle of unrestrained extravagance and opulence. It runs counter to the simple way of life advocated by the Prophet Mohammad and ignores hadith that are critical of ostentation and ornamental displays of wealth. It also runs counter to the traditional lifestyle of his Malay predecessors. De Vienne observes how Arab-style gold cupolas, ceramics, and ornate fittings have replaced the wooden tiered roofs and simplicity of traditional Malay buildings, mosques, and the previous royal palace.¹⁰²

In order to retain power and wealth in such a potent concentration, the Sultan and his advisers arguably understood that the key for survival was to minimize scrutiny and accountability and maximize loyalty to the Sultan and his family. There are five main ways for achieving this strategy. First, absolute rule is deemed legitimate through MIB ideology, which cannot be questioned or its tenets debated. Second, financial benefits for citizens come personally “from their generous ruler” fostering dependency and gratitude. Third, the Sultan and other key players are kept above the law. Fourth, the government censors and silences opposing or different views, thereby fostering self-censorship. Fifth, is to harness Islam to bolster “*Beraja*” monarchy by creating a government monopoly over Islamic truth. As MIB was discussed earlier, the focus in this part will be on the other four components.

The Sultan and the royal family enjoy immense personal wealth.¹⁰³ The allocation he

⁹⁸ Syariah Penal Code Order (2103) s69.

⁹⁹ See: Muller, “Sharia Law and the Politics of Faith,” 326.

¹⁰⁰ See: James Bartholomew, *The Richest Man in the World: Sultan of Brunei* (London: Viking, 1989). These lists are open to debate but the Sultan's personal wealth is roughly in excess of US\$100 billion.

¹⁰¹ *Istana Nurul Iman* at 200,000 m² is larger than China's Forbidden City palace.

¹⁰² De Vienne, *From Age of Commerce to Rentier State*, 274.

¹⁰³ 90% of the annual revenue of Brunei is from petro-carbons and returns from Brunei Investment Agency's

gives himself and family under the Civil List to match “rank, position and dignity”¹⁰⁴ benefits and entitlements is not disclosed. Instead, all focus is on his personal generosity, not the source of his wealth. The constant message is that it is only because of the Sultan’s benevolence that Bruneians have one of the highest standards of living in Asia. The Sultan “personally” provides his subjects with comprehensive and generous social welfare benefits including free comprehensive universal medical and health care, free education, subsidized *hajj*, preferential government loans, well paid government employment for 25% of the working population,¹⁰⁵ infrastructure, splendid public buildings, free theme parks, and even free concerts with western superstars.¹⁰⁶ It means complaints should be few and gratitude high. De Vienne labelled it a “welfare monarchy” that takes care of its nationals from birth to death.¹⁰⁷ The result is an affluent middle class citizenry content with their lot and who support the status quo.

As sovereign, the Sultan is not a distant figure remote from their lives. There is much protocol, but he is in regular contact with his subjects. During the Hari Raya celebration at the end of Ramadan, more than 100,000 people queue when the Istana palace has an “open house” over three days during which men pay their respects to the Sultan and women to the Queen.¹⁰⁸ He also gives thousands of personal gifts (*kurnia peribadi*) at the end of Ramadan.¹⁰⁹ As chancellor of the universities, he is at graduations to congratulate and award the diplomas; he attends the openings of major buildings and ventures; frequently visits each of the ministries and departments; regularly tours the four districts; and each week prays with the men at a different local mosque. At times a gift of B\$1000 from the Sultan is added to every bank account and thousands of gifts are presented to citizens on state occasions.¹¹⁰ The media captures these moments. When new homes (1,542 in 2014) funded by the National Housing Scheme¹¹¹ are built it is the Sultan who hands over the keys. Reciprocal and high levels of gratitude for their benevolent king are required, and the media and government publications report and repeat their monarch’s “generosity,” his “caring nature,” and the people’s “love and gratitude” in return.¹¹²

As Bruneian citizens pay no income taxes,¹¹³ nor sales tax, its government cannot be conceptualized as the servant of the people. When citizens pay taxes they are likely to demand accountability and representation in government, as seen in the old demand “no taxation

international property investments.

¹⁰⁴ Constitution, s57. The royal family is not defined in the Constitution so s57(4) allows the Sultan to determine the members to whom an allowance will be payable. In the National Budget, the expenditure for the family comes under the category of “various”.

¹⁰⁵ Dominik Muller reports that in 2010 there were 46,000 civil servants in a labour force of 190,000. See: Muller, “Sharia Law and the Politics of Faith,” 318.

¹⁰⁶ For instance, Michael Jackson, Stevie Wonder, and Whitney Houston have all performed.

¹⁰⁷ De Vienne, *From Age of Commerce to Rentier State*, 285.

¹⁰⁸ Azlan Othman, “Istana Open House from 2nd Day of Raya,” *Borneo Bulletin*, 8 September 2010.

¹⁰⁹ De Vienne, *From Age of Commerce to Rentier State*, 258.

¹¹⁰ Lyna Mohamad and Rokiah Mahmud, “Thousands get more Kurnia,” *Borneo Bulletin*, 12 June 2018; Dominik Muller, “Paradoxical Normativities in Brunei Darussalam and Malaysia,” *Asian Survey* 56, no. 3 (2016): 415, 422.

¹¹¹ Mohamad and Mahmud, “Thousands get more Kurnia.”

¹¹² Pushpa Thambipillia, “Brunei Darussalam: a time for Stocktaking,” *Southeast Asian Affairs* (2015): 64, 73.

¹¹³ For example, see: Siti Hajar, “Sultan Funds K Ayer Houses,” *Borneo Bulletin*, 12 April 2011.

¹¹⁴ There are also no export, payroll, sales, or manufacturing taxes. Companies, however, are subject to income tax.

without representation” from the days of the American War of Independence. Davies argues that in countries where citizens pay no taxes, a converse principle applies, that is, “without taxation it is possible to do without formal representation altogether.”¹¹⁴ Brunei is categorised as a rentier state¹¹⁵ that uses the revenue from its extracted resources to stabilise authoritarian rule by co-opting “Malay elites and the middle class in a rentier-based authoritarian bargain.”¹¹⁶ In place of representation, there is a special relationship labelled “*Sentiasa Bersama Rakyat*,” meaning the Sultan is “always together with his subjects.”¹¹⁷

Censorship is justified to shield Bruneians from negative information. A wide net of criminal and regulatory laws guarantee a compliant, obsequious media and prevent criticism of the Sultan, the royal family, Islam, the government, or MIB. The Sedition Act makes statements that are “derogatory of the Sultan, the Royal family, Islam or MIB” seditious.¹¹⁸ The Internal Security Act (ISA) criminalises any act, “speech or publication done with the intention of inciting disaffection for the Sultan” and criticism of the government.¹¹⁹ Additional censoring provisions in the Syariah Penal Code Order 2013 include “printing, disseminating, importing, broadcasting, and distributing publications contrary to Islamic law”¹²⁰ and imprisonment for up to five years for “any person who in any manner contempts, neglects, contravenes, opposes or insults any *titah* of His Majesty.”¹²¹ The Societies Act deregisters groups that oppose the current political regime. When the Brunei National Development Party (BNDP) announced a policy calling for parliamentary democracy, elections, repeal of emergency laws, and a constitutional monarch, it was immediately de-registered and its leader arrested under ISA. The Newspaper Act gives the Minister of Home Affairs discretion to grant and revoke a publishing license, to shut down a newspaper, and to bar distribution of foreign publications. There is no appeal or judicial review of any such decisions. A person (writer, editor, or printer) who has “maliciously published false news” or given “incorrect particulars” can be tried and imprisoned. Members of the Sultan’s family own the main newspapers.¹²² There are also other Acts and Orders¹²³ that stifle debate, stop alternate views, and prevent criticism of monarchy extended to blogs and internet platforms. As was seen in pre-*reformasi* Indonesia, restrictions of this type are favoured tools of autocratic regimes and Brunei is no exception. This is why, year after year, organisations such as Freedom House categorize Brunei as “not free” along with nations such as Cambodia and North Korea¹²⁴ and Brunei in 2018 was ranked 153rd on the World Press Freedom Index.¹²⁵

¹¹⁴ John Davies, *Libyan Politics: Tribe and Revolution* (London: University of California Press, 1986), 18.

¹¹⁵ A rentier state received majority of its revenues from rent through exploiting natural resources, not from domestic taxation.

¹¹⁶ Aurel Croissant and Philip Lorenz, *Comparative Politics of Southeast Asia* (Cham: Springer, 2018), 19.

¹¹⁷ Ann Black, “Ideology and Law in Brunei Darussalam,” *Asian Journal of Comparative Law* 3 (2008): 105, 137.

¹¹⁸ Sedition Act, Cap 24, s4.

¹¹⁹ Sedition Act, Cap 24, s3 (1)(i); Internal Security Act (Cap 133) which allows detention without trial for up to two years with indeterminate extensions, specifically ousts judicial review of detention orders.

¹²⁰ Syariah Penal Code Order ss213, 214, and 215.

¹²¹ Syariah Penal Code Order s320.

¹²² Newspaper Act Cap 105, ss3, 3A, 3B, 4, 7, 8. See also: Reporters without Borders, “Brunei,” <https://rsf.org/en/brunei>.

¹²³ Undesirable Publications Act Cap 25; Censorship of Film and Public Entertainments Act Cap 69.

¹²⁴ Available at www.freedomhouse.org.

¹²⁵ See: “2020 World Press Freedom Index: Brunei,” *Reporters without Borders*, <https://rsf.org/en/brunei>.

Censorship is useful to prevent allegations of hypocrisy and sinful (unIslamic) conduct by the Sultan and male members of the royal family entering the public domain. Accounts of the Sultan's and brother Jefri's profligacy, salacious lifestyle, including alcohol, gambling, harems, and sexual exploitation of women are not seen or aired in Brunei. The published memoirs,¹²⁶ books,¹²⁷ articles,¹²⁸ and documentaries on this "underside" of the royal family¹²⁹ are prohibited in Brunei. A Californian lawsuit against the Sultan and Prince Jefri was brought by a former American beauty queen, in which she alleged, amongst other things, that she, with others, was held against her will and required to perform sexual acts. The suit did not proceed when District Judge Consuelo Marshall found that the Sultan was a foreign head of state, and therefore protected by sovereign immunity from lawsuits filed in the United States.¹³⁰ The Sultan called on citizens to remain vigilant against allegations he called "worse than murder."¹³¹

Monarchs in many states have immunity from suit in their personal and official capacity. The difference in Brunei is that the Sultan is not a symbolic figurehead but leads all three arms of government, and as a very wealthy individual enters many contracts, both commercial and personal that because of immunity will not be enforced against him or persons acting on his behalf. The High Court of Australia held the Sultan was entitled to immunity from suit in an Australian court, as his immunity was substantial, not procedural.¹³² The case arose when the Sultan was in breach of a contract with Australian Company Garsec, over the sale of A\$10.6 million bejewelled miniature Quran: a gift for the Sultan's third wife.¹³³

In 2004, the Sultan used his emergency powers to amend the Constitution. It put beyond doubt that he "can do no wrong in either his personal or any official capacity" and will "not be liable ... in any court in respect of anything done or omitted to have been done by him ... in either his personal or any official capacity." This immunity extends to anyone acting on the Sultan's behalf or under his authority,¹³⁴ which essentially is the entire government and its employees. If you are hit by a bus in Brunei, wrongfully dismissed from the army,¹³⁵ or have a negligence claim against a hospital, you need an out-of-court negotiated private settlement. The Constitution s84 C (1) also specifies that if discretion is exercised under any written law "the remedy of judicial review is and shall not be available."¹³⁶ The President of the Law Society argued that reinstatement of judicial review was necessary in the "interests of justice."¹³⁷

¹²⁶ Jillian Lauren, *Some Girls: My Life in a Harem* (New York: Penguin, 2010).

¹²⁷ Bartholomew, *The Richest Man in the World*.

¹²⁸ Julie Zeveloff, "The Royals of Brunei Lead Lives of Almost Incomprehensible Wealth," *Business Insider*, 9 May 2014; "Prince Jefri, the Sultan Brother and his Extravagant Lifestyle," http://factsanddetails.com/southeast-asia/Brunei/sub5_10a/entry-3606.htm.

¹²⁹ "Sex, lies and Sharia Law: The secret life of the Sultan of Brunei," *Sixty Minutes Australia*, 23 April 2015.

¹³⁰ "Judge Rules Beauty Queen Can't Sue Sultan," *Los Angeles Times*, 26 August 1997.

¹³¹ Tim Cornwell, "So Who's Telling Lies: The Swinging Sultan or the white slave beauty?," *The Independent*, 11 May 1997.

¹³² *Garsec Pty Ltd v His Majesty Sultan Haji Hassanal Bolkiyah Mu'izzaddin Waddaulah the Sultan and Yang Di-Pertuan of Brunei Darussalam and Anor* [2009] HCAASP 19 (16 April 2009).

¹³³ *Garsec Pty Ltd v His Majesty The Sultan of Brunei* [2008] NSWCA 211.

¹³⁴ Constitution s4(2).

¹³⁵ *Idrus bin Ibrahim V Commander, Royal Armed Forces Brunei*, Judgment of the Courts of Brunei, 2004, Vol II, 72.

¹³⁶ Intermediate Courts Act (Cap 162) s7(3)–(8); Subordinate Courts Act (Cap 6) s7(3)–(8).

¹³⁷ Quratul-Ain Bandial, "Law Society Calls for Return of Judicial Review," *The Brunei Times*, 24 April 2015.

Additional amendments give direct control to the Sultan over court proceedings¹³⁸ in both the common law¹³⁹ and Syariah courts.¹⁴⁰ He can direct a case be heard in camera,¹⁴¹ set the time and venue for proceedings;¹⁴² and exempt “any person” required to attend court or comply with a summons.¹⁴³ If a party in proceedings might make a “direct or indirect reference” to the Sultan the trial must be “held in camera”¹⁴⁴ and goes further to criminalise the reproduction of any judgment in any proceedings that might have the effect of lowering or adversely “affecting the position, dignity, standing, honour, eminence or sovereignty of the Sultan.”¹⁴⁵

Perhaps the most powerful mechanism for protecting the status quo is the state’s monopoly over Islam. Muller argues that the Islamic bureaucracy is the Sultanate’s “most powerful political actor outside of the royal family.”¹⁴⁶ As head of the religion, the Sultan with the Religious Council can ensure that Islam practiced in Brunei supports, not undermines, an absolute monarchy. The Constitution specifies that Islam in Brunei means Sunni Islam “according to the Shafeite sect.”¹⁴⁷ This form of Islam as interpreted now in Brunei does not allow for Islam’s inherent plurality. There is only one permissible Islamic path in Brunei.¹⁴⁸ All Islamic teachings and practice must conform to it. Religious interpretations that are inconsistent with the Religious Council’s conservative Shafeite positions are “deviationist” and their eradication is a national preoccupation.¹⁴⁹ Shia Islam,¹⁵⁰ Ahmadiyah, a range of Sufi groups, Al-Arqam, Baha’i, Silat Lintau are banned as heretical or deviant forms of Islam. One heresy of Al-Arqam, for example, was their promotion of a return to a simpler, more spiritual life that their leader argued was closer to how early Muslims lived. This was seen as dangerous because it could lead people in Brunei to question, and even challenge, the existing authoritarian structure of the Sultanate and its divergence from the just and equal society expounded in the Quran and teachings of the Prophet Mohammad.¹⁵¹ Deviationist teachings are called a “poison to security and could destabilise the country’s peace and harmony creating havoc, foes and even spill blood (fighting) among Muslims.”¹⁵²

¹³⁸ See generally, Ann Black “Judicial Independence in Brunei Darussalam,” in *Asia Pacific Judiciaries: Independence, Impartiality and Integrity*, ed. H.P. Lee and Marilyn Pittard (Cambridge: Cambridge University Press, 2018), 57–80.

¹³⁹ Supreme Court Act (Cap 5); Intermediate Courts Act (Cap 162); Subordinate Courts Act (Cap 6).

¹⁴⁰ Supreme Court Act (Cap 5) s 15 (4).

¹⁴¹ Supreme Court Act (Cap 5) s 15 (5).

¹⁴² Supreme Court Act (Cap 5) s 15 (6).

¹⁴³ Constitution s 34 (1).

¹⁴⁴ Supreme Court Act (Cap 5) s 15 (4).

¹⁴⁵ Supreme Court Act (Cap 5) s 15 (8).

¹⁴⁶ Muller, “Sharia Law and the Politics of Faith,” 320.

¹⁴⁷ Constitution s2. Also Religious Council and Kadi’s Courts Act Cap 77, s43.

¹⁴⁸ The Sultan’s *titah* for *Aidil Adha*, 7 March 2001, reminds Muslims not to let “deviants influence them”.

¹⁴⁹ The Sultan’s *titah* for New Year of Hijrah 1439 reminds the country to be wary of Akidah Deviation. See the report in *Borneo Post*, 23 September 2017, <http://www.theborneopost.com/2017/09/23/his-majesty-reminds-the-country-to-be-wary-of-akidah-deviation/>.

¹⁵⁰ The second largest group of Muslims after Sunni adherents. See: Muller, “Sharia Law and the Politics of Faith.”

¹⁵¹ This view is expressed by Jay Bernstein in “The Deculturation of the Brunei Dusun,” in *Indigenous Peoples and the State: Politics, Land, and Ethnicity in the Malayan Peninsula and Borneo*, ed. Robert L Winzeler (New Haven: Yale University Southeast Asia Studies, 1998).

¹⁵² Azlan Othman, “Imams Warn against Deviationist Teachings,” *Borneo Bulletin*, 4 January 2004,

Religion is an important apparatus of the state and not confined to the private sphere. The state Mufti has sole authority to issue *fatwas* (binding rulings for Muslims in Brunei)¹⁵³ and writes the weekly sermons under the Sultan's supervision, which all Imams must give.¹⁵⁴ It is compulsory by law for Muslim men to attend the Friday prayers so the mosque is a pulpit for delivering the government's agenda. The extensive religious bureaucracy includes the Ministry of Religious Affairs (MORA) to propagate "correct" Islam, regulate Islamic practices (including *hajj*, *zakat*, and halal certification), and to oversee compulsory Islamic religious education at all schools. Religious Police report on unIslamic behaviour, the *Da'wah* (propagation) Unit promotes conversions to Islam; and the *Aqidah* (Doctrine/Faith) Control Section ensures "correct" practice of Islam.¹⁵⁵ Muller's research shows how limiting Islam to a narrow doctrinaire form has criminalised long-held Malay cultural practices of shrine worship, traditional healing rituals, and supernatural beliefs.¹⁵⁶ On the grounds of confusing Muslims, Brunei also restricts the religious practices of Christians, Buddhists, and Hindus with a range of prohibitions on religious symbols, publications, words used, and practices. For example, any public displays of Christmas (such as crosses, candles, singing carols, and Christmas trees) risk five years imprisonment under the Syariah Penal Code Order 2013.¹⁵⁷

The paradox is that Islam is used to support a wealthy Sultan and an elite royal oligarchy. Kessler argues that Islamic teachings encourage Muslims to resist a society based on inequality and injustice.¹⁵⁸ For this reason, it is a government imperative to maintain homogeneity of Islamic thought and to control all religious teaching to ensure there is no questioning which could undermine their political authority. Braighlinn contends that MIB promotes "royal absolutism under a divine mandate"¹⁵⁹ and to do so the Islam pillar ("I") endorses political obedience "as a special, legitimising prop to "B" (*Beraja*/Monarchy), which protects and fosters it reciprocally."¹⁶⁰

Part 5: Sultan and Gender Justice—Achievement and Concerns

Human rights and principles of gender equality exist, but only through the lens of Islam in which Allah-granted human rights are held as superior to fallible "man-made" rights. Only when there is no compromise or contradiction with Islam are provisions of "man-made" international rights instruments valid. This is why there is a general reservation to the CEDAW Convention¹⁶¹ and to the Convention of on the Rights of the Child (CRC) for any provision

<http://nbd.com.bn/2018/07/07/avoid-misguided-teachings-friday-sermon/>.

¹⁵³ Fatwas are generally advisory but in Brunei it is a criminal offence to disobey a fatwa of the Mufti. See: Ann Black and Nadir Hosen, "Fatwas: their Role in Contemporary Secular Australia," *Griffith Law Review* 18, no. 1 (2009): 405–427.

¹⁵⁴ De Vienne, *From Age of Commerce to Rentier State*, 272.

¹⁵⁵ Muller, "Sharia Law and the Politics of Faith," 320.

¹⁵⁶ Muller, "Sharia Law and the Politics of Faith," 329–340.

¹⁵⁷ Syariah Penal Code Code (2013) s217; "Christmas ban to be strictly enforced in Brunei after sharia law introduced," *ABC News*, 24 December 2015, <http://www.abc.net.au/news/2015-12-23/christmas-ban-to-be-strictly-enforced-this-year-in-brunei/7051680>.

¹⁵⁸ See: Clive Kessler, *Islam and Politics in a Malay State: Kelantan 1838-1969* (Ithaca: Cornell University Press, 1978).

¹⁵⁹ Braighlinn, *Ideological Innovation under Monarchy*, 43.

¹⁶⁰ Braighlinn, *Ideological Innovation under Monarchy*, 22.

¹⁶¹ United Nations Treaty Collection: CEDAW Declaration and Reservations available at:

“contrary to the Constitution or the beliefs and principles of Islam.” Brunei also entered two specific CEDAW reservations¹⁶² and did not ratify the CEDAW Optional Protocol. Brunei has not ratified or signed many other core UN human rights treaties.¹⁶³

The CEDAW Review Committee noted that in their opinion the principles of the Convention do not run counter to the fundamental principles of Islam, a stance Musawah (an organisation that advocates for equality and justice in Muslim laws) supports. Musawah challenged the assumption underpinning Brunei’s CEDAW reservations by advocating that diversity of opinion has been well accepted and celebrated in Islamic jurisprudence and means there is not a unified, monolithic “divine law.”¹⁶⁴ Moreover, Brunei’s codified Islamic laws are not God-given *per se* but are adopted by men serving on committees that means they are “man-made” and can change to be equal and just.¹⁶⁵ This could better reflect Quranic values of “equality, justice, compassion and mutual respect”¹⁶⁶ and correspond with contemporary human rights principles. Brunei’s Religious Council, which is led by the Sultan, rejects reasoning of this type, insisting that traditional conservative Shafi’i school jurisprudence and textualist interpretation do best embody Allah’s laws. Therefore, it is only through the Religious Council’s interpretations of Islam that Islamic-compliant gender justice can be achieved.

Brunei has taken no steps to include the principle of gender equality into its Constitution, and there is no definition of discrimination in line with Article 1 of CEDAW contained in any national legislation. There are many positive dimensions of women’s lives in the Sultanate, especially in the social and economic fields, but Brunei’s CEDAW reservations give rise to concerns on a range of gender equity issues. Outlined are both dimensions: achievements and concerns.

As already noted,¹⁶⁷ by tradition, women in Brunei always participated in the economic and agricultural life of their communities, and this continues especially in commerce and professions. In 2012, it was reported that women in Brunei were the third highest paid in the world,¹⁶⁸ and Deputy Minister Adina positioned Brunei 20th in the world rankings in terms of female economic participation in the workforce with “equal rights and opportunities in education, training, healthcare, employment, business, ownership of assets, benefits and citizenship.”¹⁶⁹ Women have equal access to University (without fees), and 70% of undergraduates are women. Women also comprise 50% of the civil service, yet the highest post attained is deputy minister. They can also join the armed forces but cannot serve in combat positions. Crown Princess Pengiran Anak Sarah set an example, serving as an army

https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-8&chapter=4&clang=_en#EndDec

¹⁶² Reservations to Article 9.2 and Article 29.1.

¹⁶³ Treaties not signed include: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights; and International Convention of the Elimination of all Forms of Racial Discrimination. Not ratified are The Convention of the Right of Persons with Disabilities; and the Convention against Torture and other Cruel inhuman or Degrading Punishments.

¹⁶⁴ “Musawah Thematic Report on Muslim Family law: Brunei Darussalam,” 59th CEDAW Session, October 2014.

¹⁶⁵ “Musawah Thematic Report on Muslim Family law: Brunei Darussalam.”

¹⁶⁶ “Musawah Thematic Report on Muslim Family law: Brunei Darussalam.”

¹⁶⁷ “Musawah Thematic Report on Muslim Family law: Brunei Darussalam.”

¹⁶⁸ Rabiatal Kamit, “Brunei Women third highest paid in the world,” *Brunei Times*, 4 July 2012.

¹⁶⁹ Adina Othman, “Moving Forward – Women in Brunei Darussalam.”

cadet in 2009, and in 2010 she graduated, with honours, from the University of Brunei Darussalam.

In the private sector, women make up 60–70% of the middle management,¹⁷⁰ but there are few CEOs or women in “top-line position in the government.”¹⁷¹ Ain Bandial observed that there is an unbalanced approach in senior levels of decision-making: “when we talk about women’s issues it is the men making the decisions about them ... so there needs to be more representation in the decision-making processes in Brunei.”

In 2011, the Sultan decreed there would be maternity leave of 105 days for women with his government paying the first five weeks of salary and then eight weeks by the employer.¹⁷² In the workforce, women have equal access to incentive schemes and financial assistance and their involvement in Information Communication Technology (ICT) is encouraged by the Sultan.

Brunei’s CEDAW reservations allow a series of conservative Islamic practices and traditions to continue in family matters with discriminatory consequences for women in Brunei. These include the need for women to have permission of a *wali* (male guardian) for marriage to be lawful,¹⁷³ which restricts a woman’s right to freely chose and marry on equal terms.¹⁷⁴ The age of marriage varies according to gender and ethnicity,¹⁷⁵ and whilst there is no reliable data on under-age marriages the Penal Code makes lawful intercourse where the wife is 13 years old.¹⁷⁶ Marital rape is not criminalised unless the wife is under 13 years, nor is it criminalised in the Syariah Penal Code (2013). The UN High Commissioner for Human Rights held that “ensuring that women have full autonomy over their bodies is the first crucial step towards achieving substantive equality between women and men.”¹⁷⁷ In response, the Attorney General’s chambers said there were no plans to amend the rape laws, and police have confirmed that no investigation occurs for reported allegations of spousal rape.¹⁷⁸ Polygamy of up to a maximum of four wives is permissible with court permission for Muslim husbands.¹⁷⁹ The Sultan and his two brothers had polygamous marriages, so indirect support by royal “example” means there can be no public opposition to it, unlike in Muslim majority Indonesia where women’s groups meet to publicly denounce and protest against polygamy. CEDAW

¹⁷⁰ Hakim Hayat, “Brunei women lucky, but still need more work to raise gender equality,” *Borneo Bulletin*, 17 December 2017.

¹⁷¹ Hayat, “Brunei women lucky, but.”

¹⁷² Siti Hayar, “Maternity Leave: government to assist the private sector,” *Borneo Bulletin*, 5 January 2011.

¹⁷³ Islamic Family Law Order 2000. This is not a Quranic requirement.

¹⁷⁴ Musawah reports that as the conservative interpretation of Islam has increased, along with influences from Arabia, the *wali* concept is now culturally, but not legally, extending to a norm that unmarried women need their father’s or brother’s consent to leave the home. “Musawah Comprehensive Fact-Sheet on Muslim Family Laws: Brunei Darussalam,” submitted to 59th CEDAW Session, October 2014.

¹⁷⁵ Muslim girls can marry at 16, Muslim boys at 18, although this can be lowered by two years with consent of both sets of parents. Non-Muslim girls can marry at 14. Marriage Act Cap 76, s3A.

¹⁷⁶ Penal Code Cap 22, s375.

¹⁷⁷ Committee on the Elimination of Discrimination Against Women, “General Recommendation on Women’s Access to Justice,” 23 July 2015, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf.

¹⁷⁸ Zareena Amiruddin, “Marital rape: Are Women in Brunei protected from it?” *Brunei Times*, 13 August 2010.

¹⁷⁹ Islamic Family Law (2000) s23. The court requires that there are just and reasonable grounds and the husband has the financial means to provide for addition wives and children.

found that existing wives frequently had not given permission, nor were inadequate provisions for wives and children investigated.¹⁸⁰

Men in Brunei can unilaterally pronounce divorce from a wife by one and to three *talaqs* (pronouncements or repudiations) and register it, whereas a wife cannot. She must apply to the Syariah Court for a divorce and while several forms of divorce are open to her, when the husband does not consent to the divorce the process can be lengthy and expensive. A mother does not have a right to guardianship of her children and will lose custody if she remarries after a divorce. Inheritance laws are unequal as a wife inherits half the portion of a male, and wives in a polygamous marriage share the portion. Female Genital Mutilation (FGM)/female circumcision is prevalent and performed in government hospitals. The Ministry of Religious Affairs declared circumcision for Muslim women (*sunat*) necessary in Islam, but as it is more usual for removal of the hood of the clitoris (Type I per World Health Organization classification) Brunei submits it is not FMG. Lastly, under the Brunei Nationality Act, female citizens married to non-nationals cannot pass on citizenship to their children, even though the same restrictions do not apply to men. The CEDAW Committee recommended revision of the legislation to ensure citizenship is acquired in an equal manner regardless of the parent's gender.

Syariah Penal Code Order (2013) was perhaps the most controversial step the Sultan took in his Islamization agenda for a *z'ikir* nation. Although justified by MIB and historical tradition there was not previously any widespread implementation of *hudud* penalties of amputation, stoning, executions, and whippings, or *qisas* (retaliation) and *diyat* (blood money) for homicide and bodily injury. Without setting out details on each gender discriminatory provision in the Order, there are general principles in the Order that warrant mention. For example, women are disqualified from being witnesses for certain offences (*hudud* offences); their testimony is half that of a man's when a number of eyewitnesses are required; and they receive half the financial compensation given to a male victim for offences against the person and homicide (*diyat* or blood money rules). There are also offences that apply to women only, such as disobedience of a wife¹⁸¹ and when an unmarried woman leaves the custody of her parents/*wali*/guardian. Because there is no age limit given, Musawah argues it indicates women are perpetual minors.¹⁸² The ICJ expressed "grave concern" that some offences, including *z'ina* (adultery), disproportionately affect women who are at a higher risk of conviction for extramarital relations.¹⁸³ Consensual same-sex conduct is criminalised, and although imprisonment and not the death penalty is prescribed for lesbian acts,¹⁸⁴ the criminalisation is in contravention of international standards. The International Gay and Lesbian Human Rights Commission expressed concern that morality offences in the Order "would disproportionately

¹⁸⁰ Syazwani Hj Rosli, "MKM hosts legal talk on polygamy, spousal rights," *Borneo Bulletin*, 17 March 2017.

¹⁸¹ See: *Islamic Family Law* Cap 217. Section 130 creates a criminal offence and s61 and s90 cover other family law consequences.

¹⁸² "Musawah Comprehensive Fact-Sheet on Muslim Family Laws: Brunei Darussalam," submitted to 59th CEDAW Session, October 2014.

¹⁸³ Committee on the Elimination of Discrimination Against Women, "Concluding Observations on the combined initial and second period reports of Brunei Darussalam," 21 August 2017.

¹⁸⁴ Syariah Penal Code Order (2013), s 92. The maximum penalty for *musabaqab* (physical activities between two women with one party a Muslim) is 10 years' imprisonment. *Linat*—defined as acts done against the order of nature—applies to any person (whether Muslim or non-Muslim) with the maximum penalty being death.

impact mostly on women, LGBT people and anyone who does not conform to strict norms on gender and sexuality.”¹⁸⁵

Conclusion

Unlike most other monarchies, the role for Brunei’s Sultan is not one of symbolism and ceremony. As this article has highlighted, royal authority is absolute and covers all aspects of decision-making, law, and religion. Although the Constitution and national ideology of MIB reject a female monarch, and female leadership is tokenistic in its advisory Councils, the Sultan has power to change all of this. Just as the Sultan of Jogjakarta used his prerogative powers to equalise succession, Sultan Bolkiah could use the authority he has to “amend and revoke” the patriarchal provisions of the Regency and Succession Proclamation and adopt CEDAW recommendations by embodying principles of gender equality in the Constitution.

Instead of appointing a few women to the LegCo and Executive Council, where they hold position “at his pleasure” and have legal restrictions on what can be discussed, the Sultan could embrace genuine female participation. By ending emergency orders and allowing the Abode of Peace to hold national elections in which women could vote and stand for office, he would in fact embody the Islamic notion of consultation, *shura*. The Prophet consulted women and did not limit his counsel on gender lines. It could be timely as Brunei faces an uncertain future given its dependence on oil and gas reserves. The current effect of paternalism for women in Brunei goes beyond the denial of a vote and genuine participation in government. It restricts what information they can access, what organisations they can join, and how to practice their faith.

MIB ideology was designed to legitimise current practices on the basis that these stretch back in a continuum of 600 years. Leaving aside the argument that this “continuity is largely fictitious,”¹⁸⁶ past practice and tradition cannot be the ultimate test for what institutions and what practices occur today. If it were, Brunei would still have slaves, would have no Syariah courts, or police, and only nobles could own land.¹⁸⁷ Modern Brunei is markedly different from the Brunei of the early Sultans and the selective use of some components of that distant past to legitimise every aspect of current governance is open to question and scrutiny in the twenty-first century. Until it does, Brunei will remain an anachronism. Using an antiquated model of rule by “God’s shadow on earth” the nation is out of step with its Muslim, and non-Muslim neighbours in Asia. That it is able to do this in the twenty-first century is, in Horton’s view, simply because “the regime remains wealthy enough to buy domestic apathy and international silence on such matters.”¹⁸⁸

¹⁸⁵ IGLHRC, Submission to CEDAW: “Discrimination and Violence Against Women in Brunei Darussalam on the Basis of Sexual Orientation and Gender identity,” November 2014.

¹⁸⁶ See: Talib, “A Resilient Monarchy,” 144.

¹⁸⁷ All commenced during the Residency era. See: Black, “The Stronger Rule,” 102–104.

¹⁸⁸ A.V. Horton, “Brunei in 2004: Window-Dressing an Islamizing Sultanate,” *Asian Survey* 45, no. 1 (2004): 185.