

THE DISCOURSE OF PROTECTION AND THE ORANG ASLI IN MALAYSIA

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The Aboriginal Peoples Act of 1954 is arguably the most important piece of legislation governing the lives of the Orang Asli in Malaysia today. This law governs all aspects of the Orang Asli's lives, including land rights, education and who can be defined as Orang Asli. This law effectively sets up the Orang Asli as wards of the state and thus limits their rights as full citizens. In this paper, I trace the formulation of this law over time, highlight how the discourse of protection has been a central theme in the law and how it frames the Orang Asli-state relationship. The discourse of protection provides justification for state policy regarding the Orang Asli and becomes a stand-in for control and power over the community. The Aboriginal Act was first drafted to protect the Orang Asli from exploitation and cultural contact with outsiders who were perceived as detrimental to the community. In this framing, the Orang Asli were labelled as 'primitives' and 'simple' people who needed protection. Later, during the communist insurgency (1948–1960), the government viewed the Orang Asli as a potential security threat in need of protection from the subversive ideology of communist guerrillas. In the post-independence era (1960s–present), the focus has shifted from one of protection to 'advancement' of the community. The Orang Asli are now framed as 'backward', 'anti-development', and needing to be brought in line with the nation's ambitious economic development agenda and aspirations of modernity. I argue that the Orang Asli are trapped between a protectionist law, which positions them as wards of the state with limited autonomy, rights and control over their resources, on the one hand, and the post-independence policy of hyper-development, under which they are deemed to be failed subjects, on the other hand.

Keywords: Orang Asli, indigenous, Malaysia, protection, Aboriginal Peoples Act

INTRODUCTION

In this paper, I trace the discourse of protection that has been the basis of government policies regarding the Orang Asli from the colonial to the postcolonial period. The Aboriginal Peoples Act of 1954 (Revised 1974), also known as Act 134, is arguably the most important piece of Malaysian legislation that governs the lives of the Orang Asli, the indigenous peoples of Peninsular Malaysia. This Act was inherited from British colonial rule, and its precursor, the Perak Aboriginal Tribes Enactment, was first instituted in 1939. The Act covers

most aspects of the Orang Asli's lives, including land rights, education, security and who can be defined as Orang Asli. Initially created with the benevolent aim of protecting the Orang Asli, this law, as many scholars and Orang Asli leaders have argued, is paternalistic in nature and in fact, further disadvantages this minority group (Nicholas and Baer, 2007: 120). As one Orang Asli scholar describes it, "The tone of the legislation is paternalistic, with the government in the position of parents to the Orang Asli children" (Dentan et al., 1996: 70). The Act effectively sets up the Orang Asli as wards of the state, which thus limits their rights as full citizens of Malaysia.

Although most discussions concerning this law focus on the fact that the Act 134 was a response to security needs during the Emergency Period, this essay examines the development of this law in its earlier form: the 1939 Aboriginal Tribes Enactment for the State of Perak. The 1954 law, which was initially referred to as the Aboriginal Peoples Ordinance (1954) and later revised as the Aboriginal Peoples Act (1974), was essentially an adoption of the 1939 Enactment. The earlier law, based largely on recommendations by H. D. Noone, a field ethnographer and curator for the Federated Malay States Museum Department, attempted to protect the Orang Asli's way of life (Noone, 1936). In this essay, I describe the Orang Asli state-relationship as it has developed from the colonial to the postcolonial period and examine how certain perceptions of the Orang Asli embedded within the cultural and political-economic context of the time shaped the government's attitude towards the Orang Asli. I highlight how the discourse of protection provided justification for changing state policy regarding the Orang Asli. In other words, the discourse of protection provided the rationale for government intervention and control over the community.

In the first part of this paper, I describe how the Enactment was first drafted during the colonial period to protect the 'primitive' and 'simple' Orang Asli from exploitation and cultural contact with outsiders who were seen to be detrimental to the community. Later, during the communist insurgency (1948–1960), the government viewed the Orang Asli as a potential security threat that needed to be protected from the subversive ideology of communist guerrillas. In the post-independence era (1960s–present), the state's rhetoric shifted from one of protection to 'advancement' (development) of the community. Now, the Orang Asli are framed as 'backward', 'anti-development' and needing to be brought in line with the nation's ambitious economic development agenda and aspirations of modernity.

I argue that the Orang Asli are trapped between a protectionist law that positions them as wards of the state with limited autonomy, rights and control over their resources, on the one hand, and the post-independence policy of hyper-development, under which they are deemed to be failed subjects¹, on the other

hand. The Orang Asli's perceived failure to fit into the majority's model of development feeds into a vicious circle, which reinforces the idea of the Orang Asli as needing guidance and protection and thus further entrenches their position as wards of the state.

COLONIAL LEGACY AND LAW

Many scholars view modern states as direct descendants of colonial regimes that have continued colonial practices in their exercise of power in controlling their populations (Pels, 1997; Ludden, 1992; Dirks, 1992). Others studying the state have critiqued the use of the colonial-native framework in analysing modern state-citizen relationships (Ong, 1999; Young, 2004; Ho, 2004). They question the usefulness of the 'postcolonial' framework of analysis in this transnational period in which modern states have taken on many different forms. Ong (1999: 35), for example, suggests that countries like Malaysia are in the process of constructing 'alternative modernities' based on new relations with their populations and the rest of the world. Patricia Seed, in examining historical continuities between colonial rule and modern states in the Americas, suggests that this continuity continues to influence not only state rule but also how indigenous movements frame their rights discourse. However, she observes that in Asia, "The English impact upon national systems of governance thus appears to be fading in regions where colonial rule began only in the past century" (Seed, 2001: 7). In her observations of India, she argues that the "rapidly growing middle classes in India currently seem to be altering the nation's central political directions in ways that cannot be understood from the vantage point of its colonial past".

In this essay, I show that this is indeed not the case in Malaysia. The assemblages of colonial rule continue to influence present day policies and politics in Malaysia. In contrast to Seed and others who see a direct continuity between colonial and modern state rule, I argue the colonial legacy leaves not only traces that inadvertently emerge from the background over time but also effects that continue to be selectively drawn upon and reinterpreted. For example, a law inherited from the colonial era may be identically codified in the postcolonial era, but its practice is interpreted according to the political-economic context of the time. The Aboriginal Enactment, first passed during the colonial period, takes on multiple forms in its implementation within different political-historical timeframes. I explore how the State (colonial and postcolonial) selected different images of the Orang Asli and different interpretations of 'protection' to justify their own agenda.

In this essay, I also highlight how the roles of individuals in creating these laws are also important in understanding their formulation and implementation. Colonial law-making, as Sally Engle Merry argues, "is made up of both: chance conjunctures of particular individuals and broad economic, political and cultural forces" (Merry, 2000: 6). Here, I pay particular attention to brothers Pat and Richard Noone, both colonial officers in charge of the Orang Asli during different time periods. Pat Noone contributed to the drafting of the Perak Aborigines Enactment in 1939, which later was adopted in 1954 as the Aborigines Ordinance (and later known as the Aboriginal Act) by his younger brother, Richard Noone as Adviser on Aborigines (Leary, 1995: 34, 97). I explore their personal relationships with the Orang Asli community as well as the historical context foregrounding their service. 'Colonial transformations,' as eloquently summed up by Merry, "[comprised] a fragment of global processes of imperialism, capitalist expansion and transition to modernity but it was also the product of actions of particular people who found themselves there at the time" (Merry, 2000: 6). This essay explores this intersection of macro-structural processes and micro-contingencies with regard to how laws are created and interpreted.

THE 'WILD RACE' (COLONIAL ERA)

Stemming back to the days of Victorian anthropology and the influence of social evolutionism, early writings on the Orang Asli placed them close to the bottom of the evolutionary ladder. This dominant social theory of the day, later known as Social Darwinism, supported the sense of racial superiority that western Europeans had towards the rest of the world, especially areas of their colonial expansion. The Europeans considered themselves the most evolved of humankind and therefore the most superior; they were the epitome of civilisation. This 'racial ideology' justified 'the forward march' into Asia and Africa to bring civilisation into these 'dark' continents in the last quarter of the 19th century (Hirschman, 1986). The idea of 'the white man's burden' reflected a Christian moral imperative for the civilised nation to guide the less civilised societies in seeking enlightenment.

It was during this era that scientific expeditions with ethnographers and naturalists were commissioned to travel to many 'wild' and 'exotic' places to seek out and study the uncivilised races. As with other surveys during this period, these expeditions had the dual purpose of seeking scientific knowledge and providing useful information about the natives for the colonial enterprise. There seemed to be considerable scientific interest in the aborigines of the Malay Peninsula at the time, as they were "representative of one of the wildest races of mankind" (Skeat, 1902: 125). Studies were conducted by scientists and naturalists

from England and by colonial officers already stationed in the region who had a keen interest in anthropology. These include detailed anthropometric studies (e.g., Knocker, 1909; Skeat, 1902) as well as studies that documented the different groups' habitat, arts, rituals and belief systems (e.g., Bourien, 1865; Evans, 1918; Skeat and Bladgen, 1906; Schebesta, 1927)². Following Henry Morgan's three stages of social evolution, the aborigines were categorised by some as 'savages' or referred to as Semang, Sakai, Jacoon and Orang-Utan, among other names, in these documents. In a report written by Alfred Russell Wallace in 1865, he describes the 'savages' as less civilised than the 'Mohametan' Malay races. According to Wallace, the 'wild tribes' "wear the scantiest clothing, often of bark; their only manufactures are a few weapons, canoes and rude huts; but all are more or less settled and practice agriculture, so that they are not at the lowest stage of barbarism" (Wallace, 1865: 201–202). Another report from the same year describes "[t]he life of the savage... are, in reality, nothing but a condition of misery, imbecility and stupidity" (Bourien, 1865: 72).

On the whole, reports on the Orang Asli at this time seem to ignore their early history of trade and their important place in the state polity of the Malay Peninsular (see Andaya, 2008). Instead, an image of the Orang Asli as primitive and simple-minded emerged. They were constructed as a society that was cut off from the rest of the world, living far away in the jungle in their 'primitive' ways. In actuality, the Orang Asli played an important role in trade and governance in the region, and alliances with the Orang Asli were much sought after by the Malay settlers (Andaya, 2002: 23–48; Edo, 2002: 137–159). During this time period up through the early 20th century, the Malays depended on the Orang Asli as their primary source of forest products such as rattan, resin, gutta percha and sandalwood for international trade (Andaya, 2008: 204). In some parts of the region, the Orang Asli had important leadership roles and at times even oversaw Malay subjects (Nicholas, 2000: 74–75). Indeed, they played an important role in the formation of the Malaccan empire in the 15th century (Andaya, 2002). In Negeri Sembilan, the descendants of the Orang Asli, referred to as Biduanda Waris, held an esteemed position in the administration of the region from the 16th century (Nicholas, 2002: 75; Wong, 1975). On the other side of the equation was a history of violence; Malays were reported to have raided Orang Asli villages and captured them for slaves (Endicott, 1983).

Beyond the 'scientific' inquiries, there was not much interest in the aborigines from government officials of either the Straits Settlement or the Federated Malay States in the late 19th and early 20th centuries. There were some in the colonial administration who felt that the government needed to pay more attention to the aborigines. Skeat and Bladgen (1906), in the preface to their book *Pagan races of the Malay Peninsula*, admonished the British colonial government for their lack of interest in studying the natives under their rule. They pointed out that apart

from the scientific value of such investigations, it was important for the colonial government to study the "the peculiarities of the alien and less civilized races committed to their care".

The reason for the government's lack of interest was a practical one. On the whole, British administrators were more preoccupied with understanding the larger Malay population with whom they had more interaction, particularly the Malay elites. The Malays were initially described as 'lazy natives' (Syed, 1977), but later they were considered 'nature's gentlemen' to be groomed for administrative duties (Hirschman, 1986: 343). The Orang Asli, in contrast, were viewed as the less civilised group; although there was some interest in them as an 'exotic', 'primitive' community, they were not considered important subjects that should have a voice in governance. They were more an object of intellectual curiosity than of administrative interest. While the Malays were the direct subjects of the civilising mission, the Orang Asli were left alone and, in fact, protected from the onset of civilisation.

THE NOBLE SAVAGES

The one office in the British civil service with an interest in the Orang Asli during the early part of the 20th century was the Federated Malay States Museum Department. In the late 1920s, in part due to lobbying by interested researchers such as Skeat and Bladgen (1906), it was decided that more work on the Orang Asli was needed, and a full-time position was advertised for a field ethnographer to be based at the Taiping Museum. I. N. H. Evans, the curator, who had also been one of the pioneers in Orang Asli research, was retiring, and in 1930, a young anthropologist, Herbert Deane 'Pat' Noone, was recruited directly after graduating Cambridge University in England to eventually take over his position. In the following, I discuss some details of Pat Noone's personal life³ to understand the context of his relationship to the Orang Asli and the rationale behind the formulation of the Aboriginal Peoples Enactment.

The opportunity to study the aboriginal people of the Malay Peninsular was a dream come true for the young and adventurous Noone. Pat Noone, as he was more popularly known, was born in India in 1907. His father, H. V. Noone, worked with a British merchant company in India and, upon retirement, moved back to Europe. He was an amateur archaeologist and attempted to establish himself as a scholar in the field. As children, Pat Noone and his siblings were exposed to a world of archaeological digs and took multiple trips to museums (Noone and Holman, 1972: 3).

Pat Noone was only 23 and a recent graduate of Cambridge University with a double first-class degree in Anthropology and History when he was offered the field ethnographer position. His family, especially his father, was equally if not even more enthusiastic about his new adventure. According to Richard Noone, Pat Noone's brother, their father saw in Pat the realisation of the dream of academic fame that he himself was not able to achieve. "My father was certain he would be famous", Richard Noone writes in a biography of his brother. "In Pat he saw the fulfilment of his own frustrated dreams of attaining distinction as a scholar" (Noone and Holman, 1972: 6). This insight is important to help understand Pat Noone's drive to protect the Orang Asli.

With this sense of adventure and a family expectation of making a great discovery, Pat Noone set out for his new position as field ethnographer for the Federated Malay States Museums Department. At the time of Pat Noone's appointment, little research work on the Orang Asli had been conducted, especially not in the more remote, interior region of the Malay Peninsular. Some earlier researchers, such as I. N. H. Evans, Noone's boss and curator of the museum, had done work in the highlands, but there remained a vast area left unexplored. Noone was interested in studying the 'aboriginal block', which comprised the main mountain range that serves as the backbone to the elongated peninsula (Noone and Holman, 1972: 5-7). Much of the area was remote and inaccessible except by foot through thick forest areas and mountainous regions.

Young, enthusiastic and ambitious, Noone carried out many expeditions into this region during his tenure. Noone spent much of his time with the Temiar tribe in the Perak-Kelantan border in particular. According to his brother's memoir, Noone was so dissatisfied that the Temiar were still hiding secrets from him that he decided that marriage was a way into their 'inner councils' and to 'reach their hearts' (Noone and Holman, 1972: 28). He married a Temiar woman by the name of Anjang, the niece of a shaman. Marriage indeed opened up the Temiar world for Pat Noone. He was not just the white man who protected them; he was now kin. The Temiar referred to him as 'Tata', a title meaning 'grandfather' that is usually reserved for the respected elders in the community.

In letters to his family, Noone conveyed a strong sense of obligation towards the Temiar. A shaman had prophesied that he would be a saviour to the community, a premonition that he appears to have taken seriously (Noone and Holman, 1972: 67). At one point, he found that there was gold in Ulu Kelantan⁴, but he intentionally omitted any reference to this in his report to the Kelantan British Adviser. "I am loath to say anything", he confided to his family, "as I don't want the Temiar to lose their territory. These people look on me as a messiah, and I feel that my duty is towards them...My love for them grows, and in this respect I feel I am fulfilling my obligation to anthropology (Holman, 1958: 22)". Noone

continued to be fascinated with the Temiar from an academic standpoint. He thought of them as a 'utopic', balanced society and was fascinated with the community's practice of dream interpretation, which he felt was the key to the dynamics of the society. He was excited about this 'discovery'. He wrote to home, "As you see, there are many interesting avenues of research for me to follow, particularly those concerning their psychological and sociological developments. I have come across evidence which suggests I am on the verge of a discovery. I have a feeling, dear parent," he declared, "that I am about to make anthropological history" (Noone and Holman, 1972: 23). These glimpses into Noone's life, captured through his letters to family, give us an understanding of the logic behind his recommendations for the protection of the Orang Asli.

In 1936, Evans retired and Noone assumed the position of curator of the Museum Department. This gave him more flexibility in the direction of his work. One of Noone's most important published works was a report titled "Settlement and welfare of the Ple-Temiar Senoi of the Perak-Kelantan watershed" (Noone, 1936). In it, he documented the problems faced by the Orang Asli community. Noone made many important policy recommendations based on his study, and these became the basis of the laws and policies regarding Orang Asli for years to come. He was particularly concerned with the rapid expansion of mining and agricultural activities that were causing the Orang Asli to retreat further and further into the interior. Noone also discussed the effects of 'cultural contact' on the community and documented how a village that was closer to a road, thereby exposing it to outsiders, faced many health and social problems (Noone, 1936). His proposal focused on measures to protect the aborigines from the ill effects of outside intervention.

In the report, he proposed the establishment of large areas of 'controlled reserve' in Perak and Kelantan. He noted that large tracts of land where the Senoi lived were designated as a Malay Reservation, pointing out, "If we are to have a reservation, let us at least reserve the land for the people who occupy it" (Noone, 1936: 62). He knew that development was inevitable but advocated that the government consider the welfare of the Orang Asli as a priority. He wrote, "Relatively vast areas of the Peninsular are still underdeveloped jungle, so that today timber, wildlife and primitive people coincide in a single area. It seems not unreasonable that the interest of the inhabitants should have their protection as well as the timber and big game" (Noone, 1936: 73).

In 1939, Pat Noone's work led to the Perak Aborigines Enactment, which put in place the recommendations that he had made earlier in the policy document. Its provisions included the establishment of Orang Asli Areas and Orang Asli Reserves. It also created the position of 'Protector for Aborigines', with Pat Noone being the first to hold this position. The Perak Aborigines Enactment was

Noone's most important contribution and continues to have ramifications to this day. I will detail more of the content of this law later in this paper. In short, The Perak Enactment encapsulated Noone's concerns for the protection of the community and codified the position of the government as a protector of the Orang Asli. Noone's work with the Orang Asli was cut short by the Japanese invasion in 1943 and, subsequently, by his mysterious disappearance and death.

THE 'HOSTILES' (THE EMERGENCY PERIOD 1948–1960)

The communist insurgency in the post-war period marked a serious turn of interest and attention to the Orang Asli from the British administration. Whereas in the Pat Noone era, they were protected from the negative impact of culture contact and capitalist expansion into their territory, during the Emergency Period the focus shifted to protecting the Orang Asli from communist infiltration. They were in fact seen as the unwitting pawns of the Communists and a major threat to national security.

During the Japanese occupation (1943–1945), the Malayan Peoples Anti-Japanese Army (MPAJA) emerged to fight the Japanese army. The MPAJA assumed a tactic of hiding in the forest between ambushes. During this time period, they interacted on friendly terms with the Orang Asli living in the forest. After the war, the MPAJA army formed the Malayan Communist Party (MCP), which fought against the British administration for liberation. The MCP continued guerrilla warfare tactics and hid in the forest as a safe base. This period of communist insurgency is referred to as The Emergency Period and occurred from 1948 to 1960. Using tactics of intimidation and indoctrination, the MCP depended on the Orang Asli to provide them with food and sometimes shelter and information about the Security Forces. It was reported that out of a population of 50,000, a staggering 30,000 Orang Asli aided the communist guerrillas at one point during the Emergency period (Leary, 1995).

The communists tried to win over the Orang Asli by promising them a better position as the first people of the land once the British were defeated. However, the Orang Asli were not only wooed, they were also threatened and suffered a great deal of violence during this time period (Leary, 1995). They were in a difficult position of being under pressure and threatened by retaliation from both the MCP and the Security Forces. The Emergency has been described as the most traumatic period for the Orang Asli in Malaysia (Means, 1985; Dentan et al., 1996; Carey, 1976).

The government's interest in the Orang Asli at this time was no longer a scientific or romantic interest but one of critical national security. For the first time, the

Orang Asli were not only on the radar but were also the main interest of the upper echelon of the British administration. From 1947 to 1949, under the British Military Administration the welfare of the Orang Asli came under the jurisdiction of the Department of Social Welfare. In 1950, this position was replaced with the appointment of a Federal Adviser based under the folio of the Member for Home Affairs. Major P. D. R. Williams-Hunt was appointed in 1950 as the first Federal Adviser on Aborigines⁵. Along with this appointment, the small Department for the Welfare of Aborigines was created (Williams-Hunt, 1952).

The British Administration decided that one way to fight the communists was to cut off the supply of food that they procured from the Orang Asli villagers. The strategy was to round up the Orang Asli and place them into secured camps⁶. Thousands of Orang Asli were hurriedly placed by security forces into poorly designed camps with limited resources. The poor condition of the camps, the lack of food and the trauma of being plucked from traditional villages and placed into barb-wired enclosed camps caused hundreds to die from illness and mental depression (Carey, 1976: 307–308; Means, 1985). Some escaped and brought stories of the horrors of the government to the rest of the group. This strategy of displacement failed miserably and had tragic consequence for the Orang Asli community. The disastrous resettlement project increased resentment among the Orang Asli towards the British Administration, and they were now more inclined to support the communist guerrillas than ever (Carey, 1976: 307–308).

When Major Williams-Hunt died in a tragic jungle accident in 1953, John Blacking, also a trained anthropologist from England, was hired as the new Adviser on Aborigines. However, Blacking's tenure was short-lived, and he was dismissed after only two weeks because of his open disagreement with the current methods of winning over the Orang Asli, which he felt were very short-sighted. He pointed out that "purely material offers such as medicine, cigarettes and salt, are quite insufficient to win the confidence and cooperation of the aborigines" (British Archives, 1953a). Blacking's outright public questioning of the administration's methods caught the attention of politicians back in England, and as a result, a Member of Parliament questioned the State Secretary of the Colonies in the House of Commons about the effectiveness of the Malayan Government's strategy in protecting the aborigines from communist infiltration (British Archives, 1953b). The Orang Asli, previously relegated to scientific inquiries, were suddenly the subject of national security and were even debated in the House of Commons in the London.

The threat of communist insurgency had heightened during this time. The Security Forces deemed the Orang Asli to be the key to winning the battle against the 'communist terrorists'. To protect the country, the key solution was identified as the protection of the Orang Asli. A new man, Richard Noone, Pat Noone's

younger brother and fellow Cambridge alum, was brought in to coordinate the security efforts and head the Department of Aborigines. Richard Noone was specifically sought out for this position based on his previous experience working with his brother among the Orang Asli and his training in intelligence work. At the time of Richard Noone's appointment, he was the Secretary to the Federal Intelligence Committee in Kuala Lumpur⁷.

Through the work of Richard Noone and the readiness of the government to provide more resources for the Orang Asli administration, the department quickly expanded. This became the foundation of the present department with field officers assigned throughout the peninsular. Richard Noone drew upon his brother's notes on the Orang Asli to understand the psychology of the community (Noone and Holman, 1972: 168). The maps drawn by his brother also proved to be useful in locating Orang Asli villages in the interior. Richard Noone worked at winning the trust of the Orang Asli by giving them gifts (such as medicine, food and tobacco) and convincing them of the strength of the British forces.

The security forces campaign shifted to creating jungle forts instead of relocating Orang Asli into fenced camps as a way to "protect" them from communist infiltration. These jungle forts consisted of military bases located in dense Orang Asli areas. Supplies and people were airlifted into these areas. Security officers based at these sites provided surveillance to protect and monitor the Orang Asli. Basic amenities, such as a sundry shop, medical facilities and rudimentary education programs, were provided as incentives for the Orang Asli to stay within the fort area. Another successful strategy spearheaded by Richard Noone was the creation of an Orang Asli security force, called the *Senoi Praak*. This security force was not only successful in tracking down the communist guerrillas but also in convincing other Orang Asli groups to side with the British forces. The British also provided award money for Orang Asli who assisted in the capture of wanted terrorists. These measures proved to be successful at the end of the 1950, when a significant number of "hostile" Orang Asli groups and guerrillas surrendered. The protection mechanism for the Orang Asli was soon codified with the formulation of the Aboriginal Peoples Ordinance of 1954.

THE FORMULATION OF THE ABORIGINAL PEOPLES ACT

In response to security concerns, Richard Noone pushed for the creation of the Aboriginal Peoples Ordinance of 1954 (later revised as the Aboriginal Peoples Act of 1974, hereafter referred to as the Act). It closely followed the Perak Enactment of 1939 and reflects earlier concerns for the need to protect the Orang Asli. On the whole, the Enactment established the Orang Asli as wards of the state. Wardship, in a legal sense, is usually intended to protect the rights of the

disadvantaged party. A common example is that of the child-guardian relationship. A child without a parent to care for its welfare is put under the care of an appointed guardian; someone who can make decisions in the best interest of the child. The Act gives full power to the Commissioner of Orang Asli Affairs⁸ concerning the administration, welfare and advancement of aborigines. The Department of Orang Asli (initially, the Department of Aborigines) is the government body administering this law. The traditional headman of the community is relegated to matters of customs and beliefs, with the government even monitoring the appointment of the headman.

The Act begins with a definition of an aborigine. This definition includes biological as well as cultural factors. An aborigine is defined as someone who, by birth or adoption, has at least one parent from an aboriginal ethnic group, speaks an aboriginal language and follows an aboriginal way of life, customs and beliefs.

The Act (and the original Perak Enactment) includes provisions for the creation of Aboriginal Areas and Aboriginal Reserves. The Aboriginal Areas were created to accommodate mobile aborigines, whereas the Reserves were created for settled aborigines (British Archives, 1939). The provision also stipulates that an Aboriginal Area or Reserve cannot be converted into a Malay Reserve or a wildlife reserve. All matters dealing with the land (e.g., commercial dealings) in the Area or Reserves require the permission of the Commissioner; the Orang Asli cannot be involved in any land dealings (transfer, mortgage, lease or sale) without the permission of the Commissioner. Here, the power of the Commissioner is further reinforced because he is able to grant permission for commercial dealings (for example, logging) to outsiders. It is important to note that the State has full authority over these areas and can at any time revoke the status of the land. Although this provision was created with the view of protecting the Orang Asli's way of life, the Orang Asli have no authority over the land they inhabit and are subject to the discretion of the Commissioner or the State Authority. At best, as set out in Section 8, 'Rights of Occupancy', the Orang Asli are tenants at will in these designated areas: "Rights of Occupancy ... shall be deemed not to confer on any person any better title than that of a tenant at will".

In any case where the Reserve or Area is revoked, the State has the authority to order the community to move. The State Authority may at its discretion provide compensation either directly to the community or to the Commissioner to be held in trust. The Act is ambiguous on the compensation rules for land, with statements such as '*may* grant compensation' or '*as may* be necessary' compared to the compensation provision for the loss of fruit and rubber trees for which '*compensation shall*⁹ be paid'. However, it is up to the State Authority, and not to the tree owners, to decide the amount.

In making recommendations for the Perak Enactment, Pat Noone was concerned with protecting the Orang Asli community from the negative influences of the outside world and included a provision for the right of the government to prohibit alcohol from entering Orang Asli areas. In light of the communist threat, the prohibitions in the 1954 Act included written materials and films deemed inappropriate for the Orang Asli. The government also had the right to prohibit and remove any person from Orang Asli villages.

The Act does provide for the right of Orang Asli children to education; they cannot be denied the right to go to school. They are also not obliged to attend religious classes at school unless the parents or guardian (which may be the Commissioner) provide consent. An Orang Asli child also cannot be adopted by another race without the consent of the Commissioner.

Taken in total, the Aboriginal Peoples Act of 1954 effectively formalised the relationship of wardship between the Orang Asli and the State such that the Orang Asli is the ward and the State as the guardian or trustee with the responsibility to protect the welfare of the Orang Asli. This is not surprising when we understand the origins of this bill and the intentions of the people responsible for drafting the law. Though intended to protect the Orang Asli, the law, however, ultimately limits the autonomy of the community and puts them in precarious position with a change in development focus in Malaysia.

'ANTI - DEVELOPMENT' AND 'ANTI-MODERNITY' (POST INDEPENDENCE)

In the 1954 version of the law, the first sentence reads, "*An Act to provide for the protection, well-being and advancement for the aboriginal peoples of West Malaysia [25th February 1954].*" Whereas in the 1939 Enactment, the law was "to provide protection", this later version included a mandate for the "well-being and advancement" of the Orang Asli. This small but critical addition bears important ramifications for the Orang Asli. In the colonial era the Orang Asli were viewed as 'noble savages' needing protection, but in the post-independence era the state's emphasis shifted from protection to 'advancement' (development) of the community.

After Malaysia achieved its independence in August 1957, there was concern among some of the British officers that the new government would ignore the welfare of the Orang Asli (Carey, 1976: 9). In 1961, the newly independent government, through the Ministry of Interior, published a "Statement of policy regarding the administration of aborigine people of the federation of Malaya". This document reaffirms the new government's intention to continue to protect

and recognise Orang Asli rights. The document stipulated "the aborigine being one of the ethnic minorities of the Federation must be allowed on an equal footing from the rights and opportunities which the law grants to other sections of the community". It was also stated that the goal is "[the] ultimate integration [of the Orang Asli] with the Malay section of the community", but "special measures should be adopted for the protection of the institution, customs, mode of life, persons, property and labour of the aborigine people" (Department of Information, 1961: 3, 5).

However, in the 1970s and 1980s, there was a strong push for the integration and assimilation of the Orang Asli with Malay communities through an Islamisation policy. Orang Asli leaders have reported many cases where the government encourages conversion to Islam by discriminating positively in favour of those who convert (Dentan et al., 1996; Nobuta, 2009)¹⁰. For example, those who converted were more likely to get new houses or new projects for their village. Whereas the Department's 1961 official policy was based on the principle of an "open-ended integration that recognises the rights of the Orang Asli to assimilate themselves, only if they wish to do so," on the ground the situation was quite different (Mohd Tap, 1990: 461). According to Mohd Tap, a former senior officer at the Department¹¹, "In spite of this official position, there were discrepancies in the promotion of the official policy of integration carried out by individual Malay officials who took it upon themselves as being right and proper for them to impose their perceived superior culture by correcting certain behavioural patterns of the Orang Asli" (Mohd Tap, 1990: 461). It is not surprising that there is strong resentment against the Department among the Orang Asli communities (Dentan et al., 1996). Many observers have also pointed out the failure of this Department in protecting the rights of the Orang Asli.

The Department of Orang Asli's declared main focus is for the development and protection of the Orang Asli. Indeed, a slogan for the Department is to take care of the Orang Asli "from the womb to the grave" (Endicott and Dentan, 2008: 35). According to Mohd Tap and his insider's knowledge of this government agency, the "predominantly Malay officials of the Department have developed a paternalistic attitude towards the Orang Asli and see them as their wards and thus it is within their right to show the Orang Asli the proper way to live in the modern world (Mohd Tap, 1990: 461)." This 'father knows best' mentality has continued until the present. In 2011, the Department of Orang Asli Affairs changed its name to the Department of Orang Asli Development (*Jabatan Kemajuan Orang Asli*).

The New Economic Policy instated after the 1969 aftermath, which focused on equalising the disparity between ethnic groups and eradicating poverty, also had an important impact on the lives of the Orang Asli in Malaysia. There were many

projects instituted during this time to 'uplift' the Malays by focusing on land allocation and converting forest lands into agriculture plantations for the Malay farmers. As an increasing number of projects were instituted, many Orang Asli communities found their land impinged upon (Means, 1985). Some communities retreated further into the forest while others were resettled into villages closer to urban areas.

During a second wave of communist threat in the early 1970s, the intention was again to 'protect' the Orang Asli from communist infiltration. Instead of jungle forts, the Department of Orang Asli Affairs moved the Orang Asli into 'resettlement' projects where they were grouped together into new villages. The logic of protection was again utilised to resettle the Orang Asli. This program was known as the '*Rancangan Pengumpulan Semula*' (Village Regroupment Plan) or RPS. Several Orang Asli villages were grouped into one area, for which the government provided housing and basic amenities. The regroupment programs initially instated in the name of protecting the Orang Asli later became a strategy to move villagers from land areas that were needed for development projects (Nicholas, 2000: 113).

The 1980s and 1990s were periods of intense development and modernisation in Malaysia. With the expansion of urban centres, construction of mega projects, and increased natural resource extraction, more Orang Asli communities found their land affected. In some cases, communities had to leave behind their producing orchards, farms and foraging land. They were given a new area with smaller land holdings and, usually, inferior land quality and had to start over in a new place. Some communities were forced to move several times to accommodate the development and rapid urbanisation occurring around them. The law designed to protect them instead left the Orang Asli at a disadvantage because they no longer maintained secure land tenure and were not provided compensation for the loss of land and communal forest.

ORANG ASLI'S FAILURE TO CHANGE

When the Orang Asli protested against projects that resulted in the loss of land, their resistance was often framed as being 'anti-modernity' and 'anti-development' (Wan Zawawi, 1996). When they invoked their rights, the Orang Asli were reminded that the government had always done the utmost to help them and that they should be grateful for what they have been offered. "After all that the government has done for these people", one government officer lamented to me, 'how can they demand more?' According to Orang Asli leaders, their efforts to call attention to problems faced by the community seemed to have fallen on deaf ears, and for many years, the same response was given. Current government

policies and speeches continue to place emphasis on the Orang Asli's own failure to better themselves. Any attempts to discuss rights are generally countered by discourse that shifts the burden of failure onto the Orang Asli's 'mentality', 'backwardness' and refusal to embrace modernity (Idrus, 2010).

Despite the focus on Orang Asli development and the implementation of such projects, they remain the poorest population in Malaysia. Although the national poverty rate of Malaysia has declined over the years to 6.5%, 50.9% of the Orang Asli population remain below the poverty line (JHEOA, 2008). According to official statistics, 35.2%—more than one-third of the Orang Asli population—is classified as hardcore poor, compared to 1.4% nationally (JHEOA, 2008). Malaysia's infant mortality rate is at 8.9 out of 1000 live births, yet the Orang Asli infant mortality rate is at a high of 51.7. The average life expectancy for the Orang Asli is 53 years—a striking difference to the national average of 73 years (Nicholas, 2000: 27–28). In 2008, 40% out of the 4411 Orang Asli students who completed Year Six failed to continue to Form One, and out of that group, half dropped out before reaching Form Five (JHEOA, 2008). In a 2006 newspaper article, members of the Malaysian parliament were shocked to learn that as many as 247 Orang Asli settlements were without a supply of water and 335 did not have electricity¹². This illustrates the fact that Orang Asli villagers still lack amenities and that 'the Orang Asli problem' has been cordoned off for the Department of Orang Asli to handle. As a result, the rest of the population, including state leaders, was not aware of it.

The Orang Asli's unchanging situation of a high poverty rate and lack of education are often framed by the government as the group's failure to accept changes and their resistance towards development. In government policy implementation manuals, the Orang Asli are framed as people resisting development whose 'mindset' and 'attitude' need to change. Government officials reiterate this sentiment in statements and speeches. In an address to Orang Asli leaders in 2005, the Deputy Prime Minister told the Orang Asli audience, "The most challenging form of development for the government is to develop people's mindset. If people's mindsets do not change, we cannot become a developed nation". The Orang Asli are thus reminded that their failure to change will not only affect their community but also the nation. They are told that they need to change their 'traditional' lifestyle and embrace modernity. In another speech by a government minister, they were again told that the government's main challenge was to change "the attitude and mindset among the Orang Asli to accept changes in their lives". The Orang Asli audience were told, "You must have the intention to change in order to succeed otherwise all plans to upgrade your community will fail."

In this narrative, what is omitted is how government policies and laws related to the Orang Asli make it challenging for them to be self-sufficient and emerge from poverty. Not having secure land tenure and constantly moving to new resettlement areas make it difficult for the Orang Asli to move out of conditions of extreme poverty (Nicholas, 2000: 38, 39). Additionally, the implementation of development projects that were poorly carried out and not in synchronisation with the Orang Asli's needs doomed them to failure. The government protection policy leaves the Orang Asli without a voice as all matters of their lives are controlled by the state.

In this vicious circle similar to the situation in Indonesia, the Orang Asli's "failure to improve" is used, as observed by Tania Li, "as rationales for their dispossession and as the justification to assign resources to people who will make better use of them" (Li, 2007: 21). Orang Asli land is converted into, among other things, oil palm plantations, logging concessions, dams, highways and projects labelled as being for the "greater good" but that are detrimental to the Orang Asli community (Endicott and Dentan, 2008: 32). Although the Orang Asli law was enacted to protect the community, this protection mandate is now used to justify control over them.

PROPOSAL FOR A NEW LAND POLICY

In 2010, there was a proposal to amend the Aboriginal Peoples Act with regard to the land policy and structure of the Department. The recent proposal would provide land titles to the Orang Asli and allot between two and six acres of land per Orang Asli household. However, there is a catch. Not only will the land come from existing Orang Asli reserves and areas, but it must also be developed for commercial agriculture following the RISDA and FELCRA model. In this model, the existing Department of Orang Asli Affairs will be converted to a statutory body responsible for land development. Orang Asli households are expected to work on this land and only receive their titles after the crops mature. Even after getting the land titles, any transactions concerning the land will require permission from the Department of Orang Asli Affairs.

Although Orang Asli leaders have long been advocating for land titles for their community, this was far from what they had in mind. They point out that the proposal was first formulated without adequate consultation from the community. It was predetermined that the land will be developed for commercial agriculture thereby disregarding the Orang Asli's needs and wants. Existing crops, orchards and subsistence farms will be converted into a market-dependent monoculture. The Orang Asli may also lose their communal forests, which are important sources for food, medicine and other community resources. Small farmers who

switch solely to monocultures—such as oil palm and rubber—take enormous risks because they are subject to the boom and busts of the global market for those products.

Second, the area designated is reported to be less than half the total amount of land already acknowledged as Orang Asli land. It is uncertain what will happen to the rest of their customary land. Additionally, according to the new policy, only current heads of households can apply for the land. Orang Asli leaders attest that this will exclude unmarried adults, single mothers and the entire next generation.

Third, Orang Asli leaders argue that this proposal disregards the Orang Asli's unique position as indigenous peoples with special ties to the land. The land is a key part of the Orang Asli's livelihood and identity as indigenous peoples. The courts (e.g., *Sagong Tasi and Ors vs. State of Selangor and Ors 2002*) have already acknowledged this distinct relationship and recognised the Orang Asli's customary rights to ancestral land.

The Department of Orang Asli's response to the objection is to insist that the policy is in the best interest of the community. The Department continues to describe the community's objection as a rejection of modernity and as instigated by outsiders. The new policy, they insist, is for the well-being of the community. In March 2008, 3000 Orang Asli gathered in Putrajaya to protest the new land policy. Since then, Orang Asli leaders have repeatedly spoken out against the formulation of this new land policy, which impinges on their rights as citizens and threatens their way of life.

CONCLUSION

The changing perceptions of the Orang Asli have shaped the laws and policies that affect them. In the colonial era, the Orang Asli were perceived to be 'primitive savages' low on the evolutionary ladder. There was also a romantic fascination with the Orang Asli as 'innocent', 'simple', 'noble savages' needing protection from the outside world. Policies and legislation created for the Orang Asli were established to protect them and preserve their traditional way of life. During the communist insurgency, the Orang Asli again needed to be protected—this time from communist infiltration for the sake of national security. Later, in the post-independence era, the dominant motif concerning the Orang Asli switched from 'protection' to 'advancement'. The Orang Asli were perceived as needing to be developed and integrated into the mainstream community and were blamed for their 'failure' to change. The early colonial law is retained but reinterpreted to fit the political agenda of the time.

The Orang Asli are thus trapped between a protectionist law that positions them as wards of the state with limited autonomy, rights, and control over their resources, on the one hand, and the post-independence policy of hyper-development under which they are deemed to be failed subjects on the other hand. The Orang Asli's perceived failure to fit into the majority's model of development feeds into a vicious circle that reinforces the idea of the Orang Asli as needing guidance and protection. At times, the wish is the father to the thought, and this provides justification for the government to appropriate the Orang Asli's territory in the name of development and modernisation.

NOTES

1. Nicholas and Baer (2007), in a study of health care for the Orang Asli, make a parallel argument regarding how paternalistic policies towards the Orang Asli (inherited from the British colonial state) have, over time, actually worked against the interest of the Orang Asli.
2. An impressive two-volume treatise on the "Pagan Races of the Malay Peninsula", compiled by Skeat and Bladgen (1906), includes the findings of previous surveys on the different aboriginal groups throughout the Peninsula.
3. Information on Pat Noone's character was derived from the biographies of the Noone brothers written by Dennis Holman, "Noone of the Ulu" (1958) and "In Search of the Dream People" (1972) by Richard Noone with Dennis Holman. Both of these books quote extensively from letters to home written by Pat Noone, which I draw upon here as the primary source when possible. There is overlap in materials in the two books, but the second is written with the voice of Richard Noone as the author. It also has more information about Richard Noone during the communist insurgency and his quest to uncover the mystery of Pat Noone's disappearance.
4. Pat Noone brought a piece of quartz from the area for an engineer friend to analyse and found it high in gold content.
5. Major Williams-Hunt was very sympathetic towards the Orang Asli and spent a great deal of time with a Semai community in Perak. He eventually married a Semai woman.
6. This resettlement strategy was also implemented in Malay and Chinese villages. However, it seemed that the Orang Asli camps were particularly poorly organised.
7. Richard Noone was also interested in the position because he wanted to solve the mystery of his brother's disappearance (Holman, 1958: xv).
8. Currently the Director General of the Department of Orang Asli Affairs.
9. Provisions dealing with compensation: Section 10, 11, 12 of Aboriginal Peoples Act.
10. See (Nobuta, 2009) for detailed discussion on the impact of Islamisation on the Orang Asli community.
11. Mohd Tap made this statement in his dissertation written while he was a senior officer at the Department of Orang Asli Affairs.
12. Title of piece: "Shocker on plight of Orang Asli"—New Straits Times, 29 September 2005 by Chok, S. L.

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