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Titular Roman Catholic Archbishop of Kuala Lumpur v Home Minister

What is the Name of God?

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The name of God is sacred. Although God is capitalised, God is not actually God's name. God is a common noun. If God has a name, that name would be a proper noun. In Judaism, God has a name that must not be pronounced. Where the Jewish tradition has the Tetragrammaton, the Christian tradition has the Trinitarian formula: In the Name of the Father, and of the Son, and of the Holy Spirit. Again, Father, Son and Spirit are common nouns, not proper nouns. In the Islamic tradition, insofar as Allah is simply the Arabic word for God, Allah too is a common noun, not a proper noun. But that is not so in Malaysia, after the case of the *Titular Roman Catholic Archbishop of Kuala Lumpur v Home Minister*. The Court of Appeal in that case has done what generations of prophets have not dared to do: to name God, that is, to give God a proper name. In Malaysia, the Islamic God has a proper name and that God's name is Allah. As Allah is the name of the Islamic God, no one else but Muslims can use that name to refer to God. Even if one disagrees with the court's judgment, one nonetheless has to admire its chutzpah.

This chapter will begin by setting out the facts of the case (section I) and the legal reasoning in the judgments of the High Court, the Court of Appeal and the Federal Court (section II). Section III will point out the hodgepodge of legal errors in the Court of Appeal's judgment. Section IV will focus on one particularly audacious proclamation in the judgment: the Court's attempt to name God. Section III will address the legal errors, while section IV will address the theological-philosophical errors. When the secular judiciary intervenes in matters of religion, there is necessarily a degree of presumptuousness, for what do secular judges know about divine law? The job of human judges is to judge human law, not God's law. Even accepting a degree of presumptuousness that is necessarily present in such cases, the Court of Appeal judgment has surpassed even that. The Court of Appeal in this case claims to know the name of God or, more audacious still, to name God. This chapter argues that the name that the Court of Appeal has purportedly given to God is not only wrong in law, but also wrong in fact.

I. The Facts

Politically, Malaysia has adopted the Westminster system of parliamentary democracy, in common with most Commonwealth countries. Legally, Malaysia is a common law jurisdiction, again in common with most Commonwealth countries.[1] Demographically, Malaysia is a Muslim majority country. Roman Catholics are a religious minority in the country. The Catholic Church publishes a weekly newsletter called the *Herald* in various languages, including in Malay, which is the national language in Malaysia. In the Malay-language edition of the publication, the *Herald* uses the term 'Allah' as the Malay translation for the word 'God'. This translation is consistent with the translation used in the Malay-language Bible, which goes as far back as 1629 when the first printed edition of the Gospel of Matthew appeared in the Malay language.

The Roman Catholic Archbishop of Kuala Lumpur was granted a permit to publish the *Herald* by the Home Minister under the *Printing Presses and Publications Act 1984*. However, the Minister imposed a *condition* that the publication must not use the term 'Allah' to refer to God. It is this condition that was the subject of litigation in this case. The Archbishop filed for judicial review of this ministerial decision. In the Malaysian legal system, judicial review of executive action is carried out based on standard common law principles in administrative law. Most immediately, this case raises the administrative law question of whether the Minister has the power to impose that condition under the *Printing Presses and Publications Act 1984*.

Beyond administrative law, this case also raises constitutional law issues, as the Archbishop had argued that the condition infringes, inter alia, the constitutional right of Roman Catholics to the freedom of religion. The key constitutional provisions that are directly relevant to this case are reproduced below for ease of reference:

> Article 3
>
> 3(1): Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.
>
> …
>
> 3(4): Nothing in this Article derogates from any other provision of this Constitution.
>
> Article 11
>
> 11(1): Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.
>
> …
>
> 11(4): State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.
>
> 11(5): This Article does not authorize any act contrary to any general law relating to public order, public health or morality.

As a matter of administrative law, the Archbishop's argument was that the Minister did not have the power to impose the impugned condition under the *Printing Presses and Publications Act 1984*. As a matter of constitutional law, the Archbishop's argument was

[1] On the history of the common law in Malaysia, see J Neoh, 'Legitimacy of the Common Law in Post-colonial Malaysia' [2010] *LAWASIA: Journal of the Law Association for Asia and the Pacific* 59.

that the impugned condition infringes the constitutional right to the freedom of religion that is protected under Article 11(1) of the Constitution. If either of these arguments was correct, then the condition would be null and void, either as a matter of administrative law or as a matter of constitutional law. The impugned condition, which is attached to the publication permit, is that the Catholic Church cannot use the word 'Allah' as the Malay-language translation for the word 'God' in its newsletter.

II. The Judgments

The judicial review application was filed at the High Court. The matter was heard at the High Court by a single judge, who ruled in favour of the Archbishop. The government appealed. The matter was then heard at the Court of Appeal by a panel of three judges, who ruled in favour of the government. The Archbishop appealed. The application for leave to appeal was heard at the Federal Court, which is the apex court in Malaysia. The application for leave to appeal was heard before a panel of seven judges, and by a 4:3 majority, the Federal Court denied leave to appeal, and the matter ended there. As the application for leave to appeal was denied, the Court of Appeal's judgment, which ruled in favour of the government, became the binding judgment.

As the Court of Appeal's judgment is the binding judgment, it will be focus of this chapter's analysis. However, for the sake of completeness, the following sections will briefly summarise the High Court's judgment (as a *prelude* to the Court of Appeal's judgment) and the Federal Court's judgment (as a *postscript* to the Court of Appeal's judgment). The High Court was overruled by the Court of Appeal. With the High Court and the Court of Appeal, we have two contrasting judgments, one in favour of the Archbishop and the other in favour of the government. The Federal Court denied leave to appeal by a 4:3 majority. With the Federal Court's split bench, we have also two contrasting positions, one refusing to grant leave to appeal and the other allowing leave to appeal.

A. Prelude: The High Court

The matter was first heard at the High Court in Kuala Lumpur before Lau J, who found the impugned condition to be illegal (under administrative law) and unconstitutional (under constitutional law). On the administrative law front, Lau J ruled that the decision maker committed numerous legal errors, including the failure to take into account relevant considerations, such as the fact that 'for 15 centuries, Christians and Muslims in Arabic-speaking countries have been using the word "Allah" in reference to the One God', the fact that 'the word "Allah" has been used continuously in the printed edition of the Matthew's Gospel in Malay in 1629, in the first complete Malay Bible in 1733 and in the second complete Malay Bible in 1879', and the fact that 'Munshi Abdullah who is considered the father of modern Malay literature had translated the Gospels into Malay in 1852 and he translated the word "God" as "Allah"'.[2]

[2] *Titular Roman Catholic Archbishop of Kuala Lumpur v Home Minister* (High Court in Malaya, Lau Bee Lan J, 31 December 2009) [12].

On the constitutional law front, Lau J ruled that the impugned condition contravened, inter alia, the freedom of religion provision in Article 11(1) of the Constitution. Lau J found that 'the use of the word "Allah" is an essential part of the worship and instruction in the faith of the Malay-speaking community of the Catholic Church in Malaysia'.[3] Although Article 11(4) does permit the government to 'control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam', that permission is narrowly circumscribed. It only allows for restrictions to be imposed on propagation – specifically on propagation to Muslims. Therefore, propagation can be restricted, but the right to profess and practise one's religion cannot. In fact, that distinction is made explicit in the express terms of Article 11(1), which states that: 'Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.' Clause (4) can only be used to restrict propagation. It cannot be used to restrict the profession and practice of a religion. Construing the right broadly and the restriction strictly, the state cannot ban the use of the word 'Allah' if it is used in the course of the profession of a religion, although the state may be able to ban it if it is used in the course of the propagation of a non-Islamic religion to Muslims. In this case, the use of the word 'Allah' is for internal worship and instruction *within* the Catholic Church, and not for propagation. That being the case, Article 11(4) cannot be relied upon to restrict the right under Article 11(1).[4]

Article 11(5) states that the freedom of religion protection under Article 11 'does not authorize any act contrary to any general law relating to public order, public health or morality'. The Home Minister sought to rely on Article 11(5) to justify the impugned condition on 'public order' grounds. The Home Minister submitted that 'the use of the word "Allah" is a security issue which is causing much confusion and which threatens and endangers public order',[5] but the Home Minister provided no supporting evidence to back up this claim. Consequently, Lau J rejected this 'public order' submission, finding that 'a mere statement by the 1st Respondent [ie, the Home Minister] that the exercise of power was necessary on the ground of national security without adequate supporting evidence is not sufficient in law'.[6] Lau J further took judicial notice of the fact that 'in other Muslim countries even in the Middle East where the Muslim and the Christian communities together use the word "Allah", one hardly hear of any confusion'.[7] In rejecting this submission, Lau J also warned that 'the Court has to consider the question of "avoidance of confusion" as a ground very cautiously so as to obviate a situation where a mere confusion of certain persons within a religious group can strip the constitutional right of another religious group', a right which is protected under Article 11(1).

B. The Three Judges at the Court of Appeal

The Home Minister appealed to the Court of Appeal. The matter was heard before a bench of three judges. The Court of Appeal overturned the High Court's judgment.

[3] ibid [15.5].
[4] ibid [18.4], [19.1].
[5] ibid [22.3].
[6] ibid.
[7] ibid [22.5].

All three judges at the Court of Appeal ruled in favour of the government. The three judges were Apandi JCA, Abdul Aziz JCA and Zawawi JCA.

It should be recalled that Article 3(1) states that 'Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation'. Apandi JCA ruled that the first prong of Article 3 'places the religion of Islam at par with the other basic structures of the Constitution'.[8] This particular reading of the first prong of Article 3 bolsters his associated assertion that the insertion of the phrase 'in peace and harmony' in the second prong with regard to the practice of non-Islamic religions is meant 'to protect the sanctity of Islam as the religion of the country and also to insulate against … any possible and probable threat to the religion of Islam'.[9] Apandi JCA interpreted the phrase 'in peace and harmony' not as supporting the freedom of non-Muslims to practise their religion, but as a limitation on that freedom: that freedom is subject to the superiority of Islam in the Federation. Hence, if the government decides that the usage of the word 'Allah' by non-Muslims would constitute a possible and probable threat to Islam, it could impose the ban consistent with Article 3(1). The threat does not have to be actual, but only possible and probable, and the relevant threat here is to Islam as a religion, not to national security or public order. Even the freedom of religion guarantee under Article 11(1) is subject to the supposed superiority of Islam under Article 3(1). In the mind of Apandi JCA, Article 3 takes precedence over Article 11 for the simple and simplistic reason that Article 3 comes before Article 11. Article 3 is '3rd in the order of precedence of the Articles that were within the confines of Part I of the Constitution', while the fundamental liberties provisions, including the Article 11 provision for the freedom of religion, 'were grouped together subsequently under Part II of the Constitution',[10] so first come, first served.

Thereafter, the tone of the judgment switched from legal analysis to theological exposition. Apandi JCA claimed that 'to refuse to acknowledge the essential differences between religions will be an affront to the uniqueness of world religions[:] due recognition must be given to the names given to their respective Gods in their respective Holy books; such as "Yahweh" the God of the Holy Bible; "Allah" the God of the Holy al-Quran and "Vishnu" the God of the Holy Vedas'.[11] He deemed it appropriate and within his area of judicial competence to go around categorising and naming Gods, including the Gods of others. How did he know the name of God? Apparently he did some research of his own: 'For completeness, I note that from a quick research on the history of the language of the Bible, it is clear that the word "Allah" does not appear even once as the name of God or even of a man in the Hebrew Scriptures. The name "Allah" does not appear, even once in either the Old or New Testaments. There is no such word at all in the Greek New Testament.'[12]

The second judge on the bench of three, Abdul Aziz JCA, went a step further in theologising this matter. According to Aziz JCA, the name Allah 'is sacred to the Muslims

[8] *Home Minister v Titular Roman Catholic Archbishop of Kuala Lumpur* (Court of Appeal, Mohamed Apandi bin Ali JCA, 14 October 2013) [31].
[9] ibid [29].
[10] ibid [31].
[11] ibid [52].
[12] ibid [51].

and is placed on the highest position and its sanctity must be protected'. Allah 'refers to "oneness" and cannot be part of the concept of Trinity of Father, Son and the Holy Ghost of the Christian faith'; Allah is 'not just a mere word or translation of the word God as described in the Herald but it is a *special name* for the Muslim's God' (emphasis added).[13] Aziz JCA then returned to the recurrent theme of confusion: 'the use of the word "Allah" … to describe or refer to God among Christian[s] would create confusion among Muslims as the concept of God in Islam and in Christianity is world[s] apart – in the former it refers to the concept of oneness of God whereas in the latter it refers to the concept of Trinity of God'.[14]

The third judge, Zawawi JCA, extended the confusing logic of confusion further. According to him, if the word 'Allah' is to be employed by Christians, 'there will be a risk of misrepresentation of God within Christianity itself … in other words, the potential for confusion is not confined only to Muslims but also to Christians'.[15] It is difficult, for me at least, to understand what exactly is confusing here. Perhaps this 'potential for confusion' is akin to the following scenario: if I call my father 'Papa', and you call your father 'Papa', there is a risk that you will be confused that my Papa is your Papa, and your Papa is my Papa, or that we have the same Papa.[16] The state therefore has to protect not only Muslims, but also Christians from confusing their Gods. To prevent such confusion, Zawawi JCA had to step in to clear the air by proclaiming *ex cathedra* that 'Allah is not the God of the Bible; Allah is a *proper name* and the only God in Islam' (emphasis added).[17] How did he know the name of God? Apparently he, too, did some research of his own – on the internet. His judgment cited the following websites:

> See: http:/www.danielpipes.org/comments/185481
>
> See: http:/www.foxnews.com/story/0.2933, 293394,00.html
>
> See: http:/www.news.com.au/story/0.23599, 222540 – 13762,00.html
>
> See: answering – islam/org/Gilchrist/Vol 2/3B html.

C. Postscript: The Federal Court

After having won at the High Court but having lost at the Court of Appeal, the Archbishop filed for leave to appeal to the Federal Court, which is the apex court in the Malaysian judicial system. By a bare majority of 4:3, the Federal Court denied leave to appeal. The Archbishop posed a total of 28 leave questions under three categories: administrative law questions; constitutional law questions; and general questions.

The administrative law questions centred on the correct test that should be applied in a judicial review application concerning the exercise of ministerial discretion. Apandi JCA at the Court of Appeal claimed to have applied a test which he called 'subjectively objective'. As pointed out in the dissenting judgment by Zainun FCJ at the Federal Court,

[13] ibid (Court of Appeal, Abdul Aziz bin Abdul Rahim JCA, 14 October 2013) [92].
[14] ibid [36].
[15] ibid (Court of Appeal, Mohd Zawawi bin Salleh JCA, 14 October 2013) [28].
[16] See further J Neoh, 'The Name of God on Trial: Narratives of Law, Religion and State in Malaysia' (2014) 18 *Law Text Culture* 198, 215.
[17] *Home Minister v Titular Roman Catholic Archbishop of Kuala Lumpur* (Court of Appeal, Mohd Zawawi bin Salleh JCA, 14 October 2013) [26].

the idea of a 'subjective test' is 'old hat', while 'the term "subjectively objective" is paradoxical since they are two different concepts which negates one another'.[18] That then leaves only one correct test that should have been applied: the objective test. There is no such thing as a 'subjectively objective' test. The Court of Appeal has 'gone on a frolic of its own in applying this hybrid test'.[19] Zainun FCJ, dissenting, would have granted leave on this basis. The majority in the Federal Court affirmed the objective test as the correct test, but they refused to grant leave to appeal, as the majority claimed that although the Court of Appeal said it was applying the 'subjectively objective' test, it actually (perhaps even inadvertently) applied the correct test, ie, the objective test.[20] If that were the case, then it actually gives rise to a different problem, which was pointed out by Zainun FCJ in her dissent: 'the form and substance of the [Court of Appeal] judgment do not add up'.[21] The Court of Appeal said it was doing one thing, but it was actually doing another.

One of the key constitutional law questions that were posed by the Archbishop in the leave application concerned the correct interpretation of Article 3 of the Constitution. The Court of Appeal held that Article 3 of the Constitution, which makes Islam the religion of the Federation, takes precedence over the fundamental liberties provisions. The majority at the Federal Court denied leave to appeal these constitutional law questions on some technical procedural grounds, which were themselves open to question, but I shall wade into this particular procedural controversy in this chapter.[22] Dissenting, Malanjum CJSS would have granted leave to appeal, not least because 'it is disquieting in this case to note that in determining the ranking of importance of the various Articles in the FC [Federal Constitution] the Court of Appeal seems to have adopted the "first-come basis" approach'.[23] This 'first come, first served' approach to constitutional interpretation is clearly incorrect and, according to Malanjum CJSS, ought to be corrected on appeal, lest the error be perpetuated. Or as another dissenting judge, Tan FCJ, said: 'The constitutional questions should be answered by the Federal Court. They are too grave to be answered by any other.'[24]

The major issue in the general questions category concerned the theological pronouncements by the Court of Appeal judges based on their own internet research. The majority at the Federal Court refused to grant leave on this basis as they found these judicial-theological pronouncements to be 'mere obiter'.[25] Dissenting, Zainun FCJ would have granted leave to appeal as these judicial-theological pronouncements had 'escalated to a worrying level': 'the learned judges in the court below ought to have confined themselves strictly to the legal issues raised, since the question of the truth or otherwise of the disputed tenets of religious belief and faith … are all beyond the competence of judges of fact and law' – 'judges should not overreach themselves for

[18] *Titular Roman Catholic Archbishop of Kuala Lumpur v Home Minister* (Federal Court, Zainun Ali FCJ, 23 June 2014) [41], [98].

[19] ibid [99].

[20] ibid (Federal Court, Arifin Zakaria CJ, 23 June 2014) [33].

[21] ibid (Federal Court, Zainun Ali FCJ, 23 June 2014) [99].

[22] On the procedural point, see W Tay, 'The Use and Misuse of Article 4(3) and 4(4) of the Federal Constitution' (2015) 2 *Malayan Law Journal Articles* 154.

[23] *Titular Roman Catholic Archbishop of Kuala Lumpur v Home Minister* (Federal Court, Richard Malanjum CJSS, 23 June 2014) [64].

[24] ibid (Federal Court, Jeffrey Tan Kok Wha FCJ, 23 June 2014) [10].

[25] ibid (Federal Court, Arifin Zakaria CJ, 23 June 2014) [45].

we are not omniscient'.[26] Also dissenting, Malanjum CJSS would have granted leave to appeal to 'deal with the appropriateness of the learned judges of the Court of Appeal in conducting their own [theological] research via the Internet', without giving the parties 'any prior opportunity to submit on those materials obtained'.[27]

III. Legal Errors

With the denial of leave to appeal by the Federal Court, the theology-laden judgment of the Court of Appeal, which upheld the Allah ban, became the binding judgment. The Court of Appeal judgment will be the focus of analysis in this chapter. There are many errors, both of law and fact, in the Court of Appeal judgment. Let me pick off some low-hanging fruits first, before moving on to meatier issues.

To begin with, the 'first come, first served' approach to constitutional interpretation is obviously wrong. One simply has to look a few lines down from Article 3(1) to see the following provision in Article 3(4): 'Nothing in this Article derogates from any other provision of this Constitution.' This provision alone is sufficient to demolish any legal attempt to use the Article 3(1) proclamation of Islam as the religion of the Federation to qualify and restrict the Article 11(1) right to the freedom of religion. Nothing in Article 3 can be used to derogate from any other provision in the Constitution. That is explicitly stated in Article 3 itself. The numbering of the articles, which places Article 3 before Article 11, matters not one bit.[28]

Second, the Court of Appeal went on and on about Article 11(4), which allows for restrictions to be placed on the propagation of non-Islamic religions to Muslims, but that is entirely irrelevant to this case. This case had nothing to do whatsoever with the propagation of non-Islamic religions to Muslims; it was solely about Roman Catholics using a particular word in their *own* internal religious worship and instruction. While Article 11(4) is completely irrelevant to the case, Article 11(5) has some arguable relevance. Article 11(5) states that the freedom of religion protection under Article 11(1) 'does not authorize any act contrary to any general law relating to public order, public health or morality'. However, unlike Article 11(4), which allows the government to impose restrictions on propagation, Article 11(5) is not a restriction; rather, it is a clarification, and it is expressly phrased as a clarification. Article 11(5) simply makes it clear that the constitutional right to the freedom of religion is not a basis for an exemption from any *general* law relating to public order, public health or morality. Article 11(5) cannot be used specifically to restrict the right to the freedom of religion under Article 11(1). To recap, although Article 11(4) can be used to restrict the right to the freedom of religion under Article 11(1), it does not apply to the facts of this case. Conversely, although Article 11(5) arguably applies to the facts of this case, it cannot be

[26] ibid (Federal Court, Zainun Ali FCJ, 23 June 2014) [127], [128].
[27] ibid (Federal Court, Richard Malanjum CJSS, 23 June 2014) [68].
[28] For a more extensive analysis of art 3, see J Neoh, 'Islamic State and the Common Law in Malaysia: A Case Study of *Lina Joy*' (2008) 8 *Global Jurist* 4.

used to restrict the right to the freedom of religion under Article 11(1). It is a legal error to use either Article 11(4) or Article 11(5) to justify the impugned provision.[29]

Third, even assuming *arguendo* that Article 11(5) can be used to justify restrictions on the freedom of religion, it is still of no help to the government. The Court of Appeal referred to the protests that occurred right after the High Court initially ruled in favour of the Archbishop as evidence of a threat to public order, which is supposed to justify the Allah ban. These protests, which occurred after the High Court judgment, are irrelevant timewise. The material time was the time of the ministerial decision, when the Minister's delegate decided to attach the impugned condition to the publication permit. There were no protests then, and no threat to public order. The material time was not the time of the High Court decision. There were no public order disturbances at the material time when the Minister's delegate made the decision that was the subject of judicial review. To hold otherwise would be to allow one group's constitutional right to be held hostage by the willingness of another group to cause trouble: if one does not like a judicial decision in favour of a group, one could simply protest, thereby causing public order disturbances, which would then justify curtailing the rights of the group whose rights had just been vindicated by the court. That would make a mockery of the judicial process.

Fourth, Article 3(1) has two prongs: 'Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.' Hitherto, it has been widely understood and accepted that the second prong is meant to protect religious minorities, after the first prong made Islam the religion of the Federation. What the Court of Appeal did was to turn the second prong on its head by turning it from a protection of religious minorities into an imposition on religious minorities. According to the Court of Appeal, the insertion of the phrase 'in peace and harmony' in the second prong with regard to the practice of non-Islamic religions is meant 'to protect the sanctity of Islam as the religion of the country and also to insulate against … any possible and probable threat to the religion of Islam'.[30] On this errant reading of Article 3, the only way a religious minority can practise their religion 'in peace and harmony' is to practise it in such a way that pleases the majority. That is cold comfort for religious minorities. The Court of Appeal has turned a provision designed to protect religious minorities into a provision that imposes an obligation on the religious minorities to kowtow and tiptoe around the majority. This most bizarre interpretation goes against decades of settled understanding.[31]

Fifth, for the reasons that have been pointed out by Malanjum CJSS and Zainun FCJ at the Federal Court, it is legally wrong, let alone completely irrelevant, for the Court of Appeal to have engaged in the kind of pseudo-theological reasoning that it did. However, since they have done it, I shall endeavour in the next section to descend to

[29] For a more extensive analysis of art 11, see J Neoh, 'Apostasy and Freedom of Religion in Malaysia' in P Babie, N Rochow and B Scharffs (eds), *Freedom of Religion or Belief: Creating the Constitutional Space for Fundamental Freedoms* (Edward Elgar, 2020).

[30] *Home Minister v Titular Roman Catholic Archbishop of Kuala Lumpur* (Court of Appeal, Mohamed Apandi bin Ali JCA, 14 October 2013) [29].

[31] For an overview of the history of constitutionalism in Malaysia, see J Neoh, 'Snake with Two Heads: The Two Voices of the Malaysian Constitution' in S Farrar and P Subramaniam (eds), *Law and Justice in Malaysia: 2020 and Beyond* (Thomson Reuters, 2021).

their level and play their game in order to show why their pseudo-theological reasoning is faulty, which further shows why they should not have done it in the first place. Fools rush in where angels fear to tread.

IV. Theological-Philosophical Errors

Elsewhere, I have provided a political-philosophical analysis of the Court of Appeal judgment.[32] Here, in this section, I shall venture a theological-philosophical analysis of the judgment. All three of the Court of Appeal judges assert that Allah is the name of God. One judge said that 'Allah' is 'not just a mere word or translation of the word God as described in the Herald but it is a *special name* for the Muslim's God' (emphasis added).[33] Another judge said that 'Allah is a *proper name* and the only God in Islam' (emphasis added).[34] The first problem is that they have offered no analysis to justify this bold claim, so it is a bald assertion. The second problem is that it is wrong. Claiming that 'Allah' is God's name is like claiming that 'God' is God's name. It confuses a common noun with a proper noun.

The philosophical analysis of names is a subset of the philosophy of language, which is where I propose to begin the theological-philosophical analysis.[35] To do that, I have to introduce some technical terminology. A person's proper name is, usually, made up of proper nouns. My name is Joshua Neoh, which is a proper name with two proper nouns: Joshua and Neoh. If a person's proper name only has one proper noun, then that person is mononymous. European monarchs are often mononymous, like Elizabeth. Jesus is mononymous too. However, a mononymous proper name, which consists of only a proper noun, can be attached to a common noun. For example, Queen Elizabeth and Jesus Christ: Queen and Christ are common nouns. Christ is a title, just as Queen is a title. 'The Great' in Alexander the Great is, similarly, a title. His name is Alexander.

Proper names can have meanings, but the meaning of the name is irrelevant as far as the use of the name is concerned. A name refers to a person. It does not describe that person. Joshua means, roughly, 'God saves'. However, when someone calls me by my name, what matters is not the meaning of the word. They might not even know the meaning of the word 'Joshua'. They use that word to refer to me, not to describe who I am. I am not God and I have saved no one. The meaning of that name does not describe me. The meaning of a proper name does not limit or control the use of that name. Neither does the meaning of a proper name limit or control who or what it can refer to.

[32] Neoh (n 16).

[33] *Home Minister v Titular Roman Catholic Archbishop of Kuala Lumpur* (Court of Appeal, Abdul Aziz bin Abdul Rahim JCA, 14 October 2013) [92].

[34] ibid (Court of Appeal, Mohd Zawawi bin Salleh JCA, 14 October 2013) [26].

[35] For two excellent overviews of the philosophy of names and naming, see: S Cumming, 'Names' in E Zalta (ed), *Stanford Encyclopedia of Philosophy* (Metaphysics Research Lab, 2019); and G Forbes, 'Proper Names' in E Craig (ed), *Routledge Encyclopedia of Philosophy* (Routledge, 1998). The main philosophical divide in this field is between the 'sense theory' of names and the 'historical chain theory' of names. See G Frege, 'On Sense and Reference' (trans M Black) in PT Geach and M Black (eds), *Translations from the Philosophical Writings of Gottlob Frege* (Blackwell, 1980), who is the leading proponent of the 'sense theory'; and S Kripke, *Naming and Necessity* (Harvard University Press, 1980), who is the leading proponent of the 'historical chain theory'.

A proper name can have multiple referents. The same name can refer to multiple persons. A Google search reveals that there are several people currently living in the world who are called Joshua Neoh. I know of at least two persons by the name of Charles Taylor: the Canadian philosopher and the Liberian war criminal. When I refer to Charles Taylor, most people whom I speak to, unless they are simpletons, will be able to tell, from the context, whether I am referring to the philosopher or the war criminal. They will be able to match the proper name to the intended referent correctly and without fuss. As Wittgenstein states in his famous remark about the name 'Moses':

> Has the name 'Moses' got a fixed and unequivocal use for me in all possible cases? – Is it not the case that I have, so to speak, a whole series of props in readiness, and am ready to lean on one if another should be taken from under me, and vice versa?[36]

This section will argue that Allah is not a proper name for God, but *even if it is*, it is most unlikely that a person hearing the word 'Allah' will be confused as to which God the speaker is referring to. Most people, unless they are simpletons, will be able to match the proper name to the intended referent correctly and straightforwardly. It is commonplace for a proper name to have multiple referents, and it is not rocket science to figure out who the intended referent is. We do that all the time in a myriad of everyday conversations, which should put paid to the facetious worry that people will be confused when they hear the word 'Allah' as to which God the speaker is referring. The context will often make it abundantly clear. 'Allah' in a mosque refers to the Islamic God, while 'Allah' in a church refers to the Christian God. 'Allah' in the Quran refers to the Islamic God, while 'Allah' in the Bible refers to the Christian God. One proper name can refer to multiple persons and, conversely, one person can be referred to by multiple proper names. Names can co-refer to the same entity. Let's say, in some circles, I am called Joshua Neoh, but in other circles, I am simply called Neo. Both names – Joshua Neoh and Neo – can refer to the same person: me. This feature of name, too, is commonplace, and it is no cause for concern, least of all for confusion. The Christian God is sometimes called by this name, sometimes by that name and sometimes by the name 'Allah'. There is no reason to be confused on this score, for there is nothing unusual in this regard.

Even if Allah were to be a proper name for God, there is no reason to think that it will cause confusion when used by Christians alongside Muslims. But is Allah a proper name? A proper name is made up of proper nouns, which are distinct from common nouns. Proper nouns refer, while common nouns describe. The meaning of a proper noun does not matter in its use, while the meaning of a common noun does. 'Bachelor' is a common noun, and a bachelor means an unmarried man. The meaning of the word is a description of a bachelor. The description acts as a definition that limits the range of its application. Anyone, if they so wish, can call themselves Joshua, but not anyone can call themselves a bachelor without committing a linguistic mistake. A married man is, by definition, not a bachelor. A bachelor means an unmarried man, and that meaning matters. In contrast, although Joshua means 'God saves', that meaning does not matter. Someone who is not God and who has not saved anyone can still call themselves Joshua, but someone who is married cannot call themselves a bachelor. A married man who

[36] L Wittgenstein, *Philosophical Investigations* (trans GEM Anscombe) (Basil Blackwell, 1953) §79.

calls himself a bachelor is an incompetent user of the English language. If he is not an incompetent user of the English language, then he is a liar.

Allah has all the hallmarks of a common noun, not a proper noun. The word has a meaning that describes an entity. The description acts as a definition that limits the range of its application. A mere human is, by definition, not Allah, just as a married man is, by definition, not a bachelor. In the case of a bachelor, only if certain facts obtain is a particular person a bachelor. The relevant conditional facts are that one must be (i) unmarried, and (ii) a man. A similar linguistic structure applies to the word 'Allah' as well. The meaning of the word 'Allah' might be less settled than the meaning of the word 'bachelor', but that is not an impediment to the word being a common noun. Due to a phenomenon called the open texture of language, different people can employ slightly different descriptions in relation to a common noun. A degree of linguistic indeterminacy is to be expected. As Hart explains, a word will often have a core of settled meaning and a penumbra of uncertainty.[37] Let's suppose the core meaning of Allah as a common noun is, roughly, a supreme being who created the world. Those are the conditional facts. Any being that fits, or purports to fit, that description can be called Allah. One commits no linguistic mistake in calling that being Allah, be it Christian or Muslim.

It is possible for God to have a proper name, just as it is possible for anyone to have a proper name. However, not all religious traditions have given God a proper name, and it is not logically necessary for a religion to do so. It is logically possible, but not necessary, that God has a proper name. In biblical Hebrew, the common noun for God is Elohim. In addition to the common noun, the Jewish God also has a proper name, YHWH, which is sometimes known as the Tetragrammaton. That name is considered so sacred that it is not pronounced by observant Jews. 'The Tetragrammaton has revelatory significance': God naming himself YHWH is an act of divine self-revelation to the people of Israel.[38] God's revealing of his proper name to his chosen people is an expression of intimacy that forms a bond between the God of Israel and the people of Israel. Before God revealed his proper name to be YHWH, there was a common noun for the Jewish God in Hebrew, which is Elohim, but no proper noun. This example from Judaism illustrates clearly the difference between having a common noun and a proper noun for God. They are not the same thing.

By accepting Allah as a common noun, does it entail that anyone or anything can be called Allah? No. The meaning of a common noun determines the range of its application. One cannot call a mere human Allah without committing a linguistic mistake. Whether that linguistic mistake should be turned into a legal wrong is a separate matter. Abdul Aziz JCA claimed that Allah 'refers to "oneness" and cannot be part of the concept of Trinity of Father, Son and the Holy Ghost of the Christian faith'.[39] The most charitable way to make sense of this claim is to read it as saying that the meaning of the common noun 'Allah' includes the quality of oneness as part of its definitional

[37] HLA Hart, *The Concept of Law* (Oxford University Press, 2012) 128: 'Uncertainty at the borderline is the price to be paid for the use of general classifying terms in any form of communication concerning matters of fact. Natural languages [are] irreducibly open-textured.'

[38] M Byrne, *The Names of God in Judaism, Christianity, and Islam* (Continuum, 2011) 24.

[39] *Home Minister v Titular Roman Catholic Archbishop of Kuala Lumpur* (Court of Appeal, Abdul Aziz bin Abdul Rahim JCA, 14 October 2013) [92].

description. Oneness is one of its conditional facts. A being who does not satisfy, or purport to satisfy, this condition cannot be called Allah. Just as a married man is not a bachelor, so a plural being is not Allah, definitionally speaking.

As indicated earlier, due to the open texture of language, words often have a degree of linguistic indeterminacy. Some might think that the quality of oneness is part of the penumbra of the meaning of the word 'Allah', but not at the core of it. Abdul Aziz JCA seemed to think that it is at the core, so let's accept his definition *arguendo*. Even granting his more stringent description of the meaning of the word 'Allah', the Christian God still fits that description. It is a serious misunderstanding of Christian theology to think that it does not. The Trinity is called a trinity because it is three making up a unity, three-in-one. The first line of the Nicene Creed makes this point as plainly as possible: 'We believe in one God.' Therefore, even if a divine being has to be 'one' to be called Allah, per Abdul Aziz JCA, the Christian God is such a being.

V. Conclusion

A court of law is not a forum for theology. This case illustrates the dangers of secular judges playing the role of theologian and doing pseudo-theology. Why, then, did the Court of Appeal judges do it? Perhaps they did so for the following Nietzschean reason:

> The right of the masters to confer names extends so far that one should allow oneself to grasp the origin of language itself as the expression of the power of the rulers: they say 'this is such and such', they put their seal on each thing and event with a sound and in the process take possession of it.[40]

The naming of God in this case is simply an assertion of power. It is an attempt to assert dominance over a religious minority, which also explains the Court of Appeal's astonishing interpretation of Article 3. That interpretation places the freedom of religion of the minority at the sufferance of the majority. It sends a message to the minority to know their place. By putting their seal on the word 'Allah' and assuming exclusive possession of that word, it tells the religious minority who the master is in Malaysia.

For the Catholic minority in Malaysia, who have been deprived of their right to call their God 'Allah', there is not much that they can do, other than to take consolation in the following lines from Shakespeare:

> What's in a name? That which we call a rose
>
> By any other name would smell as sweet.[41]

[40] F Nietzsche, *On the Genealogy of Morals* (trans D Smith) (Oxford University Press, 1996) 13.
[41] W Shakespeare, *Romeo and Juliet* (Oxford University Press, 2000 [1597]).