Part 1

Village repertoires

1 Law, religion, and pluralism

What follows is an exploration, through ethnography, of how some people have reasoned about difficult problems of law, religion, and ideals of equality in a pluralistic society, Indonesia. I examine struggles over how best to apply the legal traditions and religious norms of Islam to family life. In Indonesia and elsewhere, disputes over this issue also have been disputes about political allegiance, religious toleration, and, indeed, the very survival of pluralistic societies. Debates and conflicts in Indonesia, the world's largest Muslim-majority country, have a strong bearing on one of our most significant human debates, about how people can live together, admitting their deep differences of values and forms of life, and forging ways to tolerate and accept those differences.

In Europe and North America, philosophers and political theorists have framed this debate as a question for liberal political theory: How far can the tradition of Locke, Hobbes, Kant, and Mill be stretched to fit political communities composed of differing subcommunities, each with its own set of values and rules for social life? Some theorists have answered that all such subcommunities should agree on a core set of liberal principles; others have argued that when no such core set can be found, which is often the case, we should look instead for a *modus vivendi*, a way to get along without agreeing on a set of basic political principles.[1]

This debate will continue among theorists. My work here is that of an anthropologist; I offer an ethnographic account of how Indonesians are grappling with the problems of living in a deeply pluralistic world, one characterizable as a struggle to achieve, not complete agreement, but a way of living that allows for the coexistence, and some degree of recognition, of differing ideas of justice. I trace the diverse ways in which villagers, judges, jurists, social activists, and many others have argued and deliberated over a quite particular form of what philosophers call "value-pluralism." Indonesia is the site of long-standing, diverse efforts to shape lives in an Islamic way, but also of even longer-standing

[1] In current debates, the first position is most famously upheld by John Rawls (1996, 1999), and in a different version, by Will Kymlicka (1995); the second, by John Gray (2000), Stuart Hampshire (2000), and in modified forms by Bhikhu Parekh (2000), and Avishai Margalit (1996).

and more diverse efforts to shape them according to local complexes of norms and traditions called *adat*, some 300-plus of them according to conventional calculations – and all this further complicated by shifting sensibilities regarding gender equality and the "rule of law." Indonesians have been trying to work out ways to reconcile this normative florescence, and to do so within resolutely centralizing forms of state rule, under the Dutch, under the democracy, real and then "guided," of the first president, Sukarno, under the authoritarian New Order regime of his successor, Suharto, and now, under what looks increasingly like "unguided chaos" under a succession of short-term presidents: B.J. Habibie, Abdurrahman Wahid, and most recently Megawati Sukarnoputri.

At first glance, looking to Indonesia for ideas about how people might live together seems a singularly bad idea. In 2002, Indonesia is entering the fifth year of its post-Suharto "Reform Era," but the nation-state seems to be pulling itself apart at the seams. Former political allies turn on one another savagely. Local communities engage in bloody struggles over land and work, sometimes refitting their combats in the language of *jihad* or the defense against jihad. Since September 11, 2001, some have called for a jihad to Afghanistan; other Muslim leaders have been appalled at such a call. Neither police nor army tries very hard to keep order. Everyone seems to want *otonomi*, the provinces from Jakarta, and the districts from their provincial centers.

But these centripetal movements are not the reflections of precultural urges or "ancient tribal hatreds." They are shaped by ideas about society and nation, morals and religion, as well as by political, social, and economic interests. Some provincial leaders express their desire to reshape laws and, thereby, everyday life, around *sharî'a*, an Islamic way of life. Some people argue that they would be better off governing themselves according to older sets of norms and practices, adat. Advocates for law reform plead for greater protection for human rights and women's rights, citing English-language categories such as "marital rape" and "gender analysis" as new norms to guide legislation and adjudication. In the early years of the new century, these myriad appeals have become sharper in the climate of reduced state power and heightened fears about national disintegration and international terrorism. But they remain principled, grounded in reasoning about appropriate and legitimate forms of local, national, or international governance.

These calls to reform and reformulate Indonesian social life involve a double movement of reference. One direction is inward, towards indigenousness, authenticity, and Indonesian values, in an effort to find local points of support in the face of global moral corruption. The other direction is outward, towards universality, modernity, and transcultural values of social equality, in the hope that these values may help overcome local injustices. Even the same set of cultural or legal texts can point in both directions. The term "adat" can

signify localness and self-government, in contrast to past domination and corrupt rule from Jakarta, but it also can signify an appeal to pan-Indonesian norms of human equality and a respect for widely shared "feelings," in contrast to the mechanical application of particular laws. While "sharî'a" refers to a universal Islamic way of life, it reminds some people of past Islamic kingdoms, others of a future time when girls and boys will dress modestly and observe the fast – and for some men it may promise mainly the right to marry more than one wife. Even appeals to carry out *analisis jender* can be buttressed by references to Western laws, or to Indonesian rural practices of job-sharing, and usually to both.

Indonesian society thus is criss-crossed by competing claims about how people ought to live and about what Indonesian society ought to become. These claims draw on highly local ideas, on national values, *and* on universal rights and laws. To make matters still more complicated, ideas of what is at stake change from one level of society to another. In a village, what might matter most are the rules by which people gain or preserve their control of land. In town, it might be the ways in which judges, administrators, or ordinary people justify their claims in terms of Islamic law, the norms of adat, or state regulations. In national-level debates, at stake might be (and increasingly are) the past, present, and future identities of Indonesians: as religiously Muslims, Christians, or Hindus; as ethnically Acehnese, Javanese, or Balinese; or as, together, members of a single "nation-people" (a *bangsa*).

Repertoires of reasoning

So, perhaps, Indonesia, precisely because of its troubled self-reflecting about what the nation should be and its daily struggling over norms, laws, and social order, *is* an apt place to study ways in which people reason about competing norms. In the rest of this book, I chart this Indonesian normative entanglement, looking at places where norms collide, where something is worth the fight, for more than reasons of self-interest (not that self-interest is not omnipresent). My primary objects of study are socially embedded forms of public reasoning – interpretations, justifications, argumentations – about norms and laws concerning marriage, divorce, and inheritance. These topics lead to others, because it turns out that a great deal is at stake in arguments and conflicts over these norms: at the very least, access to land, religious identity, a sense of local control, women's rights, respect for the ancestors, modernity, the rule of law, and the problem of holding together a nation. The constant element in the narrative concerns gender, the equality of rights and relationships among men and women, and the relative claims that religion, tradition, and universalist norms have on people's conduct.

I start from the level of village disputes and work upwards, following the issues where they take me. I begin the account with the intricacies of kinship-shaped access to land in a village in the Gayo highlands of Sumatra, a place where I have pursued fieldwork since the late 1970s. In Gayo society, as in many other parts of Indonesia, women and men are engaged in debates about the relative merits of adat, Islam, and state laws. Colonial officials created a map of Indies/Indonesian social life that privileged the specifics of *adatrecht*, but this culture-by-culture idea of norms was, and still is, challenged in the name of universal Islamic rules for transmitting property. Here struggles are primarily about how "family" is to be understood and reproduced: as a part of a locally meaningful system of norms and practices, or as the outcome of applying universal Islamic rules for marrying, divorcing, and inheriting wealth.

Courts increasingly intervene in these struggles. It is mainly women who have seized on the opportunities provided by Islamic courts to acquire land rights. But judges on Islamic and civil courts alike have tried to balance claims made in the name of Islam against those made in the name of adat, and the central chapters of the book treat the legal reasoning pursued by judges over recent decades. I point out that their arguments have changed over the decades in response to shifts in society and politics, showing that discourses of compromise and reconciliation among normative systems can be arrived at in more than one way, but that values of gender equality and "harmonious reconciliation" continue to form part of judges' repertoires of justification. Here the debates about Islam and family are firmly situated in a framework of law and "metalegal" arguments about which set of laws ought to govern Indonesia's Muslims.

These arguments are amplified at the level of the nation, often counterposing religious and national allegiances in debates about equality, pluralism, and political legitimacy. Gender equality challenges received understandings of Islamic law, and those Indonesians engaged in this challenge are overturning older ways of interpreting scripture, and encountering strong resistance in the process. Muslims also disagree over how porous the boundaries ought to be between religious communities: should one marry, adopt, or even greet those people who adhere to another religion? Should religious obligations take precedence over national belonging, or vice versa? Finally, is it the state, or God, who has the last legal word? Who gets to say how Muslims ought to marry or divorce, and is there a way to square the circle, underscoring the state's legitimacy while recognizing Muslim claims to the supremacy of scripture? The three issues overlap; all bring up ideas about the equality of rights and relationships among men and women, and the relative claims that religion, tradition, and universalist norms have on people's conduct.

These three issues have engaged many Indonesians in a continual effort to finesse sharp disagreements over ideas of knowledge, legitimacy, and sociability. We shall encounter much of this "reasoned finessing." In earlier studies, also

based on fieldwork in Gayo society, I considered other ways in which Indonesians have tried to persuade others, or, at the very least, live with differences among them.[2] The present work continues a discussion (Bowen 1993b) of the discursive forms that have characterized an "Islamic public sphere" in Southeast Asia, but now targeting the social norms that lie at the intersection of civil society and the state, the area of family norms and law that for many define the limit of legitimate state authority in religious matters.

Justification and social norms

Viewed analytically, then, my interest lies in the ways people select from their "repertoires of justification," a phrase associated with a recent, broadly based social science effort to understand how actors justify what they do in specific, generally conflict-ridden, social settings (Boltanski and Thévenot 1991; Dupret 2000; Lamont and Thévenot 2000; Tilly 1997). Some of these studies (Kastoryano 1997; Lamont 1992), influenced by Durkheim, ask how people occupying particular class or status positions create boundaries between themselves and others (see also Bourdieu 1984). Others, following Weber, ask how members of particular societies judge distributional claims against criteria of legitimacy in a society (Elster 1995) or in a particular social domain, as in Michael Walzer's (1983) idea of "spheres of justice."

The new pragmatic "sociology of justification" has roots in the approaches of American pragmatists (e.g., Goffman 1974) as well as Durkheim and Weber. In France, it also is a moment in a continuing dialectic of social theory, where sociologists are seeking to correct an overly strategic emphasis in the work of Pierre Bourdieu by reinjecting ideas of moral worth and cultural meaning.[3] In Britain and the United States, emphasizing the processes and repertoires that occupy a particular social domain has attracted social scientists seeking to reconcile the emphasis on individual interests and strategies most associated with political science, and the emphasis on norms and systems of meaning most associated with anthropology and cultural sociology (Barth 1987; Bowen and Petersen 1999; Laitin 1992; Petersen 2001; Swidler 1986; Tarrow 1995).

[2] These studies include the analysis of changing forms of debate and persuasion involved in resolving disputes (Bowen 1991), poetry designed to convince people to change their religious ideas (Bowen 1993a), debates over alternative understandings of Islamic ritual, and tacit forms of toleration of different understandings (Bowen 1993b).

[3] Bourdieu had framed his initial work as a practice-oriented correction of the over-reliance on publicly enunciated norms in the work of structuralists, in particular Lévi-Strauss; the latter had represented his own philosophical intervention as a scientific corrective to the voluntarism and idealism of post-war philosophy. The critique of Bourdieu, much of it as yet "oral tradition," has a double focus on his over-emphasis on the strategic element in action (such as Bourdieu 1990), and on the shared, monolithic quality of cultural space in his macrosociological accounts of culture (such as Bourdieu 1984; see Lamont 1992).

This direction of research ought to be particularly receptive to the social anthropological tradition of closely studying disputes and modes of reasoning. At least since Malinowski (1926), anthropologists have been concerned with the complex relationship between social norms and values, on the one hand, and the actions observed in everyday life, on the other. Indeed, "rules" *vis-à-vis* "processes" became a shorthand for a tension within legal anthropology (Comaroff and Roberts 1981; Moore 1986). More recently, and somewhat more broadly, studies in "law and society" have turned from studying the pluralism of legal systems to considering the dynamic relationship between legal and other normative orders (Merry 1992), and it is this view of legal pluralism as a continually shifting and contested set of domains (rather than as a single legal field) that informs the present work.

Anthropological interest in disputes and justification is far broader than the phrase "legal anthropology" might suggest. Analyzing disputes and interpretations of events has long been a particularly illuminating way to understand how a wide range of actions are shaped by ideas, norms, and interests. One of the best studies of how one constructs an elaborate justification of a social action remains Evans-Pritchard's (1937) study of oracles and sorcery accusations in Azande society of Central Africa, and similar studies continue to produce excellent accounts of how people reason through misfortune (e.g., Whyte 1997). Indonesianists have provided a wealth of such accounts; indeed, it has become a particular subspeciality within Indonesian studies to show how ideas of responsibility and causality are given cultural shape in the process of working out a dispute, whether in a courtroom setting (F. von Benda-Beckmann 1979; K. von Benda-Beckmann 1984; Just 2001; Slaats and Portier 1993) or in other forums in everyday life (Kuipers 1990; Steedly 1993; Watson and Ellen 1993).

These and other studies point out the comparative advantage of an *anthropology* of reasoning and justification, one based on long-term intimacy with people in a particular place, and a sense of the history, language, and everyday social life associated with those people. The ethnographer's "local knowledge" (Geertz 1983) allows her or him to show in microsociological detail how individuals deploy their social resources to achieve their goals, and how their goals and resources draw their value from a larger cultural system. An anthropology of reasoning and justification allows a full appreciation of conflict, incompatibility, and change in social life, and it provides analytical room for distinct levels of reasoning with respect to the same topic. As actors search for compromise or reconciliation among opposing positions, they constitute new levels of reasoning, "metalevels" of reasoning about how to understand positions taken by others (see Urban 2001). This level may be just as consequential as that of the initial argumentation; indeed, this is the level of reasoning on which judicial reasoning takes place, as judges seek a set of principles that can allow them to take account of positions taken by opposing sides (Sunstein 1996).

Islamic sociolegal reasoning

An anthropology of public reasoning has particular advantages as a way of studying the intersections of Islam, law, and social life.[4] Far from being an immutable system of rules, Islamic jurisprudence (*fiqh*) is best characterized as a human effort to resolve disputes by drawing on scripture, logic, the public interest, local custom, and the consensus of the community.[5] In other words, it is as imbricated with social and cultural life as is Anglo-American law, or Jewish legal reasoning.

Recent studies by historians and anthropologists have highlighted Islamic legal reasoning as a set of social practices, moving away from older presentations of sharî'a as a set of rules (e.g., Schacht 1964) to take account of the social contexts within which jurists and others engage in interpretation and justification. Approaching law as a species of social reasoning has allowed scholars to trace the ways in which jurists and judges take account of both the normative immediacy of sacred texts and the social import of legal outcomes. Historians (e.g., Hallaq 1995; Masud et al. 1996; Powers 1994; Tucker 1998) have emphasized the social contexts and processes of communication and mutual reading among jurists and judges that preceded legal decisions or opinions. Historians and anthropologists also have examined changes in legal structures and legal ideology (for example, the codification of law) that occurred as part and parcel of colonial domination (Buskens 1993; Christelow 1985; Eickelman 1985; Messick 1993).

Although anthropological and sociological studies of Islamic law all look at the place of cultural ideas in legal processes, one finds a range of emphases in this literature. Some studies (e.g., F. von Benda-Beckmann 1979; Dupret 2000; Hirsch 1998; Stiles 2002) have emphasized the practices of seeking justice in an Islamic court, and have given case materials and courtroom discourse a central place in their analyses. Others have drawn on what transpires in courtrooms as evidence for their accounts of broader cultural ideas. Geertz (1983) and Rosen (1989, 1995), for example, have characterized Arabo-Islamic law as a cultural system, in terms of ideas about truth, rights, and personhood. A growing body of work (Hirsch 1998; Moors 1995; Mundy 1995; Tucker 1998; see also Esposito 1982) focuses on the gendered features of Islamic laws, judges' decisions, and courtroom events.

Despite their methodological differences, these studies converge on the finding that, since early in the history of Islamic legal reasoning, judges and jurists have tried to reconcile a number of distinct sources of law. From a formal

[4] Elsewhere (Bowen 1993b) I have discussed what I see as the advantages of studying Islam through the practices, and especially the discursive practices, that constitute it, and more recently (2002), I generalized this approach to the study of religious practices in general.

[5] For accounts of Islamic jurisprudential reasoning, see Hallaq (1997) and Vogel (1993).

perspective, these sources are arranged hierarchically, with a clear text of the Qur'ân counting more than a statement of the Prophet Muhammad, and the latter more than a customary practice.[6] But in the practice of reasoning about cases and justifying decisions reached, Muslim authorities and ordinary Muslims always have found themselves having to tack among competing values, norms, and commands.

We find ourselves facing the topic of this book, the entanglement of these imperatives in the lives of Muslim Indonesians. Said in such an abstract way, the story could be about almost any place. Indeed, one of my purposes in writing this book is to show that the specificities of Indonesian law and society point toward some issues facing citizens in all areas of the world. How can differences in fundamental commitments be reconciled within a unified legal system? How can self-rule guarantee equal rights? What forms of public reasoning characterize societies in which many citizens consider religious principles to be legitimate bases for constructing a political and legal system?

Indonesia has some clear advantages as a place to consider such issues. It is one of those rambling collections of political pasts, ways of life, and religious commitments that have proved so difficult to bring together into *national* pasts, presents, and futures (Anderson 1991). Partly because of Dutch ways of administering, and partly because of its size and diversity, it became one of the major sites for writing about legal pluralism. It also contains among its people the largest Muslim population of any country. If we are interested in studying social diversity, political ideas, and religious commitment, all as they bear on law, then Indonesia remains a most interesting place for research and reflection.

The possibility of Islamic public reasoning

I stress "reflection" because I believe that the interest of this study extends beyond Indonesia to contemporary debates about justice and culture. My focus is on struggles by Indonesians to reconcile, or select among, competing sets of values and norms. It considers the social practices in which reasoning about these issues takes place: not political theory or public reason, but socially contextualized political theorizing and public reasoning in the face of competing commands. An anthropological study of such matters in Indonesia can, I believe, add to the current discussions in Europe and North America concerning the mechanisms through which constitutional democratic states can encompass cultural and religious diversity.

In particular, the Indonesian case challenges the analytical adequacy of Western political theory for the comparative study of political and legal reasoning. A number of prominent contemporary liberal political theorists (e.g., Kymlicka

[6] For an analysis of early ways in which jurists incorporated custom into law, see Libson (1997).

1995; Rawls 1996, 1999; Raz 1994) have tried to extend political theory to encompass pluralistic or "multicultural" societies. Their strategies differ, but they all involve trying to arrive at a universal core of principles to which people in all societies can subscribe. Will Kymlicka and Joseph Raz define the core of principles in terms of the autonomy of the individual, and his or her capacity to form and revise an idea of "the good life." John Rawls has moved over the years from holding a position close to that of Raz, to attempting to carve out from culture and religion a narrow area of political principle on which all parties can agree. Rawls distinguishes between two sets of ideas and principles. On the one hand is a secular "political conception of justice," which will be shared by all within a society (he uses the phrase "overlapping consensus"), and which defines the limits of "public reason." On the other hand are all the varying "background cultures" specific to each of the several religious and cultural groups in the society, each composed of its own set of distinct "comprehensive doctrines" of the good life, including religious doctrines.

And yet, applying these quite reasonable accounts of justice across cultures raises serious objections. Liberal characterizations of political justice are shaped by the particular cultures from which these theorists come. As Bhikhu Parekh (2000) argues, valuing autonomy and "the good life" are outcomes of a particular Western intellectual and social history, in which Greek philosophy, Christianity, and colonialism each contributed to liberal doctrine. People from other backgrounds have developed different, equally principled bases for politics and justice. For example, many Muslims argue that their religious texts provide a God-given set of political and social ideas, and do not see why they should be rejected in favor of liberal ideas. For them, "public reasoning" *should* derive its principles from religious texts.

Furthermore, in Indonesia, India, Egypt, and elsewhere there is more than one "political conception of justice." One's religious identity determines under which laws one will marry, divorce, and divide one's estate. This structure regulates distributive justice, the legal statuses of men and women, and, at a legal metalevel, the relationship between positive law and religious law. In these societies, there continue to be strong disagreements among different social groups about what this relationship ought to be. In other words, there is neither a single political structure regulating issues of basic justice, nor an overlapping consensus on the current pluralistic legal arrangements – and for principled reasons, not merely as a compromise born of expediency.

I will argue that in Indonesia, much public reasoning *retains* its foundation in comprehensive doctrines, and in particular its foundations in specific understandings of Islam and particular adat-based conceptions of the world. The ensuing debates often concern the legitimacy, in Islamic terms, of efforts to interpret religious texts in such a way that they are compatible with other ideals, for example, that of equal treatment of men and women. In these instances, the