Islam, Law, and Equality in Indonesia

An Anthropology of Public Reasoning

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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

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[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).

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[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

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[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

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[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

Indonesian Muslims in question endorse, not a political conception of justice as in Rawls, but a reasonable conception of justice that is *public and also Islamic*.

I use "public," therefore, in a broader sense than in Rawls, to include the many kinds of reasoning processes about justice and rights that contain implications for basic structures of society, and that one finds across all levels of society, articulated by village leaders, jurists and judges, national political figures, social activists, and by other, ordinary people. My intention is not to offer a competing version of political theory, a reconstruction of society from first principles. Rather, I offer an anthropological account of such reasoning, the ways in which citizens take account of their own pluralism of values as they carry out their affairs.

Indonesian pluralism

The political and cultural history of Indonesia, of the Dutch East Indies, and of the many kingdoms and societies of the archipelago, has given rise to a particular way of studying pluralism. I find in the region of Southeast Asia as a whole a particular awareness of an "internalized pluralism," a consciousness of other societies at the core of each society's self-definition. One finds origin myths that proceed by differentiating a society from its neighbors, sometimes through a story of the wanderings of two brothers, by receiving an initial charter from a distant power, sometimes strengthened by a marriage between a foreign man and a local princess, or by postulating the new society as the continuation of an older center, accompanied by the transmission of sacred books. This consciousness may be the result of the region's outward orientation, its history in commerce, religion, politics, and art of receiving and transforming objects and ideas that have come from elsewhere, often across the seas.[7]

Southeast Asia borrows in order to create what defines it – a paradoxical formulation that one sees across nearly all human domains in the area. The Javanese *wayang* shadow puppet theater has the power it does precisely because it refers to figures of power who originated elsewhere, as do the Buddhist statues and monasteries of Burma and Thailand, or the Catholic images and dances of the lowland Philippines. One also finds a tendency to produce indigenous social theory about differences across groups, rather than theory that encompasses difference in unity – as one finds, for example, in India and China.

In Indonesian law, adat, Islam, and the positive law of statutes and decrees are each considered to be sources of law, each providing rules that have legal force. From a statist perspective, the distinctions among the three are of mere historical

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[7] Indeed, the two major histories of Southeast Asia, by Denys Lombard (1990) and Anthony Reid (1988, 1993), have taken the seas, rather than the land masses, as the definitive geographical feature of the area. Both historians were inspired by the work of Fernand Braudel on the Mediterranean.

interest, as bodies of knowledge from which the state has taken its commands. But as debated, lived, and applied, these kinds of law represent three distinct ways of thinking about law, norms, and the state. By inspecting processes in which these categories are invoked, we can discern distinct "metarules" proper to each, rules about what law is, and how it is to be found or created. These ideas about adat, Islam, and positive law will become clearer in subsequent chapters. For the moment schematic contrasts must suffice.

Adat and community

In Indonesia, the sense of a pluralism of norms and values usually is couched in the terms of adat, the Indonesian word with the strongest connotations of local-ism (though of Arabic origin). Adat can refer to the rules or practices of social life, to feelings and a sense of propriety, or to a somewhat thinner sense of tradition and custom. It may be used to refer to local ways of resolving disputes, rather than to substantive rules, and has been so used in recent appeals to adat ways of overcoming hostility in Ambon and Kalimantan, the sites of violent clashes between social groups. Often it is counterposed to Islamic law or state law. Recently it has been used to mean "local" as opposed to "national," such that the phrase *masyarakat adat*, "adat society," refers to people living under local social norms, and *perempuan adat*, "adat women," really means something like "women speaking for local interests and values" against Jakarta-instigated corruption and repression.

Adat also has a narrower sense, that of "adat law" (*hukum adat*), an expression whose systematic use dates from the period of Dutch colonial rule. To the extent that colonial rulers in the Dutch East Indies wished to rule indirectly, they tried to determine what the local laws might be, and those they consolidated into what they termed adatrecht, adat law. Anthropologists and administrators compiled manuals of the laws in each "adat area" in the Dutch East Indies, and in some regions judges continue to rely on these colonial-era manuals in making decisions. These processes of creating adat law did not so much "invent" it, the term often used for the parallel processes in Africa (Adas 1995; Chanock 1985; Moore 1986), but made into rules those expressions and proverbs that once had been public starting-points for complex political processes. These older processes did not apply rules, but sought out equitable solutions to social problems (F. von Benda-Beckmann 1979; Ellen 1983; Geertz 1983).

Since Indonesian independence the matter has become much more complex. In the late 1950s, shortly after independence, the Indonesian Supreme Court claimed that the revolution had propelled Indonesians toward a new, national kind of adat law, in which the equality of men and women was a notable principle. The dissonance between this claim and actual social practices left to local courts the problem of figuring out how to decide what adat law was or

was to be. Was a norm part of local adat law if it guided the current handling of local affairs, or if it was how old men said affairs used to be handled, or if it is how the Supreme Court said all Indonesians ought to conduct their affairs? Put another way, is *adat* to be discovered, remembered, or prescribed (see Lev 1962, 1965)?

Sharî'a and jurisprudence

With adat there is one term and multiple uses, multiple ideas about how it comes to be and is to be found and applied. With "Islamic law," at least three Indonesian terms of Arabic origin are involved: *hukum*, *sharî'a*, and *fiqh*. Hukum has three quite distinct meanings in Indonesia. In its broadest use it refers to "law" in general, and includes statutes, anything given legal status in courts, and broader notions of penalty, judgment, or consequence such as "law of the jungle" (*hukum rimba*). Within Islamic discourse the term refers to the legal value given to any action, from obligatory (*wajib*) to forbidden (*harâm*).[8] Hukum has a third Islamic-legal meaning as well, that of the valid consequences of an act. The hukum of a husband uttering certain words is divorce; the hukum of a man and a woman's guardian exchanging the words of a marriage formula is marriage, and so forth. Hukum in this sense is a "constitutive speech act" in the tradition of Oxford philosophers. Here, too, there is a scale of validity of such acts. The most important terms are those designating the end-points on this scale: "valid" (Ind. *sah*, Ar. *sahîh*) and "invalid" (Ind. *batal*, Ar. *bâtil*). From the perspective of Islamic law, what we may say is that hukum is most importantly about assigning certain values and certain binding consequences to specific acts.

What is at stake with the second "law" term, sharî'a (Arabic *sharî'a*), is far broader. Sharî'a is the path or the way that was pointed out by God and His Messengers for all humans. It is sharî'a that Muslims have in mind when they say that nothing in the world is outside Islam. But this path, even if it is all-encompassing, is not clearly set out in all its detail for humans. It must be discerned through correct interpretation of the specific directives and the general principles found in the Qur'ân, the *hadîth*, and the consensus of the Islamic community. Muslim scholars, in evaluating Indonesian laws, have had as their reference point not a fully codified, fully encompassing law, but a

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[8] The continuum extends from obligatory (*wajib*, Ar. *wâjib*), through recommended (*sunna*), permissible or indifferent (*mubâh*), and reprehensible (*makrûh*), to all that is forbidden (*harâm*). The familiar term *halâl* refers to everything not forbidden, in other words, all acts falling under the four categories other than harâm. As the reader might already suspect, the terminology and the distinctions are more numerous than suggested here, and there is more than one continuum of valuation (see Schacht 1964:120–23). In particular, the term *fard*, which yields Indonesian *perlu*, also refers to obligatory acts but is used to distinguish between duties incumbent on each individual (*fard 'ayn*) and duties that fall on the community as a whole (*fard kifâya*).

general set of guidelines, sharî'a, and a much more narrowly focused set of valuations, hukum.

Linking hukum to sharî'a, specific consequences to general guidelines, is the act of jurisprudential interpretation, or fiqh. Fiqh refers to knowledge but in an active sense, as an interpretive process. Fiqh is another candidate for "law," but only in the sense of law as active engagement with texts and norms, not law as sacred rules. Fiqh is fallible; it is human knowledge of a divine law. Islamic jurisprudence also generally recognizes the state as a source of valid law, and specifically of "policy for religious law" or *siyasah sharî'a*. The state has the legitimate power to regulate how acts that have a particular religious-law status (hukum in the third, narrow sense described above) are to be carried out.

So far, fairly clear; but this sort of typology has a way of becoming muddled in practice, and different actors have different interests in representing "law" in particular ways. Each of these ideas of law brings in different ideas of legitimacy. "Sharî'a" can serve as an all-purpose term. In July 2000, the Governor of Aceh declared that henceforth his government would "develop, guide, and oversee the application of Islamic Sharî'a" in the province, but officials were hesitant to say what this measure would mean.[9] "Fiqh" is more specific, as an interpretive process that is inherently older and broader than the state. Legitimating a proposition in terms of fiqh involves citing decisions and positions taken in Islamic history in the Islamic world, with little place for specifying an Indonesian content. "Hukum" can refer to both of the above, or to state statutes, or to "law" in general.

Some of this semantic muddle is due to the efforts of colonial and postcolonial states to bring fiqh under state control. Islamic jurisprudence in much of the region that eventually became the Dutch East Indies was carried out by more or less trained jurists and judges, the former giving legal opinions (*fatâwa*) about Islamic law, the latter hearing disputes and rendering judgments, all of which was carried out in more or less informal settings (Lev 1972a). Dutch efforts to create Dutch-like Islamic tribunals were followed by a series of Indonesian state efforts to "regularize" Islamic law, culminating in a 1989 bill that established a national court structure with, among other things, parallel Islamic and civil courts at the district and provincial levels, all under the jurisprudential supervision of the Supreme Court (Cammack 1989). Despite this legal domestication of Islamic law, Islam as a discursive tradition continues to provide a world-wide universe of past and present interpretations of the Qur'ân and the Prophet's sayings, interpretations that need not make reference to state law.

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[9] The order, technically a *Peraturan Daerah*, "regional order," was published in the legal journal of record, *Varia Peradilan* (184:113–22), in January 2001; the quoted phrase is Article 3 of the order. This step was authorized in 1999 by the Indonesian Parliament as part of the law allowing greater legal autonomy for Aceh, and it was later put into a statute of the Acehnese Parliament (*Lembaran Daerah Aceh* No. 30, 25 August 2000).

Sharî'a and adat share the feature of reaffirming worlds of law outside the state, indeed, worlds existing before the state, that do not require state sanction for their legitimacy. However, the two normative systems resonate across different domains. Throughout their colonial histories, in most Muslim-majority countries Islamic law was restricted to "family law," and the most widely felt demands for "applying sharî'a" have had to do with matters of marriage, divorce, inheritance, and male–female relationships more generally (and, in Indonesia, much less with matters of commerce, theft, and so forth). Adat plays on different normative registers. Despite New Order government efforts to limit adat to domains of marriage customs, kinship, and art (and thereby have it substitute for sharî'a), it has retained a sense of legitimacy as a basis for resolving disputes, regulating land use, and, more vaguely, regulating interethnic relationships.

The boundaries of state law

The idea of state law (*hukum negara*), or positive law, at first glance seems more clear-cut than do sharî'a and adat, because of the familiarity to Western readers of such institutions as the Parliament, the courts, and an Executive Branch, all the heirs of a Dutch colonial system modeled on the Roman-French-Dutch civil law tradition. Indonesia, today, has a judicial system in theory independent of the executive and consisting of a number of specialized courts, plus two nationwide hierarchies: first-instance civil courts and Islamic courts at the district (*kabupaten*) level, each with its own provincial appellate court; both subject to cassation by the Indonesian Supreme Court.

And yet some (e.g., Lindsey 1999) would say that the "rule of law" has not taken hold in contemporary Indonesia because the idea of a tripartite government is a sham: the legal system itself, starting from the 1945 Constitution, relieves the president of any obligation to account for his or her actions to Parliament or to the Supreme Court. The Constitution makes the president the chosen "mandatory" of the superparliament, the MPR (Majelis Permusyawaratan Rakyat, People's Consultative Assembly), which consists of parliamentarians plus additional appointed delegates. Indeed, it was this body that in July 2001 voted to remove President Abdurrahman Wahid from office, automatically elevating to that office his vice-president, Megawati Sukarnoputri.

But by the turn of the century the legitimacy of all state institutions had been severely weakened. Corrupt judges, delegates elected in fixed elections, a president who entered office under the banner of reform but quickly was tainted with old-style scandals: these, unfortunately, became the branches of the early "reform" state. In the search for legitimacy, international and transnational concepts were imported: a truth and reconciliation commission, human rights tribunals, "voting" in the legislature (rather than state-managed acclamations by consensus).

The tainted character of the new "new order" has been scandalous because it prevents Indonesians from blaming their problems entirely on Suharto. Institutional reform, strengthening the judiciary, will doubtless be part of any possible improvement in Indonesia's political condition. Constitutions can be reinterpreted, and jurists and judges have begun to propose a stronger notion of "judicial review" of statutes and of presidential orders (*Inpres*, *Instruksi Presiden*); indeed, a number of repressive orders delivered by Suharto have been challenged and are likely to become dead letter rules.

On another level, the basic interrelationships between separate sources of norms and laws are being rethought. Adat and sharî'a increasingly are invoked as new sources of hope for order and justice in the provinces. Refashioning what is understood by hukum, by adat, and by sharî'a is a task that will occupy the attention of many Indonesians over the coming years.

This task also requires understanding how they came to be intertwined with positive law, with hukum negara, in the first place. The actions of the colonial and postcolonial states to incorporate adat and Islam into substantive law, or "positivize" them, created new ambiguities. Some of the uncertainties stemmed from Dutch policies that segregated the legal systems, with "natives," "Europeans," and non-native "Asians" treated as legally different types of person, and within the category of "natives," differential treatment of Muslims and non-Muslims. This policy of state-law pluralism meant that, upon independence, some citizens of the new Indonesia were used to having their affairs judged under something other than the civil law tradition, and, indeed, many of them saw this compartmentalization of laws as granting them a small measure of autonomy, whether as Muslims, or as members of an ethnic group (Lev 1972b, 1978, 1985; Lindsey 1999).

As a result, creating a unified legal system after independence meant either replacing adat law and Islamic law with positive law, or developing a legal rationale for preserving separate spheres of judgment. What happened during the Sukarno and Suharto regimes was a combination of these two processes, replacement and compartmentalization, along with an intermittent attitude of *laissez-faire*, allowing local courts or other bodies to proceed as before, without a consistent rationale as to why they should do so (Lev 1973). Thus, the 1974 Marriage Law provided a set of positive law redefinitions of and constraints on Islamic procedures for marrying and divorcing, and the 1992 Compilation of Islamic Law, "enacted" only as an executive order, extended this "positivization" process to inheritance disputes. These laws replaced an older fiqh process, where judges drew on Arabic-language books of jurisprudence, with a more civil law process of applying a code.

At the same time as these efforts to replace fiqh with positive law, judges were left free to ratify agreements made among parties on the basis of local norms on any subject where doing so would not contravene positive law, a

position which allowed judges to continue to apply a form of "adat law." And, finally, the Supreme Court has tended to look the other way when lower courts systematically enforce local patrilineal inheritance norms, despite the Court's rulings against these norms in a handful of cases from the early 1960s.

In some sense, in terms of the traditions of reasoning to which each refers and defers, these three sources of law – adat, sharî'a, and state law – may be seen, in Sally Falk Moore's (1978) words, as "semi-autonomous." To the extent that adat processes still resolve everyday disputes, adat has a delimited "semi-autonomy" in practice as well. Each Indonesian government has tried to shrink that sphere of autonomy, to create something like a juridical field in Pierre Bourdieu's (1987) sense, a political space defined by the variable access to legal resources, with a single hierarchy of adjudication. But the proper shape of such a field is precisely what is under debate in Indonesia today. Whose words *do* have the force of law? Which mechanisms convert simple social actions into legal ones? Which resources are "legal" and which merely "traditional" or "religious"?

Not only are the bases and boundaries of the legal field itself under debate, but two other elements of current Indonesian public life additionally mean that we cannot refer to "law" to predetermine the subject matter of this study. "Law" is never a primitive term. First, as we already have begun to see, the normativity of adat and Islam comes from outside the field of state-constituted law. It is not that the state gives the normative force of law to Islam and adat; it is rather than the state attempts to appropriate their specific normativities to its own institutions. Our subject is thus a multiply located sense of normative pluralism, which interacts with, and in some cases may even serve to define, the sphere of state law itself (see Assier-Andrieu 1987; Dupret 2000; Greenhouse 1982; Griffiths 1986).

Second, the complex of values and norms surrounding marriage, divorce, and inheritance cannot be predefined as mainly about "law." In Indonesia's villages, as we shall see in the next chapter, disputes about inheritance invoke relationships to the ancestors, religious obligations, land histories, and a sense of propriety. In courtrooms, the same disputes are narrowly couched in terms of law, but even in those confines judges invoke broader notions of normativity and tradition. In national debates, disputes about family and marriage evoke worries over Muslim–Christian relations; the legal issues become sites for these worries to be expressed.

Re-understanding Islam

Across the institutions and levels of society examined here – village meetings, judicial disputes, nationwide debates – we return continually to matters of family and gender. Marriage, divorce, and the transmission of goods across

generations – the basic practices that constitute, divide, and reproduce family relations – are major sites for contemporary Islamic public reasoning throughout the Muslim world. It is with respect to these key family processes that rules deriving from the interpretation of Islamic texts most often pose challenges to local and transnational norms and values.

The whole of anthropology has pointed to the close interrelationships of family forms with local material and cultural forces: kinship, marriage, and inheritance regulate the way people work, feast, play, and die throughout the world. Land is passed down through lineages or in villages; rights of women and men are functions of the groups they join after marriage; the whole social group is responsible for easing transitions of humans in and out of this world. Here is where demands for uniformity, whether they come from Islam, Christianity, or modernizing individualism, run up most sharply against the reasoned persistence of local culture. Hard though it may be to give up pork, fast for one month in the year, and adopt new forms of worship, these practices can relatively easily be added on to social life. But approaching the family as the result of a contract among individuals rather than as part of an ongoing relationship among social groups, as demanded by the individualistic codes of Islamic and other modern legal systems, has posed acute and difficult challenges to local social life. All the more so as traditions and norms that first developed in the Arabian peninsula, in a specific cultural context, needed to be reasoned through, critiqued, and reinterpreted as they were introduced to peoples in Asia, Africa, Europe, and North America.

This book concerns those processes of reasoning about apparently incompatible ideas, toward workable arrangements to govern everyday social life. It points to the possibilities for reaching agreement as well as the obstacles in the way. I intend it as a refutation of all ideas that Islam (or any other collection of norms) consists of a fixed set of rules – as if a codebook called "sharî'a" contained a timeless and repressive plan for abolishing rights and diversity. The history of Muslim societies proves otherwise, but learned people continue to offer broad generalizations about "Islamic civilization" and its supposed incompatibility with "the West." In a reality where Islam has become one of the major religions in North America and Europe, and where Muslim scholars and public figures play increasingly visible roles in public life, with all the demands for accountability and consistency that these roles demand, these broad civilizational contrasts look increasingly out of focus.

Indonesia offers a critical case in our efforts to reorient how we understand Islam. As the largest Muslim society, and at the same time the most distant, in space and in ways of life, from the Arabian heartland (or even from the broader Arabian-Persian-Turkish one), Indonesia is a site of particularly marked struggle to bring together norms and values derived from Islam, from local cultures, and from international public life. And yet the processes and the imperatives are

the same as are found elsewhere, whether in Morocco, Iran, or Saudi Arabia. Nowhere is there an "Islamic society," if that phrase implies people simply applying a single set of texts to social life; everywhere there is one if that phrase implies people struggling to rethink those texts in the light of alternative cultural and legal norms.

Studying multilevel phenomena

How, then, does one carry out a study of normative pluralism, if the goal is to show how the issues themselves shift across levels of society? The methodology I have chosen, in the hope of remaining faithful to the questions and topics I pursue, is to combine studies of village life and legal processes in one part of Indonesia, the Gayo highlands of Aceh, Sumatra, with archival court study and broad analyses of national debates.[10] The Gayo cannot possibly be "representative" of Indonesian societies, but the processes and mechanisms found there illustrate the ways in which national legal and political institutions interact with local norms and values.

I have written extensively about the Gayo elsewhere (Bowen 1991, 1993b), where I also mention many of the friends and neighbors who helped me during fieldwork. I will introduce particulars as we go, but a series of snapshots of the "field sites" and working methods used in the book is appropriate here. I lived and worked in the five-village settlement of Isak for over two years in 1978–80, and then returned for frequent visits over the period 1980–82, when I lived in Banda Aceh and Jakarta, and then for two summer visits in 1989 and 1994. I visited Isak briefly in 2000, when random highway shootings made, in my friends' and family's opinions as well as my own, a prolonged stay inadvisable. My village fieldwork was traditional in many ways, including as it did surveys, textual studies, historical work, but above all long hours in conversations with people who became friends: in their houses, on treks over mountains, and while boiling palm sap into sugar in the forest. My continued strong friendships with a few families, those with whom I experience the passing of time most profoundly, include those with Ayah Tengku Asaluddin (since passed away), Abang Kerna, Ibu Inën Rat, Aman Dewi, Aman and Inën Samsu, and Abang Das.

I have at least equally strong personal ties in the main highlands town of Takèngën, where I have been a member of the family of Abang Evi (Zaini Wahab) since my initial visit to the region. I myself grew from late adolescence to "maturity" together with members of that family. Evi, the oldest child, studied English with me as a middle school student in Takèngën, and during her high school years lived in Jakarta, in a house I rented with one of her uncles. She

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[10] See, regarding the issue of "place" in anthropological fieldwork, the essays collected in Gupta and Ferguson (1997).

since has made her permanent home in the United States, with her Egyptian husband, Ashraf, and has worked first as a successful executive, and then as a fashion designer and non-profit consultant. It was through the continuing relationship with this family that I first came to understand fieldwork as, among other things, a life-long conversation, with a special intimacy that serves as both the condition of possibility for the work and, in a sense that goes beyond professional considerations, the whole point of the enterprise.

My fieldwork in Takèngën initially was an extension of village work, to gain an idea of townspeople's religious and social practices in contrast to those I was studying in Isak. Later, however, town work came to center on the courts. I studied everyday life in the courts and, through work in their archives, their history, on various town visits, but especially in 1994 and again in 2000.

Jakarta is the third field site for the research reported on here, and like all other cities poses special methodological challenges (which I am facing again in new work on Paris). Jakarta is both a local place like any other, and a site for national debates that attract people from across the nation. The "field" appropriately includes social networks, large institutions and their leaders, public intellectuals and jurists, newspaper reports and the discussions people have about them, and so forth, from the highly personal to the most impersonal. In Jakarta I have visited legal aid offices and ministries, courts and judges' homes. I have also learned from friends and colleagues in Jakarta, some of whom themselves are key players in the debates discussed here; they include Gayo family members, especially Abang Gemboyah (Dr. Baharuddin Wahab), as well as friends and colleagues such as Nurcholis Madjid, Azumardi Azra, Taufik Abdullah, and Duane and Reti Gingerich.

In the next chapter, I begin the ethnographic account where my Indonesian fieldwork began, in Isak, with a dispute that raised the question of how, when faced with conflicting norms, people arrive at effective and legally valid resolutions. This case will bring us to an analysis of how norms are used as part of a repertoire, in this case how "adat" and "consensus" can be invoked as cultural categories in order to obtain certain desired ends. This look at local complexities and mechanisms will then lead us, in chapter 3, to a broader consideration of adat as a schema for the interrelation of people, places, and property in Indonesia today.