
ISLAMIC JUSTICE, STATE LAW, AND CULTURAL POLITICS IN INDONESIA: A REVIEW ESSAY¹

M. B. Hooker. *Indonesian Islam: Social Change Through Contemporary Fatawa*. Honolulu: University of Hawai'i Press, 2003. 310 pp.

John R. Bowen. *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning*. Cambridge: Cambridge University Press, 2003. 289 pp.

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In the new millennium especially, Muslims and non-Muslims will increasingly appreciate serious scholarship conducive to better understandings of dynamics bearing on Islamic justice in Indonesia, a country that includes more Muslims than any other, boasts the fourth-largest population in the world, and is quite strategically located to boot. The collapse of the Suharto regime in May 1998 ushered in a period of unprecedented opportunities and crises, along with a dizzying succession of short-lived presidencies, each bearing promises for new beginnings in myriad domains of law, order, and justice. Overdetermined expectations quickly gave way to disillusionment and protest as tens of millions of people fell below the poverty line and untold thousands lost their lives to sectarian violence, much of it condoned (if not sponsored) by agents of the state working with paramilitary forces loyal to one or another group of elites. Dynamics set in motion by the events of September 11th exacerbated the situation, for around the time US policy makers devised plans to invade Afghanistan and Iraq, they declared Southeast Asia the "second front" in the administration's "war on terror," understandably fueling fear and suspicion among Indonesians, Muslim Filipinos, and others in the region that a new (and improved) crusade against Islam would be waged in their own backyards. Little wonder, particularly in light of the US war against Iraq, that some Indonesians attributed the massive earthquake and devastating tsunami of December 26, 2004 to an underground nuclear device detonated by US scientists and their government handlers.

¹I am grateful to Peter Just and Mark Woodward for comments on an earlier version of this essay.

However far-fetched the latter imaginings may be, they provide discomfiting evidence of how increasing numbers of Muslims throughout the world have come to regard US foreign policy and the basic values upon which such policy is predicated. Perhaps more to the point is their sharp indictment of America's readiness to unleash devastating violence to deal with conflicts and obstacles encountered in its pursuit of global hegemony. It is no small irony (and highly unfortunate) that these views resonate deeply with most Americans' perceptions of Muslims.

The disastrous tsunami claimed more than 140,000 lives in the Aceh region alone and perhaps as many as 200,000 in Indonesia as a whole. Making matters worse is that long-standing Acehnese desires to retain reasonable shares of the province's oil, mineral, and forest resources, along with a meaningful measure of regional autonomy, have met with brutal opposition from state forces, resulting in periods of martial law, the deaths of at least 15,000 people over the last thirty years, and the torture and rape of untold numbers of others. What social and cultural resources are Acehnese and other Indonesians drawing upon as they go about rebuilding their homes, schools, and mosques and attempting to recreate communities in areas destroyed by forces of natural disaster and state violence? How are they dealing with the everyday conflicts that inevitably arise? More generally, how do Muslims and others in one of the world's largest and most culturally vibrant, ethnically diverse, and territorially dispersed nations reason publicly about life, death and loss, kinship, marriage, gender, sexuality, property rights, ritual obligations, the entailments of citizenship, and what it means to be a modern Indonesian Muslim? The answers to these and attendant questions are not merely "academic." In an increasingly globalized era, real and imagined developments in Aceh, Jakarta, and elsewhere in the archipelago are more or less immediately accessible to Muslims and others in locales as diverse as Mindanao, Kuala Lumpur, Baghdad, Peshawar, and the Land of Beltway. To state the obvious, what transpires in Indonesia has a potentially enormous impact on developments elsewhere in the world (especially the Muslim world) and vice versa.

Those who are interested in questions of the sort posed here would do well to set aside time for careful reading of recent books by M. B. Hooker and John R. Bowen, each of whom has extensive firsthand experience in the region extending over a number of decades, as well as a long string of highly regarded publications to his credit. This recommendation is proffered despite the fact that neither book speaks directly or substantively to the strife in Aceh, or to violence elsewhere in the archipelago; and of course neither one mentions the tsunami, which occurred a year after the books appeared in print.

The two books converge in subject matter, as is evident from their titles, though they also differ in significant ways due to contrasts in the authors' epistemologies, orienting conceptions, basic methodologies, and overall objectives. Hooker, for example, who was trained in the field of law, focuses on law and lawlike phenomena as systems of formal rules and judgments (expressed in written codes, statutes, precedents, etc.), which are assumed to determine behavior; as might be expected, his analyses are in many respects highly systematic. Bowen, an anthropologist by training, conceptualizes law more in terms of social process and regards laws and other systems of norms not as determinants of behavior, but as resources and constraints that individuals and groups draw upon and invoke in order both to model and justify their

own behavior and to contest that of others; many of his analyses are admirably systematic as well, though at times he is less “data-driven” and more impressionistic. Equally striking are the books’ underlying commonalities, three of which merit brief mention. First, both volumes focus their descriptions and analyses on Islamic resources, practices, and attendant sensibilities that are deployed for *resolving* conflicts. In this they depart from a good deal of Western scholarship and of course media and government accounts, almost all of which center on Islam as a *source* of conflict. Especially when taken together, the two books thus serve as critically important correctives to the often sensationalistic and distorted accounts of those who fashion themselves, or have come to be regarded by others, as “experts” on “terrorism” in Indonesia and Southeast Asia as a whole.² Second, both books provide extensive empirical demonstration and painstaking analysis of diversity and pluralism in Indonesia and, if only by implication, the broader Muslim world. And third, both books are appropriately sober, though hopeful, on the subject of Indonesia’s future. Hooker and Bowen concur in recognizing that the overwhelmingly secular state apparatus is in serious disarray, its component features frequently pressed into service in the pursuit of “uncivil” ends.³ At the same time, they both emphasize that the Islamic institutions and interpretive traditions bearing on religious scripture that have developed in the archipelago provide some of the most promising resources and models for social and cultural reform and may, in any event, soon give rise to the emergence of a distinctly Indonesian *madhhab* (school or tradition of Islamic law).

Indonesian Islam: Social Change Through Contemporary Fatawa

Hooker is Professor in the Faculty of Law at Australian National University and an Honorary Senior Associate of the Asian Law Centre, University of Melbourne, who taught for many years at the University of Kent at Canterbury and was a key figure in establishing and promoting that institution’s programs in Southeast Asian studies. He has written a number of books on *adat* law in Malaysia and Indonesia, as well as more general works on law and Islam in Southeast Asia as a whole, most of which reflect his formal training in fields of law and his interests in comparative jurisprudence, legal pluralism, and state codifications of *adat* and Islam in particular. More generally, as noted on the dust jacket of his most recent book, “he has forty years’ experience in teaching and writing about Southeast Asia.”

Hooker’s book opens with a preface and a lengthy (forty-five-page) introduction (“Twentieth-Century Islamic Reform: Contexts for the Indonesian *Fatawa*”) that spell out his rationale for focusing on *fatawa*—defined as “formal advice from an authority on a point of Islamic law or dogma” (viii; cf. p. 1)—and clarify the time frame of the study, the 1920s through the 1990s. Hooker is chiefly concerned with contemporary Indonesians’ understandings of Islam’s “classical past” and the ways they utilize and adapt textual (in this context, written) resources from the past to resolve dilemmas

² For an incisive discussion of recent literature on “Southeast Asian terrorism,” see John T. Sidel, “Other Schools, Other Pilgrimages, Other Dreams: The Making and Unmaking of *Jihad* in Southeast Asia,” in *Southeast Asia Over Three Generations: Essays Presented to Benedict R. O’G. Anderson*, ed. James T. Siegel and Audrey R. Kahin (Ithaca, NY: Cornell University Southeast Asia Program, 2003), pp. 347-81.

³ Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton, NJ: Princeton University Press, 2000).

creatively and otherwise negotiate the complexities and conundrums of contemporary life. He therefore concentrates on *fatawa*, which are both authoritative, though often contested, and analogous in some respects to formal law, rather than on formal (“Islamic”) law per se. For a number of reasons worth brief mention here, he explains why he does not focus his study on formal Islamic law. One reason has to do with the legacy of Dutch colonialism: the Dutch so thoroughly circumscribed, trivialized, and bureaucratized Islamic law and other aspects of Islam that what passes for Islamic law (*syariah*) in contemporary Indonesia bears little, if any, resemblance to “real” Islamic law. *Fatawa*, by contrast, and “only *fatawa*[,] preserve the link between the challenges of modernity and the classical inheritance, because,” in Hooker’s view, “in their arguments they take us to the Qur’an, Sunna and the classical texts without an intervening European intellectual influence” (viii). A second reason for privileging *fatawa* over Islamic law per se, also a legacy of the colonial era, is the dubious status of Indonesia’s legal system as a whole, which provides the larger context in which the Islamic judiciary operates. Hooker asks rhetorically, “Does Indonesia actually have a legal system in the formal sense?” (43). Part of his answer to this question is that “the usual test is efficacy in time and place... [and that] Indonesia certainly fails the efficacy test” (45). By way of brief elaboration, he cites three grounds on which Indonesia fails this test: “laws are generally not known,” they “are in a state of internal confusion,” and they “do not determine behaviour,” though he adds that these comments “may or may not apply fully to the religious courts” (45). Of more immediate relevance than the dubious supposition that “laws determine behavior” is Hooker’s verdict as to “whether or not Indonesia actually has a legal system, properly so called”; in his words: “it is doubtful” (44-45).

In pursuit of his objectives, Hooker culled the records of a number of *fatawa*-producing organizations and other relevant bodies that issued *fatawa* from the 1920s through the 1990s, and then began the massive task of organizing and cross-indexing the *fatawa* thematically and chronologically. He proceeded to group them under four major headings, each of which serves as the focus of a separate chapter (“The Individual and Religious Duty”; “Women: Status and Obligation”; “Is God Still the Creator? Islam and Medical Science”; and “Offences Against Religion”). Adopting the method of controlled comparison, he then compared *fatawa* under each heading (and their multiple subheadings) in terms of their origin in one or another of the four main bodies that produce *fatawa*, noting both the similarities and differences among thematically linked *fatawa* issued by different organizations, as well as the overall theological cum philosophical positions of the particular organizations involved, where they stand in the playing fields of Indonesian cultural politics, and so forth. I hasten to add that this is my understanding of the methods employed, and that, unfortunately, nowhere in the book will readers find any remarks on methodology, research strategies, or related matters such as limitations of the study due to political uncertainties, possible language barriers, or other constraints. One consequence is that readers are provided no clue as to how much time Hooker may have spent in Indonesia (or when he might have lived there) in order to collect *fatawa* and other material for the book, to discuss his preliminary findings with Indonesian *ulama* (Muslim scholars of Islam), jurists, politicians, public intellectuals, ordinary Muslims, or others, or simply to observe the lived realities of Islam and social change for variously defined groups of contemporary Indonesians. This situation is exacerbated

by Hooker's silence regarding the theoretical underpinnings of the book and its objectives vis-à-vis the rich comparative literature on the subject, aside from passing critiques of Wael Halleq and Fazlur Rahman (on methodological grounds in each case). A bit more framing would have been useful.

Throughout the book, Hooker provides deeply learned and compelling discussions of Indonesia's four main *fatawa*-issuing bodies, beginning with the Islamic Association (Persatuan Islam; commonly known as Persis), whose largely prescriptive *fatawa* were produced mainly by a single individual, Ahmad Hassan (1887-1958), who espoused views often characterized as "aggressive, puritanical, and extreme" (48). Muhammadiyah, the much-studied "modernist" Islamic reform organization founded in 1912, began issuing *fatawa* in 1927 and, according to Hooker, has consistently promoted a clear, coherent method for understanding Revelation, emphasizing among other things *maslaha* (public interest/benefit, something like "the greatest good"). Their "answers" and "decisions," however, are basically didactic (guides to sources) rather than prescriptive (55) and are less binding than *fatawa* of the more "traditionalist" Islamic Association (Nahdlatul Ulama; NU), founded in 1926, also covered in some detail. The Council of Indonesian Ulama (Majlis Ulama Indonesia; MUI), which was established in 1975 at the initiative of the government, is the other main *fatawa*-producing organization that Hooker examines. Interestingly, many MUI *fatawa* show little if any government influence and some oppose state policy.

Examination of *fatawa* produced by Muhammadiyah, NU, MUI, and other organizations in relation to positions staked out by the Islamic courts reveals an important but infrequently noted relationship between *ulama* and their organizations on the one hand and the religious courts on the other: to a significant degree, these organizations (or at least those responsible for issuing *fatawa* bearing their imprimatur) not only habitually reject the authority of the courts but also tend to ignore their very existence (43). There is another issue here, both more general and at least potentially of far greater import: the production and "consumption" of *fatawa* as guides of and for behavior consistently underscores the fact that the truths of Revelation remain the ultimate authority, far over and above any authority claimed by the state. Since Hooker is understandably at some pains to emphasize that the state apparatus, as manifested in the judiciary (broadly defined), is "chaotic," "plagued by endemic corruption" as well as weak institutional structures, and "not an operative system at all" (41), this is perhaps less than surprising and might, in any event, be seen by many readers as a good sign both for the future and the paths chosen to get there. Not clear in Hooker's account, however, is the precise link between these dynamics. For example, to what extent, if any, do the shortcomings, failures, and abuses of the secular postcolonial state inform the content of *fatawa* produced by Muhammadiyah, NU, MUI, and other organizations? And to what extent might popular reception of *fatawa* (about which we hear very little) be conditioned by these shortcomings, failures, and abuses on the part of the state? Such questions seem all the more crucial to consider in light of two sets of issues. First, Hooker sees "*fatawa* as an important form of dialogue between the state and the truths of Revelation" (87). And second, both elite and popularly grounded calls for the expansion of *syariah*, the imposition of *hudud* criminal codes, and the creation of variously imagined Islamic states are often fueled by precisely these types of shortcomings, failures, and abuses. This is abundantly evident in contemporary

Indonesia and in neighboring Malaysia, as well as Egypt, Sudan, Nigeria, Pakistan, Afghanistan, post-Saddam Iraq, etc.⁴

Readers will find much of interest in Hooker's disquisition on issues associated with the individual and religious duty, women's status and obligations, and Islam and medical science (chapters 2, 3, and 4, respectively). That said, some readers will no doubt wish that Hooker had elaborated briefly on key passages, such as why "the status of women in Islam is a matter of grave concern in all Muslim societies" (122) and why "the prescriptions that express the values of *Syariah* in society are always going to be problematic, particularly where women are the subject" (156; but see 230, 240-41). One wonders, for instance, if the "grave concern" at issue is felt as keenly by women as by men, and assuming it is felt more strongly by men, why Hooker feels this is so and what gender-inflected entailments of social and cultural change he sees as responsible for this situation.

Hooker's analysis of *fatawa* concerning innovations in medical science is highly instructive, especially his treatment of variation in *fatawa* concerning the acceptability, from an Islamic point of view, of contraception, abortion, autopsy, blood transfusions, organ transplants, plastic surgery, and sex-change operations (generally permissible for "transvestites/hermaphrodites," such being a subject of "abiding interest in Indonesian Islam" [183]). But because some of these *fatawa* are described as containing an "almost wholly Western-derived set of propositions with an 'Islamic colouring'" (172), others as being grounded in the philosophical and other imperatives of postcolonial state policy, it is difficult to accept Hooker's basic orienting proposition (noted earlier) that "*fatawa* take us [back] to ... the classical texts without an intervening European intellectual influence." More generally, while many of Hooker's data and conclusions resonate with Muhammad Qasim Zaman's brilliantly argued thesis that both the epistemological and discursive orientations and the authoritative practices of *ulama* in South Asia and elsewhere are appropriately viewed as the product of a creative engagement with modernizing forces (such that *ulama* are less guardians of tradition than, following Zaman, "custodians of change"),⁵ some of Hooker's general pronouncements are simultaneously out of keeping with Zaman's thesis and with his own data and arguments.

In the "Epilogue," "Issues for an Indonesian Islam," Hooker summarizes and expands his thesis that "the '*syariah*' is now but a shadow of the classical jurisprudence and a travesty of the *fiqh* literature" (which consists of jurisprudential interpretations and technical rules of law), and that with respect to *syariah* "there is no room for any creativity, even in the weakest sense" because "the Western-derived state is everywhere dominant. But these remarks do not apply to the *fatawa*," which to one or another degree enjoy "a distance from the institutions of state" (228). Of broader concern is that just as juridical and overall intellectual creativity in Indonesian Islam is most pronounced in the realm of *fatawa*, conditions may soon be ripe for the emergence of a uniquely Indonesian *madhhab* that will provide critically important resources for citizens of the world's largest Muslim-majority nation as they negotiate their uncertain

⁴ See Farish Noor, "Negotiating Islamic Law," *Far Eastern Economic Review* (September 9, 2002), p. 23.

⁵ Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton, NJ: Princeton University Press, 2002).

future. Not coincidentally, Bowen shares these views, although he comes to them on the basis of different kinds of methods and materials.

Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning

John R. Bowen is Professor of Anthropology, Dunbar-Van Cleve Professor in Arts and Sciences, and Chair of the Program in Social Thought and Analysis, all at Washington University in St. Louis. His extensive publications include two other Sumatra-centered monographs (on politics, poetics, and history; and religious discourses and ritual practices), as well as an edited volume on comparative politics, readers on religion, and numerous articles on topics ranging from sacrifice and sorcery to property law and global ethnic conflict. He organizes his most recent book into three sections, each of which focuses to one or another degree on an analytically distinct domain of culturally salient law—*adat*, *syariah*, and national/statutory law—and the local, national, and transnational dynamics that inform the ways in which people of different social locations and cultural orientations experience, understand, and invoke norms associated with these domains. The primary objects of study throughout are “spheres of justice” in Michael Walzer’s sense⁶ and, more specifically, “repertoires of justification,” “socially embedded forms of public reasoning,” and “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” (5, 7).

The first section, “Village Repertoires,” consists of three chapters. Chapter 1, “Law, Religion, and Pluralism,” provides readers with an overview of the author’s main arguments, his conceptual and theoretical orientation, and the general contours of his fieldwork among Gayo speakers in the highlands of Aceh, a region famously described by Dutch colonial scholar Christiaan Snouck Hurgronje, whose two-volume *The Achehnese* is often cited, along with Thomas Stamford Raffles’s *History of Java*, as one of the key orientalist texts of the colonial period.⁷ Bowen conducted his initial fieldwork in Aceh, in the five-village settlement known as Isak, from 1978 to 1980. He returned for a series of visits during the period 1980-82, when he lived in Banda Aceh and Jakarta, and made subsequent trips in 1989, 1994, and 2000, some of which appear to have been divided between research in the highlands town of Takengen and interviews in Jakarta with lawyers, judges, Muslim feminists, and other key players in the fields of Indonesian law, politics, and religion.

One of Bowen’s main concerns throughout the book is to provide ethnographically thick descriptions of Indonesian disputes of various kinds, involving everything from issues of land tenure, inheritance, and the creation of property rights, to equality in kinship and marriage relations, and the role of the state in demarcating boundaries of *adat*, Islam, and national/statutory law. Another concern is to demonstrate the relevance of such data for western philosophical and social scientific debates concerning how best to understand and manage value pluralism and sociocultural

⁶Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York, NY: Basic Books, 1983).

⁷Christiaan Snouck Hurgronje, *The Achehnese*, 2 vols., trans. A. W. S. O’ Sullivan (1906; repr., New York: AMS Press, 1984); Thomas Stamford Raffles, *History of Java* (1817; repr., Kuala Lumpur and New York, NY: Oxford University Press, 1965).

diversity. One dominant set of arguments in the literature involves the position, variously articulated by John Rawls and Will Kymlicka, among others, that people in a given society or nation should reach consensus on a core set of values shared by all. Another, which Bowen favors, and which finds additional support from John Gray, Stuart Hampshire, and Bhikhu Parekh, is that such may not be feasible or viable, and that laying the groundwork for a *modus vivendi*, for ways to get along that do not presuppose attaining or even seeking agreement on basic principles or values, is the preferred alternative (3). In evaluating the strengths and weaknesses of these (and other) arguments in light of data from Indonesia, Bowen rightly emphasizes that much of the literature on pluralism, especially the contributions of Michael Walzer, John Rawls, and Charles Taylor, concentrates on the rights of minority groups within larger, relatively homogeneous settings (Aborigines in Australia, Muslims in Great Britain, etc.), and that far greater attention needs to be devoted to understanding how people negotiate contrasting norms *within* communities (minority or otherwise), not simply between or among them.

In the first two chapters and elsewhere, Bowen explains that individuals and groups involved in conflicts, whether as disputants or as parties endeavoring to help resolve the differences at issue, do not seek the mechanical application of one or another contextually invariant rule or norm (as Hooker often assumes) but proceed mainly by “assembling persuasive tokens of legitimacy” (22). More generally, debates among Indonesians “remain principled, grounded in reasoning about appropriate and legitimate forms of local, national, or international governance” (4). These arguments receive strong support from thickly described cases of conflict involving village property rights and other matters subject to the jurisdiction of *adat* law, which are presented in Chapters 2 and 3 (on “Adat’s Local Inequalities” and “Remapping Adat,” respectively). In these two chapters, Bowen illustrates that *adat* is less “a fixed set of rules on which all agree” than an “interpretive resource, recognized as legitimate by all, but open to multiple interpretations, and more easily mobilizable by some people”—especially those with power—“than others” (43).⁸ The brief discussion of local conceptions of *adat* that construe *adat* primarily as a source of law and normative reasoning that is distinct from, and at times sharply opposed to, any laws or reasoning emanating from or sanctioned by the state is also highly revealing, as is the March 1999 demonstration involving some 230 women “representing all Indonesia’s provinces, [who] gathered as *Perempuan Adat*, ‘adat women’ or ‘women of adat’, and called on the state to stop destroying the environment, give back autonomy to the regions, and renounce the use of force against women” (59). Far from being of interest only to Snouck Hurgronje, Ter Haar, philologists, and others of an antiquarian, orientalist bent, then, *adat* continues to be of great relevance to contemporary Acehnese and other Indonesians as a set of resources that can be invoked to critique state policies, to further struggles for greater autonomy vis-à-vis the state, or both. More broadly, Bowen tells us that “ways of mapping difference and normativity in terms of *adat* continue to shape the discourses of politics and representation in the uncertain (post-) Reform era” (63). To this he adds, somewhat ominously, “where they take Indonesia is yet to be seen.”

⁸ Material from Aceh is thus similar in many respects to data collected among the Dou Donggo of Sumbawa, which Peter Just describes in his fine study, *Dou Donggo Justice: Conflict and Morality in an Indonesian Society* (Lanham, MD: Rowman and Littlefield, 2001).

The second section of the book, "Reasoning Legally Through Scripture," turns from *adat* to Islam, from disagreements typically handled within villages to disputes that are more often dealt with either in urban-based religious or civil (secular) courts or at the national level. The four chapters comprising this section—"The Contours of the Courts," "The Judicial History of 'Consensus'," "The Poisoned Gift," and "Historicizing Scripture, Justifying Equality"—show how Islam, in the form of norms derived from or keyed to *syariah*, *fiqh*, etc., provide Acehnese and other Indonesians a second set of resources to draw upon when they engage in public reasoning. Bowen's exposition of the ways in which these universalistic norms both transcend and displace those linked to more locally defined *adat* will be of great interest to Indonesianists and others concerned with the role of Islam, and of religion generally, in states grappling with the conundrums of social and cultural diversity and a territorially far-flung citizenry.

As elsewhere in Indonesia and parts beyond, Islamic courts in Aceh originated in "multi-purpose" village-level institutions, developed many of their formal, defining features in relatively recent (colonial-era) times, tend toward informality in their proceedings, and, in recent decades especially, have been subject to state-driven processes of standardization and rationalization geared toward elevating them to the level of the more prestigious civil courts. (Until 1975, the Islamic court in Takengen was "literally, a storefront operation with a makeshift staff" [92].) The civil courts, which deal with a much broader range of cases (including theft, assault, homicide, stock-market fraud, drug-trafficking, and so on) and have more substantive resources and sanctions at their disposal, thus provide the gold standard to emulate, at least in terms of procedure and various aspects of professionalism. This despite the view, underscored by Hooker and apparently widespread throughout Indonesia, that judicial corruption remains a serious problem among magistrates in the civil courts, particularly when cases involve large sums of money or important political issues, but not much of a concern in the Islamic courts, where, among other differences, the amounts of money at stake tend to be relatively inconsequential (except to the principals in the deliberations).

Bowen's incisive treatment of these and related dynamics builds on and updates Daniel Lev's pioneering work on Indonesia's Islamic courts,⁹ just as it draws on and complements some of the ethnographic and historical work that has been done in recent years on Islamic courts outside of Indonesia (e.g., in Morocco, Yemen, Kenya, and Ottoman Syria and Palestine). Whether or not readers are familiar with this literature or with the current debates in the anthropology and philosophy of law and politics that Bowen engages, they will welcome his sensitive and nuanced handling of a nexus of issues with far-reaching significance for understandings of justice and diversity in Islam; these include: the atmosphere and personnel of Islamic courts; the cases concerning marriage, divorce, inheritance, and other matters they hear, most of which are brought by women and, perhaps surprising to some readers, are more often than not decided in favor of women; their jurisdictional relations with the civil courts; and the similarities and differences in religious and civil courts in terms of procedure, which "in both types of courts, ... follows a colonial-era version of European civil law"

⁹ Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Berkeley, CA: University of California Press, 1972).

(83). Particularly engaging are Bowen's delineation of the social history and cultural logic of judicial decision making on the one hand, and his erudite elucidation of the relevance of specific scriptural norms bearing on issues of consensus (*ijma'*), reasoning by analogy (*qiyas*), "independent reasoning" (*ijtihad*), and abrogation (*naskh*) on the other, many of which exercise the moral imagination of scholars, jurists, and others throughout the archipelago and the Muslim world as a whole. Worthy of mention for other reasons is Bowen's tendency throughout the book to use the term "gender" as a codeword for "women" and to confine most discussions of "gender" (read: male-female relations) to equality between males and females within the family (as occurs in Hooker as well). This entails the exclusion of many gendered and sexual dynamics from consideration in ethnographic, analytic, and theoretical terms, just as it gives rise to certain other problems, as I discuss below.

Descriptions and analyses of material bearing on processes of adoption, the rights of adoptees, and the formal conveyance of property rights to children or other potential heirs during one's lifetime via "gifts" (*hiba*), as distinct from formal bequests (*wasiat*) that take effect after one's death, help set the stage for the third and final section of the book, "Governing Muslims Through Family," which consists of four chapters: "Whose Word is Law?" "Gender Equality in the Family?" "Justifying Religious Boundaries," and, finally, "Public Reasoning across Cultural Pluralism." As might be expected, in this last section of the book Bowen is at his best, providing analyses that are at once empirically detailed and conceptually sweeping, that simultaneously highlight the importance, for descriptive and analytic purposes, of working with a clear sense of the ambivalences, ironies, contradictions, and power dynamics in kinship relations—not just their idealized representation in static, one-dimensional images of "the family" that are promoted in variously cast discourses on what it means to be a modern Indonesian Muslim.

Bowen's material on the cultural construction and social entailments of male and female prerogatives in marriage and divorce is especially welcome and is usefully compared to data from neighboring Malaysia,¹⁰ as well as Morocco, Sudan, and Kenya, whose Islamic courts have been described in superb studies by Lawrence Rosen, Carolyn Fluehr-Lobban, and Susan Hirsch, respectively.¹¹ Perhaps understandably, Bowen devotes little attention to such comparisons and their implications, concentrating instead on the relevance, both for other conceptually delimited domains of Indonesian public reasoning and for western political theory, of the most general stakes at issue in such debates: "Whose Word is Law?" What is the proper relationship between Islam and the state? Of considerable interest here is that various political and religious elites, supported in many cases by Muslim feminist organizations, have pursued legislative and other measures to restrict polygyny, just as some have sought to have the law acknowledge the existence of "marital rape" so as to criminalize it and thus, it is hoped, reduce its occurrence. Some of these campaigns have been linked to

¹⁰ Relevant sources on Malaysia include Sharifah Zaleha Syed Hassan and Sven Cederroth, *Managing Marital Disputes in Malaysia: Mediators and Conflict Resolution in the Syariah Courts* (Richmond, Surrey: Curzon Press, 1997) and Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton, NJ: Princeton University Press, 2002).

¹¹ Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society* (Cambridge: Cambridge University Press, 1989); Carolyn Fluehr-Lobban, *Islamic Law and Society in the Sudan* (London: Frank Cass, 1987); Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago, IL: University of Chicago Press, 1998).

decades-long moral, political, and legislative debates concerning men's prerogative to divorce their wives through recitation of the standardized divorce formula (*talaq*). Certain of the latter controversies, in turn, have resulted in state-mandated restrictions, forbidding men to pronounce the *talaq* outside of court, one consequence of which is that all such "extra-judicial" divorce is invalid in the eyes of the state, though not necessarily from the point of view of Islamic law.

In these and attendant debates—concerning, for example, the implications of failing to register a religiously and otherwise valid marriage with state authorities; the expansion of grounds on which women can legitimately seek a divorce—we see a jostling and sometimes carefully reasoned and highly innovative melding together of *fiqh*- and *syariah*-based arguments, *adat*-derived notions of (relative) male-female equality, and transnational (feminist-inflected) standards of human rights, a melding that, some hope, and as Hooker prophesies, may lead to the development of a distinctly Indonesian school of Islamic law (*madhhab*). Whether or not this comes to pass, all such material lends further support to Bowen's argument concerning the multiplicity of norms and normative understandings within communities defined in terms of a single religious (or other cultural) tradition, which needs to be addressed by political theorists and others seeking to come to terms with issues of diversity and pluralism.

These discussions, like most in the book, are of very high quality. They would be even more compelling, however, if they included local voices, such as we hear in the first section of the book, or other material that might give readers a sense of how marriage, divorce, and the Islamic (and civil) courts that the state increasingly relies on to police kinship, gender, and sexuality are experienced, understood, and represented by males and females of different socioeconomic standing and religious (and overall cultural) orientation. If Indonesia's Islamic judges and other court personnel involved in quelling disputes between men and women commonly find men to be at fault, as appears to be the case, are the courts sites for the production of discourses on masculinity that are potentially subversive of official representations of masculinity and, by extension, of all political, administrative, and other hierarchies that privilege males, as occurs in Malaysian Islamic courts? Are the Islamic courts sometimes viewed by men as "women's courts" and thus of diminished legitimacy because so many of their decisions favor female litigants, as occurs in Kenya's Islamic judiciary? More generally, what are the similarities and differences in men's and women's lived, embodied experiences and narrative formulations of kinship, marriage, gender, sexuality, and Islamic justice?

Further Considerations and Conclusions

The political and other conditions these studies document are clearly both fragile and contingent. I would add that processes entailing the centralization of the Islamic courts and their increasingly bureaucratic, corporate style do not necessarily bode well for the growth of pluralism or civil society or the expansion of women's rights in particular.¹² It is important to recognize that by providing women with resources and

¹² Some of these points are developed in more detail in Peletz, *Islamic Modern*.

allies capable of being called upon to negotiate and, in some instances, to terminate their relations with their husbands, the state, through the courts, is making itself more indispensable to women by increasing their reliance on the judiciary, and is thus further intruding into their lives. There is an appreciable tradeoff here and elsewhere where such processes have occurred. This is clear from Sally Merry's analysis of working-class women's increased use of lower courts in contemporary America.¹³ Working-class women who turn to lower courts in America to help them resolve problems with husbands, boyfriends, neighbors, landlords, and others often do so partly because they feel powerless to resolve their disputes by other means. One of many paradoxes is that while these women seek out the courts in an effort to gain a powerful and prestigious ally who can help them favorably resolve their problems, they typically lose control over the conflicts at hand as their problems are redefined as cases and taken over by legal experts who are charged with shepherding them through the system. In Indonesia, as in Malaysia and other Muslim contexts, these kinds of dynamics are amplified by laws that attempt to restrict polygyny, extrajudicial divorce, marital rape and other domestic violence, and all varieties of transgenderism and nonheteronormative sexuality. In circumstances such as these, women and men who petition the courts to help them resolve matrimonial and other domestic matters might be seen as inadvertently complicit in the state's colonization of social space. In registering such observations, I am not "blaming the victim." Rather, I am underscoring that in terms of citizenship and participation in modern-style politics, Acehnese and other Indonesians are not merely passive spectators who vote, but are in fact engaged in the making of history, albeit, to paraphrase Karl Marx's famous observation, not necessarily as they wish, choose, or imagine.¹⁴ These are some of the "down sides" that need to be taken into consideration when assessing the impact of projects of modernity and civil society. In Indonesia, as elsewhere, rationalization and other processes of modernity are not all liberation, freedom, and enlightenment. There is a dark side to these processes, which involves greater discipline, surveillance, and control on the part of Islamic and civil courts and myriad other institutions.

I confine my remaining remarks to two sets of issues, one of which has to do with the time frame of these two studies and the fact that, in Bowen's case, virtually all of the political and religious "extremism" and violence that is mentioned (often in passing, and mostly in the first twenty-five or so pages of the book) is excluded from analysis. Hooker, for his part, does not mention any of the extremism or brutality, even though his commentary incorporates political, religious, and attendant developments of the early 2000s, by which time paroxysms of violence (some sectarian, some more squarely criminal) were already widespread. Some readers may feel that the scope and force of such violence raise questions about the viability of Hooker's methodology. To what extent can one rely on relatively mainstream *fatawa* to track shifting religious sensibilities in larger contexts of political-economic and cultural change in Indonesia in recent decades, especially if the *fatawa* under consideration do not address the entailments of *jihad*, the legitimacy of violence, or the basic contours of one or another type of Islamic state?

¹³ Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago, IL: University of Chicago Press, 1990).

¹⁴ Karl Marx, "The Eighteenth Brumaire of Louis Bonaparte," in *The Portable Karl Marx*, ed. Eugene Kamenka (1852; repr., New York, NY: Viking, 1983), p. 287.

Bowen suggests at the outset of his study that his descriptions and analyses will take into account dynamics through 2002, when Indonesia was “entering into the 5th year of its post-Suharto ‘Reform Era’” (4). At this time, Bowen writes, “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* ,” and “[n]either police nor army tries very hard to keep order” (4). Here and elsewhere, we learn that the lives of many Gayo and other Acehnese were claimed during the late 1990s and early 2000s (22), and that brutal killings of locally resident Javanese and others were partly responsible both for the high turnover in the personnel of local Islamic courts and for the fact that many residents had fled to places like Medan and Jakarta. Related to this violence, much of it apparently condoned (if not sponsored) by state forces in response to Acehnese demands for greater control over their resources and territories, was an “unwanted gift” (232) in the form of the state’s decision to introduce *syaria* into Aceh. This important development is addressed briefly in the latter part of the book (231-33), where we read that members of the Free Aceh Movement (Gerakan Aceh Merdeka; GAM) have insisted that women wear “Islamic” dress (*jilbab*) in public, and that in 1999 at least some of those who failed to comply were forcibly seized by men who cut their hair.

Curiously, however, none of these bloody struggles or other acts of vigilantism or populist violence are factored into Bowen’s analysis. Instead, they are cordoned off by means of an implicit conceptual and analytic domaining that construes them as beyond the scope of the study (because they are largely irrelevant to Islam, law, equality, or public reasoning?). Indeed, we hear virtually nothing about Indonesians’ views and feeling-tones (“pro,” “con,” or ambivalent) concerning the murders and other brutality in Aceh, the emergence of groups such as Laskar Jihad (the Jihad Paramilitary Force) and Laskar Pembela Islam (the Paramilitary Force of the Defenders of Islam), or the gut-wrenching violence (some of it dating from the mid-1990s, some even earlier) in East Timor, parts of Kalimantan, Papua, Ambon, Maluku, Poso, or elsewhere in Sulawesi or beyond. For reasons such as these, some readers will find it difficult to accept fully Bowen’s previously noted claim, which undergirds much of the book’s conceptual and analytic apparatus, that debates among Indonesians “remain principled, grounded in reasoning about appropriate and legitimate forms of local, national, or international governance (4).”

I turn finally to issues of gender. With one or two exceptions, Hooker does not use the term “gender,” though he addresses many gendered phenomena and does so in ways that are both insightful and welcome. Bowen, in contrast, claims to offer a gendered account and does in fact shed much valuable light on gendered themes but tends to use the term “gender” as a codeword or synonym for “women.” Anthropologists and other scholars working in variously defined fields of gender and sexuality studies increasingly operate with more expansive concepts of gender, ones that encompass femininity, masculinity, androgyny, hermaphroditism, transgenderism, etc., as well as diverse modalities of sexuality. These concepts facilitate analysis of culturally interlocked domains that are often artificially segregated or ignored in scholarly accounts, as occurs when transgender practices or certain forms of sexuality are excluded from consideration or examined in relative isolation from other salient components of the more encompassing sex/gender and cultural-political

systems of which they are a part. One consequence of an overly narrow construing of gender is that gendered domains are stripped of much of their significance (for the collection of data, the development of theory) before research has even begun. Particularly in Indonesia, the locus of a good deal of research on transgenderism and same-sex sexuality in the last few decades, nonheteronormative practices and identities raise critically important analytic issues bearing on gender and pluralism alike; critically important too are the genealogies of these phenomena and the real-world stakes at issue.

Christiaan Snouck Hurgronje claimed that in the 1890s same-sex sexual practices among Acehnese men (as well as Minangkabau and Javanese men) were common and by no means beyond the pale of local normativities (though judging from Snouck's language, they clearly offended his own sensibilities).¹⁵ M. A. Jaspan, generalizing from Sumatra but referring to Southeast Asia as a whole roughly three-quarters of a century later, said nothing about these or other sexual practices (because those at issue had been delegitimized and were no longer as common, public, or visible?), though he did remark on sensibilities bearing on gender and sexuality, which we might characterize as relatively pluralistic, albeit less so than in earlier times, and somewhat dismissive: "homosexuals and transvestites are treated with kindness and an amused tolerance, ... are seldom considered a menace to society, blamed for being what they are, or made to feel that they must be kept in separate places from other people, ostracized or confined to institutions."¹⁶ One question that arises is where things currently stand on these fronts in Aceh, elsewhere in Sumatra, and in Indonesia as a whole. Bowen could have easily addressed these issues, and some readers (perhaps especially Indonesianists) will no doubt feel that he should have, given his stated concerns with kinship, marriage, gender, equality, value pluralism, and normative codes of various kinds. Evelyn Blackwood's rich corpus on same-sex relations and transgender practices among female-bodied Minangkabau is highly relevant here,¹⁷ as in different ways is Dede Oetomo's and Tom Boellstorff's incisive scholarship on *waria* ("male transvestites") and "gays" in Java and other parts of Indonesia.¹⁸ Some of the work by Oetomo and Boellstorff highlights the Indonesian state's relative lack of concern with nonnormative sexualities. So too, but in yet different ways, do reports from Jakarta indicating that same-sex relations among women, many of whom have husbands, children, and outwardly "normal" (heteronormative) lives, are extremely widespread though typically hidden from family members and others because they are denied

¹⁵ Snouck Hurgronje, *The Achehnese*, 1:21, 63, 149n.1; 2:222, 318.

¹⁶ M. A. Jaspan, *Traditional Medical Theory in Southeast Asia* (Hull: University of Hull, 1969), pp. 22-23.

¹⁷ Evelyn Blackwood, "Falling in Love with An-Other Lesbian," in *Taboo: Sex, Identity, and Erotic Subjectivity in Anthropological Fieldwork*, ed. Don Kulick and M. Willson (New York, NY: Routledge, 1995), pp. 51-75; "Tombois in West Sumatra: Constructing Masculinity and Erotic Desire," *Cultural Anthropology* 13,4 (1998): 491-521; "Gender Transgression in Colonial and Post-Colonial Indonesia," *Journal of Asian Studies* 64,4 (2005 [in press]); see also Evelyn Blackwood and Saskia Wieringa, eds., *Female Desires: Same-Sex Relations and Transgender Practices Across Cultures* (New York, NY: Columbia University Press, 1999).

¹⁸ See, for example, Dede Oetomo, "Gender and Sexual Orientation in Indonesia," in *Fantasizing the Feminine in Indonesia*, ed. Laurie Sears (Durham, NC: Duke University Press, 1996), pp. 259-69; and Tom Boellstorff, "The Perfect Path: Gay Men, Marriage, Indonesia," *GLQ: A Journal of Lesbian and Gay Studies* 5,4 (1999): 475-510; "The Gay Archipelago: Postcolonial Sexual Subjectivities in Indonesia" (PhD dissertation, Stanford University, 2000).

legitimacy and are seriously stigmatized.¹⁹ More broadly, political and religious elites in Java and elsewhere in the archipelago often act as if sexual and gender “deviance” does not exist, even while they tacitly endorse its censorship along with its repression by the military. What do circumstances such as these tell us about the scope and force of pluralistic sensibilities bearing on gender and sexuality in the 1990s and in the years since the collapse of the Suharto regime? And how, if at all, might we reconcile them with Andrew Beattie’s recent observation that a deep structural “relativism,” at once conceptual and moral, informs contemporary Javanese pluralism in language use, kinship, gender, sexuality, and religion?²⁰

The authors’ decisions not to deal systematically with political and religious extremism are relevant in this context as well; for they preclude consideration of an important range of highly charged relations among domains of politics, religion, kinship, gender, and sexuality, just as they inhibit recognition of some of the deep structural features that are common to all of them and that simultaneously illuminate some of the ways they are mutually constituted. Reports from contemporary Java suggest that members of extremist Islamist paramilitary organizations like Laskar Jihad (which in recent years has claimed as many as ten thousand supporters) and Laskar Pembela Islam have instigated attacks on “gay” organizations, such as those that have occurred in Jogjakarta and elsewhere in the past few years.²¹ These actions do not necessarily bear the imprint of the state, nor do the offensive forays against cafes, bars, discotheques, and casinos that are believed to be the work of Laskar Pembela Islam and Jemaah Islamiyah (the Islamic Community). It is probably not coincidental, however, that legislation recently drafted for the whole of Indonesia (Penal Code Article 427) could criminalize same-sex sexuality as well as nonreproductive sexual acts (e.g., oral sex) between married partners (though it mainly targets extramarital relations between males and females). (At this writing, key details and implications of the draft legislation remain unclear, as does the timetable for its implementation.) Occurrences along these lines are deeply troubling, the more so given the well-documented links between extremist religious organizations and powerful members of military and paramilitary groups loyal to former President Suharto and his supporters.²² Indeed, they are perhaps even more disturbing than “ordinary” state-sponsored terrorism inasmuch as they resonate with Taliban-style sensibilities and high-profile developments in other regions of the Muslim world such as Saudi Arabia and Egypt.

The direction of future developments in Indonesia and other regions of Muslim Southeast Asia remains unclear. The signs are not necessarily encouraging, especially when one considers that the extremely puritanical Salafi-Wahhabi tradition of Islam

¹⁹ Allison Murray, “Let Them Take Ecstasy: Class and Jakarta Lesbians,” in *Female Desires*, ed. Blackwood et al., pp. 139-56; Saskia Wieringa, “Desiring Bodies or Defiant Cultures: Butch-Femme Lesbians in Jakarta and Lima,” in *ibid.*, pp. 206-31.

²⁰ Andrew Beattie, “Changing Places: Relatives and Relativism in Java,” *Journal of the Royal Anthropological Institute*, n.s., 8 (2002): 469-91.

²¹ Tom Boellstorff, “The Emergence of Political Homophobia in Indonesia: Masculinity and National Belonging,” *Ethnos* 69,4 (2004): 465-86.

²² Robert W. Hefner, *Civil Islam*; “Global Violence and Indonesian Muslim Politics,” *American Anthropologist* 104,3 (2002): 754-65; Noorhaidi Hasan, “Faith and Politics: The Rise of the Laskar Jihad in the Era of Transition in Indonesia,” *Indonesia* 73 (April 2002): 145-69. See also Freek Colombijn and J. Thomas Lindblad, eds., *Roots of Violence in Indonesia* (Leiden: KITLV Press, 2002) and the many relevant articles in recent issues of this journal.

promoted by Saudi leadership has informed both Taliban-style Islam and the Muslim paramilitary groups that have sprung up throughout Indonesia. What does seem a strong likelihood is the heightened militarization of Indonesia and insular Southeast Asia generally—at least in the short run—owing to some of the regional dynamics alluded to here in conjunction with US policy initiatives linked to “the war on terror.” These developments bode ill for transgenering and perhaps for pluralist sensibilities of all kinds. This perspective is supported by the experience of the southern Philippines during the 1970s and 1980s. The increased violence spawned then as a consequence of the imposition of martial law by President Marcos and the subsequent rise of the Moro National Liberation Front placed a premium on male virtues associated with bodily strength, physical combat, military prowess, and successful warfare, thus creating conditions conducive to declines in the prestige of certain aspects of femininity and a further stigmatization of transgendered practices and identities.²³ One can perhaps be more optimistic about the long term, hopeful that political and religious elites work with ordinary Indonesians to negotiate their present crises and variously defined projects of modernity in ways that build on and enhance rather than constrict the pluralistic traditions that long characterized the region.

²³ Mark Johnson, *Beauty and Power: Transgendering and Cultural Transformation in the Southern Philippines* (Oxford: Berg, 1997).