BOOK REVIEW

Sharifah Zaleha Syed Hassan and Sven Cederroth, *Managing Marital Disputes in Malaysia: Islamic Mediators and Conflict Resolution in the Syariah Courts*. Richmond, Surrey: Curzon (1997). (252 pp.)

Lawrence Rosen

Popular images of Islamic law - whether of flogging or amputation, gender discrimination or rigidified religiosity - consistently fail to capture the lived existence of this multifarious form of legal orientation. Having concentrated so heavily on text and commentary rather than on the realities of its daily implementation, western scholarship on Islamic law has only uncovered the tip of the iceberg. When seen in its daily operation Islamic law reveals itself as an even more subtle and complex socio-legal system.

Malaysia offers an especially good case for studying Islamic law at work. Because it lies outside the Arabic-speaking world and was subject to intense British colonization, the Malaysian context puts the range and adaptability of Islamic law to a fascinating test. The authors of the present book, as part of a larger group working on conflict resolution in Sweden and Malaysia, conducted their research in 1991-92 in two mixed ethnic towns of roughly one hundred thousand people each in the Malaysian states of Kedah and Selangor. Through their research assistants they were able to tape and transcribe a number of court cases, the transcripts of which form an essential part of the authors' presentation.

Two central themes inform this study: first, that the activities of various Islamic court personnel have moved Malaysians away from reliance on customary law and more towards the terms of 'normative' Islamic law; and, secondly, that, given the various roles played by these court personnel, mediation rather than strict adjudication best describes the model used to 'resolve' the vast majority of cases. Each of these propositions, while attractively argued and not altogether inapposite nevertheless raises a number of concerns.

There are three main officials who operate in the courts studied: a marriage

counselor, an arbitrator appointed by the court, and the judge of the Islamic court (*hakem syari'e*). The latter is the main judge of the courts, the arbitrator having become increasingly a bureaucrat concerned with religious administration. More to the point, counselor and judge both operate, say the authors, primarily as mediators: neither sticks strictly to his or her assigned role but reaches out to create agreements between contending parties. This process is not without its history. In the colonial period civil courts were the venue for Islamic law adjudication. As Horowitz has put it, "the British inadvertently expanded the reach of the Shariah [Islamic law].... In many ways what was accomplished was not the Islamization of law but the legalization of Islam" (Horowitz 1994: 257). Reforms of the 1980s separated the Islamic courts from the civil courts while customary law (adat), which had had a great role in pre-colonial times, failed to acquire formal status. As a result court personnel, confronting marital problems in particular, rely on their own mediational capacities informed by Islamic precepts far more than on decision-making guided by indigenous practice.

Exploring these styles of mediation the authors paint a social and demographic profile of considerable interest. They show that women bring suits three to eight times as often as men, that a quarter of the cases concern support while estrangement and desertion account for another third, and that only about one-third as many cases go directly to the Islamic law judge for adjudication as pass through the office of religious affairs to be mediated. When such adjudication does take place the characteristic Muslim emphasis on reliable local witnesses supplemented by occasional oaths is evident. Unlike other parts of the Muslim world, however, there is no use of local experts. As a result, the limited capacities of the system of proof are rendered largely irrelevant when mediation seeks to elicit both facts and solutions.

The richest part of the authors' study is, in some respects, also an indicator of its weakness. These are the accounts of twenty-one actual cases. We see the court officials moving in and out of their official roles to get a sense of the intensity of the dispute, the feelings of the parties, and to instill in the litigants the correct moral and emotional states which, it is imagined, will allow the officials' proffered solutions to be effective. Undoubtedly, as the authors say (234), the officials' point is one of morality rather than direct implementation of power. But the rather superficial and formulaic questioning of parties by the officials, coupled (in all but one case) with no follow-up to indicate to these officials if their 'solutions' have worked suggests a very different reading from that offered by the authors. For whereas this may appear as simple mediation, the price of the officials' involvement often seems to be that the parties accept the terms in which officials describe each person's proper role and the appropriate way they should conduct themselves in the future. In a number of instances we see the judge hinting at possible judgments if his advice is not

accepted; in others one suspects that legitimate claims may be compromised as the price of judicial support for a workable compromise. The implementation of actual judgments is often left to the litigants (83). But knowledgeable researchers in Malaysia consistently told me that men rarely pay what courts require and that to avoid the notoriety of a separate civil suit for enforcement people prefer to obtain a settlement agreement. For many women in particular the cases cited seem to be examples of the problems associated with urban loneliness. And because the authors never interviewed the officials about their cases, much less followed litigants out of court to discuss their cases, we have no way of knowing what the court's questions about emotions meant to the parties, whether the litigants felt truly free to reject a suggested outcome, or whether the mediation in fact succeeded or failed.

Thus the question arises whether this is mediation or role reinforcement, whether this particular way of practicing Islamic law is not still demonstrative of the colonial heritage. My own research in Malaysia suggests far greater conflict between custom and the sort of Islamic law indicated here than the authors acknowledge. Had they given consideration to child custody cases or more concentrated attention to the division of marital property they might have noted that courts often rely on customary concepts which many Malays see as their form of Islamic law rather than as something that stands in contradistinction to it. There is, in fact, much to suggest that Malays, far from having had their family matters simply absorbed into a system of 'Islamic remedy agents', continue to be affected by colonial, customary, and Islamic laws and the contexts of their present-day political and economic implications. The joinder of these diverse legal regimes in certain formal domains does not mean that any one element has finally trumped all the others. Rather, as on-the-ground studies such as this demonstrate, a far richer array of contending forces may be embraced within the ambit of Islamic law than may be covered by formal doctrine. As a result the Malaysian experience will continue to test both our understanding of legal pluralism and our methods for taking its telltale pulse.

Reference

HOROWITZ, Donald
1994 'The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change.' *The American Journal of Comparative Law* 42: 233-93.