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Domesticating Islam: Sexuality, Gender, and the Limits of Pluralism

Tom Boellstorff

JOHN R. BOWEN. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, 2003. Cambridge, UK: Cambridge University Press. Pp. 306. \$28.99.

MICHAEL G. PELETZ. *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*, 2002. Princeton, NJ: Princeton University Press. Pp. 360. \$26.95.

INTRODUCTION

In the contemporary West, it seems that discussions of Islam are in danger of becoming less rather than more informed, clouded by stereotype, and prone to fundamental misunderstanding. Nowhere is this more apparent than in conversations about “Islamic” or “Muslim” law, which sensationalistic media often equate with dour-faced mullahs chopping the hands off of petty criminals and throwing burkas over the heads of hapless women.¹ The reality of Islamic jurisprudence, like that of Islam more broadly, is both more complex and more banal. Just as most Muslims go about their days in peace, concerned with the mundane aspects of their lives, so too most Islamic law concerns itself with questions of marriage and divorce, inheritance, and the best path to a pious life. This is well demonstrated in two excellent recent ethnographies on Islamic law: John R. Bowen’s *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* and Michael G. Peletz’s *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*.

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1. As a noun, “Muslim” refers to a follower of Islam. As an adjective, “Muslim” is equivalent to “Islamic” and means “pertaining to Islam.”

A benefit of these two ethnographies is that they are set in Indonesia and Malaysia. These two nations are part of Southeast Asia, that region between India (to the west), China and Japan (to the northeast), and Australia (to the south) that has represented a major crossroads for commerce and ideas, including religious ideas, for millennia. More specifically, Indonesia and Malaysia are part of what is termed "Island Southeast Asia" or the "Malay world," a subregion of Southeast Asia that also includes the Philippines and Singapore.² In fact, Indonesia and Malaysia are adjacent to each other: to the east, they share a border on the island of Borneo, which is split between them; to the west, the Indonesian island of Sumatra lies across the narrow Straits of Malacca from peninsular Malaysia, which in turn shares a northern border with Thailand.

Taken together, these studies of the "Malay world" provide an important corrective to the tendency to conflate the "Islamic world" with the "Arab world." Indonesia, after all, stretches a distance greater than that from California to New York and is the fourth most populous country (only China, India, and the United States have more inhabitants). Since almost 90 percent of its citizens are Muslim, Indonesia is home to more Muslims than any other—including any Arab—nation; Indonesia's Muslim population is almost equal to the Muslim population of the entire Middle East.³ With a population of around 25 million, Malaysia is considerably smaller than Indonesia (though hardly a tiny country).⁴ Islam is only one of several official religions in Indonesia (the others include Christianity and Hinduism), but it is the sole official religion of Malaysia. Virtually all persons identifying as Malay are Muslim (throughout much of Southeast Asia, this association is so strong that the phrase *masuk Melayu* ("become Malay") is often used to mean "conversion to Islam" (e.g., Kipp 1993, 29)).⁵

Since both books examine the quotidian workings of Islamic courts in the contemporary Malay world, setting *Islamic Modern* alongside *Islam, Law, and Equality in Indonesia* should prove rewarding to students of comparative colonialism, ethnicity, and jurisprudence. Clearly, Indonesia and Malaysia present interesting similarities and contrasts, a situation complicated by the influence of primarily Dutch colonialism in Indonesia and primarily British

2. It also includes Brunei Darussalam, a small independent sultanate on Borneo.

3. Despite this fact, Islam is not the sole official religion of Indonesia, and the practice of Islam varies considerably in the archipelago. Christianity (Catholicism and Protestantism), Buddhism, and Hinduism also have official status in Indonesia. Most Indonesian Muslims are Sunnis that follow the Shafi'i school of jurisprudence.

4. As languages, Indonesian and Malaysian are roughly as similar as British and American English, but due to a variety of factors (particularly colonial policy), only about half Malaysia's population is ethnically Malay, with the remainder made up primarily of various ethnic Chinese groups and Tamils from South Asia.

5. But while it is assumed that all (or nearly all) ethnic Malays are Muslim, it is not assumed that all Muslims are Malay: both Muslim South Asians and Chinese converts to Islam, for instance, can be found in Malaysia.

colonialism in Malaysia. These two powers brought differing attitudes toward colonialism (in general the British were more interested in “civilizing” the “natives” they ruled, while the Dutch usually placed greater emphasis on economics), as well as different notions of law (English common law for Malaysia, Dutch civil law (based upon the Napoleonic Code) for Indonesia). In the contemporary context, both Indonesia and Malaysia represent nations in which the place of Islam in society is hotly debated but also constantly enacted through everyday practices of legal reasoning.

Bowen’s and Peletz’s books could be reviewed from a range of perspectives, given the rich ethnographic and historical detail each provide. For the purposes of this essay, I follow the lead of Bowen and Peletz in discussing a shared research finding that might be surprising to some but should be significant to all. This is that the scope and meaning of Islamic jurisprudence in Indonesia and Malaysia is fundamentally tied to domestic spheres of marriage, inheritance, and kinship (rather than, say, criminality, trade, or government). Bowen and Peletz marshal impressive evidence demonstrating the implications of this state of affairs for questions of jurisprudence, society, and modernity. However, I will argue that the potential remains for further explicating the ultimate conclusion to which their own data compels them: Islamic law in Indonesia and Malaysia presumes its juridical subject is heterosexual. Of course, this presumption is not unique to Indonesia and Malaysia, nor is it unique to Islamic law. We need look no further than the Western legal tradition, which does the same.

It must be emphasized at the outset that I am not faulting either book for ignoring homosexuality. Indeed, Peletz actively works to bring issues of homosexuality and transgenderism into his analysis, and for Bowen the absence of reference to homosexuality accurately reflects its absence in his ethnographic data. Instead, my point is that there is merit in asking what consequences follow from the presumption of heterosexuality Bowen and Peletz find in their ethnographic data. Because heterosexuality is the dominant sexual orientation worldwide, it is often taken for granted and conflated with “sexuality” in general. Pausing to consider its historical and cultural variability in Bowen’s and Peletz’s books allows us to ask useful questions. For instance, the particular assumptions about being male or female that Bowen and Peletz underscore in their ethnographies assume that to be male is to desire women and to be female is to desire men. This has consequences for everything from notions of choice in marriage, to questions of how modern Indonesia and Malaysia are understood as composed of nuclear families constituted through heterosexual unions.

Foregrounding the presumed heterosexuality of the juridical subject is helpful because it opens the door to discussing the particular forms of heterosexuality at play in legal reasoning. For instance, in a case of conflict between customary law (*adat*) and Islamic law discussed below, the legal dispute in question sets a notion of the heterosexual nuclear family against

another form of heterosexuality, not against a form of homosexuality. Asking these kinds of questions challenges the apparent universality of both male dominance (explicitly addressed by Peletz and Bowen) and heterosexuality. Feminist legal scholars have worked not just to underscore that the presumed juridical subject is masculine but to demonstrate the consequences of this assumption. For instance, they have shown how associations of this masculine juridical subject with notions of autonomy, agency, and choice shape legal outcomes for men and women—including those women who can to some degree fulfill the normative masculine model and those men who cannot (Smart 1999).⁶ A similar analytical move with regard to sexuality can facilitate asking new questions as to the effects of a normatively heterosexual juridical subject in various legal contexts. As I discuss in the final section of this essay, these are fundamentally linked, since it is through the assumption of heterosexuality that male dominance equals the dominance of *women*—as wives, daughters, and sisters. My approach is analogous to that of early feminist anthropologists, who challenged the apparent universal subordination of women to men through comparative theoretical exegeses that attempted to set forth universal reasons for that subordination (Ortner 1974; Rosaldo 1974), and through ethnographic studies investigating how that apparently universal subordination was instantiated in specific historical and cultural contexts. This essay is an example of the latter approach, drawing upon the specific ethnographic materials Bowen and Peletz set forth. These materials are of course not limited to “the local,” since the Islamic courts they study draw upon debates and legal forms from across the Islamic world, and Southeast Asia is in any case a region with a long history of global interchange.

Within the scope of this review essay I do not make the overtly comparative move of addressing, say, same-sex marriage debates in North America or Europe. Just as my argument is not that Bowen and Peletz fail to consider homosexuality, so it is also not that Bowen and Peletz fail to include in their analyses data from Canada or Denmark. My argument is not that some set of data is missing; rather, it focuses on drawing out the implications of the data at hand. It concerns Bowen’s and Peletz’s impressive demonstration that the assumption of a heterosexual juridical subject is internal, indeed foundational, to the Indonesian and Malaysian materials under discussion. Bowen and Peletz come close to naming this state of affairs and reflecting upon its significance when they independently reach the conclusion that Islamic law is grounded in the domestic sphere. But not all domestic spheres are heterosexual.

In my view the most important finding of these studies concerns the forms “domestication” takes in contemporary Malaysia and Indonesia: it

6. Under Islamic law, for instance, the inability of a husband to consummate his marital union due to impotence is typically grounds for divorce—not necessarily because of the inability to reproduce but because of the husband’s failure to provide sexual fulfillment to his wife. A particular model of heterosexuality is presupposed by this line of reasoning.

presupposes a “modern” family composed of a husband, wife, and their children, rather than any of the forms of extended kinship that have existed in the region. Contained within this finding is the point, so obvious it goes largely without saying, that this nuclear family is founded in the sexual relationship between a man and woman; in other words, it is based upon *heteronormativity*. “Heteronormativity,” a term neither Peletz nor Bowen employ, refers to the assumption that heterosexuality is the only normal or proper sexuality. Naming heteronormativity does not equate to calling for a discussion of homosexuality. Instead, it is a call for considering the implications of the forms of heterosexuality found in the data under consideration. Heterosexuality, like all forms of sexuality, is not a genetic given but the product of cultural forces, including—as Bowen and Peletz show—juridical forces. Feminist legal scholarship has worked not just to address the experience of women but to “consider the ways in which law constructs and reconstructs masculinity and femininity, and maleness and femaleness, and contributes routinely to a common-sense perception of difference which sustains the social and sexual practices which feminism is attempting to challenge” (Smart 1995, 79). In an analogous manner, considering the specific forms of heterosexuality constructed through various legal regimes provides an important perspective from which to ask how, for instance, notions of “choice” in marriage might or might not shape understandings of “choice” more generally.

After reviewing Bowen’s and Peletz’s discussions of Islamic courts in Indonesia and Malaysia, I return to the theme of heteronormativity, not in a mode of comparison with the West but in the form of explicating its importance in Indonesia and Malaysia. Because heterosexuality is still largely taken as the default state of affairs for human relations worldwide (this is, indeed, the definition of “heteronormativity”), it often passes without comment. In reflecting on the ramifications of heteronormativity in Islamic courts in Indonesia and Malaysia, my goal is to respond to this silence in a way that can be taken up in further ethnographic and comparative work.

ISLAMIC LAW IN THE “MALAY WORLD”

From its origins, Islamic jurisprudence has evinced several features that have remained remarkably constant despite the formation and dissolution of a range of Islamic caliphates, sultanates, and other polities, the substantial impact of colonialism, and the varied statuses of Islam in a range of post-colonial contexts. One such feature concerns the ways in which Islamic law developed through a scholarly tradition with relatively weak connections to state power:

Governmental decrees, royal edicts, and palace codes have in some legal systems become the bases for the development of systematic juristic

thought. In others, notably in the early Common-Law system of England, judicial precedents have served a similar purpose. It is instructive, therefore, to note that none of these plays any significant part in the development of Islamic law. What was initially preserved was preponderantly the dicta not of judges but of jurists. (Calder 1993, 220; see Schacht 1964, 209; Zubaida 2003, 4)

This distinction between “judges” and “jurists” refers to persons who actually decide cases (judges) versus legal scholars who set forth principles for deciding cases (jurists). This emphasis on scholarly debates rather than definitive precedents means that Islamic law has *always* been marked by pluralism. This can be seen in the formation of differing schools of jurisprudence (*madhhab*) and the lasting importance of interpretation even after the “closing of the gate of independent reasoning” around A.D. 900 (Schacht 1964, 70–71; see Hallaq 2001, 238). But despite this strong pluralistic tradition, Bowen and Peletz both note how the mistaken view that Islamic jurisprudence consists of “a fixed set of rules” remains distressingly common in the West (Bowen 2003, 19; Peletz 2002, 65). It is here that the ethnographic contributions of Bowen and Peletz (like their colleagues elsewhere (e.g., Hirsch 1998; Rosen 1989)) are so significant. In both ethnographies, Islamic law emerges as a contextual process in which litigants and judges work to find practical solutions in keeping with religious directives. This context includes relationships between the past and present, between Islamic courts and secular legal systems, and between competing interpretations of Islam itself.

Peletz and Bowen show us not only the suppleness, but the banality of Islamic law as it works to settle divorces or divide property between siblings. Their research techniques facilitate comparison: each author spent about nine months engaging in ethnographic research on the work of Islamic courts, including sitting in on proceedings. The courts in question were in locales where the authors have many years of prior experience, so their analyses are supplemented by earlier work in the region, archival research, and textual analysis. Bowen and Peletz relate the cases they observe to a range of factors, from local politics (they sometimes have personal acquaintance with the litigants in question) to national, regional, and global factors, to a range of historical factors. Their monographs thereby illustrate the classic anthropological approach that provides “a continuous dialectical tacking between the most local of local detail and the most global of global structure in such a way as to bring them into simultaneous view” (Geertz 1983, 68).

While many prominent schools of anthropological analysis have been fairly ahistorical (for instance, the functionalist approach of Bronislaw Malinowski, or the structuralist approach of Claude Lévi-Strauss), most anthropological research has always combined the present-day orientation of participant observation with a historical perspective. For Bowen and Peletz,

this perspective sheds light on how practices of Islamic jurisprudence in the “Malay world” reflect and depart from those found elsewhere.

Bowen weaves an attention to history throughout *Islam, Law, and Equality in Indonesia*. For instance, Chapters 2 and 3 provide background concerning the Gayo region on the island of Sumatra, the ethnographic focus of the book (and only about 300 miles from the region of Malaysia in which Peletz conducted his fieldwork). Later chapters (like Chapter 7, “Historicizing Scripture, Justifying Equality”) also weave historical and ethnographic materials together to show how contemporary practices of Islamic legal reasoning in the context of courts (rather than jurists working in isolation) draw upon multiple sources of authority.

Bowen tracks how notions of *adat*, very roughly “customary law,” were codified and linked to local spatial scales during Dutch colonialism (see Boellstorff 2002). Acknowledging that these processes have apparent parallels elsewhere in Indonesia and beyond (von Benda-Beckmann 1984; Merry 1988), he emphasizes that while Islamic law may be found around the world and while debates over Islamic law cross borders, the practice of Islamic law always takes place in specific cultural contexts. Bowen thereby demonstrates what he terms “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” (Bowen 2003, 8; emphasis in original). From the outset, Bowen emphasizes that a “constant element” in his discussion will be “gender, the equality of rights and relationships among men and women” (Bowen 2003, 5). Bowen does not consider the consequences of the fact that these relationships among men and women are assumed not to include sexual relationships *between* men or *between* women—that is, that the presumptive juridical subject is heterosexual. Nonetheless, his analysis implicitly demonstrates how assumptions of heteronormativity underlie Islamic jurisprudence. The question of “the equality of rights and relationships among men and women” that Bowen identifies as a focus of Islamic jurisprudence is quite rarely a question of brothers and sisters, aunts and uncles, or men and women without any recognized blood tie. It is overwhelmingly a question of men and women in a socially recognized heterosexual bond—that is, husbands and wives. As can be seen in the examples discussed below, it is often with reference to such heterosexual bonds (the child of a husband and wife, the brother of a husband, and so on) that other persons enter into juridical consideration at all.

Questions of gender and sexuality also occupy a central position in Peletz’s analysis of Islamic jurisprudence in Malaysia. Like Bowen, Peletz grounds his discussion in a historical perspective. For instance, Peletz discusses the consequences of the consolidation of British power in the late nineteenth century for Islamic law on the peninsula. In general, the Islamic officials known as *kadi* or *qadi* found that the British emphasis on “written codes and substantive law as opposed to, say, more informal, unwritten codes of

operation" (Peletz 2002, 48) led to a "relative messiness and chaos" (49) where British common law was partially combined with forms of Islamic legal reasoning. It also contributed to the domestication of Islamic law, since "it is clear that with respect to numerous categories of cases that the British deemed serious, such as homicide, burglary, rape, arson, forgery, and coining . . . Malays tended to be excluded from all substantive participation in the judicial process" (49). It thus seems that *kadi* jurisdiction was expressly limited to matters of marriage, divorce, adultery, and inheritance (50–51), though religious matters like mosque attendance and failure to fast during Ramadan were sometimes included as well (57). This domestication of Islamic law in Malaya (later Malaysia) roughly paralleled the situation in the Netherlands East Indies (later Indonesia), where "colonial rulers . . . allowed local Islamic judges . . . to handle disputes involving family law matters of marriage, divorce, and inheritance" (Bowen 2003, 46). In both cases a third set of laws, courts, and informal disputing practices (other than Islamic and colonial) involved *adat*, the codification of which served colonial interests by defining local culture as non-Islamic and highly fragmented (46–63; Peletz 2002, 56–59, 210–11).

In light of the colonialist tendency to localize culture (including law), a tendency with a long and related history in anthropology, I would emphasize that while in the Indonesian and Malaysian cases colonial and postcolonial agents worked to "domesticate" Islamic law, the grounding of Islamic law in the family is also found within Islamic tradition itself. As Pearl has noted, marriage "has a fundamental role to play in Islamic jurisprudence. Almost every legal concept revolves around the central focal point of the status of the marriage" (Pearl 1979, 42; see also Anderson 1959, 4). It is also true that since Islam's early history, attempts by Muslims to extend Islamic law to penal matters of crime, taxation, and statecraft have been met with resistance by rulers (including Muslim rulers), often resulting in the curbing of *kadi* power and "a double administration of justice, one religious and exercised by the *kadi* . . . the other secular and exercised by the political authorities" (Schacht 1964, 54; see also 50, 76; Zubaida 2003, 1). Forms of Islamic law that involve criminal penalties for theft or murder have existed in the Malay world (Peletz 2002, 26–38), but an emphasis on marriage, divorce, and inheritance can be found throughout the history of Islamic jurisprudence. At issue for Bowen and Peletz are the forms this "domestication" takes, particularly with regard to the contemporary emphasis on the nuclear family.

The main body of both Bowen's and Peletz's ethnographies lies in their consideration of present-day court cases. Both employ a case-study approach that alternates between recounting particular court cases and commenting on them. Peletz's ethnography is built around thirty-six case studies from Islamic courts in Rembau (like Bowen's Takèngèn, the district capital nearest the rural fieldsites of earlier research). Peletz examines how Islamic courts in Malaysia are encompassed by secular courts, whose workings continue to

shape perceptions of what legal proceedings and judgments should look like (a state of affairs shared with Islamic courts in Indonesia, which Bowen notes are subordinated to an overarching secular court system). Both authors demonstrate that this encompassment of Islamic jurisprudence within a secular court system dates to the colonial period and even earlier but takes on new meanings in the contemporary period. For instance, in Malaysia, Islam stands as “the key symbol of Malayness” (Peletz 2002, 188). Despite the fact that there are non-Malay Muslims in Malaysia, and despite the fact that ethnic Malays could in theory profess any faith, the conflation of “Muslim” and “Malay” is central to the national imaginary, and Peletz discusses how Islamic courts shore up this equation through everyday court proceedings (204–08). This is quite distinct from the ways in which Islam is linked to ethnicity in Indonesia, where a higher percentage of citizens identify as Muslim but where Islam is not the sole official religion. There, debates over “intermarriage” reference not so much ethnicity as the related but distinct question of marriage between Muslims and non-Muslims (Bowen 2003, 240–52).

Among the many cases examined by Peletz are two in which women go to Islamic court to clarify their marital status (Peletz 2002, 136–41). In the first case, the wife left home after a dispute, and her husband later told someone else “it’s like we’re divorced.” (In Islamic law it is usually the case that a husband can divorce his wife by proclaiming “I divorce you,” even if the wife is not within earshot.) The Islamic judge (*kadi*) hearing the case determined that the couple were not divorced based on the husband’s choice of words. Since the husband now wished to reconcile with his wife, the *kadi* left them to work out if they wished to try and save the marriage (and cohabitate again) or not. In the second case, a woman went to court to seek support and clarification of her marital status; her husband had been in a motorcycle accident four years ago, and since that time they had been separated, with the husband apparently suffering emotional side effects from the accident and also wishing to marry a second wife. The husband had not provided any support to the wife for over ten months. The *kadi* decreed that the husband’s elder brother (standing in for the husband, who was not present) would ensure that the back payments were made to the wife. No one was able to ascertain if the husband had ever made the necessary statement to divorce his wife, so the case was not resolved.

These synopses illustrate several patterns in the cases documented by Peletz and in Islamic jurisprudence in Malaysia generally. First, most plaintiffs are women (see also Hirsch 1998). Second, nearly all cases involve marriage, understood as a heterosexual bond between men and women. Third, while these court proceedings typically involve *kadis* invoking principles like *talak* (repudiation) without citing authoritative texts or precedents, they are nonetheless understood by all involved as Islamic law.

Like Peletz, Bowen attends to how Islamic jurisprudence works in specific contexts of practice, emphasizing the indeterminacy of rules. This

is a theme throughout *Islam, Law, and Equality in Indonesia*, and particularly in its second section, "Reasoning Legally Through Scripture." Here Bowen's goal is "to consider the ways in which judges, jurists, historians, and ordinary Muslims have sought ways to justify or critique social norms on the basis of Islamic tenets, and to reinterpret Islam on the basis of other social norms" (Bowen 2003, 67). In particular, Bowen explores the interplay between customary law, or *adat*, which "ties people to places," versus Islam, which as a globally minded religion "juridically displaces them" (67). Bowen's data indicate that "women have brought most of the cases" to the courts he examines (86). Though the gendered division appears less stark than in Peletz's material, Bowen notes that the courts "have served as institutions that work in favor of female plaintiffs . . . *even though* on the surface the Islamic legal principles appear to be less favorable to women" (87, 200; emphasis in original). Chapters on judicial consensus and inheritance disputes further support Bowen's claim that Islamic jurisprudence in Indonesia is strongly pluralistic, with interplay between local, regional, national, and global debates, and between religious schools and organizations, state bureaucracies, and village and ethnic traditions. By tracking how legal disputes take the form of argumentation between a range of actors (rather than through reference to definitive rulings, for instance), Bowen and Peletz show how far the anthropology of Islam has come since Talal Asad's observation that "In their representation of 'Islamic tradition,' Orientalists and anthropologists have often marginalized the place of argument and reasoning surrounding traditional practices" (Asad 1986, 16).

We can see one example of this pluralism in the "case of Aman Nurjati's lands," a dispute involving land inheritance that Bowen follows over more than two decades (Bowen 2003, 95–99, 108–11). The gist of this long-running and complicated (but apparently not unprecedented) family dispute involves a conflict between Islamic law, which in theory has a clear-cut formula for determining the shares of land to be inherited by someone's descendants (and which typically gives men twice the share of women), and the *adat* (customary law) of the Gayo region, which tends to be more place-bound and assumes that women who leave their natal village after marrying forfeit any claim on village property. A 1947 ruling resulted in dividing the property between a daughter of the original owner who had stayed in the village and her nephew, excluding three nieces who had moved away from the village after marrying. Bowen notes how "the court record shows little concern with the boundaries between judiciaries, or for distinguishing between 'Islamic law' and 'adat law'" (98). A 1963 attempt to reopen the case (brought forward by two of the excluded nieces and one of their sons) was denied, but in 1969 the case was successfully appealed. By this time, the judge involved "was working in an entirely different conceptual framework from that of his 1947 predecessors. At issue for him was not whether past settlements had been consensual or not, nor whether one should apply Islam or *adat*, but

rather who were the genealogically entitled heirs to [the person who originally owned the land]" (111).⁷ This judge redivided the land so that three sisters who had left the natal village received shares of the land, against the ostensible norms of Gayo *adat*. Islamic law and *adat* can be seen as respectively privileging two different models of heterosexuality.

GENDER, FAMILY, AND HETERONORMATIVITY

In contemporary Islamic law, as in contemporary Western law, "husband and wife [are] established as the core intimate relationship around which law, politics, and policy revolve" (Fineman 1995, 1). It is thus entirely appropriate that Bowen and Peletz explicitly emphasize gender, and implicitly emphasize heteronormativity, as key to the working of the Islamic and other legal regimes they study. Based upon the materials presented by Bowen and Peletz, it is evident that all parties involved in Indonesia and Malaysia strongly link Islamic jurisprudence to kinship and that the gendered distinction between "male" and "female" is the fundamental binarism organizing this domain. In light of the overall history of Islamic law and its relative exclusion from questions of statehood and criminal law, this focus is understandable. Yet note again how the range of topics excluded from contemporary Islamic jurisprudence in the Malay world is quite large. It obviously includes items like slavery, which historically was a topic for Islamic jurisprudence.⁸ Additionally, Islamic law is in theory attentive to crimes like thievery and highway robbery, as well as religious offenses like failure to attend mosque or drinking wine.

Given how questions of gender predominate in the Islamic court contexts researched by Bowen and Peletz, it is not surprising that both focus on gender in the final sections of their ethnographies. In this essay, I follow their lead in turning to questions of gender, recalling issues I touched upon in the introduction. In Part 3 of *Islam, Law, and Equality in Indonesia*, "Governing Muslims through family," Bowen discusses how the centrality of gender to Islamic law in Indonesia is instantiated diachronically in terms of inheritance—the passing of wealth between generations of persons construed as "family" through the rubric of gender—and synchronically in terms of marriage and divorce, which "raise issues of equality of agency between men and women" as well as "the possibility of transgressing boundaries between religious communities" (Bowen 2003, 173). Bowen explores how debates over gender shape notions of Islam, the public, and justice itself: "Islamic court

7. As Bowen sees it, the change in the conceptual framework is thus part of a large-scale change in jurisprudential focus—from a weighing of what was interpreted as two differing legal systems (Islam and *adat*) to a mode of reasoning that tends to subsume *adat* within Islamic law, shifting the question to one of interpretation.

8. For instance, with regard to questions of marriage and inheritance, how a slave could become free, and the treatment of slaves (Hasan 1993; Schacht 1964, 127–30).

judges are in an important way family law judges; all of their everyday work involves trying to sort out disputes within a family" (210). This family, Bowen demonstrates, is presumed to be founded in a heterosexual bond.

Like Bowen, Peletz emphasizes in the latter portion of his book the differing ways men and women make use of Islamic courts as litigants. The irony is that "the more the courts adhere to what are regarded as authentically Islamic and modern practices that entail the refashioning of new Malay-Muslim families and subjectivities, the more they contribute to the production of a Malay-Muslim citizenry whose subjectivities and forms of kinship converge with those of the nation state's non-Muslim population" (Peletz 2002, 206). In other words, we find notions of "Islamic" and "modern" becoming conflated through specific forms of heterosexuality. Islamic courts thus erode the ties of extended kinship in favor of the nuclear family, disseminating the modern notion that identities "are in a very basic sense freely chosen" (2280). What cannot be chosen under this legal framework is something other than heterosexual desire. Thus, this notion of choice invokes particular understandings of heterosexuality and explicitly sets itself against notions of the extended family. Such notions of the extended family, associated in Indonesia and Malaysia with *adat*, are also predicated on heterosexuality. However, this notion of heterosexuality—foregrounding ethnicity and kinship and assuming that both of these, as well as marriage itself, are not chosen but arranged by social forces—is a different model from the simultaneously "modern" and "Islamic" notion of heterosexuality that foregrounds the choice of a single woman and a single man for each other in marital union.

A short digression into theories of gender and sexuality will help clarify why it is important to attend to normative models of sexuality when analyzing the gendered nature of law. In her classic essay "The Traffic in Women: Notes on the 'Political Economy' of Sex," the anthropologist Gayle Rubin developed the notion of what she termed the "sex/gender system," insisting that biological sex and cultural gender must be analytically distinguished (Rubin 1975, 159). She noted further that gender and sexuality are deeply imbricated, since "gender is not only an identification with one sex; it also entails that sexual desire be directed toward the other sex . . . The suppression of the homosexual component of human sexuality . . . is therefore a product of the same systems whose rules and relations oppress women" (180).

This suppression of homosexuality is key to what I term "heteronormativity" in this essay, since it allows heterosexuality to be taken as the default state of affairs for human relations. In a later (and also frequently cited) essay, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," Rubin emphasized that despite the blurry boundary between gender and sexuality, it is crucial to recognize their social distinctiveness:

I want to challenge the assumption that feminism is or should be the privileged site of a theory of sexuality. Feminism is the theory of gender

oppression. To automatically assume that this makes it the theory of sexual oppression is to fail to distinguish between gender, on the one hand, and erotic desire, on the other. . . . [This] reflects a cultural assumption that sexuality is reducible to sexual intercourse and that it is a function of the relations between women and men. . . . The cultural fusion of gender has given rise to the idea that a theory of sexuality may be derived directly out of a theory of gender. (Rubin 1984, 307–08)

Rubin thus underscores how the mutual interpenetration of any set of social categories—ethnicity and nationalism, religion and politics, economics and healing, and so on—does not entail that the categories lose their integrity. Indeed, while keeping categories distinct may be a cultural imperative in some circumstances (Douglas 1966), in other circumstances it may be through blurry boundaries, not clear-cut ones, that cultural categories are sustained through time and across space.

As Rubin indicates, “sexuality” and “gender” make up an odd binarism. It is clear that sexuality and gender are on some level distinct. In the Western academy, this distinction has been institutionalized, albeit incompletely, in the division between feminism and queer theory (Weed and Schor 1997). Yet it is also clear that sexuality and gender overlap: as I have noted elsewhere, there are no cases where a young person’s desire for a young person (regardless of gender) would be labeled “homosexual” while that same person’s desire for an older person (regardless of gender) would be labeled “heterosexual.” “Homo” and “hetero,” as terms of *sexuality*, are assumed to index *gender* (Boellstorff 2005a).

In light of this discussion of gender and sexuality, it is significant that the concluding chapter of *Islam, Law, and Equality in Indonesia*, “Public Reasoning Across Cultural Pluralism,” draws together Bowen’s analyses to argue that “pluralism in values and social norms . . . is an irreducible fact of Indonesian life” (Bowen 2003, 257). This chapter harks back to the opening framework of the book, in which the Indonesian material is deployed against debates in liberal political theory concerning pluralism. This emphasis accurately reflects the emphasis on questions of pluralism and justice in the contexts under consideration. It is significant, however, that what Bowen terms the “irreducible pluralism” of Islamic law in Indonesia does appear reducible in one respect. The notion of “family” that is the landscape upon which Islamic jurisprudence plays itself out appears to assume, across an otherwise bewildering array of contexts, that families are centered upon heterosexual relationships. Homosexuality and transgenderism are absent from Bowen’s analysis, accurately reflecting the perceived incommensurability between these topics and the public faces of Indonesian Islam (Boellstorff 2005b). In the face of this apparent incommensurability, it is all the more important to not take heterosexuality for granted but to ask after the consequences of particular assumptions about the nature of heterosexual desire. For instance, how are legal frameworks shaped by a social world based predominantly upon a need

to choose a spouse of the opposite gender, versus one based predominantly upon entering into an arranged marriage, where the arrangement is presumed to involve the selection on one's behalf of a spouse of the opposite gender?

Peletz also emphasizes the equation of Islamic law with family law, noting that in contemporary Malaysia "In order to be a full-fledged social adult, one must enter into a legitimate marriage (with a socially approved member of the opposite sex) and bear or father (or adopt) children" (Peletz 2002, 188). The heteronormativity that evaporates Indonesia's otherwise irreducible pluralism appears in Malaysia as well. From the beginning of *Islamic Modern*, Peletz signals an attention to pluralism around issues of ethnicity, religion, and the public that resonates with Bowen's concerns, though Peletz ties his argument less to liberal political theory than to controversies concerning globalization and Weberian debates over the rationality of Islamic law. Peletz emphasizes how gender is shaped by Islamic jurisprudence:

[T]he courts help produce and legitimize modern middle-class families and subjectivities and simultaneously endeavor to assure that allegiances beyond the household be largely restricted to the global community of Muslim believers (the *ummah*) and the state . . . the sanctity of (heterosexual) conjugal bonds and parent-child relations are accorded highest priority in terms of the explicit content of morally corrective exhortations and pronouncements to troubled couples and others . . . what is noticeably absent [are] positive references to collateral relatives and kin groupings like kindreds, lineages, and clans. (19)

In other words, heterosexuality has moved to the fore, at the expense of what are now seen as "collateral" forms of kinship. An important issue raised here by Peletz is precisely what aspects of this modern middle-class family ideal are novel. The paucity of reference to collateral relatives and other kin groupings is probably not a distinguishing feature:

The family is the only group based on consanguinity or affinity which Islam recognizes. Islam is opposed to tribal feeling, because the solidarity of believers should supersede the solidarity of the tribe. Intermediate groups have left traces only in connection with succession (the 'asaba), with crimes against the person (the 'akila), and with the duty of maintenance beyond the limits of the family in the narrow meaning of the term; but these are merely extensions of the family and not groups in their own right. (Schacht 1964, 161)⁹

9. Peletz also links the significance of this deemphasis of extended forms of kinship by claiming they are "seen as a drag on economic effort, hence an obstacle to the economic development of the Malay community, which . . . continues to lag behind the Chinese and Indian minorities" (Peletz 2002, 20). Yet in Malaysia and elsewhere, one source for the economic success of Chinese (and to a lesser extent, Indian) communities has precisely been the exploitation of extended family networks in the business world.

The contemporary conflation of Islamic law with the domestic sphere in Indonesia and Malaysia relies upon gender normativity and heteronormativity; both structure the modern publics to which “the domestic” is opposed. As a result, heterosexuality marks the limit of pluralism in these nation-states; pluralism in dominant Indonesian and Malaysian understandings is reducible to heterosexuality and the nuclear family which that heterosexuality is held to instantiate and reproduce. Bowen’s and Peletz’s research demonstrates how a particular form of heterosexuality—the assumption that marriage is a *chosen* relationship *between* men and women—is becoming central to the formation of modern Islamic publics in Malaysia and Indonesia.

A salient difference between the approaches of Bowen and Peletz is that Peletz includes a chapter (“Producing Good Subjects, ‘Asian Values,’ and New Types of Criminality”) in which he explicitly considers the ramifications of nonnormative sexualities and genders for Islamic law. In this chapter Peletz also abandons the case-study method in favor of analyzing secondary sources. A major reason for this methodological shift is that, as in Indonesia, a sense of incommensurability between Islam and homosexuality means that homosexuality was simply not present as a topic for discussion in the court contexts that made up his ethnographic research. Homosexuality, it appears, is assumed not to produce kinship, and kinship is the domain within which the Islamic litigation Peletz examines is played out. The two cases to which Peletz turns in this chapter both originate in the late 1990s: the “Azizah” case, in which two women tried to marry each other; and the “Anwar” case, concerning the arrest and trial of former Deputy Prime Minister Anwar Ibrahim on charges of sodomy. Peletz places his discussion in the context of a reading of the “Asian Values” literature as produced by former Prime Minister Mahathir Mohamad and others.

As Peletz notes, the notion of the modern, nuclear family is organized around the notion of “companionate marriage” (Peletz 2002, 105) and the intersection of choice and love it entails. As I have argued elsewhere (Boellstorff 2005a, 2007), with the demographic shift from predominantly arranged to predominantly chosen marriage, sexual orientation emerges as a new kind of problem. When marriages are arranged, sexual orientation is secondary, but when marriages are based on love and choice, then that love and choice “fail” if not heterosexual. Homosexuality thus becomes a particular dilemma in societies where choice and love are linked to modernity: Persons with homosexual desires fall in love, but the form of their desire falls outside sociolegal recognition. Given that the title of the chapter in question includes the phrase “new types of criminality,” it is surprising that Peletz does not cite James Siegel’s *A New Criminal Type in Jakarta: Counter-Revolution Today* (Siegel 1998). This work is useful for Siegel’s examination of the themes of love, choice, and national belonging that are so central to Peletz’s analysis. For instance, Siegel notes that in Indonesia “Love, justifying marriage by the consent of the couple even against the wishes of parents, is a theme of

nationalist novels, particularly Sumatran ones, from the 1920s and 1930s . . . Nationalism and love are linked because through it, peoples are mixed and a new authority is created" (16). Thus the emphasis on companionate marriage in the "Malay world" appears to originate in multiple sources, including Islamic jurisprudence, nationalism, and capitalism.

One possible reason Peletz does not pursue these connections is that, like Bowen, he does not set forth a theoretical framework that distinguishes sexuality and gender; in the absence of such a framework, the key role of heteronormativity remains unclear. Peletz has made important contributions to the study of Southeast Asian masculinities, but the lack of a theoretical vocabulary for theorizing sexuality limits his ability to address the specifically heteronormative aspects of Islamic jurisprudence in Malaysia. Homosexuality and transgenderism are conflated in his analysis, as can be seen by references to "gays, lesbians, bisexuals, transvestites, and all others engaged in transgendering" (Peletz 2002, 250) or "the increased visibility of Malaysian gender-transgressors, particularly homosexuals" (250, see also 295). Of course many Malaysian homosexuals, like homosexuals elsewhere, are not gender transgressors at all; they appear as "normally" gendered men and women, transgressing only in terms of their homosexual desire. It bears noting that the distinction between sexuality and gender, and thus between homosexuality and transgenderism, is quite clear in most Southeast Asian contexts and in many Islamic contexts more broadly. This is illustrated by the fact that the contemporary Islamic Republic of Iran supports and even finances sex-reassignment surgery for transsexuals while vehemently opposing homosexuality.

What is lost when Peletz conflates homosexuality with transgenderism is the insight that it is heteronormativity together with gender inequality, not just the latter in isolation, that is central to Islamic jurisprudence in Indonesia and Malaysia. Asking after the specific consequences of gender in a heteronormative paradigm for Islamic jurisprudence, given that this paradigm constitutes an apparent point of similarity with the West, remains an important topic for future research. Here we again see the analogy to recognizing that the presumptive juridical subject is male—so that, for instance, the "reasonable man" in legal discourse assumes particular notions of self-sufficiency and agency, with consequences not just for women but for men who are seen not to attain the masculine ideal (Smart 1995). Similarly, the heteronormativity of Islamic and Western jurisprudence renders homosexual domesticity (indeed, homosexual families) juridically invisible, but this heteronormativity has parallel effects with nontraditional heterosexual relations: "illegitimate" children, heterosexual cohabitation outside marriage, and so on. The fact that so-called "anti-pornography and porno-activity" (*pornografi dan pornoaksi*) legislation proposed in Indonesia over the last few years has often targeted unmarried heterosexual couples (said to be *kumpul kebo* or "living like water buffalo") reflects how forms of heteronormativity raise questions for legal analysis that go beyond the question of homosexuality, just

like feminist legal criticism asks questions beyond those of women narrowly conceived (Minow 1990).

BEYOND THE DOMESTIC

It should be evident that Peletz and Bowen have provided us with—and I mean no hyperbole here—significant achievements of anthropological analysis. It is possible to read each of these works in many ways, drawing from their substantive and conceptual offerings to draw country-specific or comparative insights regarding topics ranging from religion, law, and the state to ethnicity and the ongoing discursive effects of colonialism. In this review essay, I have focused on a cluster of topics—gender, sexuality, kinship, and marriage—that act as key domains through which Islamic jurisprudence is “domesticated” in daily practice.

It is crucial to emphasize that Bowen and Peletz both identify a powerful and productive cultural contradiction in a *public* reasoning that takes place across the *domestic* terrain of the heteronormative family.¹⁰ The equation of Islamic law with “family law” thus has deep consequences. It shapes the character of legal proceedings; for instance, Peletz’s observation that “going to court entails airing private matters publicly” (Peletz 2002, 129) entails the ethnographically accurate conclusion that nonprivate matters of commerce and criminality, among other possible topics, are quite absent from Islamic courts in Malaysia. The “socially embedded forms of public reasoning” that constitute Islamic jurisprudence in Indonesia are fundamentally “about norms and laws concerning marriage and inheritance” (Bowen 2003, 5). What Bowen terms a “repertoire of justification” (7) is a repertoire founded in the conviction that families are heterosexual and that such families—the modern, middle-class nuclear family in image if not always reality—are the social units making up the nation and, in a powerful sense, humanity itself.¹¹ Recognizing this conviction lets us see that these forms of heterosexuality are not the “foundation” of law and society, as the rhetoric so often goes, but the *product* of repertoires of justification. It is not just that legal reasoning is socially embedded, but that the social norm of heterosexuality is legally embedded, naturalized, and regulated through legal reasoning.

This indicates that heteronormativity is not a special, isolated topic to be left to feminists or queer studies scholars. It appears as a cultural linchpin that acts to mediate conceptions of proper and improper, public and domestic—and ultimately, society and law. What are the implications of this

10. Of course, such contradictions can be found in the West as well—divorcees also go to court in the West, and “domestic” matters of sexuality and gender have public ramifications.

11. In Islam it is often claimed that one can take up to four wives; Bowen and Peletz both provide material discussing this question of polygamy.

centrality of gender and sexuality for the anthropology of law? Since at least the work of nineteenth-century ethnologists such as Louis Henry Morgan and Henry Maine, the nexus of kinship and law has been central to theories of culture and society (Maine 1861; Morgan 1870). Ever since, work in the anthropology of law has taken kinship as crucial to legal regimes. However, it seems that a need persists for a stronger theorization of the relationship between gender and sexuality, kinship and marriage, and domestic and public. The anthropology of law can benefit from asking how sexuality and gender, as distinct yet interlocking categories of human relationality and subjectivity, are taken to be the raw material producing kinship (indeed, ethnicity) through heterosexual marriage (Schneider 1980). Bowen and Peletz demonstrate the continuing importance of this equation even in contexts (like Islamic jurisprudence in the Malay world) that might appear distant from both feminism and queer theory.

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