

7

Normative Pluralism in Indonesia: Regions, Religions, and Ethnicities

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A number of prominent political theorists recently have tried to expand the reach of their approaches beyond Western liberalism and beyond Western democracies by critically examining notions of justice, multiculturalism, and what Parekh (2000) calls 'moral monism.' In his late writings, John Rawls (Rawls 1999) asked, albeit in a footnote, whether Islamic norms could enter into political debates about justice (he said they would have to be translated into universalistic norms). Parekh (2000) has presented a normative framework for immigration situations (such as in Britain) that would not pretend that Western liberal ideas of autonomy were universal. In Chapter 2, Kymlicka asks whether Western trends toward recognition of minorities have found or will find a purchase in Asian societies; he suggests that they have only to a limited degree.

These studies start from a Western liberal framework, asking whether it is suitable for other societies. I would like to proceed the other way around. After noting Kymlicka's observations on Asian societies, I explore claims and practices regarding normative and legal pluralism that have emerged in Indonesia. I find debates and conflicts over the very units for thinking about pluralism and that, specifically, using the broadly analytic categories of political theory such as 'minority', 'culture', and 'people' to characterize the positions taken in Indonesia would highlight, and thus favor, one set of political positions over others. I then ask if this case might not allow us to reexamine the language we use for describing cases in Europe and North America.

Kymlicka points out that western countries have moved towards policies of 'multination federalism', in which minorities are granted a degree of self-governance in defined territories, as well as increasing degrees of 'multiculturalism' towards immigrants, in the form of rights to preserve their language and culture. The concept of multination federalism covers a wide range of arrangements, from devolution of legislative powers, as in Scotland and Catalonia, to the formal recognition of indigenous peoples' rights in Australia and the Americas. Even France, stated by Kymlicka as the major exception to this trend, continues to recognize the special status of a number of regions,

NORMATIVE PLURALISM IN INDONESIA 153

from Alsace to the Reunion islands, and in practice, thought not yet officially, has begun to follow European dictates on minority language rights.

That said, Kymlicka observes that with the exception of India, Asian states have opposed multination federalism for a number of reasons: they see some minorities as fifth columns and potential allies of the state's enemies; they want to impose uniform laws and property rights; they believe that in any case minorities will assimilate in time. Kymlicka also notes that there are exceptions (such as India) and there are situations that do not fit the Western categories of national minorities, indigenous peoples, and immigrants, despite the increasing tendency of actors in each Asian country to adopt, via Non Governmental Organizations (NGOs), the United Nations (UN), or other international conduits, the Western conceptual framework. The question for the future will be whether such international efforts to guarantee minority rights can succeed.

But what if we reversed the line of inquiry, and asked whether there are political theories and institutions developed in some Asian countries that are based on quite different assumptions about the categories and groups that make up nations? This way of thinking has enjoyed a very bad reputation, of course, ever since former Malaysian Prime Minister Mahathir touted the virtues of 'Asian values' in order to claim the inapplicability of international norms of human rights. But I wish to focus not on issues of human rights but rather of the recognition of minority rights, and pose several questions: What categories are granted political and legal recognition? What kinds of claims are made by communities that compose the nationwide population, which may or may not be minorities? What remains of the category of citizen or member in a national political community? My Asian work has been in Indonesia and I restrict myself here to that country, but I believe that contrasts along some of the axes I point to here could become the basis for some modest regional comparisons, before extending such comparisons to European or American countries.

In what follows I first analyze debates about the relative merits of claims to self-governance that are made in Indonesia on the bases of peoplehood, place, and social norms. I then consider whether the result of this analysis could provide us with a different lens for studying debates in Europe or the Americas. Next I turn to the question of religious law and its place in a democratic society, asking whether the presence of a legal system of laws that are based on revelation is compatible with the idea of an overlapping political consensus—and whether this problem does not exist for Western societies as well.

1. Indonesian Categories

The New Order that lasted under Suharto from 1966 to 1998 made the control of categories part of its state-building policies. The Indonesian state motto is 'unity in diversity,' a motto whose Sanskrit origin reminds us of the

importance in the state ideology of the ancient 'Indian' connection, a connection that is promoted through the Buddhist complex at Borobodur and that promises to overcome divisive allegiances to region, religion, or political party. Under Suharto a narrow sort of cultural diversity across regions was acknowledged and indeed promoted. In the 1970s and 1980s, the state television stations frequently aired dances and songs that were identified by the name of a region. These performances took on a rather boring uniformity, wrested as they were out of their ritual or ceremonial contexts. Each province boasts a house in the national 'miniature garden' in Jakarta, the Taman Mini Indah Indonesia. Inside each are tokens of 'culture': wedding outfits on mannequins, farm implements, musical instruments, and so forth. Absent are representations of indigenous political institutions or, most intriguingly, accounts of ethnic differences. For example, the province of South Sulawesi contains a number of distinct ethnic categories—Buginese, Makasarese, Torajan, and others—and residents of the province are highly aware of these categories and the cultural differences across them. But in New Order public contexts one could only speak in terms of the residents of a geographical region, as in 'people of South Sulawesi' and not mention ethnic names, lest one be guilty of exacerbating ethnic tensions.

The forbidden categories for public discussion were known by the acronym SARA: *suku* (ethnicity), *agama* (religion), *ras* (race), and *antargolongan*, literally 'intergroup' and applicable to nearly any discussion of group identity. I found of particular interest the linguistic contortions necessary to refer to individuals of Chinese background. Often one read the incomplete designating phrase *orang keturunan*, 'someone of descent', which everyone could easily complete with 'Chinese.' A second usage was to write about someone who was a 'citizen', *warga negara*, which readers understood to refer to Chinese because Chinese, and no other citizens, were *merely* citizens; legal citizenship was their only relationship to the Indonesian social and political body. (One might compare the French designation, 'français de papiers,' 'French by virtue of papers', referring to those people who have citizenship papers but no other claim to French status.)

After Suharto these restrictions were considerably loosened, but even more consequential for public deliberation about minorities and citizenship has been the process of political decentralization. In a series of laws, Parliament has authorized the devolution of some political and economic authority to provinces and districts. Local governments now have greater opportunities to develop policies about resource use or trade, and also to engage in the corruption once reserved for the central government.

This legislation came at the same time as a general sense of a crisis in legitimacy, and indeed in part because of that crisis. It was, and still is, unclear what the normative basis for government is in Indonesia. Elections have been widely viewed as manipulated. The three presidents who succeeded Suharto

NORMATIVE PLURALISM IN INDONESIA 155

did so under the old rules of the game. Current contenders for the office include highly corrupt members of the Suharto regime and representatives of more or less 'Islamic' parties. The judiciary hardly inspires greater confidence. Certain judges continue to give their decisions to the highest bidder; the major change since 1998 has been the degree of publicity given to their actions.

The prospect of devolution has given rise to movements for self-governance in many parts of Indonesia. These movements and deliberations do not, however, seem to have entered into international discussions of group rights and representations. The reasons for that may be, first, that in Indonesia the issue is seldom posed in terms of 'minority rights', and, secondly, that there is a great deal of local debate and conflict over precisely in what terms claims to self-governance should be made.

2. Provinces, Peoples, and Adat Norms

One might expect the natural unit for decentralization to be the province. Provinces have been the most important subunits in Indonesia's politics. Many provinces correspond in some way or another to social and historical realities. All provinces contain people of more than one ethnic category, but some are relatively homogeneous, such as central Java, which contains the two old court cities where Javanese culture was most developed, and west Sumatra, home of the Minangkabau people. Others are frankly 'mosaics' but correspond to historical developments, such as North Sumatra, which contains old Malay sultanates, various related Batak peoples, and the cosmopolitan city of Medan. Much of that province's historical dynamics revolve around the creation of plantations and the movement of Bataks from the hills into the plains and the city. Some provinces can appeal to distant glorious pasts. Aceh contains a number of distinct peoples but is the remnant of a once extensive sultanate. The city of Palembang, capital of southern Sumatra, lies near the capital of the maritime empire Srivijaya and provides a symbolic focus for that province.

Since independence, most provinces have engaged in one or another project of rebelling against Jakarta, whether because a secessionist movement gained regional power or because provincial leaders thought they could gain leverage in order to make demands for provincial privilege or for changes at the center. Indeed, it is very difficult to adequately characterize these 'secessionist' movements, as different groups of people participated for very different motives.

Starting before, but especially after the fall of Suharto in 1998, individuals and groups have made claims to self-governance on grounds that they represented people bound together by a set of norms or values. These claims

have rested on several different foundations. In some cases they referred to Islamic or other religious norms, but in many other cases they referred to norms of *adat*, a term used to refer to local norms, practices, and values, and usually in explicit opposition either to Islam or to rule by Jakarta. In a legalistic sense, *adat* can be used to refer to social norms as rendered into the law-like codes of 'adat law'. In a superficial sense, *adat* can be used to refer to the cultural trappings of wedding ceremonies and cuisine. But more recently, *adat* has been used to refer to ways of governing resources and resolving disputes.

Some *adat*-based associations began to advance their claims well before 1998. The West Sumatran Adat Assembly, for example, was recognized in 1983 by Jakarta as a legitimate political body. By the late 1980s the Assembly had declared its deliberations to have the force of law. Regional alliances began to emerge, each claiming to represent a specific *masyarakat adat*, a phrase that literally means 'adat community' but is used to mean 'people who live according to adat'. In the late 1990s an Alliance of Adat Communities in the Archipelago lobbied the national parliament for greater self-determination by such *adat* communities. One delegate put the alliance's claims in terms close to those used by Kymlicka (1995) to justify self-determination by indigenous groups: 'Long before the state existed, *adat* communities in the archipelago already had succeeded in creating a way of life; the state must respect the sovereignty of the *adat* communities' (*Kompas*, March 22, 1999).

The concept of 'adat community' has provided a source of legitimacy for groups seeking to act in the name of society against the state. Their claims may amount to a recall petition, as when in West Kalimantan three such organizations, claiming to represent Malays, Dayaks, and Chinese, 'the majority of residents' in the province, sent a petition to the regional parliament asking for the dismissal of the Governor. The three groups said they acted in the name of 'the people of West Kalimantan' and called their statement a 'no-confidence motion', in other words, as if they were a shadow parliament (*Kompas*, June 14, 2000).

The claims made by such groups are in terms of specific political ideas about their political legitimacy, on grounds that their society is governed by distinctive social norms of *adat* and that these norms predate 1945, the birth year of the Indonesian state. 'Adat' as used by these groups includes most importantly the norms governing family life, methods of resolving disputes, and rights to resources. For many groups, the importance of highlighting *adat* has to do with resources and self-government, and in particular: (a) rights to land held in the name of the community as a whole, now brought to bear on agricultural estates and logging companies which had been authorized by the Suharto state; and (b) institutions of dispute resolution,

NORMATIVE PLURALISM IN INDONESIA 157

weakened by the state, which might help ease current intercommunity tensions. (Murray Li 2000).

These political self-conceptions and claims do not always involve a general notion of prior residence or even minority status—Javanese organizations claim the importance of adat norms as well. Sometimes they correspond to ethnic groups, sometimes to the population residing in a particular region. In north and east Sumatra, for example, rival groups claiming to represent ethnic Malays in land disputes also tried to include other ethnic groups in the category ‘Malay adat community’. One group referred to the ‘adat community of Deli’, a region defined by a Malay sultanate, and stated that ‘Anyone, as long as he/she lives on Deli soil, is included in the Deli adat community’; indeed the group had Javanese, Bataks, and Malays on its rosters (*Forum Keadilan*, June 18, 2000). This group saw its major struggle as regaining rights to communal land then controlled by a private company, and its self-definition around common residence fit that project. Another group defined its wider scope in terms of ‘Malay adat and culture’ throughout eastern and northern Sumatra, but also highlighted the fashion in which Malays had married with other groups and yet had preserved Malay norms (*Kompas*, June 13, 2000).

As one might expect, claims to speak for an ‘adat community’ have led to disputes over legitimacy of representation. More interestingly for our questions, however, is that these disputes often also have concerned the very nature of the social groups being represented. For example, in the late 1990s delegates could be proposed to represent ‘ethnic minorities’ to the Indonesian national ‘superparliament’ that chose the president. The Dayak Adat Council of West Kalimantan proposed in 1999 that one of its leaders represent the Dayak minority. But two other Dayak leaders argued that Dayaks should not be represented as ‘ethnic minorities,’ both because on Kalimantan they are the majority, and because it is control of local resources, and not representation in national forums, that is important (*Kompas*, August 9, 1999).

In the end, ‘adat’, along with ideas of ‘minority’, ‘ethnic community’, and religion, are political resources that can be deployed in public debates about regional autonomy, debates that have become more pressing as, recently, districts and province prepared to exercise greater autonomy over internal affairs, and an increasing number of regions petitioned for status as independent districts or provinces. In general, it seems that an expression such as ‘adat society’ was heard in those provinces, such as Riau or West Kalimantan, where indigenous peoples felt themselves displaced or deprived of older resources by immigrants. In some cases Islam has become a rallying cry for regional autonomy more than a basis for a theocracy; such is true of Aceh and South Sulawesi. Still elsewhere, in Ambon and Central Kalimantan, adat emerged as a source of indigenous peacemaking processes and, more

generally, rules governing social life and the relationship of people to the environment.

Adat as a set of norms provides a different basis for claims to self-governance than do concepts of 'people', 'minority', or 'ethnicity.' The use of adat to claim control over regions and resources resembles the way in which regional languages and language histories have been invoked in Spain, France, and elsewhere in Europe as signs of allegiance to a regionalist political cause and as evidence for the cultural and social foundations of that cause. In general, language plays a less critical role in Indonesian autonomy debates than it does in some other parts of the world—it is less frequently a sign of one's allegiance to either the center or the region. There may be a number of reasons for this difference; two come immediately to mind. First, in most parts of Indonesia, the numerically and politically dominant Javanese are not perceived as owning the national language, and refusing to speak Indonesian would have relatively little political impact. Although reassertions of linguistic distinctiveness may well arise, state control or exploitation is not generally associated with linguistic imperialism, as it is in India, the Philippines, or Spain. (Aceh is an exception here, as was the former East Timor, for those who saw Indonesia as a colonizing power.)

Second, the major fault lines in recent, violent local conflicts have not been linguistic (and most, Irian Jaya excepted, have not involved Javanese), nor have they been part of a single nationwide cleavage, but rather have pitted a specific, recent group of immigrants against other residents. Hostilities in both Kalimantan and Ambon in the late 1990s and early 2000s had as their underlying causes resentments of the economic success of the immigrants, in some cases exacerbated by behavioral differences that grated on the sensibilities of the local population. In Kalimantan, Malays and Chinese joined forces with Dayaks against Madurese traders; later, Dayaks acted on their own. In the Moluccas, Ambonese fought against Bugis immigrants from South Sulawesi. In the latter case, but not the former, the cleavage was also along religious lines, pitting Ambonese Christians against Sulawesi Muslims. The churches and the mosques of the Moluccas served as rallying points, and the larger national communities joined in, further inflaming the conflict. But in none of these cases did language differences play a major divisive role.

3. The Case of Aceh

Clearly, then, there are a number of possible ways to characterize a subnational unit of self-governance—as a region, a people, a linguistic minority, as people following certain norms, or as members of a religious group, among other possible categories. Current decentralization policies in Indonesia will probably lead to a very complex structure that includes various types of local units

NORMATIVE PLURALISM IN INDONESIA 159

with varying degree of power of self-governance. How should we then categorize the overall set of such units? I urge us to resist the use of simple, blanket descriptors such as 'national minority', and will try to make this case not only by pointing out, as above, that the bases for these units' legitimacy are varied, but also by arguing that choosing one set of descriptors for a range of cases can itself lead us to unintentionally favor one side over another in a local political conflict.

This point is illustrated by way of the example of Aceh, the province where I have conducted most of my Indonesia fieldwork (see Bowen 2003). Aceh is the northernmost province on the island of Sumatra and the first part of today's Indonesia to have societies organized along Islamic lines, beginning probably in the late thirteenth century. By the sixteenth century the Sultanate of Aceh controlled a substantial portion of Sumatra and parts of Malaya. Conquered only with great difficulty by the Dutch in the late nineteenth century, Aceh remained under more or less military control until the Japanese invasion in 1942. The Dutch never were able to regain a foothold in Aceh, but many Acehnese fought against the Dutch near the city of Medan and raised money for the nationalist cause. Indeed, its role in providing financial capital for the Revolution led to one of its mottos: 'capital for the Revolution' alongside of the older motto 'veranda of Mecca' (Reid 1979).

Disputes with Jakarta over the status of the militia and the right to control schools and religious affairs led to a rebellion in 1952 under the banner of Darul Islam, which although it ended in 1962 left a residual resentment of Jakarta. The rebellion was supported by many across the province, including the ethnically distinct highlands regions (where I conducted fieldwork). It was a rebellion in the name of continued regional autonomy and for the protection of Islam as the religion of its inhabitants. A second, small rebellion began in 1976 and continued on a relatively small scale into the 1980s. It received support due to rising discontent over the government's failure to honor its promises to grant some degree of autonomy to Aceh and to return to the province any more than a small share of the enormous profits yielded by natural gas facilities on the northern coast (Kell 1995). I remember armed patrols passing through the village where I lived in the mountainous central region of the province during my fieldwork in the late 1970s and early 1980s.

By the late 1980s the repressive tactics of the military and the politically repressive policies of the Suharto regime had further intensified hatred of the central government and support for the rebellion (Bowen 2003; Kell 1995). Whereas the rebellion of the 1950s was under the banner of Islam, this new movement was called the 'Free Aceh Movement', and claimed to speak for an 'Acehnese people' who never had been legitimately incorporated into Indonesia but rather invaded by the 'Javanese-Indonesian' state. The atrocities committed by the Indonesian military, acting virtually without civilian control by the time of Megawati Sukarnoputri's accession to the presidency

in 2001, have further deepened hatred and resentment, leaving the conflict without a clear solution (see Jones 2003).

Now, it would seem that the Free Aceh Movement's calls for self-governance on grounds of precolonial autonomy and in the name of a people would suggest that the political theoretic approach to national minorities would work here. Indeed, international commentary on the struggle in Aceh sometimes portrays it as a liberation struggle by the 'Acehnese people', sometimes described as an 'indigenous people.' Drawing this conclusion would, however, take the movement's self-characterization at face value. In fact, Aceh consists of a number of distinct language groups, and, among the majority Acehnese speakers, serious and long-lasting oppositions between regions. The central, southeast, and southern districts are mainly composed of non-Acehnese people, who have urged the central government to recognize them as a distinct province, and to help them to develop roads and airports such that they would be able to reach the city of Medan without having to pass through Acehnese-majority districts. (As of early 2005 an airport in the central city of Takèngèn received two flights a week.) Before the current war, people in these districts managed to improve their economic and social lives only by leapfrogging over the provincial government and appealing to Jakarta for assistance. The Acehnese-speaking people of west Aceh have long resented the control by elites from two other districts, Pidie and Greater Aceh.

The main force of the idea that Aceh consists or should consist of the Acehnese has been to underwrite violence by Free Aceh fighters against Javanese migrants. Most of the killings that occurred in the central district, where I have worked the longest, were of Javanese migrants. The movement also claims that the rightful rulers of Aceh are the precolonial elite. The movement's leader, Hasan Di Tiro, descends from prominent Acehnese nobility, and the movement claims its legitimacy from that tie, positioning itself against both Islamic leaders and those who favor continued membership in Indonesia. Ironically, it was the central government that attempted to make Islam its own weapon in the struggle and that recently gave to the province the right to reshape its legal structure 'according to shari'a'. The provincial government has taken up the challenge of trying to develop new laws that would reflect Islamic values.

Aceh illustrates the ways in which international categories of 'minorities' and 'peoples' not only fail to capture local histories and meanings, but in fact weigh in on one side of a conflict. In this case referring to the residents of Aceh as an 'Acehnese people' sides with Acehnese nationalists against those other residents of the province who see their interests as intertwined with the Indonesian state and threatened by the prospect of an independent Aceh. Of course, if Aceh were to become independent, a highly unlikely prospect, instantly the highland minorities would become the 'indigenous peoples' and

NORMATIVE PLURALISM IN INDONESIA 161

'minorities' in international language and the Acehnese, now majority and nondominated, would equally instantly lose their 'indigenous' status.

4. Religious vis-à-vis National Communities

Quite distinct from the norms discussed above are those which grant different legal statuses to persons depending on their religion. Indonesia has an Islamic court system that runs parallel to its system of civil courts. Each system hears civil cases in first instance and on appeal, and allows requests for cassation to be made to the Supreme Court. The Islamic courts only hear cases brought by Muslims. They give legal sanction to marriages and divorces and can hear disputes over inheritance or the division of property upon divorce. The civil courts hear all other types of civil cases and all criminal ones, and also cases involving marriage, divorce, or inheritance brought by non-Muslims. (Special courts also exist for administrative, military, and commercial matters.) The courts of first instance refer elements of cases to each other: an Islamic court will ask its sister civil court to decide ownership disputes; the civil court will ask its Islamic counterpart to render a decision about the Islamic division of property.

I have treated the details of the legal system elsewhere (Bowen 2003); relevant to our discussion here is that Indonesia grants distinct rights to its citizens depending on their declared confession. All Indonesians must state to which religion they adhere, and they must choose among a limited, albeit now expanded, list. Couples of mixed religion enormously complicate matters, of course, and have been the subject of extensive jurisprudence, but the broad idea is that Muslims have the right to have their cases decided under Islamic law. That this is seen as a right has to do with the colonial history of law; in 1937 the Dutch regime withdrew from those Islamic tribunals then in existence (primarily on Java and Madura) the right to adjudicate inheritance cases, leaving them with jurisdiction only over marriage and divorce. Many Indonesians remembered this slight long after independence, and they saw the creation of a nationwide Islamic court system in 1989 as a final assertion of independence.

If the Islamic courts are limited in jurisdiction to cases involving Muslims, the civil courts not only hear cases involving any and all Indonesians, but emphasize the multireligious nature of the country and of its justice. I recall the manner in which one chief judge of a local civil court in Aceh asked each witness to state his or her religion (required at the swearing-in). When each responded 'Islam', he would say *kebetulan*, 'as it happens,' in order to make of this simple and routine question a didactic moment, an occasion to remind his audience that in his court one might find Christians or Hindus testifying or litigating as well as Muslims, and that this was the nature of justice in Indonesia.

However, the segmentation of the court system also created problems, in part because it suggested that with respect to family law people could be easily separated into two distinct and sealed communities. Muslims would have their affairs regulated in one court, and those of all other faiths in the other. This idea has two types of difficulties associated with it. Firstly, it creates practical problems whenever a couple or family contains people of different religions, or, more precisely, one or more Muslims and one or more people of another religion. Secondly, it may reduce the degree to which people consider themselves citizens first and Muslims, or Christians, second.

This last question is basic to the future of Indonesia. A number of Islamic parties and organizations emphasize the priority of solidarity within the Islamic community, *ukhuwah Islamiyah*. They then call on the State to protect this community against violations and intrusions that come in the form of efforts to convert Muslims, to urge them to marry outside the community, or to break up Islamic organizations under pretense of antiterrorism actions. An alternative notion of *ukhuwah*, understood as the community of all Indonesians rather than just Indonesian Muslims, has been promoted by other Muslim intellectuals and politicians. These scholars invoke the Medina Constitution of the prophet Muhammad, under which Jews and others lived together with Muslims, as a charter for an Islamic theory of religious pluralism. The scholar Jalaluddin Rakhmat (1991) has even proposed the concept of a *mazhab ukhuwah*, a 'legal tradition based on community,' in which Muslims would emphasize common effort and good works rather than theological debates.

5. Policing Inter-marriage

It is with respect to marriage across religious boundaries, however, that the greatest difficulties have arisen. Inter-marriage has been one of the key domains in which Muslim fears of inroads on their community have arisen—as is the case with many religions. Current disputes began after passing of the 1974 marriage law, which created considerable confusion about the status of 'mixed marriages.' Before the law, the term had been used both in law and in everyday discourse to refer to marriages between two people subject to different laws, where 'law' included religious laws. Marriages between citizens of different states or followers of different religions were 'mixed.' The right to enter into such marriages was guaranteed by law. Furthermore, Muslim jurists in Indonesia and elsewhere had generally acknowledged as valid the marriage of a Muslim man to a non-Muslim Christian (or Jewish) woman, citing the explicit permission given in the Qur'ân (Verse 5:5).

NORMATIVE PLURALISM IN INDONESIA 163

But the 1974 law redefined 'mixed marriage' as referring only to different citizenships, and, in Article 2, clause 1, stipulated that marriage among Indonesians was to be carried out according to the religions of the parties. Did the new law mean that a couple had to be of the same religion before they could marry? Or did it only mean that each had to satisfy his or her respective religious authorities?

In practice, people of different religions living in Jakarta (where the issue arose most frequently) ignored these issues and married at the civil registry as they had done before the law. This course of action was endorsed in at least one Jakarta court decision, although it was made more difficult by a 1983 executive decree that limited the civil registry's function to registering marriages that did not involve Muslims. In May 1986, the head of the Jakarta office of the Ministry of Religion sent a letter to the civil registrars stating that because marriage was a religious matter, the civil registries should refrain from registering any marriage involving a Muslim. After all, said the circular, Muslims have their own Religious Affairs Office, which in theory could marry a Muslim man to a Christian woman, so there was no need for the registries to be involved. Doing otherwise would be to 'bow down to Western law' by treating marriage as secular.

The Supreme Court challenged this position three years later, in a case written by the Court's Chairman, Ali Said. Said declared that the 1945 Constitution guaranteed people of different religions the right to marry, and that this right had not been revoked by the 1974 marriage law (see Bowen 2003: 240–8 for details). In this case the Religious Affairs Office in Jakarta had refused to marry a Muslim woman to a Christian man, saying that such a marriage was contrary to Islam. The Court agreed with their finding, but went on to say that the very fact that the woman had then gone to the civil registry, where the marriage could be performed but not in accord with Islam, showed that she 'no longer heeds her religious status.' The civil registry should then marry them or help them to marry, concluded the justices. They lamented that the 1974 law provided for no institution to handle interreligious marriages, and stated that the law had created a regrettable 'legal vacuum'.

The decision caused considerable negative reaction from Muslim jurists. It stated that the Muslim bride, by her very use of the registry, had suspended or abandoned her religion. This assertion confirmed the fears of some Muslims that interreligious marriages would lead Muslims to convert to Christianity. The editors of the Ministry of Religion's publication *Mimbar Hukum* took strong and continued exception to the Court's argument. Every year throughout the 1990s they published articles on mixed marriages, in which they gave reasons why every religion opposed such marriages and sometimes rather creatively reviewed the social difficulties caused by mixed marriages, including interracial marriages in the United States.

The Ministry officials defend the prohibition on marriages between Muslim men and non-Muslim women. Such marriages had generally been considered valid in Islamic circles, but, argued some scholars, this special dispensation was intended to accommodate the situation in the beginning of Islamic history when there were few Muslim women, a situation no longer existing. Muslim opponents of mixed marriages often justify their stance by pointing to the danger of conversion to Christianity, particularly because (they claim) the higher economic status of Christians will make it easy for Christian men to attract Muslim wives. The historian Taufik Abdullah (interview, 1994) explained: 'No one really debated this change in emphasis from "OK for a Muslim man to marry a Christian woman" to "neither way"; the latest theory to justify the change is that the religion of the mother is the more important since she is with the children more' (He agreed with this claim).

Even after the Supreme Court decision, local Offices of Religious Affairs continued to refuse to perform marriages involving a Muslim or to register such marriages, even if they had been performed elsewhere according to Islamic law. Some couples married overseas, but they could not then register their marriages in Indonesia. Not having a certificate of marriage registration causes problems for such couples. Indonesian law directs courts to not recognize marriages where there is no marriage certificate. Certificates are needed to collect a deceased spouse's pension or bank account, or to be declared the heir of the spouse by the religious court. Nor does the conversion of one spouse always provide a satisfactory legal solution; the Supreme Court ruled in 1996 that a wife who had converted to Islam but then reverted to Christianity lost all rights to her children in case of divorce.

In 1992 this 'vacuum' led Minister of Religion Munawir Szadjali to call for new laws to regulate interreligious marriages, a call echoed by Chief Justice Ali Said. But Munawir's voice was weakened by his own daughter's marriage to a Christian; some observers suggested that this weak position gave the upper hand to those who thought that no mixed marriages should be considered religiously valid. In 1995 I interviewed a number of prominent Muslim intellectuals in Jakarta about mixed marriages and drew a variety of responses. A noted psychologist condemned the restrictions on marriage as 'absolutely out of tune with the times', but her colleague in defending women's rights, the lawyer Nani Yamin, came out strongly against any legislation to permit mixed marriages; permitting them would weaken religious values, she argued. The well-known Muslim scholar Nurcholis Madjid relied on the Qur'ân, 'which says that a Muslim man may marry a Christian: how can you forbid the marriage when the Qur'ân allows it?' But other Muslim scholars and activists disagreed. A young feminist Muslim journalist said she agreed with the prohibition: 'Religion is the foundation for everything—how could I have a husband who did not follow Muhammad

NORMATIVE PLURALISM IN INDONESIA 165

or believe in the Qur'ân (she shuddered slightly to herself); such marriages would be confusing.'

The Indonesian Council of Ulama, an quasi-state body, has consistently opposed such marriages on grounds that they create difficult family situations. As one Council member explained to me in 2000, such marriages 'lead to problems in the home, because the husband and wife will behave differently. For example, when they have sex, the Muslim one will bathe afterwards and the other will not, and then the first will not want to have sex again because the other will be unclean. Or when cooking, they won't both observe the dietary rules.'

The debate over mixed marriage often leads to the question of whether marriage is primarily religious in character. Former Supreme Court Justice Busthanul Arifin, one of the 'hard-line' justices on mixed marriage, recalled only somewhat whimsically of the time when Stevie Wonder was playing a concert in Jakarta. One of his sidemen wanted to get married. Someone called up Arifin to see if he could help them find a church—'in the middle of the night! Of course, for them, the church marriage is the real marriage, unlike what the Dutch do, when they first have a civil marriage and only later marry in the church. So it is the fault of the Dutch that we have Christians thinking that marriage in a church, marriage being religious, is a threat to Christians . . . even Gus Dur (then President Abdurrahman Wahid) has said that our marriage laws make us sectarian. But I said no, if that is the case, then Europeans, Australians, they are sectarian, too, because they marry according to religion' (interview, 2000).

Of course, Judge Arifin's position is different from that embodied in European legal systems in that he affirms that marriage can only be performed according to religion. Even if that position has softened in practice in recent years, it can be seen as one possible logical implication of a schema for legal pluralism in which Muslims and others inhabit different family law universes. It poses problems for community cohesion at the same time as it responds to understandable demands that society take account of God's commands for those who follow them. Islamic law in this and most other societies concerns only Muslims, at least in theory, but the messy nature of social life—marriages across confessional lines, conversions, inheritance disputes in multireligious families—sometimes intervenes to challenge this conception of legal pluralism.

In most respects, jurists and politicians in Indonesia have worked to develop avenues along which Islamic law can converge with general norms of interreligious tolerance and human rights. Efforts to reinterpret Islamic law so as to guarantee equal rights for women are far from complete, but were important in bringing about substantive reform in marriage, divorce, and postdivorce property settlements (Bowen 2003). These reforms were within the context of Islamic jurisprudence rather than against it. For

example, long-standing asymmetric categories and understandings of divorce were preserved even as wives and husbands were assigned substantively equal burdens of proof. A husband still technically brings about a divorce by repudiating his wife, whereas a wife must appeal to a judge for an annulment. However, in both cases the initiating party must appear before a judge and demonstrate that one of a number of reasons for divorce has been met. The judge then either grants the wife a divorce, or allows the husband to pronounce the divorce formula. Islamic law experts have stated that these conditions simply limit how God's word is carried out without contravening it. The same Indonesian legal terms for 'divorce' are used in the two cases, thus masking the underlying Islam-based formal law asymmetry. All property acquired during a marriage, regardless of title, is divided equally between the husband and wife.

This process of convergence allows two or more groups of norm advocates to continue to adhere to their respective, conflicting universalistic positions. Advocates of international human rights and women's rights can insist that men and women enjoy just and equitable judgments. Current Indonesian law more or less meets this standard in divorce cases. Advocates of Islamic rights and duties can insist that Muslims obey God's commands as set out through the Qur'ân and through the words and deeds of the Prophet Muhammad. Indonesian law also meets this standard. In this way, two or more metanormative claims—claims about the supremacy of one set of norms over another—can coexist.

6. Three Indonesian Ideas of Normative Pluralism

I think that three distinct kinds of claims shape most of the Indonesian deliberations about normative pluralism. The first arises when people claim that a social group existed as a political community, governing itself, before the creation of the Indonesian state, and therefore ought to be able to continue to do so or revive the capacity to do so. This is the kind of claim made by some leaders in regions that once were states, such as Aceh. It corresponds closely to the idea of national minorities in Kymlicka's work (Kymlicka 1995, 2001), except that 'minority' is not part of this idea. The majority Javanese can make such claims as well. (This feature also distinguishes these claims from current international notions of 'indigenous peoples.')

The second and closely related idea is that local social norms (*adat*) are integral to the community and therefore provide legitimacy to self-governance. This form of legitimacy is distinct from that which follows from enactment of positive law or revelation of God's will. The element of preexistence relative to the Indonesia state does not seem to me to be

NORMATIVE PLURALISM IN INDONESIA 167

necessary to this idea. It is, rather, the quality of being embedded in a local community that renders these claims legitimate. The relationship between the local norms and any notion of peoplehood, ethnicity, or language is variable, as I showed for several cases in Sumatra. This metanormative distance between the norms themselves and any particular social group is distinctive of this idea and makes it unlike the major components of Western multicultural theory. One reason for this dissimilarity is the importance of genealogy in most Western notions of peoplehood, for example in proving one's status as a member of a tribe in North America. This idea is not necessarily found in adat-based legitimacy claims.

Finally, Islamic norms concerning family—marriage, divorce, and inheritance—are legitimate because of their divine status. Their enactment as positive law has meant that this legitimacy has been augmented by the legitimacy of positive law. The convergence process described above allows advocates of Islamic law and gender equality to claim some degree of victory. An Islamic jurisprudential principle that adat can be made into Islamic law also allows convergence between Islam and adat norms.

7. Is Asia Different?

The Indonesian case points to two features of subnational group politics. One is that definitions of group are themselves contested; the categories of description are among the resources drawn on by various local actors in their struggles among themselves and with those who govern them. Descriptors are thus themselves potentially of political consequence. People may choose to describe a subgroup as a people, as residents of a region, or as speakers of a language for reasons having to do with local struggles for power or legitimacy, or with the corresponding national struggles and debates. The descriptor chosen by a social scientist or philosopher thus may be intrinsically partisan, independently of the analyst's intentions, or the substance of the analysis.

The second feature is that distinct sets of norms may be irreconcilable on an abstract and metanormative level, but be subject to reconciliation and convergence through processes of reinterpretation. Hermeneutically speaking, the one set of norms provides the ground for the other. Politically speaking, each set of norm advocates can play to its own audience while engaged in serious negotiations with the other camp(s).

Are these two features of subgroup politics and rhetoric—the irreducible multiplicity of group descriptors and the possibility of normative convergence—peculiar to one part of the world, or are they of more general significance? Does an understanding of these processes as they take place in Indonesia (or other countries of Asia and Africa) bear on how we approach

pluralism in Europe or North America? Let me suggest that it does through a brief reference to two types of cases that arise in Europe.

The first type of case arises when a state and a subgroup within the state represent the nature of that subgroup in conflicting ways. France and Corsica offer such an example. The French Constitution describes France as one people and gives sole recognition to the French language. The French government does, however, recognize as legitimate and constitutional efforts to develop forms of regional self-governance. Corsican movements (and even some non-Corsican French politicians, such as former Prime Minister Lionel Jospin in a moment of forgetfulness) speak of Corsica as having a distinct 'people' that ought to govern themselves because of their distinct peoplehood.

In this case two conflicting ways of thinking about pluralism coexist in public discussions. One represents Corsican claims in the context of an overall movement toward political and fiscal decentralization, and conceives of Corsica as a distinctive region that has a distinctive history and set of social norms, and that therefore ought to have a bit more autonomy than other regions. Corsica thus would not be an example of multinational federalism but of regional decentralization. The Corsican nationalist approach makes the case in terms of a distinct Corsican peoplehood, of which language is one of several elements. In this interpretation, Corsican self-governance would be an example of multinational federalism. The resolution of this conflict of interpretations has been a *modus vivendi*—albeit a rocky and sometimes violent one—according to which certain political and legal steps could be taken that would be explained by each set of leaders in politically advantageous ways. In this fashion a kind of convergence can be achieved.

This case complicates speaking of 'national minorities' because Corsica is such a minority under one description and only a region, not a minority, under another. In this and other cases another set of complications comes from divergent *local* ideas about the definition of a subgroup. Does the subgroup consist of speakers of a language, people with certain kinship ties, people who live in a certain region, or is it defined in some other way?

These categories can themselves be combined in different ways. For example, language can be mapped onto region, as with maps showing 'three Wales' regions: areas that are Welsh-speaking and Welsh-identifying; those that are not Welsh-speaking but are Welsh-identifying, and those that are neither (where English is the dominant category). But people within, say, the first region themselves disagree about criteria for defining someone in or out of the category. For some, only native speakers of Welsh are Welsh; for others, speaking Welsh at all qualifies one as Welsh; for still others, Wales and Welshness is a matter of residence. To further complicate matters, the same individual may assign people to one category or another depending on context: some people proclaim non-native speakers of Welsh to be non-Welsh, but then may, on another occasion, include a non-native-but

NORMATIVE PLURALISM IN INDONESIA 169

pretty-fluent-Welsh-speaker in the category of 'Welsh' during a conversation with that person (Bowie 1993). This second example moves us down into the microdistinctions of everyday life, but it is at this microlevel that category boundaries are developed, maintained, or challenged, and hence where one can observe 'the Welsh' (or 'the Corse', or 'the Acehnese') being created.

The Welsh thus can be described at a global level as a people, or a set of language speakers, or people living in a certain region with a certain subjective relationship to their past. However, the choice of descriptors belies the socially shifting uses to which these same categories are put locally. In terms of both the inherent difficulties of choosing global descriptors and the complexities of local use I see little difference between the Welsh and Corsican cases, on the one hand, and those of Aceh or other Indonesian societies, on the other.

Conclusion

I will close with two brief comments, each of which I hope to expand elsewhere (and both of which have developed out of conversations with Will Kymlicka). The first is that the processes of convergence across normative systems discussed for Islam in Indonesia are more broadly characteristic of competing universalistic normative structures, whether they be based on religious doctrine, human rights, or international law norms, or the common-law or civil law systems of particular countries. It may be an inevitable feature of our normatively fragmented yet shared human world that we can hope at best for convergence, what we might call reasoned *modi vivendi*, rather than merely Hobbesian truces on the one hand or agreement on a set of shared normative starting points on the other.

Secondly, and to some degree consequently, 'we', as participants in broad discussions about norms who are nonetheless situated, more or less firmly, in our own parochial normative traditions (no matter how universal we might imagine them to be) and, I trust, exchanging ideas with people situated in very different parochial traditions, inevitably find ourselves championing some norms over others, finding some as more basic, or worthy, than their competitors. To do so is human. However, to the extent that we engage in a complex combining of normative and empirical work, advocating our ideas of justice and fairness while taking due note of the ideas advocated by others, we must expect to find ourselves at times perplexed and troubled by this exercise. Once we think we have settled matters once and for all, that is when we ought to take a second look around.