

I N T R O D U C T I O N

THIS BOOK WAS moving toward publication when the World Trade Center and the Pentagon were subject to the attacks of September 11, 2001, that resulted in the deaths of more than 3,000 civilians, damage to the American economy currently estimated to be at least in the hundreds of billions of dollars, and terrible losses and disruptions of other kinds that ramified throughout the nation and the world. In the hours, days, and weeks following these horrific tragedies, politicians as well as religious leaders and media figures in the United States consistently directed the attention of Americans and others to an extremist fringe group of Muslims (the Al Qaeda network) that understandably engages the imagination and emotions and thus makes for captivating copy. One of the many questions we must ask, however, is whether the images and symbols of Islam presented to us in connection with the awful events of September 11 are in any way representative of the sentiments, practices, or aspirations of the world's Muslim community in its entirety, which numbers over one billion people, or even a majority or numerically significant minority of Muslims in the world. It is well to bear in mind that Muslim (and other) leaders worldwide condemned the attacks as barbaric and unequivocally beyond the pale of Islam, as did large numbers of "ordinary Muslims" throughout the world. And many ordinary Muslims offered prayers, observed moments of silence, or held candle-light vigils for those who lost their lives or suffered other tragedy.¹ These reactions alone make clear that there is far more variability and diversity in the world's Muslim community than is suggested in most venues of contemporary American culture and that areas of common ground and precious opportunities for meaningful dialogue clearly exist.

For a variety of reasons it will not be easy for politicians in America and elsewhere to establish or maintain constructive dialogue of the sort necessary to help create a safer, saner, or more sustaining world. One reason for this, though certainly not the only one, is that the thrust and specifics of U.S. policies toward the Muslim world reflect not merely the understandings and agendas of sometimes well-informed national leaders and their advisors, but also pressures from congressional leaders and the American public, distressingly large numbers of whom are ill informed about and unabashedly hostile to Islam (Gerges 1999). It is no exaggeration to say that especially with the winding down of the cold war and the collapse of various socialist regimes in the former Soviet Union and elsewhere, the world's Muslim communities and their religious traditions have come to be defined in the minds of Americans and Westerners generally as *the* major threat to world order and security. This is obvious from the way Hollywood films represent Islam in its entirety as a transnationally conspiratorial menace to Western (especially Christian) bodies and minds and to all that they hold dear and sacred. Contemporary television, print media, and popular literature alike are also saturated with images depicting virtually *all*

Muslims as swarthy terrorist bombers, ragtag mountain-dwelling “soldiers of God,” sclerotic bearded mullahs, dour albeit capricious jurists of the “hanging judge” variety, or veiled, cloistered women who are subject to compulsory genital mutilation, polygynous unions, and other patriarchal excesses and misogynist perversions. That said, imagery of this nature has a long established genealogy in modern European literature and elsewhere and is in certain respects nothing new (Southern 1962; Said 1978, 1993; Daniel 1993; Caton 1999). Such should be readily apparent from the ninth-century European view that “the rule of Islam was a preparation for the final appearance of Antichrist,” coupled with the fact that in “a Crusading appeal of 1213, addressed to every part of Europe except Spain, [Pope] Innocent III expressly identifies Mahomet with the Beast of the Apocalypse.”² The theme of Islam as the principal threat to world order and security is also evident from the “civilizational discourses” embedded in the contemporary writings of exceedingly high-profile public intellectuals and presidential advisors like Samuel Huntington (1996), who, much like the media and the culture at large, presumes a monolithic, eternally unchanging, and otherwise essentialized Islam that transcends both time and place.

Many myths pertaining to Islam have been debunked by scholars engaged in research on cultural and geopolitical areas beyond the gaze of conventional Orientalist studies, such as South and Southeast Asia, home to more than half of the world’s Muslim population (see, for example, Bowen 1993; Eickelman and Piscatori 1996; Lawrence 1998; Hefner 2000). Needless to say, however, much work remains to be done. Indeed, one could plausibly argue that some of the recent scholarship on Islam in Southeast Asia has inadvertently contributed to an essentialization of Islam that is in some ways similar to what one finds in American culture and the West at large. This argument is not as far-fetched or as ungenerous as it sounds, especially when one stops to consider the outpouring of scholarly interest in movements that involve what is variously referred to as the “resurgence” or “revitalization” of Islam (for example, Peacock 1978; T. J. S. George 1980; Nagata 1984; Madale 1986; Husin Mutalib 1990; Abaza 1991; Evers and Siddique 1991; Nash 1984, 1991; cf. Fischer 1980; Ali Hillal Dessouki 1982; Bakhshash 1984; Munson 1988; Hiro 1989). It is generally well known that these movements entail resistance of various kinds and, no less important, that studies of resistance have captured the scholarly imagination to the point where they have become a major academic industry. What is not sufficiently emphasized in the flurry of recent scholarship is the fact that those involved in movements of the sort at issue here typically make up a small minority of the population of the countries in which they exist. One consequence of this critical oversight is that we are left with the erroneous impression that the entire Muslim population of Southeast Asia is centrally involved in the resurgence, or at least squarely behind it. More generally, the literature provides little sense of the range of variation as regards what it means to be a Muslim in present-day Southeast Asia and for the most part does not address the comparative or theoretical implications of such variation.³

These latter comments are particularly true of the literature on Malaysia. A

good deal of scholarly attention has been devoted to Malaysia's Islamic resurgence and state-sponsored efforts to promote or reactivate Islam (see, for example, Kessler 1980; Muhammad Abu Bakar 1981, 1987; Shamsul A. B. 1983, 1997; Nagata 1984; Milner 1986; Chandra Muzaffar 1987; Zainah Anwar 1987; Banks 1990; Nash 1991; Jomo K. S. and Ahmad Shabery Cheek 1992; Husin Mutalib 1993; Sharifah Zaleha Syed Hassan 2000). To date, however, scholars have largely neglected to consider how the resurgence, along with state initiatives to bolster Islam, have affected Malaysia's Muslim population as a whole. Similarly, scholars have focused relatively little attention on the culture, operations, and overall political economy of Malaysia's Islamic legal system.⁴ This is especially surprising and regrettable for two related reasons. First, Malaysia's Islamic courts are critical sites in the creation and policing of new Malay-Muslim families and subjectivities that state policies have singled out as the basis for a modern-day citizenry and national polity that will hopefully be competitive—economically and otherwise—both in Southeast Asia and globally. Second, the Islamic courts are key sites in struggles involving ethnic and religious groups, social classes, political parties, and many others with a major stake in defining the role of Islam with respect to the maintenance of sovereignty and the achievement of modernity and civil society in an age of ever-increasing globalization.

In the latter connection I should perhaps be more explicit. An important reason to conduct research on institutions such as Islamic courts that are both highly localized and simultaneously implicated in the global circulation of legal and other discourses is that such research can help ground by instantiation and ideally advance the oftentimes highly abstract discussions and debates that have developed in recent years on various aspects of Islam and modernity, globalization, sovereignty, and "Asian values." Some of the current anthropological writing on these topics is highly provocative and insightful and in some respects brilliant. In another context⁵ I have used such language to describe Aihwa Ong's *Flexible Citizenship: The Cultural Logics of Transnationality* (1999), which, as Ashraf Ghani notes on the book's back cover, is "remarkable in its theoretical . . . breadth . . . and for its redefinition of analytic terrain and . . . new directions of research." But I also have to acknowledge that as an anthropologist, I am at times frustrated by *Flexible Citizenship* in much the same way that I am occasionally frustrated by the scholarship of Arjun Appadurai (1996). I say this because their great strengths notwithstanding, such works sometimes err on the side of being "ethnographically thin" when it comes to doing one of the most valuable things that anthropologists are ideally suited to do. I refer here to our capacity to provide "thickly descriptive" accounts of the interpenetration of local, regional, national, and global dynamics—of the ways that different schemes of Islamic modernity, "Asian values," and "good governance," for example, are played out in local and contingent arenas "on the ground."

This book provides "thickly descriptive" accounts of the culture and political economy of Malaysia's Islamic courts and various developments bearing on Islam in Malaysia since the late 1970s. It analyzes the ways Islamic magis-

trates, religious leaders, public intellectuals, and other strategically situated social actors incorporate, put into practice, and at times effectively subvert state policies and directives concerning Islamic law and other aspects of Islam. It also examines the framing and unfolding of different types of disputes (variably cast in local, nationalist, and/or transnational discourse); the cultural logic of judicial discretion; the creation of new legal orders; the history and politics of rationalization in both the institutional and cultural senses of the term; and the ways that these and other phenomena contribute to—or, alternatively, undermine—the achievement of modernity and civil society in an age of ever-increasing globalization.

This study owes a great deal to the interpretive anthropology of law developed by Clifford Geertz (1983a), Lawrence Rosen (1980–81, 1989a, 1989b), and others who have been concerned with law primarily as a system of symbols and meanings. I also build on traditions of political and legal anthropology, cultural studies, subaltern studies, and feminist scholarship that view law as both a resource and a constraint that figures into the elaboration of discourses in a multitude of paradoxical, contradictory, and unintended ways (for example, Bourdieu 1977, 1984; Foucault 1977, 1978, 1980; Comaroff and Roberts 1981; Scott 1985, 1990, 1998; Chakrabarty 1988; Starr and Collier 1989; Conley and O’Barr 1990; Merry 1990; Lazarus-Black and Hirsch 1994; Hirsch 1998; Dirks, Eley, and Ortner 1994; Guha 1994; Eickelman and Piscatori 1996). I emphasize the importance of incorporating analyses of transnational events and processes into my study, and of attending to religious and secular courts as key sites in the reproduction and transformation of symbols and meanings of nationhood and cultural citizenship as well as mutually determined identities framed in the symbols and idioms of kinship/gender, race, and class. As such, I devote special attention to the processes by which litigants, legal experts, and others attempt to construct persuasive narratives and otherwise use the law not only in the creation, distribution, and transmission of knowledge, power, and meaning but also in their efforts to bring about cultural cleansing, alternative forms of kinship/gender, sexuality, and sociality, and new societies as a whole. I also bring into focus the variable ways in which groups of Muslims deal with social differentiation, religious division, and ideological diversity, including relations with non-Muslims and tensions between the sensibilities of national and transnational elites on the one hand and those associated with “ordinary Muslims” (and/or national popular culture) on the other. This involves analyses of dispute management and conflict resolution; the cultural logic of judicial process; the role of law in reproducing and transforming systems of inequality associated with kinship/gender, race, and class; and the options available to people when the courts and other legal institutions that have jurisdiction over them fail to protect their rights and interests.

More generally, I seek to enhance our understanding of Islam, law, and cultural politics in two ways. First, I provide ethnographic, historical, cross-cultural, and transnational perspectives on recent developments in Islam and laws concerning Islam in the rapidly shifting landscapes of a strategically important

region of the contemporary Muslim world. Second, I attend to the ways in which the contestations over symbols and meanings in Malaysia and other societies are informed by and in turn inform patterns of political and economic relations among the various groups and classes making up such societies—in short, what I have elsewhere referred to as “the political economy of contested symbols and meanings” (Peletz 1996).

Concerning the first of these general objectives I would emphasize that the Malaysian case is of much greater significance than the country’s territorial expanse (329,573 square kilometers) and demographic girth (approximately 23,263,600 million people) might suggest at first glance.⁶ One reason for this is that Malaysia is among the most prosperous of the “non-Confucian” Asian tigers and has also sustained a pace of rapid development that is probably second to none in the Muslim world. Another is that Malaysian Prime Minister Mahathir Mohamad, far more than any of his predecessors, has successfully projected both the Malaysian case and his particular ideas on political-economic modernization as an emulable model for other regions of the world; he has frequently claimed, for example, that the Malaysian model is a viable, indeed, preferred alternative to Western-style development in other Muslim-majority nations and in much of the southern hemisphere as a whole. Such claims have been well received in many quarters, both at home and abroad. Very much related to the warm reception accorded them, and to my assertion that the Malaysian case is of deep, broadly generalizable significance, is that in the course of a mere generation or so Malaysia has catapulted itself into the slender ranks of Muslim countries with appreciable middle classes and burgeoning if still precarious civil societies. Circumstances such as these help explain why Malaysia has become a locus of nationalist, transnational, and academic discourses concerning “Muslim modernities,” “Asian modernities,” and “alternative modernities” generally (see, for example, Ong and Nonini 1997; Ong 1999a; see also Eickelman and Piscatori 1996; Rofel 1999; Englund and Leach 2000; Hefner 2000).

Of further relevance here is that many of the diverse organizations associated with Malaysia’s Islamic resurgence (the *dakwah* movement) are embroiled in struggles with different groups of national elites concerning the role, scope, and force of Islam in Malaysia’s modernity project. So, too, is the main Islamic opposition party (PAS), which, like certain *dakwah* groups, seeks the imposition throughout the land of Islamic law and the creation of an Islamic state. Also centrally involved or at least directly implicated in such struggles are activist-oriented Muslim feminists (such as Sisters in Islam), many of whom reject PAS-style Islamization as misguided; and “ordinary Muslims” (or “ordinary Malays”; the two terms are used here interchangeably) who are not in the forefront of contemporary religious or political developments but are among the more enduring targets of resurgents’ efforts at cultural cleansing. Ordinary Muslims make up the majority of the Muslim population and are clearly most directly affected by the changes in procedural and substantive law that have occurred or are sought in the Islamic courts. The more germane points to note

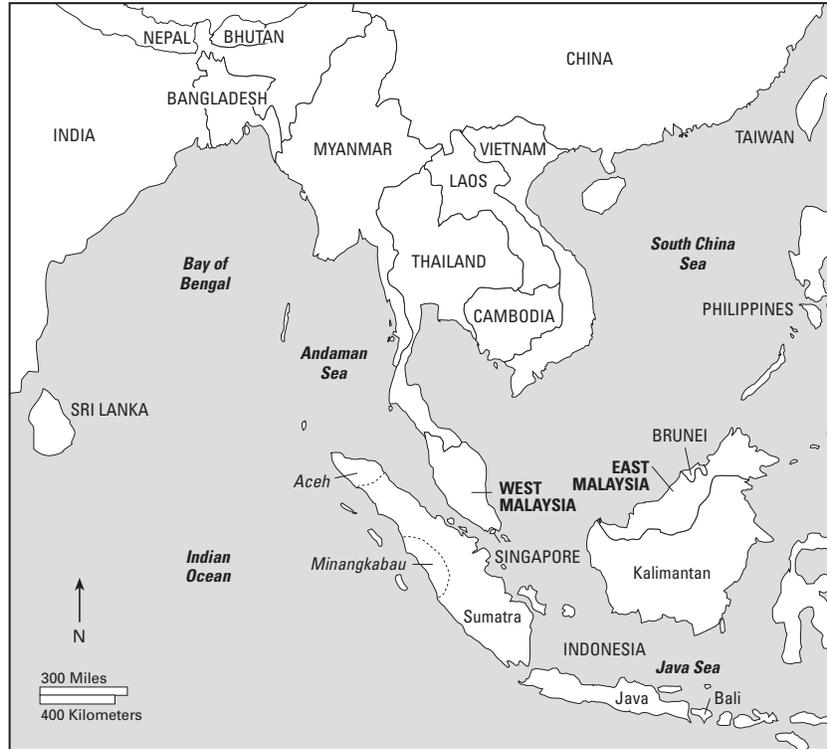
for present purposes are the pluralistic nature of Malaysian Islam and the unsettled and highly contested nature of the Islamic courts and their role in modernity in contemporary Malaysia.

BACKGROUND AND CONTEXT

Travel brochures and academic treatises frequently describe Malaysia as “the crossroads of Asia.” This is partly because of Malaysia’s strategic location along the waterways that have long facilitated the flow of people, ideas, and goods among China, India, the Middle East, and points far beyond (see map 1). Another (related) reason has to do with the rich cultural diversity of the various ethnic groups living in Malaysia. The ethnic mosaic is usually discussed in terms of four major categories. “Malays,” all of whom are Muslims, constitute 50.8 percent of the total population; “Chinese,” who are usually described as practicing a syncretic blend of Buddhism, Confucianism, and Taoism, make up 26.3 percent; “Indians,” most of whom are Hindus (though some are Sikhs, others Christian), account for about 7.4 percent; and “Others,” including hill-dwelling aborigines following animist traditions, Eurasians, etc., make up the remaining 15.5 percent.⁷ The legal system is frequently glossed as pluralistic to highlight the diversity and variegated provenance of its three major traditions of law (*hukum*): Malay customary law (*hukum adat*), which pertains to Malays; Islamic law (*hukum syariah*), which is relevant to Malays and all other Muslims⁸ albeit to a limited range of their affairs; and third, national (statutory) law, sometimes referred to as government law (*hukum kerajaan*), introduced by British colonists in the nineteenth century, which bears on all citizens and others in Malaysia. Malaysia’s political institutions include a system of parliamentary democracy and a constitutional monarchy, much like the British system on which it is modeled. They also include an indigenous (Malay) polity of pre-colonial origin, which has been stripped of most of its power but is nonetheless formally intact.

All Malays speak the Malay language, identify themselves as Sunni Muslims who adhere to the Shafi’i legal school of Islam, and order various aspects of their social relations in accordance with a body of social and cultural codes glossed *adat*. English translations of the term *adat* have included “tradition,” “custom,” and “customary law,” but none of these or any others that come to mind adequately convey the cultural meanings, moral force, or social relevance of *adat* as a unifying, broadly hegemonic construct. Suffice it to say that the concept of *adat* refers to “something half-way between ‘social consensus and moral style’” (Geertz 1983a: 185), is a core or key symbol in many areas of Malay society and culture, and has ethnographic analogs in the Chinese notion of Dao and the aboriginal Australian notion of the Dreamtime.

The concept of *adat* symbolizes important similarities among all Malays, but it also highlights some significant contrasts, for there are two major variants of *adat* in the Malay Peninsula (also known as West Malaysia; see map 2), which



Map 1. Malaysia and Surrounding Regions

is where most Malays live. The first, referred to as *adat perpatih*, is found primarily among Malays in the state of Negeri Sembilan, the Naning district of Melaka, and a few other enclaves scattered about the Peninsula. It is associated with a social organization usually characterized as matrilineal as it includes descent units of matrilineal design, which reflect the Minangkabau (West Sumatran) ancestry of the area's earliest permanent settlers. The second, known as *adat temenggung*, prevails among Malays living in most other regions of the Peninsula and is linked with a social structure usually referred to as bilateral (or cognatic).⁹

One of the most frequently encountered truisms in the literature on the region is that ethnic distinctions and antagonisms in Malaysia are infused with far-reaching religious, political, and economic significance and have been exacerbated by development strategies of the postcolonial government. This is most evident with the New Economic Policy (NEP) implemented in 1971, which sought to eradicate poverty among all Malaysians and to "restructure society" by undermining the material and symbolic connections between ethnic categories on the one hand and economic standing and function on the other. By aiming its policies at enabling the predominantly rural and agricultural Malays



Map 2. The States of West Malaysia

to “catch up” economically with Chinese and Indians, the government has placed tremendous emphasis on “race” (on being a Malay or a non-Malay) as a criterion in allocating government loans and subsidies and other scarce resources (university scholarships, contractor’s licenses, start-up funds for businesses, and so forth). These policies have heightened the awareness of distinctions between Malays and non-Malays and made them all the more politically and economically salient.

The NEP has also exacerbated class antagonisms within the Malay community. Although its policies have helped create a Malay middle class and have enriched some Malays substantially, those policies have left other Malays no

better and in some cases much worse off than before. Reactions to the NEP have taken many forms, including active and passive resistance to the Green Revolution implemented as a key feature of the NEP in many areas and disaffection from the central clique of the ruling political party and from the party in its entirety (Kessler 1980; Scott 1985; Shamsul A. B. 1986).

Dissatisfaction with the government's commitment to modernity and with the NEP in particular has further significance because it is among the many factors fueling Malaysia's Islamic resurgence, known as the *dakwah* movement. The term *dakwah* means to invite or call one to the Islamic cause, or to respond to the invitation or call (see Nagata 1984; Shamsul A. B. 1997), hence missionary work, including making Muslims better Muslims. The resurgence is usually said to date from the late 1960s or early 1970s, even though it is most appropriately viewed as an outgrowth of earlier developments in Islamic nationalism and reform, such as those associated with the Kaum Muda (Young Group) movement of the 1920s and 1930s (Roff 1967). The Kaum Muda movement was thoroughly homegrown, but it was animated and sustained in part by the activities and organizations of Muslims in Indonesia, Singapore, and elsewhere. The same is true of *dakwah*, which has been inspired in part by Islamist groups and Islamic revivalism in Indonesia, Pakistan, Egypt, Libya, and other parts of the Muslim world.

Most scholars approach the resurgence as a response, indeed, a form of resistance, to one or more of the following analytically related and culturally interlocked sets of developments. The first development concerns the postcolonial state's Western-oriented modernization policies (noted above), which entail a heavily interventionist role for the state with respect to economic planning, distribution, and capitalist processes as a whole. These policies are widely seen as contributing to Malaysia's overdependence on foreign (particularly Western) capital; to the economic success of Chinese and Indians relative to Malays; and to upper-class corruption as well as deracination and moral and spiritual bankruptcy throughout the Malay community. The second development involves the simultaneous shifting and hardening of class interests and animosities, especially between the newly emerged middle class and an entrenched (aristocratic) ruling class. The third development is the tightening of ethnic boundaries, particularly those separating Malays and Chinese. These boundaries have become increasingly salient in recent decades, owing in no small measure to NEP-era (1971–90) practices highlighting race in the allocation of scarce and highly prized government resources. The NEP is commonly regarded as having encouraged a certain cultural assertiveness—some would say chauvinism—among Malays (Chandra Muzaffar 1987; Zainah Anwar 1987). This cultural assertiveness is especially pronounced as regards Islam, the practice of which, along with speaking the Malay language and observing Malay “custom” (*adat*), is a defining feature and increasingly *the* key symbol of Malayness. More broadly, whatever else the *dakwah* movement is, scholars generally view it as a powerful vehicle for the articulation of moral opposition to government development policies, traditional as well as emergent class structures, other ethnic

groups, or some combination of these or related phenomena (see Kessler 1980; Nagata 1984; Milner 1986; Chandra Muzaffar 1987; Zainah Anwar 1987; Muhammad Abu Bakar 1987; Husin Mutalib 1993).

Dakwah organizations are highly diverse and their objectives are in certain respects mutually incompatible. However, they all share an overriding concern to revitalize or reactualize (local) Islam and the (local) Muslim community by encouraging stronger commitment to the teachings of the Quran and the *hadith* to effect a more Islamic way of life (*din*). The main organizations have included the following: Darul Arqam, a communal, land-based organization that enjoined its members to emulate the life of the Prophet and that strove for economic self-sufficiency (it was banned by the government in 1994); ABIM (Angkatan Belia Islam Malaysia, the Malaysian Islamic Youth Organization), which emphasizes formal education and is extremely popular among university students, former student leaders, and youth generally, and encourages lobbying efforts, active participation in party politics, and otherwise “working within the system,” though it is also suspected by the government of “socialist leanings” (Kessler 1980: 9); and PERKIM (Pertubuhan Kebajikan Islam Malaysia, the Malaysian Islamic Welfare and Missionary Association), a moderate if not conservative charitable organization sponsored by the government geared toward assisting recent converts to Islam.

Also worthy of mention here is PAS (Parti Islam Se-Malaysia, the Pan-Malayan Islamic Party), the major (Malay) opposition party, which has a decidedly populist orientation and has been a key player in Malaysian politics since shortly after its formation in the early 1950s (Kessler 1978; Safie bin Ibrahim 1981; Firdaus Haji Abdullah 1985). Strictly speaking, PAS is not part of the *dakwah* movement, though many of its objectives are espoused by some segments of the movement. The most basic of these objectives is the creation of an Islamic state with the Quran and the *sunnah* as its constitution.

The relationships between the various segments of the movement and the state merit careful consideration, for they have fueled many of the political and religious dynamics characteristic of contemporary Malaysia. As far as most scholars are concerned, Darul Arqam and PERKIM have never posed appreciable threats to the state (the government ban on Darul Arqam in 1994 notwithstanding). But ABIM and PAS clearly have, particularly since their leaders have on numerous occasions publicly charged that the ruling party (UMNO, the United Malays National Organization) has failed to safeguard the interests and well-being of the Malay community, especially with regard to Islam. PAS in particular has also claimed that the ruling party has sold out to local Chinese and Indians, as well as foreign capitalists, all of whom are said to have contributed both to Malaysia’s underdevelopment and ongoing dependence on foreign markets and to its decadence and spiritual bankruptcy.

In such a religious and political climate the ruling party has to work overtime to validate its Islamic credentials—relegitimize the party and the state—and thus co-opt, or at least undercut, both the Islamic resurgents and the opposition party. This means going forward with its own far-reaching but ultimately rather

moderate Islamization program, which is simultaneously both a consequence of the *dakwah* phenomenon and a key factor in its promotion along certain lines. This program to “out-Islamicize” the opposition, which does at times have those qualities of an arms race that Gregory Bateson (1936), in a very different context, referred to as “schismogenesis,” has included: the creation of an international Islamic university, an Islamic research center, and a nationwide system of Islamic banking and insurance; the sponsoring of a plethora of Islamic seminars and conferences; the building and refurbishing of prayer houses and mosques; and last but not least, the passage of myriad legislative measures bearing on Islam and Islamic law specifically. Broadly speaking, these moves have succeeded in undercutting PAS and ABIM and in retaining the support of urban middle-class Malays who constitute the segment of the population most responsive to *dakwah* appeals. But they have also seriously alienated non-Malays, who make up nearly half of Malaysia’s multiethnic population, and they have intensified ethnic antagonism. Indeed, Chinese and Indians see the Islamic resurgence as an overtly political movement with strong xenophobic overtones bent on eroding the rights and privileges of non-Muslims and subjecting them to the dictates of Islam. More important, these measures have also clearly alienated significant numbers of ordinary, especially rural, Malays, who perceive them as direct attacks on their basic values and key features of their cultural identities.

These, then, are some of the dynamics that inform the roles and operations of the Islamic courts as well as the ways they are viewed by different segments of the Malaysian population. Needless to say, many of these same dynamics informed my research experiences in the field.

METHODS

Since the late 1970s I have conducted approximately two and a half years of fieldwork and archival research in Malaysia; I have also spent about six weeks studying archival collections from the colonial era that are housed in British institutions in London and its environs (the Public Records Office, the British Museum, the School of Oriental and African Studies, etc.). Almost all of the fieldwork and archival study in Malaysia was carried out in the Malay language (*bahasa Melayu*, also referred to as “Malaysian” [*bahasa Malaysia*]), which I studied at various universities in the United States before going to the field. Much of the early research focused on Malays residing in the state of Negeri Sembilan, located in West Malaysia. The first period of research involved twenty months of fieldwork and archival study from 1978 to 1980; it concerned patterns and dynamics of social organization from 1830 to 1980 and focused on the transformation of kinship and property relations in the face of British colonialism (1874–1957), modern market forces, and Islamic nationalism and reform.

In the years following my initial research, I completed a book¹⁰ and a number of articles on kinship, property, and social history in Negeri Sembilan, with

particular emphasis on the district of Rembau.¹¹ In preparing both the book and the articles, I realized the value of broadening my perspectives by conducting additional research on topics that I had initially and, in retrospect, mistakenly viewed as more or less separate and distinct from the domains of kinship and social structure. I realized, for example, that I knew a fair amount about gender roles and the autonomy of women but that I had a relatively limited understanding of “underlying” issues, such as the way Malays in Negeri Sembilan and other parts of the Peninsula represent or “construct” not only similarities and differences between males and females, but also gender inequality and domination. I also recognized that I needed to gain a better understanding of meaning and experience, of the ways constructions of gender varied according to context and situation, and of the political economy of contested symbols and meanings. Similarly, though I was fairly knowledgeable about continuity and change in norms and laws concerning property relations, marriage, divorce, and related matters, I did not know much about the ways individual litigants and legal specialists deal with property and inheritance issues and various types of disputes in the local Islamic courts and in Malaysia’s pluralistic legal system as a whole. Nor was I familiar with the cultural logic of judicial process or the ways the state uses the courts to effect social control and sociocultural change.

I subsequently designed a program of research concerning legal procedures, especially the handling of disputes within the Islamic legal system. The proposed research would enable me to collect data both on the relevant legal and political issues and on topics of gender, since the Islamic courts are one of the principal arenas in which gender differences and inequalities are institutionalized and given formal, state-sanctioned backing. I took a leave of absence from Colgate University during the 1987–88 academic year to conduct field research on this project. The research, which extended over a period of nine months, was carried out mostly in the Rembau district of Negeri Sembilan, though I also spent some of my time in the neighboring, predominantly urban district of Seremban, which includes the state capital of the same name, and in Kuala Lumpur, the federal capital, to acquire a broader perspective. In conducting this research I was struck both by the ways in which court officials and litigants alike invoked contrasting representations of gender (and kinship) in their interpretations of the cases in which they were involved, and by the deeply perspectival nature of cultural knowledge. Since an understanding of these latter issues is a prerequisite for a proper analysis of the cultural logic of judicial process, I decided to write up the material on gender before embarking on a separate monograph on the Islamic courts.¹²

Elsewhere I have provided detailed descriptions of the research methods employed during the two major periods of fieldwork that I have undertaken (Peletz 1988b, 1996). The latter book in particular provides a chapter-length discussion of participant observation with respect to most ritual, religious, political, economic, and other domains of village life; the survey data I collected from each household in the village (concerning, for example, household composition, property ownership, sources of income, and the numbers of marriages and di-

voices of all ever-married individuals); the land and other archival records I studied in various district offices; my experiences in the village in which I resided throughout much of the fieldwork (including my informal adoption by the village headman, his wife, and her lineage branch; and how villagers and others reacted to me in different ways in accordance with changes in my life course [moving from bachelorhood, to newlywed, to parent]); and various other issues bearing on “how I know what I know.”

In light of the foregoing and since I discuss some of the relevant issues at various points below, I will simply add here that during the second period of research I spent much of my time at the office of the Islamic magistrate in Rembau, sitting in on hearings, discussing the details of cases with the Islamic magistrate and members of his staff, and studying marriage, divorce, and other court records going back to the early 1960s. Most of these cases concerned civil matters relating to marriage and divorce (such as men’s failure to support their wives and children), though I encountered some criminal cases as well. I also attended court hearings at the District Office, which handles matters of inheritance and other types of property transactions. Finally, I attended hearings at the (secular) Magistrate’s Court, which deals with most civil and criminal offenses (traffic violations, theft, assault, and the like), in accordance with the specifications of national (statutory) law.

By sitting in on formal court sessions and on the informal processes of mediation, especially those run by the Islamic magistrate and his staff, I was able to acquire important insights into Malaysia’s legal system and other issues on which I sought additional information. These activities proved especially helpful in shedding light on conflict and contradiction both in marriages and other types of relationships and in terms of gender relations more generally. The courts, after all, are one of the few contexts in which Malays are inclined to air their grievances openly and directly. Though procedures for doing so are in theory laid out in *adat*, these are not the quiet, consensus-oriented affairs about which Geertz (1983a) has written in his discussions of legal sensibilities in the Malay-Indonesian world. I was repeatedly struck by the strident nature of some of these disagreements, having been conditioned by the rounds of village life, where restricted speech codes are “pressed into service to affirm the social order” (Douglas 1970: 22), to view Malays as rather averse to conflict and litigation.

One of my objectives in sitting in on court hearings and counseling sessions was to try to determine the extent to which the cultural understandings that Islamic magistrates and their staff bring to bear on the disputes that come before them are comparable to those of the disputants themselves. I was especially interested in ascertaining whether court officials’ notions of equity, justice, and due process, as well as their notions of personhood and gender, were similar to or at variance with those of villagers who appear before the court. I also wanted to find out if court officials’ understandings of the dynamics and tensions of marriage and of the patterns and causes of divorce corresponded with villagers’ understandings of these phenomena. Finally, I wanted to see if

men and women used and experienced law and legal knowledge—as both a resource and a constraint—in broadly similar or different ways.

Information on marriage, divorce, and gender that I obtained from the study of court sessions and records of past cases was supplemented by data collected in the course of a household survey conducted by my research assistant—a twenty-five-year-old man who had helped me during my previous study—at all of Bogang's houses (which numbered 115 in 1987). This survey was intended to update the similar survey I conducted in 1979 and thus covered many of the topics dealt with in the earlier survey, though it was far more focused. One of the advantages of having my research assistant conduct the time-consuming survey is that it allowed me to spend my time on other tasks. One of the disadvantages is that much of the information my assistant collected but may not have written down due to his viewing it as irrelevant was lost. Another, less concrete disadvantage is that it reduced my social field in ways that probably offended villagers whose houses I never visited during the second period of research.

Data acquired from observation of court sessions and from discussions with the judge and his staff concerning the hearings and the written records relevant to them were also supplemented by open-ended interviews on gender and kinship (including marriage and divorce) that I conducted with twenty individuals (ten men, ten women), mostly from Bogang. Since I have analyzed these interviews elsewhere (Peletz 1996: chap. 6), it should suffice here to note three points. First, the interviews illustrate that villagers do not necessarily speak in a single voice when it comes to gender or kinship/marriage (or anything else). Second, they reveal the ways in which understandings and representations of gender are informed by understandings and representations of kinship (including marriage and divorce), and vice versa. And third, they demonstrate that women's experiences with their husbands—and in marriage and divorce in particular—are of central importance not only in the ways they think about husbands and marriage in general but also in their feelings, attitudes, and representations concerning men and masculinity as a whole. In short, as with women and femininity, men and masculinity are defined in relational terms. This has important implications in societies with high rates of divorce (or abandonment), especially when divorce (and abandonment) tend to be attributed to male faults. Perhaps most relevant is that this situation poses potentially serious challenges both to ideologies of male supremacy and to the various institutions (Islamic courts, secular political hierarchies) in which that supremacy is instantiated and enshrined.

Much of the material contained in this book derives from the two periods of research noted above. But I also draw in important ways on the brief trips I made to Malaysia in 1993, 1998, and 2001, during which time I resided primarily in Kuala Lumpur. These trips helped familiarize me with political, legal, religious, and other developments that had occurred since the completion of my second period of fieldwork in 1988. The (late May) 1998 visit was especially valuable insofar as it afforded me the opportunity to interview not only the

judge who presides over the Islamic legal system of the Federal Territory of Kuala Lumpur (and others associated with the Islamic courts) but also scholarly administrators and other officials in the employ of government-sponsored Islamic think tanks (such as IKIM) as well as members of local human rights groups and Muslim feminist organizations (like Sisters in Islam).¹³ These experts, along with journalists and others with whom I exchanged ideas, provided highly pertinent information on recent developments bearing on women's sexual and other rights (and the rights of various ethnic and other minorities) and, more generally, on religious and legal culture, civil society, and the body politic as a whole.

This trip also enabled me to acquire a firsthand albeit highly partial sense of the local-level impact of the Asian financial crisis that began in Thailand in July 1997 and quickly spread throughout the region (and beyond). In Malaysia, this crisis dealt a devastating blow to currency trade, the stock market, the banking industry, and other aspects of the local economy (the prices of many consumer goods skyrocketed, and large numbers of immigrant workers were abruptly deported). But the dislocations in an otherwise booming and prosperous economic climate struck me as comparatively mild since I had just come from a two-week tour of desperately poor Vietnam, where living standards and per capita incomes are but a fraction of those in Malaysia. Also relevant is that the dislocations that occurred in Malaysia were extremely mild compared to the widespread devastation that occurred in Thailand and Indonesia. Indonesia, for example, had just experienced the tumultuous downfall of President Suharto and seemed on the brink of complete political and economic collapse. What was not at all clear to me (or to most anyone else) at the time was that within a few short months Malaysia would be in the midst of its own devastating political turmoil—arguably the most severe since the Second World War. The latter turmoil is generally viewed as at least an indirect result of the economic chaos and political tensions engendered by the financial crisis; it was in any case precipitated by Prime Minister Mahathir Mohamad's jailing of his heir apparent, Deputy Prime Minister and Minister of Finance Anwar Ibrahim, on charges of sodomy, corruption, and bribery.

The research I undertook in Kuala Lumpur in January 2001 was in many ways a continuation of my earlier work there and elsewhere in Malaysia. During this time I interviewed lawyers, journalists, activists, artists, academics, and other professionals, as well as staff of organizations involved in various types of community service and outreach programs geared toward meeting the needs of the transgendered community and those at risk for HIV/AIDS. One of my objectives was to see how such communities had fared during the protracted Anwar trial and in recent years generally. Others involved gaining a better sense of contemporary legal and political developments and enhancing my understanding of Malaysian views and experiences of the Asian financial crisis and the dynamics of sovereignty in an age of globalization.

What follows, then, is an example of what George Marcus (1995) has referred to as "multi-sited ethnography," though not simply because it incorpo-

rates findings from ethnographic research carried out in various parts of Negeri Sembilan on the one hand and Kuala Lumpur on the other. It is also multisited in the sense that I draw on research carried out in connection with my role as an “expert witness” in four cases that involved Malaysians residing in the United States. The first was a child-custody case heard in Los Angeles in 1993. The other three involved Malaysians who self-identified as homosexuals (one gay man, two lesbian women; all three Chinese) and were seeking political asylum in this country on the grounds that if they returned to Malaysia they would face persecution by virtue of their sexual orientations and “lifestyles” or, in the relevant legal terminology, by virtue of their “membership in a particular social group,” such as that of homosexual, “subject to persecution” in their home country. These cases were heard in New York and Boston in 1999 and 2000. (All three were found in favor of the Malaysians.) More relevant for present purposes is that I learned a great deal about Malaysian and American variants of gender, sexuality, law, and “Asian values” in the course of reviewing the multitudes of documents submitted for these cases, in talking and corresponding with both the Malaysians and others involved (lawyers, judges, domestic partners, etc.), and in conducting the library and other research necessary to provide affidavits, depositions, and other relevant information. I do not discuss these specific cases in the present volume. But the findings of the research that I conducted for these and similar (pending) cases—concerning recent political, legal, and other developments in Malaysia bearing on gender, sexuality, and homosexuality in particular (including Anwar’s arrest and pilloring on charges of sodomy)—are central to chapter 5 and to the volume as a whole.

As for the organization and narrative flow of this work, the book is composed of two parts. Part 1 deals with the culture, political economy, and history of the Islamic courts and consists of three chapters. Chapter 1 establishes some of the groundwork necessary to provide a historical genealogy of Islamic magistrates and their courts in the Malay world and Southeast Asia generally since the 1400s. This entails clearing away various myths enshrined in Western scholarship—past and present—many of which stem from the religious and other cultural biases and civilizing agendas of British imperial observers. Although numerous questions remain unanswered, one of my basic arguments is that we need to distinguish among Islamic laws, Islamic magistrates, and Islamic courts throughout the period in question; failure to do so leads to confusion and distortion. The references to Islamic laws that exist in fifteenth-century texts such as the Laws of Melaka (*Undang-Undang Melaka*), for example, should not be taken as evidence that such laws were widely known let alone systematically enforced in Melaka and its environs or throughout the Peninsula. Nor does the mere existence of individuals bearing the title of *kadi* (Islamic magistrate) necessarily mean that there were Islamic judges or officials of any sort who presided over formal courts or advised political leaders as to the proper implementation of Islamic law. Building on but also departing in significant ways from the pioneering historical work of Anthony Reid (1988, 1993), I also argue that

data from Aceh, northern Sumatra (present-day Indonesia), bearing on crime and punishment during the seventeenth century are not representative of Indonesia, Malaysia, or Southeast Asia as a whole before, during, or after that century.

In this connection I also advance three interrelated arguments. First, there is much more to justice and law than crime and punishment. Second, if we endeavor to understand how people manage disputes and resolve conflicts (the two are not quite the same), we need to recall that in virtually all societies in which formal adjudication is an option, people tend to prefer to deal with disputes and conflicts by “lumping it,” “exiting” (or avoidance), negotiation, mediation, and/or arbitration, rather than by pursuing the more formal, costly, and punitive processes of adjudication (see Nader and Todd 1978). And third, in the case of Islamic areas of Southeast Asia, even when formal adjudication was sought out or did occur, it did not necessarily involve the draconian physical sanctions (amputation, capital punishment) that so mesmerized British and other European observers in the nineteenth century and before who were, in any event, given to comparing their own lofty judicial *ideals* with Malay *practice* (rather than, say, British judicial ideals and Malay judicial ideals, or British judicial practice and Malay judicial practice). That said, such comparisons are of considerable significance inasmuch as they informed the colonial-era reorganization and rationalization of the Islamic courts which began in the 1890s and has continued through to the present, as this chapter also discusses.

In this chapter and elsewhere in the volume I am particularly interested in “rationalization,” a concept of central importance in much of Max Weber’s work on comparative history and politics and the sociology of religion. Like Weberian interpretive social science generally, the concept of rationalization has a subsequent genealogy that bears careful examination. Weber employs the term to refer both to institutional changes involving differentiation, specialization, and the development of hierarchical, bureaucratic forms of social organization and to intellectual or attitudinal trends entailing, in negative terms, “the disenchantment of the world” (the displacement of “magical elements of thought”), and, in positive terms, processes by which “ideas gain in systematic coherence and naturalistic consistency” (Gerth and Mills 1958: 51; Wrong 1970: 26; Turner 1974: 151–56; Schluchter 1979: 14–15; Alexander 1989: 74). Many of Weber’s ideas on rationalization were introduced into the English-speaking social science community by Talcott Parsons, who was Clifford Geertz’s mentor, as well as the source and filter through which Geertz developed not only Weber’s ideas on rationalization (see, for example, Geertz [1964] 1973b) but also his highly influential variant of interpretive anthropology (Geertz 1973b; 1983b; see also Ortner 1999). Geertz focuses on rationalization as processes of cultural—especially religious—change that entail a standardization, systematization, and more self-conscious sense of doctrine, belief, and/or ritual. More precisely, for Geertz, rationalization involves a rethinking and reconfiguring of key symbols and their meanings so as to better accommodate them to one another and to changing social and cultural realities; and institutional or social

organizational changes that help motivate, buttress, or sustain this rethinking/reconfiguring. Geertz concentrates on the first set of entailments and, unlike Weber, is in many ways (analytically, for example) relatively unconcerned with the second.

In this and subsequent chapters I build on Geertz's insights, but I devote more attention to the institutional contexts and stimuli of rationalization that were of such importance to Weber in light of his concern to develop the foundations for a comparative historical sociology of domination. It will be clear as well that my approach to religion and law differs from that of Geertz and those who have developed Geertzian paradigms (for example, Rosen 1980–81, 1989a, 1989b)—and is in some ways more similar to that of Weber—in at least three ways: I accord political variables a very specific and determinate role in shaping the direction and content of cultural change and of religious (and legal) rationalization in particular; I attend to the darker, apocalyptic side of rationalization and of modernity in general; and I devote greater attention to the political economy and cultural psychology of ambivalence, which, following Andrew Weigert (1991: 21), I define as “the experience of [co-mingled] contradictory emotions toward the same object.”

Chapter 2 addresses the roles, jurisdictions, and operations of Malaysia's Islamic courts both during the period of my second fieldwork and to a certain degree, since, and is especially concerned with the cultural logic of judicial process in the Islamic court of Rembau. The first parts of the chapter present material relevant to the state-defined roles and operations of the courts (including their domains and jurisdictions) and the nature of the criminal and civil cases that come before them. Subsequent sections of the chapter, which are concerned primarily with judicial process, focus on the ways that Rembau's Islamic magistrate and his staff interpret the cases brought before them and devise and deploy strategies to effect outcomes that are compatible with their interpretations and objectives. One goal of this chapter is to provide a close look at the “localized offices, institutions, and practices in which the state is instantiated” (Gupta 1995: 375–76); a second is to speak to a central theme in Weber's (1925 [1968]) work on Islamic law. Elaborating and codifying extant views of East-West differences (Turner 1974: 14), Weber avers that judicial process in Islamic courts is relatively arbitrary, ad hoc, and irrational and that it reveals a relatively unelaborated concern with procedural regularities and doctrinal consistency of the sort one sees in Western-style courts. Weber has had a profound impact on Western scholarship concerning Islamic legal systems. The material in this chapter supports Weber's contention that there are some marked differences between Islamic and Western-style courts. But it also makes clear that Weber overstates and misrepresents such contrasts; that there are readily discernable regularities in the workings of Islamic courts in Malaysia and elsewhere; and that the regularities reflect broadly shared cultural understandings bearing on social relatedness, human nature, gender, and the like. A major objective of this chapter is thus to show how local cultural concepts inform the ways in which officials of Malaysia's Islamic courts handle issues of legal lia-

bility, moral responsibility, and guilt. A related objective is to illustrate that a good many of these concepts are contextually variable and contradictory and that the anthropology of law needs to be especially attentive to the political economy of contrasting cultural representations and their contextually variable realization.

Chapter 3 views the courts from a different set of perspectives. Here I am concerned with the men and women who use the courts to help them resolve disputes, and I am particularly interested in litigant strategies and patterns of resistance. The first section of the chapter discusses nine case studies and other data illuminating how and why women utilize the courts. The second provides eight cases and other material bearing on men's use of the courts and then examines gendered similarities and differences with respect to the strategies and tactics employed by women and men as plaintiffs and defendants. Here and in the third section of the chapter, which focuses on oppositional discourses and patterns of resistance, we will see that men can more easily exploit the oftentimes ambiguous and contested symbols and meanings of time, space, language, law, and "custom"; a corollary is that this easier manipulability of such symbols flows from and further enhances gendered powers that women do not have.

Part 2, which focuses on modernity and governmentality in Islamic courts and other domains, consists of two chapters. Chapter 4 elucidates how the narratives of court officials aim to reinforce certain symbols, idioms, and meanings of local kinship, gender, and sexuality—and to transform others—and, more generally, how the 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. With respect to kinship and marriage, we will see that 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, and that this same priority is evident from what is noticeably absent from morally corrective discourses, such as positive references to collateral relatives and kin groupings like kindreds, lineages, and clans. A partial explanation of these dynamics lies in the implicit assumption that the smooth operation of the courts, like that of modern states generally, necessitates narrowly defined (nuclear) family units, not a broadly construed, hence encompassing and always potentially unruly kinship. The more general point is that while the court officials' practices and narratives (including their silences and elisions) sometimes subvert state agendas, they are key components of the discourses on kinship, gender, and sexuality—and citizenship, authenticity, and alterity—that are promoted by the state. These latter discourses reflect concerns to bolster certain types of political legitimacy and political stability, as well as the economic, religious, and overall cultural development that help sustain political legitimacy and political stability alike. State discourses on kinship are thus geared toward undercutting the extended kinship long characteristic of rural Malay society, partly because of the widely held belief that such kinship impedes the develop-

ment of the narrowly cast political loyalties that are central to the state's patronage machine. Extended kinship formations, like other "backward" excesses of rural society, are also seen as a drag on economic effort, hence an obstacle to the economic development of the Malay community, which, though politically and numerically dominant, continues to lag behind the Chinese and Indian minorities in terms of overall economic standing. We will see that such development has been central to the national political agendas of the ruling party (UMNO) for a full thirty years and that UMNO has long been quite explicit in its twofold goal of eliminating rural Malay social and cultural formations as "traditionally" constituted and "replacing" them with a newly created sector of middle- and upper-middle-class urban Malay capitalists.

Chapter 5 expands the discussion of authenticity and identity—or, put differently, of new ways of understanding, experiencing, representing, and otherwise being in the world—by examining nationalist (and transnational) discourses on "Asian values" that have been expounded in recent years in Malaysia, elsewhere in Southeast Asia, and beyond. I should perhaps clarify here that in the course of my two main periods of fieldwork these latter narratives were not disseminated in the Islamic courts in a register of specifically "Asian values," though I did hear them articulated in the frequently overlapping and in some instances more or less synonymous registers of Islamic and/or Malay values. These narratives are nonetheless implicated in the very same reinscription of authenticity and identity that we see in the Islamic courts and do in these and other ways (for example, as elements of discursive strategies to constitute "good subjects" and define new types of criminality) resonate with the narratives produced by the courts. For that matter, some of the political and cultural crises that have fueled the discourse on "Asian values" in recent years have resulted in the enactment of Islamic laws bearing on sodomy, homosexuality, and the like. Such developments thus enable us to observe a legal and more encompassing cultural "discourse in the process of constituting itself" (Foucault 1980: 38)—or more precisely, a variety of such discourses in the making. For reasons such as these, they are highly relevant to the work and missions of the Islamic courts during the last few years and well into the foreseeable future. In terms of case material, this section of the chapter draws mainly on two celebrated criminal cases that have rocked Malaysia in recent years. The first involves a young Malay woman from the state of Kelantan, who in 1996 was discovered to have "passed" as a male in order to marry her female lover and who created public controversies on such a scale that various media accounts referred to her as "the woman who shook the nation." The second case involves former Deputy Prime Minister and Minister of Finance Anwar Ibrahim, who has been held in prison since the latter part of 1998, which, as already noted, is when he was stripped of his official titles and duties and charged with numerous counts of sodomy, corruption, and bribery.

The concluding chapter summarizes and elaborates on some of the main points covered in preceding chapters, especially those relevant to scholarly (and public) debates bearing on Islam, modernity, and civil society. One of my main

concerns here is to pull together and comment on material illustrating that the Islamic courts are not “backward looking” and do not by any means pose fatal obstacles to the rational modes of government, economy, and social organization that are held to be conducive to modernity’s “holy trinity”: urbanization, industrialization, and bureaucratization.¹⁴ To put this in more positive terms, I underscore that the Islamic courts are relatively forward looking; that they are strategic loci in the projects of modernity that leaders of Malaysia have set for themselves and their countrymen since the latter part of the nineteenth century and during the last three decades in particular; and that they are implicated in a certain type of modernity and civil society that is characteristically Asian and distinctively Malaysian. I argue that the courts help lay the groundwork for Malaysian-style modernity and civil society in a variety of ways, one of which involves providing a legitimate and relatively confidential forum that both enables and encourages people to air intimate experiences and to thrash out certain of their deeply felt differences and views about moral injustice, all in a relatively unfettered, “no holds barred” sort of way. The mere existence of such fora both allows for and helps motivate and induce the type of direct verbal exchange and impassioned airing of difference that is discouraged and prohibited in most other contexts in Malaysia but is nonetheless vital to a modern-day, rights-bearing citizenry, a state that is responsive to democratic sentiment and civil pluralism and a vibrant marketplace alike.¹⁵

The courts also encourage modernity and civil society by valorizing the contractual responsibilities (though not so much the rights) of the individual, by emphasizing, for example, that while individuals are enmeshed in status- and identity-conferring groups of various kinds such as households, more encompassing groups of kin, and village communities, they can and should enter into written, contractual relationships (like marriage) of their own volition, albeit with the consent of a father (or another male kinsman) in the case of women. More generally, the courts contribute to the further erosion of extended kinship as well as the democratization of family groups, household relations, and marriage in particular. The attainment of these goals is sought partly through morally corrective advice and discourses designed to help free individuals from some of the constraints of extended kinship. The realization of these goals is also pursued through the court’s efforts to “even out” certain of the gendered inequalities that obtain in Islamic law, efforts premised on the assumptions that men create most of the problems in marriage, are at fault in much (if not most) divorce, and are much more likely than women to resort to dishonesty. In these and other ways the courts are contributing to the erosion, however partial, of one of the most basic cornerstones of Islamic and state-sanctioned inequality. And they are simultaneously making space for the emergence and florescence of sentiments, dispositions, and embryonic ideologies that are at variance with—and a direct challenge to—one of the most rudimentary and fundamental of the official lines shared by Islam and the state. More broadly, by moving toward policies and practices that make more room for the individual to exercise choice and initiative (to go against one’s parents’ wishes in selecting, re-

maining with, or leaving a spouse; to get out of a marriage if it does not meet one's emotional needs), the courts are bestowing sanctified legitimacy on the exercise of theoretically uncoerced judgments and initiatives of the sort that are vital to modernity and civil society.

In the course of this (arguably celebratory) discussion I also emphasize that projects of modernity need not entail liberatory movements or even small steps toward the positive features of civil society. Moreover, we need to bear in mind the Janus-faced nature of civil society. For example, in Malaysia and other contexts, such as Indonesia, recent years have also seen the emergence of decidedly “uncivil” associations whose agendas are very much out of keeping with the pluralistic visions usually associated with the concept. Of equal if not greater analytic concern here are the ways in which concepts of kinship are implicitly and uncritically invoked in definitions and discussions of the concept of civil society. I argue that kinship is (variably) central to definitions of civil society but woefully ignored in the actual investigation and theorization of civil society and that static, Rousseauian, and otherwise essentialized views of “the family” inform much of the relevant literature. Finally, I contend that we need to devote much more analytic attention to state-mediated dialectics of kinship and civil society; in much the same vein, we need to better appreciate that what states (via their agents, policies, discourses, and internal cleavages) do to—and with—the symbols, idioms, practices, and institutions of kinship is of great significance both for the efficacy and meanings of state operations at the local level and for civil society as a whole.