

Comments and Discussion

As the papers and discussion on the first day of the conference suggested, the tension between civil and religious loyalties is a central theme of citizenship in Southeast Asian nation-states. The separate law, courts, and customs of Muslim citizens and the complexity of dealing with marriages and divorces involving a Muslim and a non-Muslim were recurring themes in a number of the essays. Mehrun Siraj's paper focused as well on the issue of how a law that is seen as God-given, such as the Quran, can be made more accessible, so that the fundamental gender equalities dictated by the Quran can be found. Finally, there was discussion of what divorce or polygamy or marriage meant where religious differences, rural-urban differences, or gender differences marked radically different practices.

For example, Mehrun Siraj described two forms of divorce among Malaysian Muslim, *taliq* divorce, which can be initiated by women, and *talaq* divorce, which is unilaterally pronounced by men. An increase in the rate of *taliq* divorce is interpreted as evidence that women are exerting their rights, while an increase in the rate of *talaq* divorce is interpreted as disadvantageous for women. Wimolsiri Jamnarnwej described the differing consequences of divorce for women among rural and urban populations in Thailand, and Chupinit Kesmanee spoke of the connection between ease of divorce and size of bride price among Thai hill tribes.

The discussion of polygamy also took up rural/urban differences, as well as class differences, but there was more focus on its economic and symbolic significance, for both men and women, across national and ethnic boundaries. As Juree Vichit-Vadakan noted in speaking of polygamy in Thailand, "polygamy would not happen if women were not party to it." There was particular attention in the discussion to *how* polygamy is practiced, so that women are not disadvantaged, rather than to *whether* it should be practiced. In particular, Southeast Asian participants sought to address the Western bias that polygamy is by definition a practice that is oppressive to women.

Divorce

WIMOLSIRI JAMNARNWEJ

In a big city like Bangkok, where the woman has work and has more economic freedom, she has more of a chance to remarry than in a small community. So it is easy for her to make the decision to divorce. The figures show that 10 years ago the rate of divorce in Bangkok was 21.9%, while in a small community the rate was only 8.1%. This is because once a woman is divorced in a small community, it is very difficult to find a good husband again, because the parents of the men think, "What can be wrong with this woman? She's not good; her first husband cannot stand her." Sometimes the woman has to stay in the marriage for the benefit of the children. I used to ask my students in a questionnaire, "If you have a choice between two women, who would you select—the one who is still a virgin or the one who has had intercourse?" The boys in the class said they did not want a used car, a secondhand car. This is why a woman has to think twice before deciding to divorce her husband: she has already become a used car.

BARBARA YNGVESSON

Mehrun Siraj spoke about divorce and increasing divorce rates. I am not clear what that means. Similarly with the polygamy issue. In other words, what does it mean to talk about an increase in divorce in terms of women's lives?

MEHRUN SIRAJ

Shall I explain a bit about the divorce rate? The divorce rate in Malaysia jumped dramatically once there was some control over talaq. In talaq the man unilaterally pronounces divorce. Before, all he had to say was "I divorce you" with intention, and the divorce was valid when it was registered. Rates are calculated from the number of marriages and the number of divorces registered in a year. According to the new provision in the law, before a man pronounces the talaq, he has to apply for permission from the court, and at that point the married couple are subjected to conciliation procedures to try and resolve their matrimonial problems. Sometimes the divorces were carried out very impulsively, because all a man needed to do was pronounce the tala and that was it. The new procedure gives people time to reconsider, and sometimes after they discuss their matrimonial problems and the counselors suggest a solution, then they can save the marriage, hence the initial drop in the divorce rate.

Now there is a slow rise, probably because some men are not waiting to go through the court procedure. They have found that if they pronounce the divorce, it is still valid. It will be registered. Not following the court procedure is an offense, but those who have been convicted are only fined, and the fine is very low—30 ringgit, 40 ringgit; very seldom is it the maximum of 300 ringgit, which is U.S. \$100. So they say, "We can pronounce the divorce and pay the fine, and then we have settled that one without going through the court procedure." I think that is why there is now a sudden rise. It is a slight rise, but the rate is still very much lower than before the new law. We look upon the law as an improvement, because previously women were just divorced unilaterally by men.

Divorce itself is not a social stigma in Kelantan. The questionnaires sent out had the question, "When were you married?" Whereupon the respondents asked, "Which marriage are you talking about?" I realized that I

had formulated the question wrong, because in Kelantan especially, the women are economically independent. They are the ones who run the marketplaces, and they own all the property. They know their rights. Sometimes a woman has been married three or four times, and there is no stigma at all.

FRANZ VON BENDA-BECKMANN

So far most of what you have written about and what you have told us and also the statistics suggest that all the divorces are male initiated. What would be very interesting to know is, To what degree are divorces female initiated?

MEHRUN SIRAJ

The picture is indeed more complex than I have presented it. I could have given you the figures for all the different types of divorce. For example, the *taliq* divorce has been on the increase. In the *taliq* divorce, the man makes a promise at the time of the marriage—it is like an agreement—that if he does not support his wife for a period of three or four months or if he is cruel to her, if she is unhappy at the way he treats her, then she is entitled to ask for a divorce. There are different terms in the different states, but that is what it really amounts to. All she has to do is prove that the circumstances mentioned in the *taliq* exist, and she gets a divorce. This divorce is initiated by the wife, and it is the easiest form of divorce if she can prove her case. Most of the time women ask for divorce when their husband has deserted them or has gone away and not sent maintenance for up to three months. *Talaq* divorces have come down, but *taliq* divorces have gone up. Women are now exerting their rights.

DAVID ENGEL

In discussing divorce rates and how complicated it is to interpret them, I want to suggest one more complication based on research I did in Thailand some time ago. Divorce rates are meaningful insofar as marriages have been registered to begin with. But the far more common practice, at least during the time that I did my research, was to be married without registering at the government office. As we compare rural and urban divorce rates, we should also ask how to compare rural and urban marriage registration rates. The differences between the urban and rural statistics may be a product of how frequently marriages are registered in the two areas. As I understand it—and I would invite my Thai colleagues to correct me or supplement what I am about to say—the unregistered marriages, what in the West we would call common-law marriages, in fact reflect a different sort of belief system about marriage and how it should be registered. If you registered a marriage with the village spirits or performed traditional marriage rites, it was not recognized at all by the official system except insofar as it became a form of common-law marriage by cohabitation over a certain period of time. But the legitimacy of the ritual itself was not recognized. It is interesting to think about why the alternative religious or belief system went completely unrecognized in Thailand when the new system of law went into effect, whereas in Islamic countries that is not the case, or so I understand. It is also my understanding, and I would particularly invite Ajaan Chupinit to comment on this if he wishes, that in northern Thailand the rate of remarriage for women is quite high and that at least in certain communities in the north, women might marry and divorce several times. I assume that what Ajaan Wimolsiri said about young Thai

men in Bangkok buying a used car might not reflect the view of men in some northern Thai communities.

CHUPINIT KESMANEE

I think I can add a bit of information about the divorce rate in the highlands, although I cannot provide statistics. Among the [Lahoo] the divorce rate is pretty high, comparatively speaking. A colleague who studies the Lahoo told me once that it could be because the custom of marriage is very simple and the bride price is fairly low compared to the price among the Hmong or the [Lisu]. In the Hmong community the bride price is very high, and divorce is not so easy to file unless a spouse can give concrete evidence of abuse in the family, and the kids would be taken in by the whole kinship system. Another interesting point is that the price of the bride is a bit lower if she marries a second time, but the price of the bride, including the children, is altogether higher than the price of an unmarried girl. If we compare Hmong and lowland Thai communities, we find that the value system is different. Thai men ideally want to marry a virgin. But virginity is not important among the Hmong, so it is not always the case that a virgin fetches a good price; a strong and effective woman can get a good price.

KEEBET VON BENDA-BECKMANN

I wonder whether as a result of the legislation in Malaysia, there could be a rise in the unofficial divorce rate, parallel to the decline in the official divorce rate. Do you have any information on unregistered divorces and maybe unregistered marriages?

MEHRUN SIRAJ

For a long time now registration of all marriages and divorces has been compulsory. The only marriages and divorces not registered are those that are solemnized outside the country.

KEEBET VON BENDA-BECKMANN

I mean something different. In Minangkabau, Indonesia, for instance, every marriage has to be registered. In practice, many marriages and many divorces are not registered. Are you sure that the state system captures every single person who cohabits?

MEHRUN SIRAJ: Are you talking about Muslims or non-Muslims?

KEEBET VON BENDA-BECKMANN: I am talking about Muslims.

MEHRUN SIRAJ

For Muslims, there would be no question of cohabitation outside marriage, because it is a religious offense. The members of a rural community know that a couple is living together outside marriage. They are the ones who report to the authorities. In the rural community, it is a lot easier to keep track of offenses because everyone is under the imam, the headman, who knows what happens in his community. It is in the urban areas that there are problems of registration, but then the offenders are caught in other circumstances—at the job, for instance, where all particulars have to be recorded.

AKIN RABIBHADANA

In northeast Thailand I think that it is not possible to know if there is a marriage or a divorce, because normally people in the villages do not register their marriages, because usually it is not good to register a marriage unless you are a government official and get a pension and assistance from the state for your children.

WIMOLSIRI JAMNARNWEJ

There is another reason that people in the villages do not want to register their marriages. They say, "We are humans and not buffaloes." Usually it is just the owners of buffaloes who register their buffaloes at the district office. We found out that only the couple who wish to borrow money from the bank register their marriage; the bank officer forces them to register so that the bank can seize the whole property instead of just half the property.

Polygamy

The discussions of divorce and of polygamy are closely connected in that both raise the question of rights for different women who are or have been married to the same man. In addition, both divorce and polygamy raise questions of interpretation (whether they benefit or disadvantage women; whether criticism or advocacy reflects the internationalization of internal space) and questions about official (registered) versus unofficial practices. At the same time, there are important differences in the two discussions, because talk about polygamy inevitably carries a particular symbolic weight, reflecting its intimate connection with official practice in specific religious traditions, such as Islam, and its connection with unofficial practice among specific ethnic groups—some of the Thai hill tribes, for example—whose economic and cultural survival is seriously threatened and for whom polygamy represents a way of life. The excerpts below address both the symbolic and practical dimensions of polygamy in various Southeast Asian nation-states and the complications that accompany the use of legislation as a way of controlling polygamy.

MEHRUN SIRAJ

Now we have a multiracial, multireligious society in Malaysia, and the legal system has always recognized customary law—the customary laws of all the various races. When the British came, Islamic law was already enforced, and some of these customary laws were already practiced, so when they introduced English law, it was always subject to the proviso that it would not cause injustice to the local inhabitants. If an English principle of law would work injustice, and this was usually in the area of family law, then local custom would be enforced instead. Polygamy came about in this way. It was accepted that the Chinese particularly, but also the Hindu community and most of the other groups, practiced polygamy; to introduce monogamy, which is based on the Christian concept of marriage, was not acceptable. Polygamy continued until 1982, when the Law Reform Act of 1976 (applying only to non-Muslims) came into force. Although it abolished polygamy, it has not actually resolved the problem of a man having

other women because adultery, concubinage, and so on, are not offenses. Men have these relationships, which sometimes produce children, who can be adopted by the father and become legitimate heirs. Because the man is free to transfer his property or even make a will leaving all of the property to some other person than his wife and children, abolishing polygamy does not protect women. Men can put all the property in the name of the mistress, leaving little for the wife to inherit when he dies.

With regard to Shari'a, which permits polygamy, we have tried to codify the law, and in doing so we have managed to put in some new provisions in the hope of improving the position for women. One provision that was introduced was the control on polygamy. Muslim men can marry up to four wives, but the Quran says that they must treat all four wives equally. When men were doing that, it was fine. Each wife was given her position in society; she was given her rights. But as time went on, men sometimes neglected one of the families—inevitably the first wife and her children—and spent all their time and money on a younger wife. It was to make sure this sort of thing did not happen that the control on polygamy was introduced.

A man has to apply for permission to marry again. The provisions that apply are different in the various states. In Kelantan, for example, where I conducted my research—the northeast state on the border with Thailand—the provision is quite simple: a man applies to the court, and if the court is satisfied that he is in a position to treat all his wives equally, then permission is granted. The court accepts the man's statement that he will, in fact, treat his wives equally and that he has enough income to support everybody. When we look at his income, we may find that it is not really enough. In other states (for example, in Kuala Lumpur, the Federal Territory), there are stricter provisions. Several conditions have to be satisfied, and the court will not give permission to remarry unless the man can satisfy all the conditions. The court found that it kept refusing permission, so men were not allowed to get married. So what did the men do? They got around the refusal by going to another state.

One possible solution is to have uniformity in the law—but how about the many people who go to southern Thailand, to the three Muslim regions, to have their marriages solemnized? Malaysian law says that so long as the marriage meets the requirements of Islam as set up under Islamic law, then it is valid. Where it was solemnized does not matter. So the government says, "Right, it is a valid marriage. Now we are going to deter you from going away to get married by saying that we won't register the marriage." Nonregistration means that if the wife subsequently wants to go to court for matrimonial relief—this mostly occurs when the husband does not pay maintenance—she cannot get maintenance because the marriage is not registered. After a while, the government realized that the ruling had backfired. Men who married in Thailand knew that they could not be tied down; they could leave their wives and marry other women, or they could divorce their wives, just like that, and the women could not claim all their entitled rights because the marriage had not been registered. This situation leads me to conclude that laws are not the answer to our social problems. Even if there are a whole lot of laws, if people want to find ways of avoiding them, they will do so. Ultimately, long-term education, reeducation, changing attitudes, will solve the problem, not the law as such.

FRANZ VON BENDA-BECKMANN

Polygamy has become a focal issue in ideological, religious, and political terms somewhat independently of its actual incidence; then it is a ques-

tion of wanting to marry a second or a third wife or not. The problem is not so much whether a man is permitted to marry more than one wife; rather, polygamy is a symbol, a very important symbol, of which system has the superior validity: Islam, which allows polygamy, or the state, which wants to constrain polygamy, or the universalist Western ideology or culture (Christian culture), which focuses on monogamy. To understand the whole discussion about polygamy we must look at this political-ideological level, rather than concerning ourselves about polygamy as such.

MEHRUN SIRAJ

I think you are right. Polygamy has always been practiced in the rural areas, where everyone is poor, but it became an issue when it started being practiced in the urban areas among the English-educated Muslims. Men, having reached a high position and being able to afford a lot more, decided to take other wives—young, highly educated women—and the first wives minded. The English-educated wives began to take up the issue. I suppose the movement to control polygamy was headed off by the abolishing of polygamy among non-Muslims.

In addition, there is a comparison with the non-Muslim women who have monogamous marriages. Polygamy is looked on with a "my goodness!" attitude, indigenous is equated with backward. The tendency is to think that if you are applying a religious law, then you are backward; the only way to go forward is by following some other system. There is this terrible inferiority complex about Islam and Islamic law and the feeling that the only way to improve the situation is by adopting all these Western concepts. That is what the movement to control polygamy among Muslims is about. What we think is probably the better way is to say, "We want to go to Islamic law in its real form, where there is no discrimination against women." A group is coming out with interpretations of the Quran from such a feminist viewpoint.

JUREE VICHIT-VADAKAN

Polygamy in Thai society is not so much an issue of symbolic debate over the ideology of polygamy. In fact, there are different types of polygamy in Thai society. Among the upper classes, Thai men have multiple wives to display sexual prowess or status, whatever. Women often enter into those unions for economic benefits. But in cases of polygamy among the middle classes the men do not supply that much economic sustenance to the women, and it is amazing that women continue to enter such unions. Polygamy would not happen if women were not a party to it. Women willingly enter into multiple unions for various reasons, perhaps for love. Among the lower classes, amazingly, the fear of being abandoned by a man affects economically independent women, especially in urban areas. Women are the major breadwinners or the sole breadwinners in a family. They raise the children, they are economically independent, but the men come and go. And while they come and go, they torture the women with the fear of their bringing an extra woman into the family or going to someone else. The women bear a psychological burden.

This is an area where I strongly believe that changes ought to be initiated. The law does not apply—as we have mentioned, marriages are not registered in this area—so I do not mean changes in the law. We need a change of attitude and a change of values and ideas, so that a woman can be truly independent, without having to rely on a man, and a marriage that does not work will be broken up. A Thai man has a possessive nature; once he has a relationship with a woman, he wants to stake a claim to her for-

ever, even though he is elsewhere. If he comes back and finds out that the woman has entered into a new relationship with another male, he gets very upset and could even beat the woman up. In this area I think that a whole change of attitudes and values about the male-female relationship is in order; the scenario is very complex.

CHUPINIT KESMANEE

We seem to use the word *polygamy* with all its negative connotations. Is it true that in the past a man simply took advantage of females by adopting several wives? I do not know much about the Islamic community, but I can give you some examples of a Hmong community where the adoption of a second wife is acceptable. In an average Hmong community, the majority of married couples are not monogamous. Only some, who can afford it, are monogamous. Others, who are faced with difficulties, mostly economic, have to adopt a second wife. Of course, many men adopt the second wife without the consent of the first. But in many cases, a wife consents—for economic reasons as well as for the ancestral reason of maintaining family ties.

Another example involves communities in Tibet, where one woman has to take care of several husbands. Who abuses and who is abused? What standards should be used, and what value judgments should be made? Perhaps it is unfortunate that this polyandrous society did not invent the steam engine, for we might then write world history differently. The question here, I think—and I have no answer to it—is, Whose value judgments must we listen to in order to maintain a harmonious and a happy community?

The last point I would like to make has to do with the recognition of customary law by the state. In principle, I agree with recognizing customary law; but how can we apply it to the society at large? What kind of legal court can we provide to suit different cultural backgrounds? I think there should be a way to accommodate differences, but to do so, customary law has to be made flexible and perhaps not too rigid to apply as a generalized law to the whole nation.

Strategies for Change

Toward the end of the day devoted to issues of women, family, and law, the discussion returned to questions about strategies for creating a space for women's rights while acknowledging the importance of family ideologies that sustain religious, ethnic, and cultural practices in the face of Western and other imperialisms. In the excerpts below, Mehrun Siraj returns to points that she made earlier about interpretation of the Shari'a as a strategy for change—this time in a discussion of marital rape. Barbara Yngvesson picks up on this discussion to suggest the contradictions for women of introducing rights through law.

MEHRUN SIRAJ

Just a brief comment on this marital rape business. You think that at least the idea of a husband forcing himself upon his wife is universally repugnant. However, when a woman is brought up with certain expectations—that when she gets married, it is her duty to go to bed with her husband at any time and according to her best ability—then the idea of

marital rape will never occur. But the use of force is, I think, universally unacceptable. So we proposed that women should be given the right to obtain an injunction to restrain their husband from continuing the violence and the right to get a protection order, an exclusion order, so he will leave the house until he changes his ways, and then he can come back. We had a joint session with the police, and they objected, saying, "Well, it is usually his house. Why should he have to leave his house?" That was when Haji Sulaiman Abdullah came up with an idea that, I think, annoyed them. He said, "Under the internal security act you happily remove people from their houses. Why can't you do that in this case?" In any case, we have not ironed out all the wrinkles yet, which is why the Domestic Violence Act has not been passed.

BARBARA YNGVESSON

I want to pick up on some issues that Mehrun Siraj and Juree Vichit-Vadakan raised about the context in which legislation is seen as a solution to problems of discrimination against women, as well as some of the broader implications for people's lives of introducing Western legal forms and practices to regulate family relationships. What is interesting to me is the intersection of the introduction of Western legal codes and practices in Southeast Asian societies with the focus on changes in family law and women's rights. There is a contradiction in empowering people but also disempowering certain traditional structures. The papers we heard today suggest the real importance of some of the changes that have been brought in with westernized legal codes and procedures. And I agree entirely with Professor Ihromi's comment that we do not want to stop making legal changes simply because they cannot be implemented and because there are so many different interests that some groups will always remain unsatisfied. I am not advocating at all that these are not important changes in terms of women's rights. But I think it is important to keep in mind that introducing these codes and procedures also brings in other practices and assumptions that have possibly negative implications, both for women's lives and women's empowerment and for local power structures. In a sense, it is as though women's rights are a fulcrum, or rationale, or focusing point, in terms of what other kinds of imperialism are going on. The situation is complicated as well by the kinds of things that Ajaan Chupinit was just saying about the diversity of traditional groups and the question of whose tradition should be codified. We talk about who is being empowered and who is benefiting from the introduction of a particular law in an enormously complex social environment.