Law & Society REVIEW

Are Women Getting (More) Justice? Malaysia's *Sharia* Courts in Ethnographic and Historical Perspective

Michael G. Peletz

Religious law is commonly understood as deeply conservative and unfriendly to women, even when it is reform oriented and "this-worldly." This essay challenges that understanding. It does so by engaging the practice and lived entailments of Islamic family law and gender pluralism in Malaysia, based on ethnographic fieldwork conducted since the late 1970s. My research reveals that *sharia* courts are more timely and flexible in responding to women's claims than in decades past, and that these courts are more inclined to punish husbands who transgress *sharia* family law bearing on women. In addition, women nowadays have far more access to resources for negotiating marriage, its dissolution, and the aftermath. This is not to say that women and men experience marriage, divorce, or the *sharia* juridical field as social equals; they do not. But this situation is changing in ways that benefit women as long as they embrace increasingly salient and restrictive codes of obedience and heteronormativity. More broadly, the essay problematizes tensions and oppositions between Islamic law and women's rights that are the subject of considerable scholarly debate and contributes to our understanding of the complex entanglements of religion and law.

[A] history of family law, written from an anthropological perspective, is a history of narrative strategies engaged in by the state to influence the life course of its nationals. These maneuvers ultimately aim to fix the meaning of kin relations essential to the constitution of citizens as subjects, meaning that the citizens themselves should preferably desire to

I would like to thank Monika Lindbekk, Tamir Moustafa, Dominik Müller, Arzoo Osanloo, Jeffrey Sachs, Patricia Sloane-White, Amanda Whiting, anonymous reviewers, and *LSR* editors for helpful comments on earlier versions of this essay. Recent research in Malaysia was funded by the National Endowment for the Humanities, the Koninklijk Instituut for Taal-, Land- en Volkenkunde (KITLV), Emory University, and the University of Malaya (UM). At UM I am indebted to Ahmad Hidayat Buang, Azirah Binti Hashim, Raihanah Abdullah, and Siti Zubaidah Binti Ismail for welcoming me during the Fall of 2013 as Visiting Professor in the Department of *Syariah* and Law at the Academy of Islamic Studies and inviting me to participate in the UM research project on Islamic Law in Practice.

Please direct all correspondence to Michael G. Peletz, Department of Anthropology, Emory University, 1557 Dickey Drive, Atlanta, GA., USA, 30322; e-mail: mpeletz@emory.edu.

Law & Society Review, Volume 52, Number 3 (2018)

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

> structure their lives according to the official rules…. In this attempt at nation-building -- to define, regularize, institutionalize, and normalize the domestic practices of the self -- the state codifies and legalizes the desires for specific kinds of relations and specific kinds of selves. (John Borneman, *Belonging in the Two Berlins* [1992:75])

Family law ostensibly grounded in religion comprises an important and deeply contested domain of legal practice in much of the world, including India, South Africa, Israel, Egypt, and Lebanon, to mention just a handful of well-studied examples. Why is this realm of religiously inflected law frequently represented by Western scholars, local activists, journalists, novelists, and the international human rights community as deeply conservative and unfriendly to women if not backward looking and anachronistic? One set of reasons is that it was historically segregated from other areas of law and otherwise "traditionalized" by modernizing elites (Halley and Rittich 2010:771–772); it is often all that remains of an historically male-dominated religious community's "collective right to religious liberty and … their sovereignty over a domain in which they are understood to have religious jurisdiction" (Mahmood 2012:56). Another set of reasons, especially germane to Islamic family law, has to do with the thrust of recent academic scholarship. This scholarship tends to highlight three themes: the resonance between the current instantiations of the relevant laws and normativities and their classical antecedents; the incommensurabilities that distinguish their core elements from key ("liberal") features of the more encompassing secular legal regimes in which they are typically embedded; and the need to bring about feminist-oriented or other reform. Scholarship driven by the latter concerns (advocacy, activism, reform) commonly underscores the other themes mentioned here. And it often involves largely synchronic perspectives, a focus on women as distinct from the more encompassing domain of gender, and a kind of (broadly construed) strategic essentialism that emphasizes dynamics of kinship, marriage, gender, and sexuality in terms of the proverbial glass that is half-empty rather than half-full.[1]

One goal of this essay is to complicate this imagery by describing and analyzing a relatively "female-friendly" pattern of historical shifts in the domain of Islamic family law in the Muslim-majority nation of Malaysia based on ethnographic fieldwork and

[1] See Abu-Lughod (2013) for a discussion of this literature and a delineation of productive tensions within the scholarship produced by reform-minded feminist activists and human-rights advocates writing about family law and related matters in the Muslim world; for alternative perspectives, see Zainah Anwar (2009) and Mir-Hosseini et al. (2015).

archival research I have conducted since the late 1970s. A second, related goal is suggested by the epigraph drawn from John Borneman's research on kinship, family law, and belonging in Berlin shortly before the reunification of the city in 1990. To borrow from Borneman, this goal involves illustrating how states endeavor to define, codify, and normalize particular kinds of relations and particular kinds of selves that political and religious elites see as essential to the constitution of citizens as subjects. I focus partly on women's prerogatives to obtain divorce/annulment without their husbands' consent. The more encompassing dynamic under study is the role played by *sharia* courts, which are integral features of the state apparatus that I foreground in this essay, in the cultural politics of marriage and in gender pluralism as a whole.[2] More specifically, I describe and analyze how Malaysian women have fared in *sharia* courts since my earlier research in the 1970s and 1980s and problematize various tensions and oppositions between Islamic law and women's rights that have been the subject of considerable scholarly debate in recent decades. My research reveals that due partly to initiatives undertaken by progressive non-governmental organizations (NGOs), women receive more timely and flexible responses to their legal claims than in times past (the 1970s/1980s and previously),[3] and that the courts are less indulgent and more punitive when

[2] I spell most Malay terms including those of Arabic origin in accordance with the conventions of standard Malay. The exceptions involve citations of published material and formal organizations that follow other guidelines, and references to *sharia* (variably rendered *syariah*, *syarak*, *shariah*, etc. in Malay), a designation I use interchangeably with Islamic law. Ethnic Malays, nearly all of whom identify as Sunni Muslims adhering to the Shafi'i legal tradition, constitute 50–51% of Malaysia's population of approximately 32,000,000 people (http://worldpopulationreview.com/countries/malaysia-population/). The two other major ethnic groupings are the Chinese, the majority of whom are Buddhist; and the Indians, who are predominantly Hindu. All Malays are Muslims and around 85% of Malaysia's Muslims are Malay (the others are mostly of Indonesian or South Asian origin). Hence I use the terms Malay and Muslim (and non-Malay and non-Muslim) interchangeably when discussing the Malaysian context.

[3] It is important to emphasize that my frame of comparison takes as its point of departure the 1970s/1980s and previously, *before* the introduction of the Islamic Family Law Enactments of 1983/1984 (the state-specific implementation of which occurred during the period of 1983–1991) rather than the 1990s or the early years of the new millennium. I utilize this optic because I am interested in long-term change and because I conducted my original fieldwork in Rembau in 1978–1980 and began doing research on Rembau's Islamic court in 1987–1988 when the new enactments had *not yet* been implemented. Some of the reforms contained in the Islamic Family Law Enactments implemented in the period of 1983–1991, hereafter usually referred to as the "Islamic family law reforms of 1983–1991," were diluted by amendments passed in the 1990s and early 2000s. This situation has led some scholars to suggest that "Polygamy and divorce have been made easier for men" (Norani Othman, Zainah Anwar, and Zaitun Mohamed Kasim, 2005:91). These contentions are true if one if one is comparing the original wording of the Islamic family law reforms of 1983–1991 with their subsequent dilution or the situation at present. But, importantly, these contentions do not hold up if one is viewing the relevant dynamics from the longer-term historical perspective adopted here.

husbands transgress *sharia* family law. In addition, women nowadays have much greater access to information bearing on their legal options and rights with respect to marriage and divorce and can rather easily enmesh themselves in networks of support to help them negotiate marriage, its dissolution, and the aftermath. I am not suggesting that women and men come to or experience marriage, divorce, or the *sharia* judiciary on an equal footing; clearly they do not. But this situation is changing in ways favorable to women as long as they conform to increasingly salient and restrictive codes of obedience and heteronormativity.

I have organized my comments into four sections. The first provides background and context. The second deals with termination of marriage via *fasakh* (judicial rescission/voiding of the marriage contract; annulment), a key site in the struggle for justice and equality in gender relations within the family and beyond. This section begins with an ethnographic vignette in the form of a transcript of a *fasakh* hearing I sat in on in 2012 and continues with brief comments on selected aspects of the case. It then delves deeper into the labyrinth of *fasakh* legalities by considering both the formal expansion of grounds for *fasakh* effected by Islamic family law reforms of 1983–1991 and ensuing, informal shifts further broadening the basis for this type of judicial relief. This material provides crucial context for—and a partial answer to—the question as to whether women are getting (more) justice, the focus of the third section of the essay. Here, I addresses themes outlined in the previous paragraph and related matters such as gender patterns in harsh sentencing and dynamics of heteronormativity and pluralism, which I take to involve conditions or settings in which diversity is accorded legitimacy (Connolly 2005). The conclusion offers summary comments and brief discussion of some of the essay's comparative and theoretical implications.

A final introductory comment bears on methodology. I conducted 18 months of ethnographic fieldwork in Malaysia during the period 1978–1980, by which time I had already attained good working proficiency in Malay (the national language); 7 months in 1987–1988; and 6 months since then, primarily from 2010 to 2013. During the first two stretches of fieldwork, I engaged in participant observation and carried out (mostly informal) interviews on a daily basis and also undertook village-wide household surveys and archival research. In the second and third periods of fieldwork, I observed and took extensive notes on approximately 175 motions and hearings in the *sharia* courts, chiefly in Rembau and Kuala Lumpur. During this time, my research assistants observed another 25 *sharia*-court hearings, providing me with relatively complete transcripts and other notes. In addition, I

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

interviewed over 40 current and former judges, lawyers, and other officials in the *sharia* judiciary (many of them on multiple occasions), some of whom shared crucial historical perspectives and other longitudinal data discussed below. I also attended more than 120 motions and hearings in the nation's civil courts for comparative purposes.[4]

Background and Context

I begin with brief consideration of the constitution of the Federation of Malaya, drafted by the Reid Commission on the eve of independence from the British in 1957. This document specifies that Malaya, which became Malaysia in 1963, is a parliamentary democracy with a constitutional monarchy, with both a prime minister and a king at its helm. It also stipulates, in Article 3, that "Islam is the religion of the Federation". The latter provision was apparently intended primarily to ensure that state ceremonies and pageantry would be Islamic in character—featuring Islamic prayers, (Malay) Muslim dress codes, and *halal* food, for example—in respect of the nation's Malay/Muslim majority (Fernando 2006, Harding 2012:233–236). Importantly, albeit with one critical but partial exception noted below, the constitution does not go on to specify that *sharia* is or should be a (let alone *the* main or sole) basis for the nation's legislation, and it explicitly guarantees freedom of religion (Articles 3 and 11). Indeed, the constitution and the texts to which it refers make clear that the extant, British-derived system of secular law, based on the common law, is the law of the land, except within the narrowly delimited jurisdictional domains of the nation's Islamic courts, which are subject to state rather than federal control (and within "customary"/*adat* courts, which are not relevant here).

According to the constitution, the sovereignty of the *sharia* judiciary is heavily constrained in other ways as well. It has no jurisdiction over the affairs of non-Muslims (predominantly Chinese and Indians), who currently comprise nearly 40% of the nation's citizenry. Its jurisdiction over Muslims, moreover, is confined largely to family matters and other personal status law: marriage, divorce, child support, spousal maintenance, certain sexual transgressions, as well as consuming alcohol, observing Ramadan, and so forth. All other offenses, including theft, murder, and human trafficking, are dealt with in the nation's far more powerful and prestigious civil courts (*mahkamah sivil*), in accordance with

[4] For additional information on methods, see note 8 (below) and Peletz 1988, 1996, 2002.

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

civil law, regardless of the plaintiff's religion. These are important and in some instances intensely contested and politicized features of the national juridical landscape to bear in mind. So too is the fact that the juridical field (Bourdieu 1987) is dominated by the civil judiciary, which defines the constitutional provisions bearing on *sharia* and is both the *sharia* judiciary's principal patron and its main competitor. Not surprisingly, the civil judiciary is also the proximate source of most of the *sharia* courts' formal procedures and "best practices" (Horowitz 1994; Peletz 2013).

As in times past, the vast majority of plaintiffs in the nation's Islamic courts are women of modest or meager means, just as most defendants are men, from generally comparable socioeconomic backgrounds, typically plaintiffs' husbands or former husbands (Peletz 2002, n.d). Noteworthy as well are continuities in the types of cases that women (and to a lesser extent men) bring to the courts, the lion's share of which concern civil rather than criminal matters.[5] As in previous decades, female plaintiffs typically petition the courts to help them resolve problems associated with their husbands' failure to provide spousal or child maintenance (*nafkah*); to clarify the status of their marriages; or to seek a termination of marriage via *fasakh* or *taklik* (due to violation of a stipulation in the marriage contract). The first two sets of issues are often inextricably linked insofar as women who have not received support from husbands who have left home to seek a living do not always know if their husbands have been delinquent in providing them with money or news of their whereabouts, or have divorced them via the *talak*/repudiation clause.[6] Women seeking *fasakh* or *taklik* divorce are often in the courts for the same general kinds of reasons.

Male plaintiffs, in contrast, usually approach these courts to obtain formal approval of their divorces or to seek permission for polygynous unions but not for clarification of ambiguity or because of financial hardship. In this too we see considerable congruence with times past and important changes that require men to secure the court's consent to effect a divorce or a polygynous marriage that is legal in the eyes of the state's religious bureaucracy. A more general continuity involves the complex entanglement of Islamic law with state directives, whose formal authority and clout, like those of the Islamic judiciary in its entirety, derive ultimately from the secular constitution. There is no "firewall separation" between the religious and the secular (Mahmood 2012:59; Asad 2003, Sullivan et al. 2011, Agrama 2012).

[5] Both the civil and the *sharia* judiciaries make use of the civil/criminal distinction in the cases subject to their jurisdictions.

[6] A husband need not pronounce the *talak* in his wife's (or a judge's) presence to effect a valid divorce, but reciting it without a judge's permission contravenes state law.

Termination of Marriage via *Fasakh*

Dynamics in Kuala Lumpur's *sharia* courtrooms provide valuable optics on nationwide developments that have taken place or are likely to occur in the years to come. This is partly because of Kuala Lumpur's status as the nation's capital, its largest metropolis, and the center from which gazetted enactments and successful juridical innovations that are relevant exclusively or primarily to Kuala Lumpur will "trickle down" to other jurisdictions. Worthy of close scrutiny in this regard are claims for *fasakh* pursued by women and how judges' views and decisions regarding *fasakh* have become more flexible. Termination of marriage via *fasakh* is currently the chief if not sole option available to a Malay or other Muslim woman in Malaysia who seeks to dissolve her marriage without her husband's consent or cooperation.[7] (A Muslim man, on the other hand, may divorce his wife at will, on any grounds, without her consent.) This situation contrasts with the options available to Muslim women in some Muslim-majority nations (discussed shortly) that have made explicit provision for women to opt out of marital unions that do not live up to the ideals of companionate marriage.

The following hearing, which was the final session in a *fasakh* case, helps convey practice-oriented perspectives on the ambience and quotidian operations of Malaysia's Islamic courts. It also affords us a useful entrée into some of the ways those at the helm of the *sharia* judiciary are endeavoring to make the courts friendlier to women, even as they hold firm to the "maintenance-obedience paradigm" that undergirds Islamic and state discourses on kinship, gender, and citizenship. *Fasakh*, recall, is a critically important site in the struggle for justice and equality within the family and beyond.

A Woman Seeking a *Fasakh* Divorce (Annulment), in a Hearing Set Aside for the Judge to Deliver His Verdict; Kuala Lumpur, July 19, 2012.[8]

This brief hearing followed a number of earlier sessions devoted to resolving the marital problems that the female plaintiff, who was probably in her 30s, brought to the court's attention.

[7] Limitations of space preclude discussion of *taklik* divorce, which involves a woman convincing a judge that her husband has violated written provisions of the marriage contact. In practice, it often requires the husband's cooperation though not necessarily his consent. In many jurisdictions, *taklik* is quite rare (IIUM 2005, Nik Noriani Nik Badli Shah 2008; see also Raihanah Abdullah 1997).

[8] I took extensive handwritten notes on this hearing (recording devices were not allowed in the courtroom), as did my research assistant. We subsequently typed up and compared our notes, translated them into English, and discussed them at length for accuracy, detail, and nuance. This was our usual practice.

She sought to address the problems not by petitioning authorities to force her husband to pay the back maintenance (*nafkah*) he owed her or to properly fulfill his other obligations as a husband, the path usually chosen by female plaintiffs. Rather the resolution she sought involved requesting that the court annul the marriage so that she would be rid of her delinquent spouse and able to move on with her life.

The case is of interest partly for reasons noted earlier. In Malaysia, as in most of the rest of the Muslim world, *fasakh* is the primary if not sole option available to a woman seeking to terminate her marriage without her husband's consent or cooperation. This situation is unlike Egypt and a few other Muslim-majority settings (e.g., Pakistan) where a woman may avail herself of unilateral "divorce by redemption" (Ar., *khul*) so long as she repays the dower (Ar., *mahr*) the husband provided or pledged to deliver at the time of wedding (or subsequently), renounces certain financial claims, and agrees to other stipulations (Sonneveld 2012). It also differs from Indonesia where in recent years Islamic courts have effectively legalized unilateral no-fault divorce initiated by women or men (Huis 2015).

Fasakh requires that a woman seeking divorce/annulment present evidence of serious wrongdoing or physical or mental defect on her husband's part, and that she convince the judge that the husband's shortcomings would cause her serious harm (*mudarat*) should the marriage continue. Neither of these requirements exists in Egypt or Indonesia. This is to say that Egypt's innovative but controversial "*khul* laws," which date from 2000, along with their previously noted Indonesian counterparts, are among the most "women friendly" divorce laws in the Muslim world (though recent developments in Iranian and Moroccan family courts are also noteworthy [Osanloo 2009, Carlisle 2013]). Malaysia has yet to and may never adopt any such laws, but the expansion of grounds for *fasakh* and their more generous interpretation since the early 1980s suggest a liberalization of grounds for female-initiated divorce/annulment. We see evidence of these developments in this case.

The hearing involved the plaintiff (P) and three men: her lawyer (PL), the judge (J), and the registrar (R). The plaintiff's husband (the defendant) was not present, had not attended previous sessions devoted to this case, despite court orders that he do so, and had not hired counsel to represent him. The registrar initiated the hearing, which had been set aside for the judge's decision, by reading out the case number and the names of the plaintiff and the defendant. The plaintiff's lawyer then rose from his chair and addressed the judge, requesting his verdict concerning his client's petition.

PL: I request the decision of the court, Your Honor.

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

J: Various notices and summonses have been issued to the defendant, but he has failed to attend all hearings related to the case. The plaintiff has requested *fasakh* based on six grounds: (1) the defendant hurt/injured (*menyakiti*) the plaintiff; (2) the defendant neglected his duty to provide *nafkah* for more than 3 months; (3) the defendant did not provide the plaintiff with *nafkah batin* (sexual companionship) for more than a year; (4) the defendant disposed of the plaintiff's properties; (5) *shiqaq* (a state of conjugal disharmony/dissension) has occurred more than once; and (6) … [Inaudible]. There are also oral statements [supporting the plaintiff's contentions] from three witnesses.

After close examination, there is evidence of grounds for *fasakh* along with consistent statements made by the aforementioned witnesses…. The court orders the plaintiff to swear before the court makes its decision. Are you willing to recite an oath involving potential retribution from Allah (*sumpah laknat Allah*) in the court?

P: [By this time, perhaps prior to the J's opening remarks, the P had taken her place in the witness box.] Yes, Your Honor.

J: You realize that if you make any false statements, you will incur the wrath of Allah?

P: Yes, Your Honor.

[She proceeds to read the *sumpah* from the laminated sheet the R handed her.] By Allah, by Allah, by Allah … In the name of Allah, I …[name and IC#] swear that … [defendant's name and IC#] … left me for 3 months without providing *nafkah* and I have never been convicted of *nusyuz* [disobedience]. If I lie in this court, I will incur the wrath of Allah.

J: The court decision, *Bismillah [il-rahman il-rahim*]. The court is satisfied with the statements and evidence collected. The court decides that (1) the defendant is convicted of failing to perform his duties (*tanggungjawab*) as a husband; (2) the court annuls (*fasakhkan*) the marriage between the defendant and plaintiff; (3) the marriage certificate is rendered invalid from this day onward; and (4) this annulment is to be registered with the Department of Islamic Religion.

Initial Comment on the Judge's Narrative

Three features of this exchange merit note. First, in rendering his verdict, the judge cites a single generic transgression on the part of the defendant—failing to perform his duties as a husband—rather than the broader range of his legally salient shortcomings outlined in the plaintiff's petition. When delivering his verdict, moreover, the judge did not specify which particular negligence he had in mind—the failure to provide financial

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

support or the dereliction with respect to sexual companionship. Presumably he had in mind the former, as that is the one the wife swore to under oath and it is most likely what the witnesses corroborated.

Second, the judge mentions, without elaboration or clarification, that a state of conjugal disharmony/dissension is one of the grounds for the plaintiff's petition, using the technical Arabic term *shiqaq* rather than one or another Malay expression that was commonly invoked in judicial narratives and ordinary Malay discourse in times past. The designation *shiqaq* was almost certainly included in the wife's petition at the behest of her lawyer. The term is not widely known among the lay public and is relatively rarely invoked in courtroom settings, though recent years have seen its increased salience there.

According to some interpretations of classical texts, *shiqaq* presupposes *nusyuz* on the part of both husband and wife.[9] In this view, for a state of *shiqaq* to exist, both husband and wife must behave egotistically, must refuse to accommodate one another, must be unwilling to admit their faults, or must treat one another with cruelty. The idea that husbands, not simply wives, may be guilty of *nusyuz* is congruent with certain passages in the Quran, which contains five separate references to *nusyuz*, at least one of which (Surah An-Nisa 4:128) makes clear that husbands may commit *nusyuz*. It is nonetheless largely out of keeping with the dominant view espoused by the Islamic courts and the Department of *Syariah* Judiciary, particularly but not only on its websites, that only women may be guilty of *nusyuz*.

Note in any event that the plaintiff swore under oath that she had never been convicted of *nusyuz*, and that the judge accepted her statement at face value, rather than proceeding as if she bore the burden of proving her innocence with respect to *nusyuz*. This is revealing, partly because husbands' lawyers increasingly endeavor to undercut current and former wives' claims against their clients by counter-charging the women with *nusyuz* or threatening to do so. My interviews with court officials indicate that such endeavors usually fall on judges' deaf ears due to lack of evidence. But they can have a chilling effect on women's commitments to pursuing their cases in court through to their completion or bringing the cases to court in the first place.

Third, the judge cited the plaintiff's claim that the defendant had unlawfully disposed of her property, which, along with "making her life miserable", falls under the category of "cruelty" in the relevant enactment (discussed below). This raises questions

[9] Norzulaili Mohd Ghazali and Wan Abdul Fattah Wan Ismail (2007:26–27).

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

concerning the grounds for *fasakh*, the ways they have expanded in recent decades, how this expansion has resulted in greater congruence between the *sharia* courts and their civil counterparts, and some of the contexts in which women are getting more justice.

Deeper into the Labyrinth

The basis for a woman obtaining *fasakh* is fairly consistent from state to state, as is the technical language of the relevant enactments. In Kuala Lumpur, as in all state jurisdictions, there are 12 specific grounds for *fasakh*. The enactment in effect in Kuala Lumpur during my most recent (2013) fieldwork, which I have edited for readability, establishes the bases for *fasakh* as follows:

1. That the whereabouts of the husband have not been known for more than 1 year;
2. that he has neglected or failed to provide for her maintenance for 3 months;
3. that he has been sentenced to imprisonment for 3 years or more;
4. that he has failed to perform, without reasonable cause, his marital obligations [with respect to sexual companionship] for 1 year;
5. that he was impotent at the time of the marriage and remains so and the wife was unaware [of this] at the time of the marriage;
6. that he has been insane for 2 years or is suffering from leprosy or vitiligo or a communicable venereal disease;
7. that the wife, having been given in marriage by her … [guardian] before she attained … [maturity], repudiated the marriage before attaining the age of 18, the marriage not having been consummated;
8. that the husband treats her with cruelty, that is to say, *inter alia* (1) habitually assaults her or makes her life miserable by cruelty of conduct; (2) associates with women or men of evil repute; (3) attempts to force her to lead an immoral life; (4) disposes of her property or prevents her from exercising her legal rights over it; (5) obstructs her observance of her religious obligations or practice; or (6) if he has more than one wife, does not treat her equitably in accordance with the requirements of Hukum Syarak;
9. that even after 4 months the marriage has not been consummated owing to the willful refusal of the husband to consummate it;
10. that she did not consent to the marriage or her consent was not valid, whether in consequence of distress, mistake, unsoundness of mind, or any other circumstance recognized by Hukum Syarak;
11. that at the time of the marriage she, though capable of giving consent, was a mentally disturbed person within the meaning of the … Mental Health Act 2001 (Act 615)]; or

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

12. any other ground recognized as valid for dissolution of marriage or *fasakh* under Hukum Syarak.[10]

This enactment delineates 12 different grounds for a woman to obtain *fasakh*, but some of them, like item "8", bearing on cruelty, contain multiple provisions, such that the list of grounds for *fasakh* is closer to 20. The term "inter alia" toward the beginning of item "8" is significant, making clear that the items listed there are not meant to be exhaustive. Similarly, item "12", "any other ground recognized as valid for dissolution of marriage or *fasakh* under Hukum Syarak", leaves open the possibility for plaintiffs, lawyers, judges, women's rights groups, and others to argue that *fasakh* may and should be granted for reasons not specifically delineated in the enactment. One example would be *shiqaq*, or, in the common-law language that is relevant in the country's civil courts, "irretrievable breakdown" of marriage. Neither of these terms, to be clear, appears anywhere in the language of the enactment.

Most of the major changes in *fasakh* provisions in the last 60–70 years occurred with the 1983–1991 reforms, which replaced the laws previously in force. The earlier enactments, dating mainly from the 1950s and 1960s, typically contained about half as many grounds for *fasakh*, focusing chiefly on the husband being impotent, insane, afflicted with a communicable disease, or on his absence for a period of three or more months, his imprisonment, failure to provide *nafkah*, etc. (Ahmad Ibrahim 1965 [1975]). The principal expansion of provisions that took place with the 1983–1991 enactments involved the inclusion of (1) item "8," bearing on cruelty; (2) the term "inter alia" at the end of the first line of "8"; and (3) item "12," concerning "any other ground recognized as valid for … *fasakh* under Hukum Syarak".

This expansion and liberalization of the grounds for *fasakh* have been interpreted by scholars such as Donald Horowitz (1994) as evidence of the convergence, at the level of substantive as distinct from procedural law, of *sharia* and British common law.[11] Horowitz's argument is not that the Islamic concept of *shiqaq* was borrowed or derived from British law or invented in response to British or other Western-origin pressures or incentives. He is well aware that the notion of *shiqaq* is enshrined in foundational Islamic texts such as the Quran and *hadith*. Rather, his point is that in Malaysia, *shiqaq* has been accorded increased salience in recent decades due largely to

[10] From *Islamic Family Law (Federal Territories) Act 1984 (Act 303)* (As at March 10, 2012); pp. 41–43.

[11] Most of the convergence over the years has involved procedural rather than substantive law.

British-origin common-law sensibilities that bestow legitimacy on "irretrievable breakdown of marriage" as a basis for non-Muslim divorce. The larger dynamic has to do with the politics of the juridical field. Many innovations and reforms in the *sharia* judiciary are motivated by concerns to be "as modern as" yet ethically superior to—hence both the same and different from—the civil judiciary, which is simultaneously the *sharia* judiciary's primary patron and main competitor.

The judge's ruling in the case at hand cited the husband's failure to perform his *duties* as a husband, rather than the wife's *right* to claim *shiqaq*. But the inclusion of *shiqaq* as a basis for *fasakh* in the wife's petition is telling. Perhaps more germane is that the judge reiterated it as he was about to render his verdict; he did so, moreover, without any balking or dressing down of the wife's lawyer, as commonly occurs when a judge feels that a litigant's counsel is off base, out of order, or ill-prepared. This suggests some degree of normalization of *shiqaq* as grounds for *fasakh*.

Interview material, court documents, and other data (addressed shortly) suggest that *shiqaq* or the emotional or mental suffering associated with it is listed by women and accepted by judges as grounds for *fasakh* more frequently now than at the time of Horowitz's research, the early 1990s. They also indicate that *fasakh* suits account for notably larger percentages of the *sharia* courts' caseloads than in decades past and are almost always decided in women's favor (see also Hirsch 1998:127–129, Rosen 2018: Chap. 2). This is important insofar as the period since the early 1990s could have seen a reversal of the trend identified by Horowitz.

To get a quick sense of why I contend that *fasakh* claims comprise appreciably larger percentages of *sharia* courts' casework than in previous decades, we might briefly consider comparative-historical perspectives from the town of Rembau in the state of Negeri Sembilan. During the period of 1987–1988, only 9% (3/33) of the civil cases I observed involved *fasakh* claims (Peletz 2002:156).[12] The relevant figure for newly registered civil cases in Rembau some 25 years later (2012) is 16.2% (37/228), hence nearly double what it was earlier.

State-wide data for Negeri Sembilan for the period of 1998–2002 yield a different set of perspectives on the prevalence of *fasakh*. But they also make clear that *fasakh* suits have become exceedingly common, accounting for 25.8% of claims bearing on divorce/annulment, and fully 41.2% of all petitions for divorce/annulment brought by women (IIUM 2005:74–76). Especially

[12] Corresponding figures for the towns of Kempas, Selangor and Kota Jati, Kedah during the same general period (1990–1991) were even lower, 1.5% (2/132) and 3.3% (5/151), respectively (Sharifah Zaleha Syed Hassan and Cederroth 1997:74–75).

when viewed alongside earlier data from Rembau and elsewhere, this material provides further corroboration of the point that the period since the late 1980s has seen sharp increases in both the frequency and the overall numbers of *fasakh* cases.

Some of the factors contributing to the increase were clarified in an interview I conducted in 2012 with one of my most knowledgeable interlocutors, Haji Musa (a pseudonym), a former high-court judge on the *sharia* bench who is now a senior official in the Department of *Syariah* Judiciary (*Jabatan Kehakiman Syariah Malaysia*; JKSM).[13] As Haji Musa phrased it, *sharia* judges have become "a bit more flexible" in adjudicating cases involving *fasakh* when a woman's petition is not based on any of the specific grounds delineated in the relevant enactment(s). In this regard, *sharia* judges are more friendly to women (my expression, not Haji Musa's). This is also to say that with respect to the termination of marriage via *fasakh*, women have an easier time getting justice—put differently, are getting more justice—than in decades past.

According to Haji Musa, this development has come about partly because judges exercise *ijtihad* (innovative legal interpretation of—or on the basis of—sacred texts; judicial creativity) in ascertaining whether a woman has experienced harm (*mudarat*) in her marriage. Haji Musa went on to say that in recent years judges have broadened the notion of harm to include a wife's emotional and mental suffering, although, significantly, there has been no corresponding shift in statutory law.

Before elaborating on his views, I should point out that the concept of harm (to women) has been elevated to a status it did not enjoy during my research in the 1970s and 1980s. This is partly a response to pressures from NGOs and civil society (considered below) and partly a function of the *sharia* judiciary's adoption of sensibilities and norms enshrined in local common-law, though the more encompassing dynamic is the intensified transnational circulation during this period of various kinds of "rights talk" (see also Osanloo 2009). During my earlier research, the central issues for judges in *fasakh* cases involved ascertaining whether or not the specific statutory conditions for *fasakh* had been met. In present day Rembau, in contrast, the forms that women are required to complete as part of their *fasakh* petitions foreground the concept of harm by subsuming all specific offenses committed by husbands under the umbrella rubric of "incidents or things that have caused harm" (*perkara-perkara yang telah memberi kemudharatan*). The relevant form asks for three examples of such harm, although some women provide many more. Commonly cited examples are "no

[13] Interview with Haji Musa, Putrajaya, July 31, 2012.

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

mutual understanding" (*tiada persefahaman*) or variations on the general theme, such as "mental and emotional suffering/torture" (*penderitaan/penderaan mental dan emosi*), "emotional stress" (*tekanan emosi*), and "we always quarrel" (*selalu gaduh*). Also conspicuously present are more conventional arguments for *fasakh* such as my husband "has not come home for a year and a half", "has not provided financial support or sexual companionship", "does drugs", "is in and out of jail", and "hits me".[14]

To clarify what he meant when he told me that emotional and mental suffering currently constitutes acceptable grounds for *fasakh* and that today's judges are more accommodating than their predecessors, Haji Musa offered the following example.

> [Suppose] a man marries a rich woman and cannot afford to provide her with the luxury she enjoyed before their marriage. If the wife experiences emotional or mental suffering on account of this situation, she can petition for *fasakh* on the basis of that suffering. The judge can then effect an annulment. In earlier times, it was more difficult to accept emotional or mental suffering [as grounds for *fasakh*]. But things have become a bit more flexible… Nowadays it is easier to annul marriages.[15]

The scenario Haji Musa provided off the top of his head is revealing, suggesting that the "fit" between husbands and wives has grown much more complex and fraught. The increased complexity and potential for stress and anxiety is a feature of the synergy created by a number of socioeconomic and cultural-political dynamics. They include the emergence of a new Malay middle class; the development of massive socioeconomic disparities among Malays; and the fact that Malay women situated at the top of the social-class hierarchy often experience difficulty finding suitable husbands, especially if the women have earned advanced degrees. Germane as well is the increased salience of companionate marriage, defined both "as a marital ideal in which emotional closeness is understood to be … one of the primary measures of success in marriage" and "a form of kinship in which the conjugal partnership is privileged over other family ties" (Wardlow and Hirsch 2006:4). All such changes have gone hand in hand with the decline of arranged marriage, the erosion of extended kin

[14] These generalizations concerning commonly cited examples of marital harm are based on my research assistant's perusal of a batch of *fasakh* files (apparently bearing on some 25–30 cases) from Rembau for the years 2011–2014 that court staff randomly selected and shared with him, and on the material from 17 files that he was able to photograph and forward to me for further scrutiny. There were probably around 140 *fasakh* cases heard in Rembau during the period in question.

[15] Interview with Haji Musa, Putrajaya, July 31, 2012.

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

bonds, and the reconfiguration of myriad other features of kinship and affinity. Many of these transformations reflect state-sponsored social engineering aimed at creating a new Malay middle class from the ranks of the once largely agrarian and relatively impoverished Malay populace (Peletz 1988, 1996, 2002).

The idea that it is easier to annul a marriage these days as compared with decades past is any event a thoroughly relative point. One would be hard pressed to argue that a woman seeking an annulment currently has an easy go of it. I should remind the reader, though, that the *fasakh* petition discussed earlier was adjudicated in the plaintiff's favor, as were fully 95% (296/310) of *fasakh* cases heard in Kuala Lumpur during the period of 2014–2015.[16] More broadly, the fact that judges are nowadays more obliging in terminating marriage via *fasakh* is of great importance in the Malaysian context, where, as we have seen, Muslim women's options to extricate themselves from loveless or otherwise untenable unions, especially without the consent or cooperation of their husbands, are highly restricted.

Malaysian political and religious elites often pride themselves on having encouraged a moderate and progressive Islam that is in the vanguard of modernizing developments both in the Muslim world and the West. Therefore, it may seem somewhat surprising that they have not followed Egypt's or Indonesia's leads by making statutory or *de facto* provision for other forms of marital dissolution initiated by women that do not require a husband's consent or cooperation. The implementation of such provisions in Malaysia could go a long way toward improving the lives of Muslim women, as suggested by data from Indonesia, Egypt, and Malaysia alike (Nurlaewati 2010; Sonneveld 2012; Huis 2015). But as material from these and other settings also makes clear, such reforms can result in backlash from men and conservative sectors of Muslim civil society, and can thus be costly and dangerous for the ruling elites involved in pursuing them (see, e.g., Sonneveld and Lindbekk 2015; see also Hirsch 1998).[17] A more general point here is that until such time as Egyptian- or Indonesian- style initiatives bearing on female-initiated divorce are implemented in

[16] JKSM Files (2014–2015).

[17] One manifestation of such backlash in Malaysia culminated in legislation introduced in 2005. The legislation allows *men* to terminate their marriages via *fasakh*, which in the Malaysian setting and in canonical Islamic texts has generally been construed as a prerogative available only to women. In accordance with this legislation, men may now seek exemption from having to pay the roughly 3 months of spousal support (*nafkah edah*) they would normally be expected to provide their wives if they divorced them by pronouncing the *talak* clause. Another manifestation of backlash involves the dilution in the 1990s and 2000s of the Islamic family law reforms' (1983–1991) restrictions on polygyny and on men's divorcing their wives without court permission (Nik Noriani Nik Badli Shah 2008, Maznah Mohamad 2010).

Malaysia, and it is possible they never will be, debates concerning the expansion, contraction, and interpretation of the grounds for *fasakh* will continue to be central to the struggle for gender justice and equality within the family and beyond.

Are Women Getting (More) Justice)?

The material on *fasakh* I have presented provides valuable context for addressing—and partially answers in the affirmative—a critically important question: Are Malay and other Muslim women in Malaysia able to get more justice from the *sharia* courts than was the case during my research in the late 1970s and 1980s?

To begin to address the issues, one needs to distinguish the (*sharia*) laws from the (*sharia*) courts. The latter institutions do not make the laws. Their mandate is, rather, to enforce them. This of course requires the interpretation of law, though the interpretive dimension of *sharia* judicial practice, the realm of *fiqh*, is often played down by political and religious elites spanning the "religious/secular" divide. This is done in the interest of stressing the uniformity of *sharia*, its unchallengeable nature as God's will, and, by implication, the uncontestable because ostensibly divine nature of state initiatives and arrangements cast in Islamic discourse or with reference to key symbols of Islam.

That said, if the laws are skewed in favor of men, then, all things being equal, court practices will be as well. There is no question that as far as legal texts (both classically Islamic and modern Islamic family law enactments) are concerned, men have more legal privileges and prerogatives than women. This skewing is evident in litigant practices and in judicial engagement with them; it was quite apparent during my earlier fieldwork and remains so. Hence the question I focus on here, clearly a relative one, is whether today's women are in a better position to receive justice than their counterparts in earlier decades (i.e., the 1970s/1980s and previously; see note 3). I hasten to add that I am not interested in engaging abstract notions of justice or developing a one-size-fits-all concept of justice that could perhaps be utilized across the Muslim world or further afield. For present purposes, justice for women in Malaysia's *sharia* courts may be narrowly defined as timely, reasonable, and otherwise equitable responses to the claims they register with court authorities. A more expansive conceptualization of justice for women, such as the one deployed here, also takes into account the spiritual, textual, social, and material resources and networks available to them to address their marriage- and divorce-related (and other)

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

grievances in the courts and in society at large. In addition, it involves consideration of gender patterns in harsh sentencing, a topic of considerable scholarly and media attention in recent years.

The short, partial answer to the question is fivefold. First, women's legal petitions are dealt with by the courts in a more timely and substantive fashion than in the past. Second, compared to the previous decades under consideration here, the courts are more likely to impose punitive sanctions on men who contravene *sharia* family-law enactments. A third, more general point, also related to sentencing, is that most harsh punishments are meted out to men, not women. Fourth, women currently have at their disposal much more information concerning their formal legal entitlements and obligations with regard to conjugal ties and their dissolution and can rather easily tap into densely configured networks of support to aid them in negotiating marriage, the shoals of divorce/annulment, and the precarities that may ensue. The fifth component of the answer is that, despite these generally encouraging developments, women and men do not experience marriage, divorce, or the *sharia* court-system on a level playing field. This too is changing in ways beneficial to women, however, albeit primarily for those who heed increasingly pronounced and restrictive expectations regarding obedience and heteronormativity. I will address these and related issues one at a time, beginning with the expansion of resources and networks, proceeding with matters of timeliness and punitiveness, and turning finally to themes bearing on obedience, heteronormativity, and pluralism. I should note that I consider some topics very briefly (especially if they are taken up elsewhere in this essay), others in greater depth.

There Has Been a Proliferation of Institutional Resources and Networks Created for the Benefit of Women (and Children)

This is the most dramatic and unequivocally positive change bearing on women and *sharia* justice that has occurred since the late 1970s. Women are presently able to access a wide variety of women- and family-friendly institutional networks and resources (spiritual, textual, social, and material) that they increasingly draw upon to enhance their understanding of their rights and responsibilities in the context of marriage and its dissolution, their husbands' duties and prerogatives, and how officers of the court manage such matters.

Before delving into specifics bearing on historical change and the emergence of NGOs that helped bring about that change, I should make clear that in the l970s–1980s the vast majority of these resources and networks did not exist. At that time, elderly

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

village women provided the main forms of assistance and support, commonly serving as sounding boards for younger female relatives experiencing difficulties with husbands or ex-husbands and offering both strategic advice and emotional support (Peletz 1996, 2002). Sisters in Islam (SIS), a progressive Muslim feminist NGO founded in 1988, is the chief exception to my generalization concerning the (relative) absence in the 1980s of resources and networks for women experiencing difficulties in marriage or divorce. SIS also deserves the lion's share of credit both for drawing public attention to the need to develop resources and networks of the sort at issue here and for providing pressure and templates for the initiation of relevant government programs conducive to enhancing pluralistic sensibilities and dispositions with respect to women.

SIS's internationally well-publicized commitment to advocacy, activism, and reform is noteworthy on other grounds as well. It typically entails a PR and scholarly focus on women as distinct from the more expansive domain of gender; it often involves relatively synchronic analyses, highlighting short-term backlashes and setbacks rather than progress over the *longue durée*; and it relies heavily on strategic essentialism of the sort mentioned at the outset of this essay (e.g., Zainah Anwar 2001, 2008, Norani Othman 2005, Maznah Mohamad 2010; see also Liow 2009:124–131.) This is one reason why members of the public and international communities of scholars and human-rights advocates tend to have rather dim views of Islamic family law and Muslim women's rights in Malaysia.

Another reason has to do with the existence of NGOs at the other end of the (Muslim) civil society spectrum. Consider, for example, associations of *sharia* lawyers (*Persatuan Guam Syarie Malaysia* [PGSM]) and groups such as Muslim Brothers, which is apparently composed mainly of current and former *sharia* judges and lawyers (Hoffstaedter 2011:139–145). NGOs such as these, aided at times by government religious bureaucracies (e.g., JAKIM), commonly criticize SIS and file police reports and lawsuits against them on the grounds of their alleged hostility to the *sharia* judiciary and their demeaning of Islam. This too makes for good copy, both nationally and internationally. The more general point here is threefold. Malaysia boasts a vibrant civil society (Moustafa 2013; Weiss 2006); some of its key players advocate tirelessly for the expansion of Muslim women's rights (and pluralism regarding ethno-racial and other diversity), while others are strongly opposed to their efforts; and media coverage of either side conduces toward views of the proverbial glass of women's rights under Islamic family law as half empty rather than half full.

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

The resources currently available to women take many forms. In terms of print media, they include colorful, easy-to-read (Malay-language) handouts and informational brochures created and distributed by the JKSM. As I observed on many occasions, these are widely available in the waiting rooms and lobbies of *sharia* courthouses, sometimes right below or next to a sign reading *Sila Ambil Satu* (Please Take One). The vast majority of women seeking the *sharia* court's services can read, write, and speak Malay. This material is thus directly and fully accessible to them.

One such brochure I examined concerns husbands' and wives' rights to lodge formal legal claims while they are married. But it focuses almost entirely on the rights of wives (e.g., to receive material support from their husbands for the purpose of maintaining themselves and their children). Another brochure addresses husbands' and wives' rights to lodge formal legal claims after they have divorced, though it too deals mostly with the rights of wives to receive maintenance, a share of conjugal earnings (*harta sepencarian*), custody of children, etc. Yet another brochure delineates the various types of marital dissolution that are available, involving the *talak* repudiation clause, for example; alternatively, via procedures laid out for *fasakh*, *tebus talak* (*khuluk*), and *taklik*.

Some courthouses (e.g., Rembau's) also distribute handouts and informational sheets bearing on polygamy (polygyny) that contain discussions of a woman's rights with respect to her husband taking a second wife while he is still married to her. The fact that this material exists and is available to women even in small courthouses such as Rembau's is significant. I never encountered brochures or printed information of this sort in the late 1980s or earlier, despite the fact that men taking second wives without the permission or knowledge of their first wives has long been a serious concern for women.

The focus in these brochures on the rights (*hak*) of wives and women generally is enormously consequential. In the late 1980s and previously much of the discourse in and outside the courts centered on the duties (*tanggungjawab*) of men as husbands and fathers, and, more specifically, on how they failed to perform them properly, not on wives' or women's rights per se. The cultural elaboration and "thick" institutional backing of the idea that women are rights-bearing, entitled citizens, not simply jural minors yoked to men through ties of marriage and co-parenthood, is a huge step forward for Malay and other Muslim women. This generalization is also relevant to the heightened centrality of rights-talk in other Muslim-majority settings, including Iran's family courts, as Arzoo Osanloo (2009) has incisively documented. The dynamic at issue is, at the same time, a momentous

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

development for those who favor the spread and entrenchment of more inclusive political discourses in the highly contested terrain of citizenship in present-day Malaysia, as discussed in my concluding remarks.

In addition to the brochures and handouts mentioned here, eye-catching posters and banners that publicize the existence of legal and other support services for women and families adorn many public spaces of *sharia* courthouses. Some of them advertise secularly oriented national legal aid bureaus (e.g., *Biro Bantuan Guam*). Others celebrate the rollout of new (as of 2010) Transit Services offered by the Family Support Division (*Bahagian Sokongan Keluarga*) of the Federal Territory *Syariah* Court that include free round-trip transportation to the court from one's home in the Klang Valley (which encompasses Kuala Lumpur) as well as food and lodging, presumably for a day or two.

These initiatives are also widely covered in print media, typically with impressive quantitative information bearing on the numbers of women they have helped since their inception. So too are different types of counseling services and mediation programs geared toward assisting women (and men) experiencing marital difficulties. Much of this information is also available through the Internet, particularly on websites sponsored by the *sharia* judiciary and federal-, state-, and district-level departments of Islamic religion.[18] Suffice it to add that most Malaysians, men and women alike, have ready access to the Internet through their smartphones, iPads, and laptops, or the devices of their relatives, and that Malaysia has "one of the highest Internet-penetration rates globally, and the highest of any Muslim-majority country" (Moustafa 2013:787).

The Court's Engagements with Women's Claims Are More Timely, Consistent, and Substantive

Comprehensive studies of district- and state-level data bearing on the period 1998–2002 conducted by the International Islamic University of Malaysia with the collaboration of Malaysia's Department of *Syariah* Judiciary indicate that cases initiated by women, like those initiated by men, are generally resolved more quickly than in times past (IIUM 2005). There is much regional variation, and considerable divergence by type of case; and long delays sometimes still occur. This is due partly to obstructive strategies by husbands and husbands' lawyers. Other contributing factors include one or both litigants failing to appear for their scheduled hearings and incomplete paperwork.

[18] See, for example, the information avialable at: http://www.esyariah.gov.my.

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

In the state of Selangor during the period 2005–2010, the courts resolved "nearly 80% of [divorce] cases in less than six months" (Siti Zubaidah Binti Ismail et al. n.d., 9), a clear improvement over the situation reported for the early 1980s, during which time "a divorce petition … [was] normally settled … [in] about seven to eight months" (Shariah Zaleha Syed Hassan 1986:195). As for *taklik* divorces, which typically take longer than other types of marital dissolution, in Selangor during the period 2005–2010 nearly half of them were resolved in less than 6 months and two-thirds of them were resolved in less than 12 months [Siti Zubaidah Binti Ismail et al. n.d. 9]); the corresponding figure for the mid-1980s was "seven to fifteen months on the average", at least in the state of Kedah (Sharifah Zaleha Syed Hassan 1993:81).

These and other relevant figures index an upgrading of the services provided by the courts that is of great import, especially since as British Prime Minister William Gladstone (1809–1898) once famously remarked, "justice delayed is justice denied". Tellingly, Gladstone's observation is commonly invoked verbatim by critics -- and supporters -- of both the *sharia* judiciary and its civil counterpart, typically in efforts to incite a more substantive "will to improve" (Li 2007) than already exists.

To say that in comparison with previous decades the courts are more timely in responding to women's claims does not necessarily mean that the courts' engagements are more consistent or substantive. These engagements *are* more consistent and substantive, however, as will be readily apparent to readers who compare the material presented here with my findings from the late 1980s (Peletz 2002). This despite the fact that the dynamics at issue sometimes result in women being encouraged by officials to accept mediated compromises that are not necessarily in their best interests.

The Courts are Less Tolerant of – and More Punitive Toward – Errant Husbands

We have seen that due to changes in Islamic family law implemented during the period 1983–1991, the state has criminalized certain practices of husbands that were merely frowned upon or discouraged in the early 1980s and previously. Such practices include taking a second wife without the court's approval, and pronouncing the *talak* without the court's permission. The courts often impose relatively heavy sanctions on men found guilty of these offenses, including fines, non-payment of which can result in jail time. They could be more severe, however, given their commitment to the proposition that harsh punishment serves as

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

deterrence, which is one facet of the punitive turn evident in many realms of law, politics, and culture (Peletz 2015).

Being more punitive toward men who mistreat women in the context of marriage or subsequent to its dissolution is not the same thing as treating women more equitably. But there is a positive correlation between these two dimensions of judicial practice insofar as the present-day disposition of cases bearing on *nafkah*, for example, is much more likely to involve strict enforcement than in the past (IIUM 2007). This is a relative point, and lapses still occur, but the trend toward stricter enforcement is largely beyond dispute.

Most Harsh Punishments Continue to be Meted Out to Men, not Women

Discussions of gender justice would be incomplete without brief mention of Western stereotypes bearing on the harsh punishments assumed to be routinely administered to women in the name of Islam in nations such as Pakistan, Afghanistan, and Nigeria (Abu-Lughod 2013). I want to make clear that, with two exceptions, I have never observed a *sharia* judge impose a fine, jail time, or corporal punishment on a female litigant.[19]

There have, however, been a few well-publicized instances, some of which drew exceedingly negative national and international attention from women's groups and human rights advocates (among others), involving *sharia* judges ordering stiff penalties for female defendants prosecuted for consuming alcohol or engaging in other moral breaches. One (in)famous case involved Kartika Seri Dewi Binti Shukarno, known simply as Kartika in the media, a Singaporean national of Malay-Javanese ancestry.[20] In 2008, the 32-year old nurse, model, and mother of two was caught up in a police raid on a nightclub in the state of Pahang and arrested for drinking beer. After being found guilty of consuming alcohol, she was sentenced to pay a fine of RM 5,000 (around US $1,400 at the time) or to serve three years in jail, *and* to be flogged with six strokes of a rattan cane. The sentence provoked immediate outcry from national and international NGOs fighting for women and human rights, and was eventually

[19] One exception was a 2011 case involving a woman who entered into a polygynous union without the court's permission. The judge fined her 500 *ringgit* (RM; around US$150), which, if not paid, could have resulted in her serving 5 days in jail. (The husband was sentenced to a fine of RM 700 or 10 days in jail.) The other exception, from 2010, involved an "unauthorized marriage" where both husband and wife were sentenced to fines of RM 800 (or 8 months in jail).

[20] See "Pendakwa Syarie lwn. Kartika Seri Dewi Binti Shukarno" (in Cases Cited, below).

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

commuted by the Sultan of Pahang to three weeks of community service.

Cases such as these are exceptions that prove the rule, a rule that flies in the face of Western stereotypes implying that in the course of their day-to-day duties, judges in Muslim-majority countries are routinely involved in disciplining women in draconian ways. I have already suggested that it is quite rare in a statistical sense for Malaysia's *sharia* courts to impose corporal punishment or jail sentences on women; fines are also relatively unusual, except in cases of *khalwat* (illicit proximity) and fornication/adultery. By contrast, it is not at all uncommon for *sharia* judges to render decisions against male litigants that include fines and, if they are unable to pay the fines, jail sentences of 30–45 days or more (but not corporal punishment).

Also crucial to underscore is that almost all of the flogging that occurs in Malaysia is ordered by the civil courts, not the *sharia* courts. Such sentences are meted out to men (judged or assumed to be "illegal immigrants" or convicted of serious offenses involving drugs, sexual assault, or other forms of violence), but never to women, since the civil judiciary does not subject women to corporal punishment.[21] This is part of the larger gendered and juridical context we need to bear in mind when assessing cases such as Kartika's. So too is the fact that, nationwide, men comprise more than 80% of defendants in *sharia* civil cases, which are typically initiated by their wives, and roughly 64% of defendants in *sharia* criminal suits, which are usually initiated and prosecuted by one or another state religious bureaucracy (such as the Department of Islamic Religion).[22] Failure to consider this larger context, because of a focus on women as distinct from the more encompassing domain of gender, for example, can easily give rise to the erroneous impression that the nation's *sharia* courts are increasingly targeting women and subjecting them to harsh, medieval punishment. Statistically speaking, it is far more accurate to say that the *sharia* establishment and other government bureaucracies, "religious" and "secular" alike, are honing in on what they take to be male delinquency and criminality. Clearly, however, the larger concern lies with reinscribing and otherwise managing dynamics of kinship, gender, class, race, religion, and citizenship, and both cleansing the nation and fortifying the state.

[21] The exception involves capital punishment (hanging), which authorities may impose on men and women alike if they are convicted of crimes such as murder, drug trafficking, or terrorism. Men account for almost all of those sentenced to death.

[22] JKSM Files (2007–2013).

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

Of Obedience, Heteronormativity, and Pluralism

My generally affirmative but importantly qualified answer(s) to the question highlighted in the title of this essay requires additional caveats if we interrogate the idea, increasingly prevalent in official quarters and popular culture, that wives are entitled to material and other support from their husbands only if they are obedient (*taat*). Still further qualification is warranted if we look beyond majoritarian circles and consider the communities of women who transgress heteronormative expectations and ideals. I address these issues one at a time, ranging beyond the courts to convey a sense of how law is lived and what types of cultural-political forces are involved in shaping both present-day socio-legal dynamics and their possible futures.

This term *taat* is commonly understood by Malays to mean obedient and loyal, particularly *in relation to one's husband*. The inverse of *taat* is *nusyuz*, which, as I have mentioned, is usually taken to refer to a wife's disobedience, disloyalty, and overall recalcitrance vis-à-vis her husband. Both concepts are heavily freighted in moral, ethical, and specifically Islamic terms. And both tend to be invoked in relation to patterns of behavior involving women but not men. This is the case even though the Quran makes clear that *nusyuz* can occur on the part of men and women alike, and despite the fact that many of the Islamic family law offenses that men commit entail behavior that fits the definition of *nusyuz* (e.g., failing to support one's wife or children, taking a second wife without the first wife's knowledge).

A central issue here is the maintenance-obedience paradigm enshrined in certain classical Islamic texts. This paradigm has been discussed by Ziba Mir-Hosseini (2016) and other Muslim feminist reformers (Ali 2006; Wadud 2008), some of whom were instrumental in the 2009 founding of *Musawah* (Arabic for "equality"), an international NGO dedicated to obtaining justice for women under Islamic family law. One of their interventions has involved revisiting and evaluating the larger context of Quranic verses cited by conservative Muslim jurists over the centuries to bolster their view of marriage as a strongly patriarchal arrangement akin to a master–slave relationship or one defined by the transfer through sale of rights over a woman from her father to her husband. They point out that such passages exist alongside others in the Quran that depict marriage as a more symmetrical and equitable partnership in which husband and wife, like men and women generally, have (or should enjoy) more or less equal or complementary rights; and that some of them also promote gender relations characterized by harmony, love, and mercy (see, e.g., Surah An-Nisa 4:128, Ar-Rum 30:21). A focus on these latter

verses yields very different Quranic perspectives on matrimony and gender relations than those enshrined both in classical Islamic legal theory and in colonial-era and post-colonial regimes of Islamic family law. Mir-Hosseini and other reform-oriented scholars thus argue that it is high time for Muslims to rethink the textual foundations and contemporary legal dynamics of marriage, divorce, and gender.

There is good evidence, as we have seen, that these kinds of arguments have become more mainstream in Malaysia and elsewhere in the Muslim world (Norani Othman 2005, Zainah Anwar 2009, Sonneveld 2012, Huis 2015). Such changes reflect pressures from civil society, including NGOs like SIS and *Musawah*, efforts on the part of *sharia* judiciaries to adopt key norms of their civil counterparts, and globally widespread discourses emphasizing individual rights. But there are strong counter-currents, backlashes, and orthogonal pressures as well, and the future is by no means settled. This is especially so as there are clear limits to the new kinds of relations and new kinds of selves, to borrow from Borneman's epigraph once again, that political and religious elites shaping *sharia*-court practice and other features of state policy are willing to countenance let alone nurture.

Some of the countercurrents are exemplified by the formation in Kuala Lumpur in 2011 of the Obedient Wives Club (OWC), an organization closely associated with the business conglomerate Global *Ikhwan*. This consortium produces *halal* consumer goods in keeping with the vision of *Al-Arqam*, a Sufi-oriented group whose members seek to emulate the Prophet's lifestyle and to propagate and enrich the faith.[23] In October 2011, the OWC published a highly controversial book with the curious title *Islamic Sex, Fighting Jews to Return Islamic Sex to the World*. The volume was advertised as a manual that would help Muslim women better serve their husbands' sexual needs and simultaneously recuperate Islamic discourses on sex suppressed by a global conspiracy of hostile Jews. Its authors enjoined married women to behave like "first-class whores" in bed so that their husbands would not be tempted to stray and sin. The book drew sharp criticism from women's rights groups, government ministries, journalists, and others, many of whom claimed that it objectified and demeaned women, effectively blamed them for their husbands' errant ways, reduced marriage to sex, and was otherwise deeply problematic and offensive (Mackinnon 2011).[24]

[23] *Al-Arqam* was outlawed by the government as "deviationist" in 1994. But *Arqam*istas continue to exist under the umbrella of Global *Ikhwan*.

[24] Shortly after its release the book was banned.

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

Antipathy to greater marriage equality of the sort at issue here and other forms of backlash are also prevalent among Malay men who occupy widely varied subject positions and social locations. In many instances, moreover, these stances are shared by their wives (e.g., Sloane-White 2017:123–127). Such enmity is also pronounced among conservative *ulama* and *mufti*, and is broadly congruent with the messages conveyed in the nation's Islamic schools and by the main Islamist opposition party (PAS) (Kraince 2009).

It remains to add that "pluralism" is a (very) dirty word in Malaysia, and that this situation did not obtain even a decade or so ago. At present, advocates of pluralism (in Connolly's 2005 sense) are commonly seen by Malay spokesmen as hostile to Islam and Malays alike. The charge that one supports pluralism (or is a pluralist) is frequently hurled at critics of the status quo who, like SIS, draw upon feminist arguments, international human-rights language, and/or discourses of democracy, transparency, accountability, and inclusiveness. Many of these same generalizations pertain to the terms "liberalism" and "secularism." The latter signifiers are often used interchangeably. And they are sometimes used as shorthand to refer to doctrines or philosophies that allegedly celebrate untrammeled individualism and promote homosexuality, same-sex marriage, and Lesbian, Gay, Bisexual, and Transgender (LGBT), an expression that has become part of the national political lexicon in recent years. These designations are sometimes uttered in the same breath, as in then Prime Minister Najib Razak's (in)famous June 25, 2012 declaration, reiterating earlier pronouncements along the same general lines, that there is no place in Malaysia for "liberalism, pluralism, and LGBT". Proclamations such as these were enshrined on the prime minister's website and have become mainstream mantras (Shanon Shah 2018).

In short, the past few decades have seen a pronounced constriction of pluralistic sensibilities and dispositions bearing on gender and sexuality both among elites and in popular (Malay/Muslim) culture, a constriction often justified with reference to Islamic normativity. NGOs and networks promoting LGTB rights such as the PT Foundation, formerly known as the Pink Triangle Foundation, and *Seksualiti Merdeka* (Sexuality Independence) do exist. But like the vibrant communities they represent, they are subject to harassment and are under periodic siege, unless, as with the PT Foundation, they position themselves primarily as organizations providing services to those at risk for HIV/AIDS, such as gay men, sex workers, and intravenous drug users.

Where does all this leave the communities of Malay/Muslim women who transgress heteronormative expectations and ideals, and what kinds of relationships do they have with the *sharia* judiciary? Women in the latter communities find the *sharia* judiciary

and the religious bureaucracies closely associated with it increasingly unfriendly and threatening. This is due in part to a spate of *sharia* laws passed since the early to mid-1990s that criminalize same-sex relations among women, and in part to state- and national-level *fatwa* and *sharia* enactments that condemn "tomboys" and all transgender practices involving female-bodied individuals (tan beng hui 2012, Shanon Shah 2018).[25] Clearly, then, there are limits to the "female-friendliness" we see in the *sharia* juridical field and to the specific kinds of relations and specific kinds of selves that political and religious elites shaping Islamic family law and other state policies are willing to accommodate let alone promote and nurture.

Conclusion

This essay has provided ethnographic and historical perspectives on a domain of family law ostensibly grounded in religion that is heavily informed by the ways the secular constitution enshrines its encompassment within a juridical field dominated by common law and the civil judiciary, its principal patron, chief competitor, and the source of many of its gold standards. This domain straddles and blurs the categories and identities of "religious" and "secular," and "*sharia*" and "common law". Their deep entanglement precludes definitively distinguishing them from one another either empirically or analytically (Asad 2003; Sullivan et al. 2011); for as Anna Tsing (2015:137) recently put it, "Entanglement bursts categories and upends identities". I have also documented some of the ways Malaysia's Islamic courts are involved in defining, codifying, and normalizing specific kinds of relations and specific kinds of selves that political and religious elites spanning the secular/religious divide see as essential to the constitution of citizens as subjects. The liberalization of the grounds for *fasakh* mandated by the Islamic family law reforms of 1983–1991 was amplified by shifts, in practice rather than doctrine, which occurred subsequently, further augmenting women's abilities to obtain this kind of judicial relief. The cultural and legal buttressing of companionate marriage and the expanded grounds for annulment thus entailed suggest that women are currently getting more justice from the *sharia* courts than women in the 1970s/1980s and previously.

More broadly, I have drawn upon ethnographic and historical methodologies conducive to describing and analyzing the routine, gendered practices of litigants and officials in *sharia* courts since

[25] Importantly, these individuals do not usually have direct experience of the *sharia* judiciary. They are typically dealt with by the police "extra-judicially": harassed, sometimes detained and abused, and then let go without formal charges.

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press

the 1970s–1980s. The perspectives I offer differ in substantive ways from those based on largely synchronic approaches that focus on women as distinct from the more expansive domain of gender, many of which rely overly much on mass-mediated accounts of cases, like Kartika's, that are statistically highly atypical. The methodologies I utilize reveal that women's legal claims are handled more expeditiously than in times past, and that the courts are more inclined to punish men who violate *sharia* family law. We also saw that due to recent court/state and civil-society initiatives, women nowadays have appreciably greater access to information and other resources concerning their legal rights within and beyond marriage and can rather easily draw upon networks of support to help them negotiate conjugal ties, their dissolution, and the uncertainties and precarities that may follow.

The fact that these networks and resources and the myriad brochures and websites advertising them highlight the rights of wives, mothers, and women generally is of considerable consequence. In the late 1980s and previously, the relevant discourse in and outside the courts tended to revolve around the (poorly performed) duties of husbands and fathers rather than the rights of wives or women. The cultural elaboration and institutional bolstering of the notion that women are entitled, rights-bearing citizens, as distinct from mere jural minors tethered to men through ties of marriage or other modalities of relatedness, is also of great import insofar as it might be scaled up to other power-laden arenas. It is, put differently, a highly significant development for those who support the diffusion and entrenchment of more inclusive political discourses keyed to citizenship, sovereignty, and the contours of possible Malaysian futures. This is particularly true inasmuch as variations of the maintenance-obedience paradigm have informed how ruling political parties approach the allocation of state resources. Ethnic and religious groups, political blocs, NGOs, and others who toe the party line are likely to benefit from the parceling out of such resources including formal legal protection and other perks. Those who do not, and are thus be definition disobedient if not treasonous, are more likely to find themselves at the end of the queue, if not altogether excluded from consideration of state maintenance and protection, or worse (Whiting 2017). The expanded jurisdiction and greater power of the (*sharia*) courts, hence the (secular) state, does in any event bring danger as well, even to pious, law-abiding middle-class Malay/Muslim women, who sometimes worry that their religious-study sessions could be construed as unauthorized public gatherings and thus result in their arrest and incarceration (Frisk 2009:21–22, 68; see also Merry 1990).

It bears reiterating that these broadly encouraging findings are not meant to imply that women and men experience married

life, its formal undoing, or the *sharia* juridical field as social equals; they do not, as we have seen. We have also seen that this situation is changing in ways generally beneficial to women, as long as they adhere to strictures of obedience and heteronormativity that are increasingly pronounced and inflexible. The latter caveat points to one of the ways that pluralism in any given field or case is not simply present or absent, but is graduated, much like zones of sovereignty, citizenship, and justice (Peletz 2009). All of this is to say, finally, that the domain of religiously inflected family law examined in this essay is indeed unabashedly partial and deeply contested but is also far more dynamic, reform oriented and otherwise this-worldly than the relevant scholarship and media representations might lead us to assume.

References

Abu-Lughod, Lila (2013) *Do Muslim Women Need Saving?* Cambridge, MA: Harvard Univ. Press.

Agrama, Hussein (2012) *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt*. Chicago, IL: Univ. of Chicago Press.

Ahmad Ibrahim (1965 [1975]) *Islamic Law in Malaya*. Kuala Lumpur: Malaysian Sociological Research Institute.

Ali, Kecia (2006) *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld.

Asad, Talal (2003) *Formations of the Secular: Christianity, Islam, Modernity*. Stanford, CA: Stanford Univ. Press.

Borneman, John (1992) *Belonging in the Two Berlins: Kin, State, Nation*. Cambridge, UK: Cambridge Univ. Press.

Bourdieu, Pierre (1987) "The Force of Law: Toward a Sociology of the Juridical Field," 38 *Hastings Law Journal* 814–53.

Carlisle, Jessica (2013) "Moroccan Divorce Law, Family Court Judges, and Spouses' Claims: Who Pays the Cost When a Marriage is Over?" in, Al-Sharmani, M., ed. *Feminist Activism, Women's Rights, and Legal Reform*. London: Zed.

Connolly, William (2005) *Pluralism*. Durham, NC: Duke Univ. Press.

Fernando, Joseph (2006) "The Position of Islam in the Constitution of Malaysia," 37 *Journal of Southeast Asian Studies* 249–66.

Frisk, Sylva (2009) *Submitting to God: Women and Islam in Urban Malaysia*. Copenhagen: Nordic Institute of Asian Studies.

Halley, Janet, & Kerry Rittich (2010) "Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism," 58 *American Journal of Comparative Law* 753–75.

Harding, Andrew (2012) *The Constitution of Malaysia: A Contextual Analysis*. Oxford: Hart.

Hirsch, Susan (1998) *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court*. Chicago, IL: Univ. of Chicago Press.

Hoffstaedter, Gerhardt (2011) *Modern Muslim Identities: Negotiating Religion and Ethnicity in Malaysia*. Copenhagen: Nordic Institute of Asian Studies.

Horowitz, Donald (1994) "The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change." 42 *American Journal of Comparative Law* 233-293, 543–580.

Huis, S.C. van (2015) *Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba*. Leiden: E.M. Meijers Research Institute and Graduate School of Leiden Univ.

International Islamic University of Malaysia (IIUM) (2005) *Kajian Tempoh Penyelesaian Kes-Kes Pembubaran Perkahwinan di Mahkamah Syariah Seluruh Malaysia (1998–2002)*. Kuala Lumpur: IIUM Entrepreneurship & Consultancies Sdn. Bhd. Dengan Kerjasama Jabatan Kehakiman Syariah Malaysia.

——— (2007) *Kajian Perlaksanaan dan Penguatkuasaan Perintah Nafkah di Mahkamah Syariah Seluruh Malaysia (2001–2005)*. Kuala Lumpur: IIUM Entrepreneurship & Consultancies Sdn. Bhd. Dengan Kerjasama Jabatan Kehakiman Syariah Malaysia.

Kraince, Richard (2009) "Reforming Islamic Education in Malaysia: Doctrine or Dialogue?" in, Hefner, Robert W., ed. *Making Modern Muslims: The Politics of Islamic Education in Southeast Asia*. Honolulu, HI: Univ. of Hawaii Press.

Li, Tania M. (2007) *The Will to Improve: Governmentality, Development, and the Practice of Politics*. Durham, NC: Duke Univ. Press.

Liow, Joseph C. (2009) *Piety and Politics: Islamism in Contemporary Malaysia*. Oxford, UK: Oxford Univ. Press.

Mackinnon, Ian (2011) "Explicit Islamic Sex Manual Encourages Group Sex". *The Telegraph*, Oct. 14. (http://www.telegraph.co.uk/news/worldnews/asia/malaysia/8826568/Explicit-Islamic-sex-manual-encourages-group-sex.html)

Mahmood, Saba (2012) "Sectarian Conflict and Family Law in Contemporary Egypt," 39 *American Ethnologist* 54–62.

Malaysian Department of *Syariah* Judiciary (*Jabatan Kehakiman Syariah Malaysia* [JKSM]) Files, 2005–2015. Putrajaya: Government of Malaysia.

Maznah Mohamad (2010) "Making Majority, Undoing Family: Law, Religion, and the Islamization of the State in Malaysia," 39 *Economy and Society* 360–84.

Merry, Sally E. (1990) *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. Chicago, IL: Univ. of Chicago Press.

Mir-Hosseini, Ziba (2016) "Moral Contestations and Patriarchal Ethics: Women Challenging the Justice of Muslim Family Laws," in, Hefner, Robert W., ed., *Shari'a Law and Modern Muslim Ethics*. Bloomington: Indiana Univ. Press.

Mir-Hosseini, Ziba, Mulki Al-Sharmani, & Jana Rumminger, eds. (2015) *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. London: Oneworld.

Moustafa, Tamir (2013) "Liberal Rights versus Islamic Law? The Construction of a Binary in Malaysian Politics," 47 *Law and Society Review* 771–802.

Nik Noriani Nik Badli Shah (2008) "Legislative Provisions and Judicial Mechanisms for the Enforcement and Termination of the Islamic Marriage Contract in Malaysia," in, Quraishi, A., & Vogel, F., eds., *The Islamic Marriage Contract: Case Studies in Islamic Family Law*. Cambridge, MA: Harvard Univ. Press.

Norani Othman, ed. (2005) *Muslim Women and the Challenge of Islamic Extremism*. Kuala Lumpur: Sisters in Islam.

Norani Othman, Zainah Anwar, & Zaitun Mohamed Kasim (2005) "Malaysia: Islamization, Muslim Politics, and State Authoritarianism," in, Norani Othman, ed., *Muslim Women and the Challenge of Islamic Extremism*. Kuala Lumpur: Sisters in Islam.

Norzulaili Mohd Ghazali and Wan Abdul Fattah Wan Ismail (2007) *Nusyuz, Shiqaq, dan Hakam Menurut Al-Quran, Sunah, dan Undang-Undang Keluarga Islam*. Nilai, Negeri Sembilan: Universiti Islam Malaysia.

Nurlaewati, Euis (2010) *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts*. Amsterdam: Amsterdam Univ. Press.

Osanloo, Arzoo (2009) *The Politics of Women's Rights in Iran*. Princeton: Princeton Univ. Press.

Peletz, Michael G. (1988) *A Share of the Harvest: Kinship, Property, and Social History Among the Malays of Rembau*. Berkeley, CA: Univ. of California Press.

——— (1996) *Reason and Passion: Representations of Gender in a Malay Society*. Berkeley, CA: Univ. of California Press.
——— (2002) *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*. Princeton: Princeton Univ. Press.
——— (2009) *Gender Pluralism: Southeast Asia Since Early Modern Times*. New York, NY: Routledge.
——— (2013) "Malaysia's *Syariah* Judiciary as Global Assemblage: Islamization, Corporatization, and Other Transformations in Context," 55 *Comparative Studies in Society and History* 603–33.
——— (2015) "A Tale of Two Courts: Judicial Transformation and the Rise of a Corporate Islamic Governmentality in Malaysia," 44 *American Ethnologist* 144–60.
——— N.d. *Sharia Transformations: Cultural Politics and the Rebranding of an Islamic Judiciary*. [Book ms. in process]
Raihanah Abdullah (1997) "Reasons to Dissolve a Marriage Through Fasakh," 5(1) *Syariah Journal* 1–13.
Rosen Lawrence (2018) *The Balance of Justice: Islam and the Rule of Law*. Chicago, IL: Univ. of Chicago Press.
Shanon Shah (2018) *The Making of a Gay Muslim: Religion, Sexuality, and Identity in Malaysia and Britain*. London: Palgrave-Macmillan.
Sharifah Zaleha Syed Hassan (1986) "Women, Divorce, and Islam in Kedah," 1 *Sojourn* 183–98.
——— (1993) "Settling Marital Disputes in a *Syariah* Court in Malaysia," 20 *Jurnal Antropologi dan Sosiologi* 73–90.
Sharifah Zaleha Syed Hassan & Sven Cederroth (1997) *Managing Marital Disputes in Malaysia: Islamic Mediators and Conflict Resolution in the Syariah Courts*. Richmond, UK: Curzon Press.
Siti Zubaidah Ismail, Ilhaamie Abdul Ghani Azmi, & Zulfikri Yasoa. (N.d.) "Justice Delayed is Justice Denied? Delays in Disposing Divorce Cases in Malaysian Shariah Court". Unpublished ms.
Sloane-White, Patricia (2017) *Corporate Islam: Sharia and the Modern Workplace*. Cambridge, UK: Cambridge Univ. Press.
Sonneveld, Nadia (2012) *Khul Divorce in Egypt: Public Debates, Judicial Practices, and Everyday Life*. Cairo: American Univ. in Cairo Press.
Sonneveld, Nadia, & Monika Lindbekk (2015) "A Revolution in Muslim Family Law? Egypt's Pre- and Post-Revolutionary Period (2011-2013) Compared," 5 *New Middle Eastern Studies* 1–19.
Sullivan, Winnifred F., Robert Yelle, & Mateo Taussig-Rubbo, eds. (2011) *After Secular Law*. Stanford: Stanford Univ. Press.
tan beng hui. (2012) *Sexuality, Islam and Politics in Malaysia: A Study on the Shifting Strategies of Regulation*. PhD Thesis, National Univ. of Singapore.
Tsing, Anna (2015) *The Mushroom at the End of the World: On the Possibility of Life in Capitalist Ruins*. Princeton: Princeton Univ. Press.
Wadud, Amina (2008) *Inside the Gender Jihad: Women's Reform in Islam*. Oxford: Oneworld.
Wardlow, Holly, & Jennifer Hirsch (2006) "Introduction," in, Hirsch, Jennifer, & Wardlow, Holly, eds., *Modern Loves: The Anthropology of Romantic Courtship and Companionate Marriage*. Ann Arbor, MI: Univ. of Michigan Press.
Weiss, Meredith (2006) *Protest and Possibilities: Civil Society and Coalitions for Political Change in Malaysia*. Stanford, CA: Stanford Univ. Press.
Whiting, Amanda (2017) "Rebooting the Emergency: Najib's Law 'Reform' and the Normalisation of Crisis," in, Lemiere, Sophie, ed., *Illusions of Democracy: Malaysian Politics and People*. Vol. II. SIRD: Kuala Lumpur.
Zainah Anwar (2001) "What Islam, Whose Islam? Sisters in Islam and the Struggle for Women's Rights," in, Hefner, Robert W., ed., *The Politics of Multiculturalism:*

Pluralism and Citizenship in Malaysia, Singapore, and Indonesia. Honolulu: Univ. of Hawaii Press.

Zainah Anwar (2008) "Advocacy for Reform in Islamic Family Law: The Experience of Sisters in Islam," in, Asifa Quraishi and Frank Vogel, eds., *The Islamic Marriage Contract: Case Studies in Islamic Family Law*. Cambridge, MA: Harvard Univ. Press.

Zainah Anwar, ed. (2009) *Wanted: Equality and Justice in the Muslim Family*. Petaling Jaya: Musawah/Sisters in Islam.

Cases Cited

"Pendakwa Syarie lwn. Kartika Seri Dewi Binti Shukarno," 30(2) *Jurnal Hukum* 269–85, 2010.

Statutes Cited

Islamic Family Law (Federal Territories) Act 1984 (Act 303). (As at March 10, 2012).

Michael G. Peletz *is Professor of Anthropology and former Chair of the Department of Anthropology at Emory University, with research interests in social and cultural theory, gender, law, social justice, Islam, and modernity, particularly in Southeast Asia. His publications include* Islamic Modern: Religious Courts and Cultural Politics in Malaysia *(Princeton, 2002) and* Gender Pluralism: Southeast Asia Since Early Modern Times *(Routledge, 2009).*

https://doi.org/10.1111/lasr.12346 Published online by Cambridge University Press