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Women, men, and the long and short term of inheritance in Pulau Langkawi, Malaysia

This paper examines inheritance practices among Malay Muslims on the island of Langkawi, Malaysia. These are complex, variable and flexible. Broadly, they are based on two sets of principles applied on different time scales. One, which is informal, applies immediately following a death and often for a considerable number of years thereafter, stresses rights through residence and equal inheritance within a sibling group irrespective of gender; the other allocates rights according to Islamic law. In the state of Kedah, of which Langkawi is part, Islamic inheritance rules are automatically applied whenever recourse is made to the courts by Malays for a formal division of property, but not necessarily prior to this. Nor are heirs under any obligation to go through this legal procedure. In Langkawi portions of an estate are often also reallocated after such a formal division with the agreement of all beneficiaries, and this reallocation is then validated by the local Land Office.

The manner in which these two systems are manipulated in Langkawi is relevant to the long-standing debate on an obvious disjunction between Islamic law and adat (custom, tradition, propriety) in Southeast Asia. In this case an informal system sustains an ideology of equal inheritance between women and men, while the formal, legal apparatus upholds the

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1 The fieldwork on which this paper is based was conducted between October 1980 and April 1982. It was financed by a Social Science Research Council (now ESRC) studentship with additional funds from the Central Research Fund of the University of London. During the writing of this paper I have been supported by a fellowship from the Evans Fund, University of Cambridge. An earlier version of this paper was presented at a workshop on Islamic Family Law and Practice held by the Centre for Middle Eastern Studies and the Department of Anthropology at the University of Cambridge in January 1988. I am grateful to participants in that workshop, Maurice Bloch, and the anonymous reader for *Bijdragen* for their comments.
Islamic code. This disjunction is well known in the literature through the work of, amongst others, de Josselin de Jong (1960) on the rather special case of matrilineal inheritance in Minangkabau and Negeri Sembilan. In Langkawi, where kinship is reckoned bilaterally, not matrilineally, inheritance is perhaps more typical of Southeast Asia in general.

The inheritance practices which I will describe illuminate the complex articulation between *adat* and Islamic law that occurs in Langkawi. While it is possible for both participants and observers to distinguish these at one level, at another it always remains possible to merge them. Indeed, I argue that this is necessarily the case in a context where both *adat* and Islam are central to notions of morality. A straightforward opposition between them is untenable, since it would imply a possibility for rejecting the moral basis of either *adat* or Islam.

The enormous variation, geographic and temporal, in how both Islam and *adat* are constituted in Southeast Asia, and in the relation between the two, has been stressed by other writers (Ellen 1983). This paper is primarily concerned with the views and experiences of villagers in Langkawi, particularly women. That is, it focuses on the ethnography of one locality 'from the bottom up', rather than the wider administrative, political or religious structures in Malaysia or the Southeast Asian region. My aim is not to deny the relevance of the latter but to show in detail how ideas about relatedness — kinship — inform and are reflected in inheritance practice in one particular case, and how a knowledge of these is a prerequisite to understanding the way the articulation of *adat* and Islam occurs in practice.

As Needham (1971) and Schneider (1984) have argued, kinship notions can only be understood through an examination of their content and meaning in a particular cultural context, rather than through the application of *a priori* assumptions. In this case, relatedness is intimately bound up with the symbolic and practical elaboration of shared consumption in houses. This particular ‘meaning’ of kinship, whereby relatedness can be achieved through co-eating, suggests that the straightforward use of terms like ‘consanguinity’ and ‘affinity’ is potentially misleading.

Shared consumption is epitomized above all by siblings, and indeed defines them. This fact, together with the centrality of siblingship to wider notions of kinship, is highly relevant to inheritance. For the enormous tension generated when division threatens the unity of the sibling group — as it inevitably does when a parental estate is partitioned — means that there is considerable ambivalence towards dividing property.

Malay *adat* is conventionally divided into two categories: *adat perpatuh*, the matrilineal *adat* of Negeri Sembilan, and *adat temenggong*, found in the context of bilateral kinship, i.e. in most of peninsular Malaysia outside Negeri Sembilan (the term itself is, however, rarely used) (see Wilkinson 2000).
The centrality of kinship to an understanding of how these *adat* work, their content and meaning, is clear from their very definitions. While in Indonesia different *adat* were extensively formalized and codified under the Dutch and in the post-colonial era\(^3\), in Malaysia,

> 'Adat temenggong has never achieved the status of a system of law integrated with a central political authority. The reason for this appears to be that no such authority based on non-genealogical principles ever existed outside Negri Sembilan ... *The term adat temenggong then, refers to some fragmentary rules which are direct expressions of kinship factors.*' (Hooker 1972: 30, emphasis added.)

Pulau Langkawi is situated off the west coast of Malaysia and administratively forms part of the mainland state of Kedah. The village of Kuala Teriang, in which I conducted fieldwork, has a population of about 3000, divided among several named hamlets. The main economic activity of the male inhabitants is fishing, although rice cultivation forms an important agricultural base which is strongly associated with women.

Islam is a central aspect of the identity of villagers in Langkawi — as it is of Malays in general. This identity is in part constructed around a perceived contrast between the Malay inhabitants of the island and non-Muslim Chinese traders with whom they have intense economic relations but minimal social contact. However, it is notable that while Islam provides a focus for Malay unity and identity at the most general level, within the village it tends to be a source of division as much as of unity. Deep-seated political differences within the village are played out in a religious idiom as they are throughout Malaysia. The village may be said to be as much divided as united by Islam. Such differences are highly pertinent to disputes within the village but will not be dealt with here.

**Houses, Siblings and Kinship**

Kinship is reckoned bilaterally; descent is of little relevance in a context where siblingship tends to be more stressed than filiation, and the formation of bounded social groups based on genealogical or other principles is greatly resisted. Sharp distinctions between kin and non-kin or between kin and affine tend not to be drawn. There is no point at which kin cease to be recognized; rather, villagers perceive a continuum of relatedness from the 'close', *dekat*, to the 'distant', *jauh*. Connections are capable of endless lateral extension both through siblingship and through a very loosely conceived form of endogamy. Marriages between kin, whether patrilateral or matrilateral, and between those from the same locality tend not to be distinguished from each other. Marriage should occur between


\(^4\) Wilkinson (1908:45) dismisses *adat temenggong* as 'too indefinite and illogical to possess any legal interest whatever'.

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\(1908;\) Hooker 1972:28). The centrality of kinship to an understanding of how these *adat* work, their content and meaning, is clear from their very definitions. While in Indonesia different *adat* were extensively formalized and codified under the Dutch and in the post-colonial era, in Malaysia,
those who are ‘close’, dekat, a notion which encompasses both geographic and genealogical proximity, as well as similarity of appearance, wealth, status and educational attainments.

In this system, which, like many others in Southeast Asia, appears to be defined by its flexibility and lack of structure, houses constitute perhaps the most important social units. In one sense the village community is conceived as the household writ large, and houses embody certain principles of social organization which are significant at the level of the wider community.\(^5\)

Perhaps the most important of these is the unity of the household and resistance to division within it. This is expressed in a number of ways, particularly in the spatial arrangements of houses. Houses never have more than one hearth, dapur. However many couples reside together in one house, they always cook and eat together. This commensality is a prime focus of what it means to be of one household. In many senses it is co-eating that establishes the relatedness of those who live together: it creates kinship. This is true of siblings more than any other category of kin: marriage between them is conceived to be incestuous precisely because they have ‘drunk the same milk’, makan sama susu.

The close bond that should exist between siblings is at the heart of household unity. Disputes between adult siblings are always highly threatening and particularly disruptive. It is in order to safeguard the harmony of these relations that married siblings never live together. This proscription is explicitly an attempt to avoid any conflict of interests which may arise between siblings through their obligations to their own nuclear families. That harmony between brothers and sisters should be so carefully safeguarded relates to the fact that houses and sibling sets are strongly associated. This association is established at birth, when the sibling set is physically anchored to the house land during the rituals which follow childbirth.\(^6\) In a day-to-day context it is lived out in the sharing of consumption which defines the house and which siblings epitomize above all categories of kin.

The emphasis placed on harmony between brothers and sisters also relates to the wider resonance of siblingship, for relations with co-villagers and notions of kinship morality in general tend to be phrased in the idiom of siblingship. Sibling terms or their derivatives form some of the most common terms of address and reference for co-villagers. When asked to trace out a relationship with a distant consanguine, villagers inevitably trace back to the point where two ancestors are described as siblings. When they want to emphasize the interconnections between them they say ‘We are all kin here; there are no strangers’. The term used for kin, adik-beradik, is itself derived from that for younger sibling, adik.

\(^5\) For a fuller account of these ideas see Carsten 1987a and b.

\(^6\) For a full discussion of siblingship and a description of these rituals see Carsten 1987a: Chapter III; McKinley 1981.
While in many contexts the unity and similarity of siblings is stressed, relations between them can take both egalitarian and hierarchical forms, and this is generally dependent on the age differences between them. I would argue that the appropriateness of siblingship as a paradigm for relations in the wider community can in part be related to its unique capacity, among relations of close consanguinity, to accommodate both hierarchy and equality. However, in a context where relations in the community at large tend to be phrased in an idiom of equality, hierarchical notions, both within the sibling group and in the village community, are often associated with tension. As will become clear below, such tensions are made explicit when inheritance procedures generate inequality within the sibling group.\(^7\)

Siblings are expected to render each other aid and remain close throughout life, and this is especially apparent in the warm and affectionate relations that usually obtain between adult sisters. One expression of this is the fact that the mother’s sister is regarded as a particularly appropriate foster-mother for a child whose mother has died or moved away.

Across the generations, too, the tie between female consanguines is of major significance. Mothers and daughters tend to have close, intense relations; daughters prefer to reside with their mothers rather than with a mother-in-law after marriage; in old age widows prefer living with married daughters to living with sons. If the house represents unity, then this unity is created and upheld above all by female consanguines.

Men are absent from the house for the greater part of the day, being either out fishing or at the coffeeshop or mosque. The day-to-day running of the household is in the hands of women, who have control over household finances, although important decisions may be taken jointly by male and female household heads. Men turn their income from fishing over to their wives at the end of each day, reserving for themselves only a small quantity of ‘coffee money’. Expenditure on daily articles of consumption, belanja dapur, literally ‘kitchen expenses’, tends to be undifferentiated as far as possible within one house. People say ‘whoever has money spends’, leaving the value of individual contributions unmarked.

There are no fixed rules of post-marital residence. Immediately after marriage a couple tends to be rather mobile, and villagers lay great emphasis on the uncertainty and unpredictability of residence. This can be related to a general unwillingness to accord prior rights over a young

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\(^7\) Peletz has emphasized how in Negeri Sembilan ‘principles and idioms of siblingship provided the hegemonic constructs informing the conceptualization and realization of relationships and activities in a wide variety of analytically distinct organizational domains’ (Peletz 1985:107). He also notes the ‘ultimate irony’ (p. 81) that equivalence and prescriptive amity impose mutual obligations to share and exchange on individuals who are in competition for the same property rights. The resulting strains mean that ‘relationships cast in the idiom of siblingship are especially conducive to the expression of ambivalence, discord and divisiveness’ (p. 108).
couple to either the wife’s or the husband’s kin, which is associated with an ideology of marriage between equals. The general pattern of residence is for a couple to initially commute between the two parental households, spending periods of varying length in each. This is followed by a period of uxorilocality lasting until the couple have one or two children. After this a new household is usually established in either the husband’s or the wife’s natal compound.

Adult men and women do not live alone, nor do married couples before they have had children. Although houses embody both the principle of consanguinity and that of affinity, the latter tends to be subsumed under the former. Marriage ties are potentially fragile, and this is revealed in the frequency of divorce. New households are not established until the consanguineal principle has been asserted through the birth of children. It is through marriage and the birth of children that new sibling groups come into being and new houses are established, ensuring the expansion and reproduction of the village community.

If resistance to division is central to the house, it should not be surprising that both the individual ownership of property within it, and its division through inheritance among those who originate from one house, are always a source of tension and are ambivalently conceived. In the remaining part of this paper I will describe how such tension is manifested, as well as the various attempts made by villagers in Langkawi to avoid some of the disturbing implications of this.

Ownership of Property

Property such as land, boats and jewellery which belongs to either spouse before marriage remains individually theirs, but that which is acquired through the labour or income of the couple after marriage (i.e., not inherited) is regarded as jointly owned, benda syarikat. In the event of divorce this property is valuated and each spouse is, in theory, entitled to a half share.

The notion of individuals who reside in one house having exclusive rights to property — jewellery, clothes, cosmetics, shoes — tends to be resisted. Household members of the same sex often use each other’s clothing and other personal articles. The same principle also applies between children: within a group of siblings no child has exclusive rights over a particular toy. When two children fight over an object it is always the youngest who is favoured.

The fact that couples do not establish themselves in an independent house until some years after marriage, almost always means that the marital home is constructed or acquired with the couple’s joint earnings and is thus an important part of the benda syarikat. Even when a couple continue to reside permanently in one or other parental home, the continuous process of rebuilding which is likely to be financed by the young couple means that the house will eventually come to be considered joint
property. Like the house itself, its furnishings are normally also acquired during the course of a marriage and are therefore also jointly owned.

Jewellery that is given to a woman before her marriage, either by her parents or her fiancé, or that is bought out of the marriage payments, belongs to her individually; that bought after marriage with either spouse's earnings is jointly owned. The same general rules apply to more valuable items of moveable property. Boats and motorcycles, when bought after marriage, also form part of the benda syarikat, or are individually owned if bought before. Since boats, like houses, undergo a more or less continuous process of repair and replacement, they generally eventually become joint property.

To a great extent, then, the individual ownership of property within the household is resisted — both formally, in that the rules governing marital assets mean that the couple is a single property-owning unit, and informally, in that co-residents constantly borrow from each other. The informal sharing of space and property is another aspect of the resistance to division within the house which I referred to above. The partitioning of property, and particularly of land, which is both a valuable asset and often held in common by close kin, is always problematic and potentially disruptive to the harmonious relations between close kin. The association of division and disputes and the overriding desire to avoid the disruptive effects of both, figure largely in the minds of villagers and have highly significant implications for patterns of inheritance.

Inheritance: The Informal System

The most valuable forms of heritable property are land (primarily that used for rice cultivation or houses), houses, fruit trees, boats, and jewellery. Villagers are reluctant to discuss the inheritance of all of these, and this can once again be associated with the way that property division often involves disputes. Further, there is a reluctance to actually divide such property. This means that aged couples generally farm land jointly together with their resident adult children without any subdivision. One reason given by villagers for not giving property to children is that landholdings tend to be small and that subdivision is therefore impractical. However, the resistance to dividing property persists, however, long after the death of the original owner. The fact that wills are never made can perhaps be seen as a further manifestation of the same phenomenon. Verbal agreements are sometimes made, however, between offspring and their aged parents concerning division of property after the death of the latter. Pre-mortem inheritance occurs only rarely; it is highly unusual for land or any substantial amount of moveable property to be given outright to children at the time of their marriage or on any other occasion during the

8 See also Strange 1980:135; Massard 1983:345. This evidence conflicts with Banks (1976:578), who states that 'Malays dread intestacy'. It is notable that the resistance to making wills is not described in terms of Islamic doctrine.
lifetime of their parents. However, as the parents get older, resident children may take on much of the labour of rice farming and keep a proportion of the crop.

After a death has occurred the division of property takes place in two stages. The first is informal and generally only benefits the resident children and spouse of the deceased. In every case that I discussed with informants, this stage involved sons and daughters getting equal shares in the land of their parents. The proportion of the widowed spouse is, however, subject to fluctuation (depending on need, age and ability to farm the land). Although female informants always emphasized the uncertainty of their portion, even at this stage (a point which I will return to below), and although I discussed the subject as widely as possible, I did not come across any case of the informal division of land being carried out in accordance with Muslim laws of inheritance.

During this phase the property is still legally registered in the name of the original owner. This situation may persist for as long as sixty years, by which time the children of the original owner and sometimes even their children will have died. Thus, it is common to find groups of siblings or first cousins living on, and obtaining rice from, land which they effectively co-own but is legally registered in the name of a parent or grandparent who has been dead for many years.

Not only can such a situation come about through the deferral of formal division, but land titles may sometimes actually be bought in the name of a dead ancestor. In one case in which a father asked his children to divide his property equally, the titles to the village land on which the family’s houses were built had not actually been acquired by him. After his death his children bought the land titles in their dead father’s name, each contributing an equal share. It is significant that this was done specifically in order to avoid subdividing the land.

More frequently, however, the legal division of property is simply deferred. In thirty cases of formal, legal division of property, ambil kuasa, which I analysed in detail, the mean deferral period which elapsed after the death of the original owner was almost twenty years, that is, within two generations.

This evidence, combined with that obtained from conversations with informants, in which the division of land was often discussed with much bitterness, suggests that, ideally, close kin, i.e., siblings and first cousins, should not divide the property they hold in common. If they co-exist

Banks (1976:576-7), however, mentions inheritance at marriage.

Downs (1967:152-3) states that Muslim law is applied when authorities are appealed to in Kelantan, but otherwise men and women tend to share property equally. See also Banks 1976:577.

This evidence was obtained from the files of the District Office at Kuah. It comprises every fourth case adjudicated in 1981.

Djamour (1959:43) notes a similar tendency to defer the division of property and observes how this leads to joint ownership, particularly by sibling groups.
harmoniously, the legal division is unnecessary and to be resisted, since it is likely to cause friction and quarrels. Whether such disputes are the result or the cause of property division is a moot point — it would seem that often they are both — as disputes lead to property division and this itself sparks off further disputes. One woman related how she and her siblings wanted to divide the property of their grandparents while the parents wanted to keep it united. She insisted that disputes occur before the partitioning, but once the division was made there would be no more quarrels.

The reluctance of villagers to discuss such matters is an indication of the upsetting nature of disputes in this context, arising as they do between siblings who are particularly constrained to live harmoniously together. The breakdown of these relations is not only a matter of a quarrel within a small family group, it may have wider implications in the community. This is not only because the community is itself built on a model in which kin (that is, people united through extended siblingship) cooperate with each other and live together in a harmonious manner, but also because of the large numbers of people who may be involved. In one case the deferral period was 59 years, by which time 39 people registered their claims. This would have meant that in order to divide the land in accordance with Muslim law it would first have had to be divided into 36,288 equal shares. The Land Office refused to involve itself in such complexities and, instead, simply divided the property between the five children of the deceased — ignoring the fact that these children were all long since dead. The evidence would suggest that the 39 claimants would have got little satisfaction from this procedure. More significantly, a property division involving 39 people, each supported by their close kin and friends, can be assumed to have a highly disruptive effect in a small community.

Division of property, then, is an evil in that it implies disputes and separation. However, it is a necessary evil, since it is also a means — the only one available — to the resolution of disputes: as one woman put it to me, 'once property is separated, relations become easier, there are no more quarrels'. And this would suggest that such division is in the last analysis inevitable. However, the divisions within a once unified kin group are now rigidified and made permanent. This fact, which is recognized by villagers, is at the heart of their ambivalence towards property division.

The tendency to avoid dividing property has other implications apart from maintaining kin unity. The avoidance or deferral of formal inherit-

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13 The conclusion of Kuchiba et al. that the discussion of inheritance implies disrespect to parents and must therefore be avoided (1979:52) is not applicable to Langkawi. Rather, priority must be given to the centrality of relations between siblings in explaining this reluctance. See also Peletz 1985, and note 7 above.

14 See also Nagata (1976:401-2) on how division of property means the end of cooperation between kin and is encouraged by a desire to avoid disputes. Massard (1983:353) also notes a resistance to dividing estates. Banks (1976:577), however states that transfers from parents to children are a means of preventing disputes.
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ance procedure limits the subdivision and alienation of land. That this is a conscious process is revealed both in the comments of villagers on those who sell land, who are sometimes referred to as orang jahat, 'bad people', and in strategies for keeping land together. Small plots of land which would be uneconomical to divide are frequently kept in their entirety and farmed in rotation, bergeliar, by co-owners, who are usually siblings or first cousins. This avoids the alienation of property and its unequal division between siblings.\(^{15}\)

Another implication of keeping property unified is that inheritance is qualified more by residence than by genealogy. Although all heirs retain their land rights, only those who actually reside in the area farm it. Land is thus divided into fewer shares than would be the case under Muslim law. Although absent heirs can claim a share of the crop from land to which they are entitled, they do not generally do so. At this stage of the inheritance process, then, residence is an important determinant in the exercise of rights over land.

The principles which govern the formal, legal division of property are very different from those that underlie its informal division. In only three out of thirty cases I analysed did the legal division, ambil kuasa, involve moveable property. Houses, boats, trees, and jewellery are normally divided without recourse to official, legal means of property transfer. Until, recently, the value of such resources would usually not have been very great. Even today, houses are often relatively impermanent structures, and they may be moved to a different site or dismantled and the materials used elsewhere. There is no clearly stated rule governing the inheritance of houses, although the youngest child or a daughter may be favoured.

Similarly, informants emphasize the uncertainty of the mode of dividing boats and jewellery. It is possible for the value of such property to be divided scrupulously between sons and daughters — either following Muslim law or with both sexes getting equal shares. Often daughters inherit jewellery and sons boats. However, boats are often sold when a fisherman becomes too old to go out to sea. In other cases a son or son-in-law may have taken over the boat long before the death of the original owner. It is then likely that the user will have spent considerable sums on the boat's maintenance and improvement, or sold it in order to buy a better one. Without formalities, and in a manner that recalls the practice over houses, a boat may be made over to the younger man, who retains it at the death of the original owner.

There is a tendency for daughters to receive a share of moveable property that is greater than that accorded to them by Muslim law. Both the likelihood of daughters receiving their mother's jewellery and the

\(^{15}\) See also H. Geertz (1961:52), who notes how arrangements between siblings are rarely legalized. Similarly, in Negeri Sembilan, Swift (1965:171-2) argues that inheritance is only controlled by law in the event of disagreements between close kin (which are shameful), and also lays stress on agreement and equality of shares between siblings.
tendency for the informal division of property to be conducted on an equal basis play a role here. However, women always stress that their brothers have a right to claim a share of this if they wish, and that under Muslim law they are entitled to double the share of their sisters. In this sense they see themselves as dependent on the good will and generosity of their brothers.

Inheritance: The Formal System
The formal, legal division of property is costly and often highly complicated because of the large number of beneficiaries that may be involved. This procedure primarily involves the division of land, of which the most significant part is used for the cultivation of rice. The division is decided at the local District Office, with the assistance of a *kadhi*, and the property is automatically apportioned according to Muslim law, *hukum shari'ah*. However, provided all beneficiaries agree, they are free to reallocate the inheritance amongst themselves in any way they wish and the final allocation will then be registered by the Land Office.

Female informants often emphasize the uncertainty of their inheritance, saying that the allocation they will receive is dependent on their male co-heirs. I knew several cases of parents who had made their children promise to divide land equally between them and such promises had been respected. However, the male heirs must agree in order that an equal partitioning of property can take place. Where there are no male heirs, parents sometimes register the land in the name of a daughter before death. This practice avoids the problem of land going to the *baitulmal* (state land fund) and male collaterals, and having to be bought back. There were also cases where land had been registered in the name of a daughter in spite of the existence of male heirs. Parents described such action as a precaution taken to safeguard the inheritance of daughters, in case their brothers claimed the major share of land.

The precariousness of the position of women and their dependence on their brothers is illustrated by one case of *ambil kuasa* in which the formal proceedings were instigated by a non-resident heir seeking to safeguard his land rights, which he perceived to be endangered under the informal arrangements for division of property prior to the *ambil kuasa*. Initially, then, the case had nothing to do with the relative inheritance rights of men

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16 According to the religious rules same-sex siblings receive equal portions but sons inherit twice as much as daughters; a widow receives 1/8 of her husband’s property and a widower receives 1/4 of his wife’s; female grandchildren receive 1/2 of the portion of male grandchildren. In cases in which there is a daughter but no son, half the inheritance goes automatically to a state land fund, *baitulmal*. However, female heirs are entitled to buy back land from this fund. Where there are no direct descendants, property is inherited by collaterals of the deceased and their descendants. Malay property is automatically apportioned by the District Offices of the state of Kedah according to the above rules. See also Banks 1976:573-4, 578.
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and women but with the rights of a non-resident heir. Nevertheless, in the resolution it was a woman who ultimately lost land to her brothers.

The land in question was registered in the name of a deceased male. As long as his eldest son was alive it was divided into equal shares and farmed by the deceased's children, two brothers and a sister. After the death of the eldest son his brother attempted to claim the share of the former's non-resident son. In order to prevent him from doing so, the latter initiated ambil kuasa proceedings. The land was then divided according to Muslim law, with one son and grandson getting equal shares, and the daughter getting half of this. The grandson thus managed to secure his share of the property at the expense not just of his uncle, but of his aunt, who in fact had her share halved.

This example brings out not only how the ambil kuasa is delayed until a dispute arises, but also how women and resident heirs benefit from the informal division, whereas absent male heirs may gain at the expense of female resident ones at the time of the ambil kuasa. It should also be noted that this dispute involved just 7/10 of an acre, farmed in rotation by the sibling group, and finally sold after the formal division.

Villagers perceive two problems in the safeguarding of the inheritance of daughters. The first is, where there are no sons, to prevent land from passing to male collaterals. As one woman put it to me, 'if there is one male child we don't worry, the inheritance can be taken' (kita tak bimbang, harta boleh ambil). 'But if they are all girls, the inheritance goes back to the waris, and that's what's hard for women' (harta pulang ke waris, itu teruk perumpuan). 'You do the work but other people gain — your own children don't benefit' (anak kita tak boleh makan).

The second problem is directly linked to the first. That is, when there is a male heir, will he respect the wishes of his parents in relation to his sisters? Even in cases where promises to divide property equally have been made, there is no legal obligation to respect these at the time of the ambil kuasa.

Where property has been divided informally and equally between siblings, it is always possible for brothers to initiate legal proceedings and thus gain property from their sisters. As one woman put it to me, 'if the brothers are good at the time of the ambil kuasa, they will give the same amount to their sisters'. However, women see such cases as exceptional. They perceive the division of property at this time to be more likely to proceed according to Muslim law than adat. And, as we have seen, strong constraints against dividing property at all work against a strategy of dividing land before death, which might assure the inheritance of daughters. In general, this is only done when there are no male theirs.

Further, it is very significant that women conceive their brothers' benevolence to be contingent on the latter's marital status. As one woman put it, 'before men marry they will share inherited land with their sisters. If they inherit after marriage, they will be less generous.' Such comments reveal
an ambivalence towards in-marrying women, who are perceived as having the potential to disrupt the unity of the sibling group. But a woman’s own marriage has a positive economic value; as wives they have an interest in their husbands’ inheriting according to Islamic law. It is divorce and widowhood that threaten women’s economic stability, and precisely for this reason it is regarded as important to safeguard women’s inheritance rights.

There are, then, several indications of an attempt to counterbalance a patrilineal bias in the legal system of inheritance. Since the formal division of property automatically goes according to Muslim law, cases in which land is subsequently reallocated by the beneficiaries themselves are of great interest as evidence of a trend strong enough to surpass the support that religious ideology receives in the legal system.

Subsequent Reallocations of Property
Out of 30 cases of formal division of property which I examined in the local Land Office records, 8 were carried out in accordance with Muslim law, and in 13 land was reallocated in a clearly different manner (9 cases are ambiguous, either because only one heir was involved or for other reasons). Among the 13 reallocations shown in Table 1, 7 can be distinguished in which women get a greater portion than they would under Muslim law, and 6 in which women receive less than their Islamic right. Although the religious rules are only applied in just over 1/3 (8/21) of the cases, the position of women is rather unclear. The proportion of women who receive a bigger share than legally required is only slightly higher than the proportion who receive less than this requirement. However, if these cases are analysed more closely, it is possible to detect a pattern:

<table>
<thead>
<tr>
<th>1. Cases in which women receive more than their share in Muslim law.</th>
<th>2. Cases in which women receive less than their share in Muslim law.</th>
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<tbody>
<tr>
<td>Case 5: land given to male and female grandchildren equally. Value: $3764.</td>
<td>Case 1: value of property low: $813. Both 1 son and 1 daughter give up their share.</td>
</tr>
</tbody>
</table>

17 Banks (1976:578) states that men ‘suspect males outside of the sibling group will use marriage as a pretext to get wealth and preferment from female members’. They use this to justify giving preference to brothers.

18 See also Stivens (1985:35-6) on how women’s perceived vulnerability in divorce in Negeri Sembilan is used to explain the transfer of land to women.

19 These 30 cases are set out in detail in Carsten (1987a:245-7). For ease of reference I have retained the original numbering in Table 1.
Case 8: daughter and granddaughter receive bigger shares than husband and grandson, who receive same as daughter-in-law. Value: $32,107.

Case 13: land divided according to Muslim law but daughter receives house and almost 1/2 cash. Value: $4223 plus $1576 cash.


Case 26: land equally divided between male and female beneficiaries. Value: $32,552.

Case 28: land equally divided between all heirs. Value: $4208.

TOTAL VALUE: $95,845
MEAN VALUE: $13,692

Case 3: widow gives share to son. Value: $600.

Case 9: daughter gives share to her brother. Value: $4293.

Case 15: daughters excluded from moveable and immovable property. Value $8993 and $1225.

Case 18: grandson takes share of his mother (deceased’s daughter). Value: $3900.

Case 24: 1 son takes whole share; 3 daughters and 1 son relinquish claims. Value $1630.

TOTAL VALUE: $21,454
MEAN VALUE: $3,576

Of the cases in which women receive less than their right, two (1 and 24) involve both sons and daughters renouncing claims, while in cases 3 and 18 mothers have renounced claims in favour of sons. In the latter case the generational factor may be of more significance than the fact that the renouncement is made by a woman in favour of a man. There are, then, only two cases (9 and 15) of sons being indisputably favoured over daughters.

There are many reasons why an heir may renounce his or her share: old age may render them incapable of farming; or they may have taken up residence elsewhere after marriage and it is not worthwhile maintaining rights to a small plot of land too distant to farm. Most important, perhaps, is the consolidation of landholdings. The low value of properties in Column 2 of the table shows this factor to be significant.20 There is no way
of ascertaining the significance of residence in the renouncement of claims. It seems likely that the renouncement of shares by women can be linked to the higher frequency of virilocal residence than uxorilocality in the later years of married life. The extent to which women are compensated in cash when they give up rights to land is also unclear. From conversations with informants it is clear that this does sometimes happen, but this information is not recorded in the Land Office records.

The cases in which women receive *more* than their share according to religious law are rather less ambiguous. In all but one, women receive either as much or more than their male co-heirs. It is highly significant that the mean value of property in cases where women inherit as much or more than their brothers is nearly four times the mean value in the cases where they receive less than their legal right. There thus seems to be a pattern of women inheriting equal or bigger shares than men when landholdings are relatively large. For the smaller landholdings the pattern is less clear — women seem to fare worse, but often renouncement of claims by women occurs together with a similar renouncement by male heirs. It may be that this has more to do with the consolidation of landholdings and patterns of residence than an explicit bias in favour of men.

Although the evidence remains somewhat unclear, certain conclusions can be drawn about patterns of inheritance and the relative position of women and men. There is a tendency for men and women to be equally compensated in the inheritance of moveable property. In the transmission of land a minority of cases are settled according to Muslim law. There is another clear minority of cases where women inherit as much or more land than their male co-heirs. In these cases the value of the property is significantly higher than the average. In the cases where women inherit *less* than their Muslim right the mean value of the property tends to be relatively low. It should also be remembered that the tendency to defer formal division of property is one that in the short term favours women since, during the period of deferral, they are normally compensated equivalently to men.

*Conclusion*

In Langkawi, as elsewhere in Malaysia, inheritance is a complex and long-term process. It seems that there are not only two sets of rules but also a wide range of applications of these. Facets of ownership and inheritance of property which seem unproblematic can be misleading. Further, it is clear that a knowledge of local notions about kinship is a prerequisite for understanding the way inheritance is worked out in practice; nor can we assume these *a priori*. While Kuchiba et al. have emphasized individual ownership of property, and state categorically that 'the kin group with a common interest in an inheritance does not exist in Malay rural society,'

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21 Nagata's (1974) insistence on the flexibility of *adat* is highly relevant here.
nor as a rule does one sibling become dependent on another because of
an unequal division of an inheritance' (Kuchiba et al. 1979: xiv; see also
Kuchiba et al. 1979:48, 54), from the evidence I have presented it would
seem that such statements do not necessarily hold true. In Langkawi, as
in Negeri Sembilan (Peletz 1985), it is precisely because there is consider-
able weight placed on sibling group unity and equality, and because these
ideas have wider resonance, that tensions and ambivalence are generated
in inheritance procedures.

In considering the conflict between matrilineal and Islamic inheritance
customs in Negeri Sembilan, de Josselin de Jong (1960:196) has remarked
upon the ‘resilience, workability and vitality’ of matrilineal institutions
there, which he finds ‘the more remarkable as these institutions had to
contend with an opponent: Islamic law, precisely in the fields which the
latter most ardently covets: personal statute, marriage and family life, and
inheritance’ (de Josselin de Jong 1960:196). At work are ‘two systems of
ideals and practices, both of which were considered by the society con-
cerned as being an integral [part] of its culture, both applicable to the entire
society, and both perceived as a system by the inhabitants of that society’
(de Josselin de Jong 1960:199; my italics).

More recently Banks (1976) has argued that a dichotomy between
Islamic law and adat is a product of the colonial administration, that
Malays conceive of themselves as having one cultural system, and that
Islam thoroughly permeates notions of social morality. While I would
agree with Banks that Islamic law is an integral part of Malay life, his
argument that there is no justification for distinguishing a sphere of adat
from that of Islam seems overstated: ‘the Malay peasant simply does not
know what is Islam and what is only adat or that there is a difference
between them’ (Banks 1976: 580, citing Mahathir 1962).

In his (justified) anxiety to accord Malay peasants a coherence in their
culture, Banks has deprived them of the ability to make distinctions at
different levels of perception such as those we ourselves make. In Lang-
kawi such a dichotomy is both elided in some contexts, and perceived and
acknowledged in others. The articulation of adat and Islam, to which I
referred in the introduction to this paper, is an infinitely subtle and complex
process. (See also Ellen 1983 on this point in a more general regional
context.)

I would suggest that it is precisely because adat cannot be simply
translated as practice, custom, or law, but, as Geertz (1983:210) and others
have emphasized, encompasses the notion of propriety (that is, carries
moral connotations comprising ideology and practice)22, that such an
elision is possible, and indeed necessary. Since adat is by definition that
which is right, a straightforward separation between adat and Islam would

22 Geertz follows a long line of distinguished antecedents: see, for example, Wilkinson
1908:13-14; Abdullah 1966:1; de Josselin de Jong as cited above; von Benda-Beckmann
ultimately imply that which is inconceivable: the potential to oppose Islam to the moral and proper. The fact that ‘adat’ is itself an Arabic loanword underlines the paradox such an opposition would involve.\(^{23}\) A potential for merging *adat* with Islam must remain at the most general level in order to avoid the possibility, however implicit, of a moral rejection of Islam.

Such an elision is frequently made by villagers in Langkawi: they often refer to *adat Islam*, ‘Muslim adat’, *adat Melayu*, ‘Malay adat’, or simply *adat kita*, ‘our adat’, when describing Muslim practices, seeming to ignore any discrepancies between these and *adat* in another sense. But they simultaneously retain for themselves the possibility of a distinction on another level. As one woman succinctly put it, ‘there are two ways, *shari’ah* and *adat*. *Shari’ah* is the way of God; *adat* is the way of the world.’ (*Ada dua jalan — shari’ah, adat. Shari’ah — cara Tuan; adat — cara dunia*).\(^ {24}\)

The persistence of such a contrast in this context is perhaps even more remarkable than that described by de Josselin de Jong. For, in spite of the absence of any obvious institutionalized support for equal inheritance by men and women, it continues to be practised, and regarded as somehow proper. However, the paradox is that it is God’s way that is sustained by legal institutions. *Adat*, the way of the world, persists, it would seem, as much in spite of the world, as because of it.

Finally, I would argue that the strength of *adat* lies precisely in its ambivalent status: partly ‘social imagination’, as Geertz (1983:232) would have it; partly day-to-day practice, with all the flexibility and pragmatism that that implies in the Malay context.\(^ {25}\) It is this ambiguity which gives it vitality and power; for it admits the possibility of thinking about *adat* at different levels, a possibility which exists as much for Malay peasants as for anthropologists.

REFERENCES CITED


\(^{23}\) In Indonesia the codification of *adat* in fact began with the introduction of Arabic script (Abdullah 1966:9). See also von Benda-Beckmann and von Benda-Beckmann 1985:243-4.

\(^{24}\) Nagata (1974:98-9) discusses the non-distinction of Islam and *adat* among urban Malays but relates this to educational attainments. See also Hooker 1974:86-7, who stresses how these systems are only opposed when compromise between them is not possible; normally they are mutually accommodated. Massard 1983:345 notes that inheritance in practice is more complex than a simple choice between two systems.

\(^{25}\) Bowen (1988) has described the implications of this pivotal role of *adat* for social change in post-colonial Indonesia, where *adat* mediates between local societies and supra-local political processes.
Kuchiba, Masuo, Yoshihiro Tsoubuchi, and Narifumi Maeda, eds, 1979, *Three Malay Villages; A Sociology of Paddy Growers in West Malaysia*, Honolulu: University of Hawaii Press. [Translated by Peter and Stephanie Hawkes.]
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