ADAT LAWS IN MODERN MALAYA

Land Tenure, Traditional Government and Religion

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RELIGION AND LAW: INTEGRATION AND CONFLICT AT STATE LEVEL

THE nature of the relationship between Islam and adat is one which arises to some degree in all the Malay States (cf. also Chapter 10 below) though the problems inherent in the relationship are found in their most acute form in Negri Sembilan. The nature of the relationship is compounded by the fact that Islam is not merely a system of religious belief but also includes a well-developed body of jurisprudence. Its status in Malaya is rather parallel to the position of canon law in medieval Europe. There is the same all embracing religion wherein the religious faith implies the regulation of family relationships, inheritance and the form of government. Islam is the established religion of the Malaysian state and is entrenched in both the federal and state constitutions. In addition it possesses its own system of courts and legislation, which include the right to impose various sanctions, and this has jurisdiction over all Muslims. Adat, on the other hand, is generally (with the exception of Negri Sembilan) localized, confined to matters of land tenure, and its sanctioning powers have been taken over by the national legal system. It is, in fact, a second class body of law in the sense that it exists only by consent of the dominant national system and not by entrenchment in the constitution. There is one exception to this, in that adat is entrenched in the Negri Sembilan constitution as is Islam. Here possible conflict situations arise, usually concerning land, but, more importantly, ultimately involving the respective spheres of influence of the two systems in the context of a modern beauracratic government complete with the paraphernalias of political parties. This does not arise in other states despite the usual phrase preserving the competence of 'Malay law and custom' in the state constitutions. However, these states are distinguished in that at the official court level there is uncertainty and conflict as to the respective scopes of adat and Islam, especially in land problems.

This chapter will be confined to dealing with the position in Negri Sembilan. Chapter 10 will explore the more technical judicial problem.

Material For Conflict

As might be expected in the light of Chapters 1 and 3 above, the main potential point of conflict revolves around land, specifically the questions of ownership and devolution especially on an intestacy. This has three aspects:

a. Islamic conceptions of ownership and inheritance of property;
b. Adat rules as to forms of property and their devolution and
c. Relevant state legislation which impinges on (a) and (b).

The Islamic Law of Property

In Islam, the right to succession is founded on four bases: kinship, marriage, patronage[1] and religion.[2] These matters, with the exception of patronage, are all dealt with by the Negri Sembilan Administration of Muslim Law Enactment, 1960.[3] Part III of the act sets up a system of Religious Courts, one of which, the Court of the Kathi Besar, has jurisdiction to hear and determine all actions involving Muslims relating to matrimonial matters, i.e. betrothal, marriage, divorce, nullity and separation (section 41(3) (b)). In addition, the Court has jurisdiction to order the disposal of any property arising out of matrimonial matters and this will of course be dealt with on the basis of Islamic law. The same section (s. 43(3) (b) (iv)) also provides for the Kathi's court to distribute *inter vivos* sa-pencharian property which is defined (s. 2(1)) as property jointly acquired by husband and wife during the continuance of a marriage.

Part IV of the Act establishes a General Endowment Fund known as the *Baitul-Mal*. This fund is made up of any property to which, according to Islamic law, there are no heirs. The fund at present also includes zakat and fitrah contributions. The act does not apply to deceased estates.

Both parts of the act assume an 'Islamic law' definition of property. We may briefly summarize the characteristics of the concept of property *(mal)* as follows:

i. Islamic law does not distinguish between ancestral or self-acquired property nor between realty and personalty nor between moveable or immoveable property. Neither does it recognize estates in land which are distinguished in point of

[1]This is not important and will not be dealt with further here.

[2]I.e. in default of heirs of the first three kinds, property passes to the Baitul-Mal, the state religious fund.

[3]No. 15/1960.

quality like legal and equitable estates, or in point of duration like estates in fee, for life or in remainder.

ii. All forms of property over which dominion can be exercised are properly included in the category 'property' (Fyzee, 1964: 217, 247).

iii. There is a clear distinction between the corpus *('ayn)* of property and its usufruct *(manafi)*.

iv. Interests for a limited duration in property may be created: e.g. 'life tenancy', but not on the basis of limited *ownership* but only on the basis of limited use. (Fyzee, 1964: 247–8, citing the judgment in *Sardar Nawazish Ali Khan's Case*.)[1]

ADAT

Adat perpateh recognizes two forms of property, pesaka—ancestral, and charian—acquired. The most important form of pesaka is, of course, land, and its inheritance is restricted to female descendants of the holder. In some cases, a male may have a life interest in such land but he cannot sell, mortgage or lease it. Since 1909, the Customary Tenure Enactment (c. 215) has laid it down that tanah pesaka can only be transferred to a member of one of the twelve 'tribes' of Negri Sembilan (section 7(i)). Further, sale outside the holder's clan and, in some luak, lineage, is permitted only when clan and lineage members have been given an option to purchase.

Now this act does not amount to the proposition that tanah pesaka is subject to 'group ownership' or that it is held 'in trust for the tribe'. The holder of tanah pesaka has full rights of ownership from her individual point of view, i.e. she can entirely dispose of her interest by sale or mortgage. However, the categories of person who may possess tanah pesaka is restricted: we thus have property which is freely disposable or inheritable by any individual who is defined as a female and a member of a certain group. So far as inheritance is concerned the group is a kinship grouping: so far as sale is concerned the group is first, a lineage, then a clan and finally a territorial group. Female holders only are permitted.

These provisions are in marked contrast to the principles of Islamic law set out above. Despite this different approach to property no conflict can arise. The Customary Tenure Enactment has specifically excluded tanah pesaka from the jurisdiction of any system of law other than that laid down in the act itself. Thus, we see that both Islamic law and adat (in relation to tanah pesaka) are formally

[1](1948) 75 I.A. 62.

incorporated into a common judicial system which is based, at first instance, on the Negri Sembilan State Constitution, and ultimately on the Federal Constitution of Malaysia.

The second category of adat property, charian laki-bini, acquired property, can, however, give rise to an adat/Islam conflict. As pointed out above, Islamic law does not recognize this form of property though the Administration of Muslim Law Enactment makes provision for its distribution *inter vivos*. From the tenor of the act itself this must mean that such property shall be distributed to those persons entitled to the property (in the Islamic sense). In other words the possible beneficiaries will be persons who may not be admitted according to adat.

There is no statute which specifically deals with the distribution of charian laki-bini *inter vivos*.[1] This problem arises on divorce and the rule is *charian bahagi*, the apportionable property[2] is divided equally. Joint debts must also be shared equally. In addition, the claim for partition must be made at the time of divorce and if not made at that time then it cannot be made later (cf. Taylor, 1929: 149). We thus have the source of a possible conflict between the two legal systems.

The possibility becomes a probability when we consider the position on the distribution of charian laki-bini at the death of one party to a marriage. Here the rule is *mati laki tinggal kabini* (on the husband's death the property goes to the wife) and *mati bini tinggal kalaki* (on the wife's death it goes to the husband). Now because Islamic law does not recognize joint property it can provide no rûles for its division once the property owning 'partnership' is dissolved. (Cf. the problems in Chapter 10.) But in this situation the legislature has provided, specifically in respect of deceased estates, that the adat rules may, if in the opinion of the Collector their applicability can be shown, be applied.[3] It is around this point that the adat/Islam conflict arises. Section 24 of the Small Estates (Distribution) Ordinance has put into statutory form what was in fact past practice in the Negri Sembilan District Offices. It provides, first, that if any land 'appears to be ancestral customary land though not registered as such, it shall be transmitted to the customary heiress' (s.24(a)). This covers the situation of property which has for some time been

[1]As to distribution on death, see below.

[2]I.e. not pesaka, dapatan or pembawa.

[3]The Small Estates (Distribution) Ordinance No. 33/1955, s. 24 (c).

treated under adat rules; for example, twice inherited charian laki-bini which may thus have become pesaka in some luak. Second, if property is in fact harta pembawa or harta dapatan then it should be transmitted to the 'customary heiress'. The words 'Customary Land' may also be added to the title of such property. If the Collector finds any property to be charian bujang or charian laki-bini then it may be transmitted 'according to the custom of the luak' (s. 24(c)). Finally, the Collector shall give effect to 'customary adoptions where they are satisfactorily proved' (s. 24(d)). This latter of course is a radical departure from Islamic law which gives no right of succession to adopted children.

The legislature then has provided for the continuance of adat rules which are in opposition to Islamic law in matters of great concern in any peasant community—land ownership and inheritance. The legislature has not, however, provided any standard or guideline for the Collector to follow in coming to his decision and disputed cases normally take the form of outright denials of the applicability of adat by one side (the 'Islamic side') and its assertion by the other (the 'adat side'—normally females). Much therefore depends on individual Collectors. A survey carried out by the writer at various periods in 1966–8 of distributions made in the period 1959–66 at two District Offices in Negri Sembilan shows no clear 'swing' to either side. Two points did, however, appear from this survey. First, it was noticeable that many disputes which began as adat/Islam disputes were later settled by compromise and property was shared in a way which was neither Islamic nor adat. This of course only occurred where it was not possible to prove charian laki-bini. Second, individual bias on the part of the Collector played a large part in some instances. For example in one order relating to land proved to be charian laki-bini the Collector stated that 'adat must prevail over Muslim law'. This was explained to the writer as being the Collector's 'own wish': (the Collector was in fact a Rembau Malay and a clan member). It is not possible to agree with Josselin de Jong (1960: 164–5) that the tendency is for charian to be subject to the Islamic rules of inheritance: no clear statement on the position can be given. Much charian is now treated on an adat basis though it is impossible to give precise percentages without obtaining statistics from every District Office in Negri Sembilan.

We thus have two sets of laws, two systems in fact, both of which are contained in various acts, administrative minutes, law books and

reports and so on. These provide the materials upon which conflict is possible but they do not of themselves generate conflict; after all, those Malays who are subject to adat are also Muslims and they have an interest in minimizing conflict situations in so far as this is possible. Causes of conflict come from outside the strictly legal system even though the conflicts are expressed in legal terms.

We will now consider three incidents involving adat and Islam which not only illustrate these points but also lead us from problems of land tenure into the wider field of power conflicts within the state government.

Adat and Politics—1951

This was a pre-independence incident and has been fully described by Josselin de Jong (1960: 158–203). The main points may be briefly summarized as follows. In February 1951, the Religious Affairs section *(Barisan Ugama)* of UMNO[1] (Rembau Branch) produced a pamphlet asserting that the adat law on ownership and inheritance of pesaka was illegal *(haram)* according to Islam. Whoever followed adat would thus incur guilt *(dosa)*. The Religious Affairs section further proposed that a committee be set up to review the desirability of continuing with the present law (i.e. the Customary Tenure Enactment) on adat land ownership. This proposal was made to the Negri Sembilan State Council of which the Undang were members. The Rembau branch of UMNO also tried to get the support of the Undang of Rembau. The State Council prevaricated and never authorized the constitution of a committee as requested. The Undang Rembau, whatever his personal sympathies, acted in a very proper manner and advised UMNO that he could not act on any adat matter without the advice and consent of the clan chiefs. The clan chiefs, at a meeting held in April 1951, disapproved of the language and intention of the UMNO pamphlet. This disapproval was not, however unanimous as three clan chiefs were absent from the meeting. One of the three later supported his colleagues, but the other two did not and in consequence were dismissed by their clan members from office.

Matters rested here for a one month period, *Ramadan*,[2] but in July the District Officer, Rembau, a member of the Malayan Civil Service,

[1]United Malays National Organization — the most powerful Malay political party and, with the Malaysian Chinese Association (MCA), the dominant partner in the Alliance Party, at present forming the government.

[2]The fasting month.

announced support for the UMNO position and publicly stated that he would take the whole matter up with the High Commissioner for Malaya. Coming from a member of the state administration, this was rather rash, and the Civil Service must have thought so too, as the officer was transferred from the state within forty-eight hours.[1] In the same month it was reported that the women, the group most likely to be affected by any changes in the legal status of adat land-holding, were threatening to elicit their repudiation by their husbands if the latter continued to support the UMNO.

In September, fifteen clan chiefs and 110 lineage chiefs, executive officers and waris assembled in Rembau town and swore loyalty to the adat, and in November the Undang informed the UMNO members that he could not support them in their proposed reform. In December 1951, UMNO formally announced that it was dropping the reform movement but would re-commence whenever the opportune time came. The incident has not been repeated to date.

The UMNO group used three main arguments in their cause; first, the religious argument, that adat was in fact haram; second, an ethical argument, adat was unfair to men not only because they could not inherit tanah pesaka but also, because the children of an *anak raja*[2] who marries a female clan member could not inherit any of her pesaka. This latter argument is strictly irrelevant to the point at issue and has already been dealt with elsewhere (cf. Chapter 6 above on adat Lengkongan). The third argument was the 'practical' one: this is to the effect that though the adat might have been necessary in the bad old days to protect women this is no longer necessary. Conditions have changed and in fact the economic needs of the country demand that adat land tenure be abolished (on this point cf. below pp.215–16).

The supporters of adat (the clan chiefs and the women) based their arguments on the adat rule that any change must come about through unanimous consent (kebulatan) and that this would never be achieved. It was unlikely, they pointed out, that the clan chiefs would voluntarily abolish their own positions. That is, the backbone of adat as a whole would be broken if the clans were deprived of control over tanah pesaka and the local descent group of its common residence. This is concomitant with the other traditionalist argument that UMNO is a political party and has no competence in adat.[3]

[1]Josselin de Jong, 1960:169. This is still spoken about today in Rembau and also in Kuala Pilah District — with approval by the women!

[2]A male member of the ruling dynasty in Sri Menanti.

[3]cf. below pp.215–16.

A large part of the UMNO argument was based on an Islamic religious nationalism but, curiously enough, religious officials were not directly involved in the incident. However, it is probably safe to assume that they gave their support informally to the UMNO group. At the luak political level, the Undang supported adat and in view of his office there is little else he could have done at that time.[1] Finally, the Malayan Civil Service seems to have disapproved of the conduct of its officer. In summary, the three power holding groups in the state were all against or at least neutral in the dispute. The fourth, the Islamic officials group was not organized into anything like a coherent body and it was in fact silent. These groups all appear again in the description of the next incident.

ADAT, THE STATE LEGISLATURE AND ISLAM: 1957

This incident is described by Swift (1965: 93–6) and has already been mentioned above. The salient points are repeated here for purposes of comparison with the *dramatis personae* of the 1951 incident.

In 1957 the Negri Sembilan Legislative Assembly passed an enactment entitled the Council of Muslim Religion Enactment.[2] Sections 54–6 of this enactment make provision for the method of payment of zakat and fitrah.[3] This proved unpopular among the villagers of luak Jelebu who regarded voluntary payment on their part as an adat, i.e. a usage with which the legislature had no right to interfere. Much of their resentment was directed against the Undang who are constitutionally required to assent formally to the passing of each state bill.[4] The Undang of Jelebu refused to countenance the ra'ayat's protests as conveyed to him by the clan chiefs. Indeed he refused to treat with them and attempted to call a meeting of the lineage chiefs over the heads of the clan chiefs who promptly, and validly, dismissed him from office. The dismissal was, however, ineffective. The Undang retained his political pension and continued to exercise his constitutional functions despite the provisions of Art. XIV(3) of the State Constitution which recognizes the dismissal of an undang if properly carried out according to the adat of the luak.

Now as well as illustrating the constitutionally inferior position of adat as a legal system in the state, this incident provides several

[1]The position has changed since independence.

[2]No. 1/1957.

[3]The Muslim charity/tax.

[4]Arts. LXIV, LXV of the Negri Sembilan State Constitution, 1959.

points of departure from the earlier incident. First, Islam was only indirectly involved. In 1957 there was no clash between the theories and tenants of two systems of law, but rather a clash between an adat usage and an Islamic (religious) obligation expressed in legislative form. Second, the state executive and legislature acted so as to make possible the non-compliance of the Undang with an adat rule. Third, no political party was directly involved. Finally, in 1957, unlike the position in 1951, Islam had been incorporated into the state constitution as the state religion and various mechanisms provided for its support and maintenance. Islam in 1957 therefore, was operating through the medium of the constitution and the legislative assembly. The final incident to be discussed here further illustrates the interplay of these factors.

ADAT AND THE STATE LEGISLATURE: 1968

In July 1968, the Mentri Besar[1] of Negri Sembilan published a series of articles in *Berita Harian*, a Malay language daily newspaper. In the first article (17 July) he gave an account of the early history of the state. In the second article (18 July) he described the matrilineal system and in the third (20 July) he stressed that adat perpateh was not difficult to understand. In the final article (21st July) he said that the state government may have to reconsider its attitude to adat because in his view its continuance was impeding the economic progress of the state. He said that the agricultural backwardness in the state was due to the fact that eighty per cent of the farm occupiers are women. The men could not care less: '*Alah adat oleh muafat*' is never given effect to, and it is always '*biar mati anak jangan mati adat*'. He also put forward the old argument that adat inheritance rules result in excessive fragmentation of estates.

This provoked little or no public reaction from adat officials (the Mentri Besar had challenged them to a forum—this has not taken place to date) but since July 1968 it has been their main topic of conversation. There seems to have been a twofold reaction to the statement. First, the Mentri Besar cannot interfere in adat because he knows nothing about it; he is only a 'Seremban[2] man and an UMNO man'. This is similar to the traditionalist argument used in 1951, namely that only the clan chiefs can alter adat, and all other

[1]The leader of the majority party in the State Assembly — analogous to 'Prime Minister'.

[2]The State Capital — used in a derogatory sense to refer to a person ignorant of adat and rural life generally.

persons lack competency. The second argument used by the adat official is to the effect that adat inheritance does not result in fragmentation, a proposition which they will find difficult to prove, but equally, a proposition which the government will find difficult to refute.

Now this bare statement of fact does not disclose any connexion with Islam. But there is a connexion, albeit one which cannot be statistically shown but which is nevertheless very real. We may demonstrate this by considering the incident in the light of the current and ever increasing changeover of land use from subsistence rice farming to cash crop farming.[1] The land coming into production is not tanah pesaka and only some of it will be charian laki-bini. The bulk of it is freehold and unconnected with adat but connected by inheritance to Islamic law. Islamic law is therefore becoming identified with economic progress, and adat with the stagnation inherent in peasant subsistence farming. Further, there is a need to increase rice production but much of the available rice land is already held under adat tenures. This only increases the already sharp dichotomy between the two systems in the minds of the Negri Sembilan peasant.

Finally we should note the source from which the 1968 incident came: from the holder of effective political power in the state, the one man, who, as head of the dominant party in the legislature, can effectively change the law. The full significance of all these factors stands out when we come to consider the systems of authority in the state.

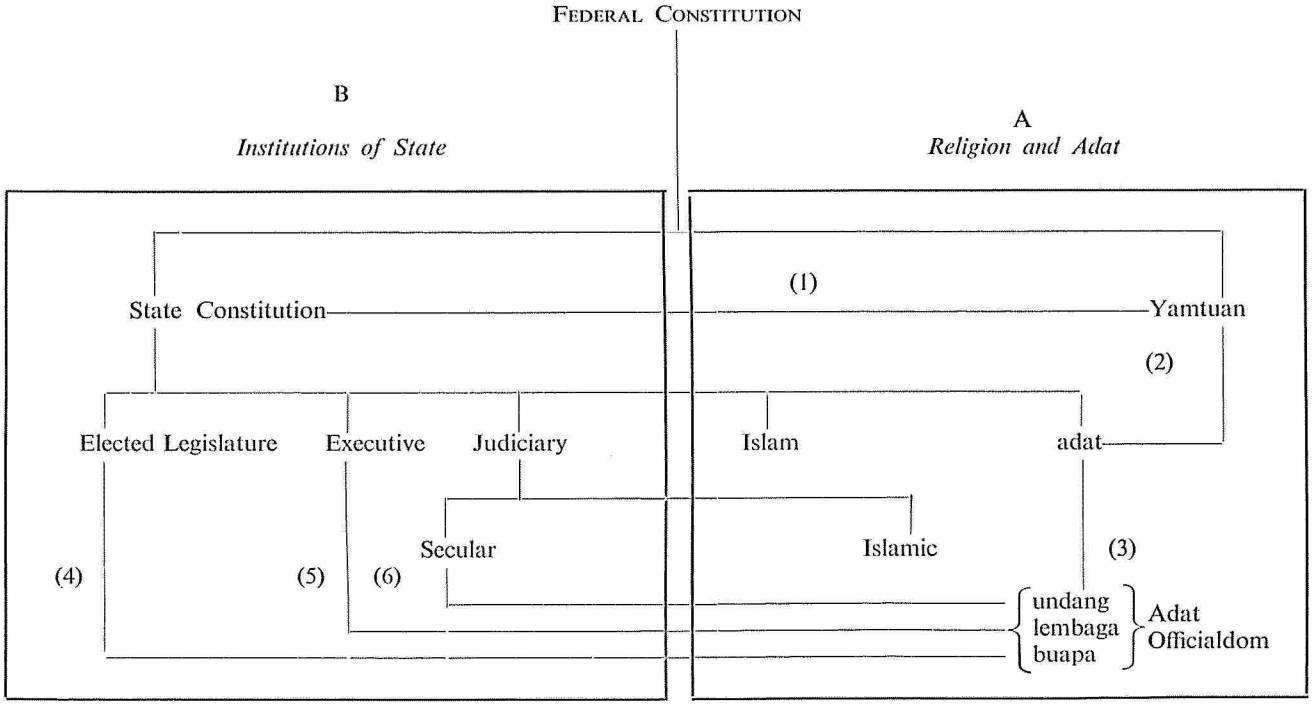
Systems of Authority

The authority system as represented in the Federal and State Constitutions is a complex whole made up of a series of interlocking factors. The system is represented diagramatically on p.217. Our diagram is divided into two boxes, respectively headed 'Religion and Adat' (Box A) and 'Institutions of State' (Box B). We may deal with each of these in turn before going on to describe the numbered lines within each box.

A. Religion and Adat

The Federal Constitution and Islam. Art. 3 of the Constitution provides that Islam shall be the religion of the Federation and that

[1]Mainly rubber, oil palm, and with some tapioca grown for commercial use.


FEDERAL CONSTITUTION
B
Institutions of State
A
Religion and Adat
(1)
State Constitution
Yamtuan
(2)
Elected Legislature
Executive
Judiciary
Islam
adat
Secular
Islamic
(3)
(4)
(5)
(6)
undang
lembaga
buapa
Adat
Officialdom

in every state having a Ruler, the Ruler shall be head of the Muslim religion and the State Constitution shall acknowledge and declare this. The effect of this provision is probably to impose an obligation on the participants in any federal ceremonial to regulate the religious parts of the ceremony according to Muslim rites (cf. Sheridan and Groves, 1967: 27–8). However, at state level, the position of Islam is more certain. In Chapter 2 of the Negri Sembilan State Constitution the following provisions are made. First, it is stated that Islam shall be the religion of the State (Art. V). Second, a Council of Muslim Religion (Majlis Ugama Islam) shall be set up to aid and advise the Yamtuan *and the Ruling Chiefs* in all matters relating to the religion of the state (Art. VI(1)). Finally, in exercising the function and powers of head of the Muslim religion in the state, '*the Ruler shall obtain the concurrence of the Undangs*' (Art. VI(2)). The provisions of Art. VI are quite remarkable in that adat officials are constitutionally involved in religious matters. It is interesting, though perhaps in vain, to try and guess what the outcome of the 1951 incident would have been had this article of the constitution been in force then. The position of the Undang especially would have been invidious.

The Yamtuan and Islam. We have dealt with this relationship above in so far as the Federal and State Constitutions are concerned. However, at the installation of the Yamtuan the rites of Islam play an important part. Before the obeisance of the undang and territorial penghulu a prayer is recited by Sri Amak di-Raja, one of the four Orang Empat Astana. This is basically an appeal to Allah to favour the present installation, combined with a plea to the four Archangels[1] to confer protection on the Yamtuan. Even more important are the prayers at the conclusion of the obeisance ceremony. These are three in number. First, the *fatihah* or first *sura* of the Koran. Second, the *Tauhid* or confession of the Unity of God. Third, and most important, is the verse 'Lo, I have appointed a caliph to be my Vice-regent upon Earth'. This, according to Wilkinson (1914: 44) gives the Holy Daulat, i.e. '... They [the prayers] are a very essential feature of the ritual of an installation and invest the Yamtuan with ... the daulat or "divine majesty of Kings"' (Wilkinson, 1914: 43). This emphasizes once again the triple function of the Yamtuan: as Penghulu of Sri Menanti and overlord of the penghulu mengadap; as the elected constitutional monarch of the state; and finally as the head

[1]'Jibrail, Mikail, Israfill, Izrail' (cf. Sheehan, 1936:238).

of Islam in Negri Sembilan. He, like the four undang, is caught fairly and squarely between the adat and Islam.

Islam and the individual. It must never be forgotten that each individual Malay peasant has a personal and intimate link with Islam. At this grassroots level localized adat/Islam conflict is only too possible and, in fact, it is not uncommon. There are minor squabbles between *kathi* and lembaga on matters of land inheritance. This seems to be mainly a result of personal ill-feeling and nowhere has it escalated to the 1951 dimensions. Some dispute does, however, arise at the level of Collector's proceedings. These proceedings, either on sale or death, settle the transfer or transmission of land. They are held informally in the District Office in whose area the land is situated. In the case of distribution on death it is the practice to obtain a kathi's certificate setting out the Islamic fractions to which each claimant is entitled. Only then do the proceedings commence and only then is the law applicable to the land (adat or Islamic) ascertained. This practice causes annoyance to most clan chiefs who claim that the order should be reversed. They are quite willing to admit Islamic law once the land in question is shown to be not subject to adat, but claim that the issue of the Kathi's certificate prejudices the findings on this point. So far as the writer can judge from his presence at distribution proceedings this claim is not well founded. The Collectors, in fact, are most meticulous in their findings.

B. Institutions of State

Politics and the Federal and State Constitutions. Both constitutions, by providing for a parliamentary system, imply the existence of political parties. The relevant party here is UMNO which, as noted above, sparked off the 1951 incident. This party, which draws its support solely from the Muslim Malay community, has always emphasized its concern for the welfare of Islam. It has shown this by spending large sums of money in the construction of mosques and prayer houses. Active Islamic influence is also apparent in the occupation figures of the UMNO candidates in the 1964 elections. Out of 218 candidates who contested the election, forty-two were teachers, thirty-one of whom were from the Alliance and PMIP[1] and were mostly employed in 'Malay or Muslim religious schools' (Ratnam and Milne, 1967: 99). But this of itself does not mean that these party members will be 'against' adat merely because of their occupa-

[1]Pan Malayan Islamic Party — The Malay nationalist/Islamic party.

tional backgrounds. In fact, some known to the writer admire and appreciate the values of the adat constitution. But to the extent that the preservation and encouragement of Islam is an important plank in all the Malay-based political parties, politics and Islam do form a contextual framework within which the adat and secular components of the constitution operate.

The nature of the relationships indicated by the numbered links on the diagram p. 217 may now be described briefly.

1. *The State Constitution and the Yamtuan.* The State Constitution is of course derivative of the Federal Constitution. Article 160(2) of the latter defines the 'Rulers' of Negri Sembilan as the... [Yamtuan] '*and* the Ruling Chiefs' (cf. Sheridan and Groves, 1967: 219). Art. 71(1) guarantees the right of a ruler to succeed to the privileges and powers of the office though the title to succession shall be determined solely by the provisions of the state constitution concerned.[1] Article 71(2) provides that Article 71(1) shall apply to Negri Sembilan with the necessary modifications, i.e. in respect of the Ruling Chiefs. The guarantee under these clauses may presumably be enforced by legal proceedings undertaken by the Federation or by the use of the Federal army and police.

Article 181(1) saves the ruler's sovereignty, prerogatives, etc. except where these are altered in accordance with the provisions of the constitution. This article specifically applies to the Ruling Chiefs acting within their respective territories. The Negri Sembilan State Constitution (1959 and amendments) contains the following provisions. First, under the provisions of Chapter 8 the Yamtuan must act with the four Undang except in respect of his regulation of the royal properties (Art. XL(2) (g)). Second, the whole of Part II of the constitution, which makes provision for the machinery of government, gives the Yamtuan the powers and functions of a constitutional monarch. Thus he appoints the Mentri Besar who is the leader of the majority party in the State Assembly (Art. XXXVI). The Yamtuan also appoints the State Secretary, State Legal Adviser and State Financial Officer. He also appoints the Executive Council on the

[1]Art. VII(4) of the Negri Sembilan State Constitution provides that the Yamtuan shall be succeeded by the following classes of person in the order stated:

i. The brothers of the deceased Yamtuan,
ii. The paternal uncles of the deceased Yamtuan,
iii. The grandsons of the deceased Yamtuan,
iv. The sons of the brothers of the deceased Yamtuan, and
v. The sons of the paternal uncles of the deceased Yamtuan.

advice of the Mentri Besar (Art. XXXVIII(2) (a) (b)). The Ruler also has power to grant pardons and reprieves etc. though this is subject to the provisions of Article 42 of the Federal Constitution. The Legislative Assembly is summoned and dissolved by the Yamtuan (Art. LXI) and he may also address the Assembly (Art. LIX). No bill becomes law (called an enactment) until assented to by the Yamtuan as witnessed by his signature and seal (Art. LXIV). He also has a special function under Article LXXV in safeguarding the special position of the Malays in the state. This covers such matters as the award of scholarships, positions in the public service and the issue of licences to trade or carry on business in the state. Finally, he may (with the concurrence of the Ruling Chiefs) amend the first part of the constitution, i.e. that part which does not touch the machinery of government (Art. LXXVIII(2)). This power is slightly restricted, however, in that he cannot alter the State or Royal emblems, or abolish adat ('the ancient constitution'—Art. XXXII) or change the name of the constitution. In other words he may alter the nature of his relationship to the undang but only with their concurrence.

The Yamtuan then is a constitutional monarch. His actions in respect of adat or religion must therefore be constitutional. Since both these institutions are also provided for in the constitution it is clear that any conflict between them will be minimized. The reason for this is quite simple. A reference to the diagram above will show that other and possibly counter-balancing factors will achieve some sort of balance in the conflict. The most important of these are probably administrative and political factors (cf. summary below pp.226–7). But the very formalization of the Yamtuan's position in a constitution containing provisions for both adat and Islam must inhibit a repetition of the 1951 experience, though it will not prevent a repetition of the 1957 or 1968 incidents.

2 and 3. *The Yamtuan and the Adat Constitution*. This has already been dealt with (cf. Chapters 6 and 7). The main point to note here is that a balance of power has been reached between the Yamtuan and the four Undang. This balance is enshrined in the constitution.

4. *The Elected Legislature*. Both Federal and State legislatures are competent to pass legislation which may and does effect adat in Negri Sembilan. Examples of three types of legislation will suffice.

First, the Federal Parliament has passed acts which, though they do not touch on substantive issues of adat land, may affect landholding and use in Negri Sembilan. Thus, the Federal Land Development

Ordinance[1] sets up a Federal Land Development authority charged with improving land use in the Federation. For this purpose, the Authority is defined as a 'Malay'[2] and may therefore acquire Malay Reservation Land, and charge, or in general deal with such land. All land held under adat perpateh is *ipso facto* Malay Reservation though its ownership is restricted to a certain class of Malay only. The Authority may also make loans for land development but these will not be given in respect of land, the title to which is marked 'customary' because the authority, though it is 'Malay', cannot deal with such land.[3]

Second, the Federal Parliament may and has enacted legislation which directly touches substantive adat issues. The most important existing example is the Small Estates (Distribution) Ordinance.[4] The purpose of this act is to provide for the distribution of small estates and to prevent 'the excessive multiplication of interests arising from inheritance'. The act is divided into five parts, the third of which (sections 20–5) is entitled 'special provisions relating to Negri Sembilan'. This part makes provision for the applicability of adat principles (s. 24) and also ensures that it is read with the Customary Tenure Enactment,[5] a pre-independence Federal ordinance. This illustrates the fact that adat matters can become the concern of the Federal Parliament.

The State Legislative Assembly is competent to pass acts affecting adat matters, specifically matters of land tenure within the territorial boundaries of the state. Thus, for example, it has amended the Customary Tenure Enactment by the act of 1960 providing for Lengkongan land tenure. In an earlier article (Hooker, 1968: 424) the writer has argued that this enactment, which provides for a system of inheritance mid-way between adat and Islamic principles, may be interpreted as a gain for the Islamic faction in the state. The main reason for this is that the act presupposes and perhaps even encourages the breakdown of lineage exogamy. Now such an interpretation is perhaps justified but it is not the whole explanation. The position of the Yamtuan and the structure of the Lengkongan

[1]No. 20/1956.

[2]Section 58(1).

[3]A similar situation arises in respect of the Majlis Amanah Ra'ayat Act. No 20/1966. This provides for the economic and social development of the Federation, especially the rural areas (s.6). The body which performs this function is also a 'Malay' (s.36).

[4]No. 34/1955.

[5]Cap. 215, revised laws of the Federated Malay States, 1935.

clans (cf. Chapter 6 above) must be taken into account, and the connexion between the Yamtuan and Islam pointed out earlier in this chapter should be noted.

To summarize: the Federal legislature is competent to directly affect adat land tenure and inheritance as is the state legislature. At the state level Islamic influence in this operation may, in one circumstance at least, be inferred. Second, the Federal legislature is competent indirectly to affect adat in a negative way by excluding land held on adat tenure from developmental grants in aid.

5. *The Executive and Adat.* There are two aspects of this relation. First, the attitude of the administration to adat matters, especially land tenure. This is a matter upon which no 'hard' data exists and one must be content with the impressions of various writers. Josselin de Jong mentions (1960: 169) the opinions of the District Office in Rembau in the 1951 incident as being pro-Islamic and anti-adat. Swift mentions (1965: 93–6) the attitude of the State executive in the Islam/Undang incident of 1957. The writer's experience in the state records the influence of a District Officer who said that 'adat must prevail over Muslim law'. In addition, the impression gained from field experience is that the opinions of senior members of the executive, while they vary enormously, are very influential and may affect land tenure disputes. They effectively hold the balance of power in cases of divided opinion.

However, the nature of the Malayan bureaucracy is not at all well-known. Allen (1970) provides a useful historical survey of the old M.C.S. up to 1941, both as a bureaucracy and as a Malayan elite. And Ness (1970) continues Allen's survey with some notes on the post-independence period also in terms of bureaucracy and elite. Attention is drawn to the suggested characteristics of indigenous officers who took control, especially in the old Federated Malay States, of which Negri Sembilan was a part (cf. Ness, 1970: 181–2). The development and elaboration of the bureaucratic machine is of course not a phenomenon confined to Malaya alone and neither is its use as an agent of 'modernization' in the context of peasant subsistence farming. While there are legal innovations in modernizing peasant farming (e.g. land redevelopment loans, rubber replanting subsidies, provision for mechanization) which are administered through the new nationalist based bureaucracy, the latter also has to administer the traditional sources of power (Islam and adat) in the state. Indeed so important has the bureaucracy become,

that one may see it as an alternative centre of power both to the traditional centres and to modern parliamentary-type legislature. This is especially obvious not only in the context of the peasant farmer but also in such matters as the administration of education, welfare, rubber marketing and so on. As the economy of the peasant moves from subsistence rice to cash, rubber and the double cropping of rice for the market (cf. Swift, 1965: 26–77, Silcock, 1961; Ho, 1967: 68–93) the influence of the bureaucracy in finance, organization and in general control, grows in proportion. This is a topic in which further research could be usefully concentrated.

The second aspect in the relation between the executive and adat is to be found in the structure of the state bureaucracy. The most important componant is the District Office and District Office proceedings on the devolution or distribution of land provide the main effective link between the State and Federal legislatures and the people. We can outline the characteristics of this link by describing briefly a distribution proceeding;[1] the following are the main points in a distribution arising on the death of a landholder:

a. Those present are the claimants in the distribution, including in one case a creditor of the deceased, and the clan chief of the clan concerned. His presence is essential.

b. All parties, including the clan chief, are sworn.

c. All parties are identified and a death certificate in respect of the deceased is produced and noted in the Minute Book by the Collector.

d. Extracts from the Mukim Register held by the claimants to the land in question are produced and examined.

e. If the nature of the land (i.e. charian laki-bini or pesaka) is not in dispute an explanation is given by the Collector and the clan chief on the relevant rules of adat governing distribution. Great care is taken to see that the persons involved understand clearly the relevant rules.

f. If the character of the land is in dispute then each party states her/his case to the Collector. A Kathi's certificate is always required at this stage. This sets out the shares for each claimant at Islamic law. Evidence as to the character is also given by the clan chief. Most disputes revolve around whether or not land is charian laki-bini, *pembawa* or neither, and current practice, which is in accordance

[1]The proceedings described here took place in the Kuala Pilah District Office in 1966. The same procedure is followed there today and, in essentials, is to be found in all other District Offices in the Malay States.

with adat rules, is to take the date of marriage as the relevant date for determining character. In many disputed cases the parties eventually reach a compromise solution in which the shares stated in the Kathi's certificate serve as a bargaining basis. The Collector makes every attempt to achieve a compromise.

g. Once the shares have been established the Collector explains the exact legal effect of the distribution. The shares are then noted in the Minute Book and the order or distribution is made. These are later transferred to the Register Books which contain the land titles and it is from these books that Mukim Extracts (copies of title) are issued.

h. The assent of the clan chief is also noted in the Minute Book.

j. Finally the Collector explains to the parties that the distribution order does not become 'absolute' until a period of one month has elapsed and within this time the parties may appeal against his distribution.

This procedure is characterized by its speed—undisputed distributions take about 10 to 15 minutes, cheapness—there are no costs, and informality.

Appeals from the Collector's decision may also be administrative or executive matters. Appeals are heard by an Appeal Committee set up under Section 19(1) (a) of the Small Estates (Distribution) Ordinance. The competency of this Committee is confined to matters of 'Malay custom'. This, in effect, means that the committee may ascertain actual adat rules only. It cannot decide on the relationship between these rules and State or Federal statutes. A survey of appeals recorded in the Kuala Pilah District Office shows that the Committee deals only with substantive rules of adat and makes decisions on these and on the facts in each case.

One further point should be mentioned. In all Negri Sembilan District Offices the writer has seen copies of various articles on adat—usually articles by Taylor (1929, 1937, 1948). The first of these is confined to the luak of Rembau, as is the bulk of the third. The second deals largely with Islamic law but its adat sections once again are mainly drawn from luak Rembau. Now all authors on adat perpateh stress the variability of adat rules from one luak to another[1] and even within the confines of one luak. There is a tendency, however, for local administrators to apply these written rules indiscri-

[1]This has been recognized by the legislature: section 24(c), Small Estates (Distribution) Ordinance 1955... [land] 'may be transmitted according to the custom of the luak'.

minately in all luak, and this has recently been judicially frowned upon. The court, in *Abas* v. *Hajjah Saelan*,[1] recognized that adat rules vary from place to place and said that the Collector should not rely upon authorities which state adat from different luak. He should attempt to establish the adat applicable in the luak in which the property is situated by consulting the relevant clan chiefs.

6. *The Secular Judiciary and Adat.* This link has already been dealt with (cf. Chapter 3 above). It may be noted here that any person affected by the decision of a Collector may appeal to the High Court —Section 19(1) (b), Small Estates (Distribution) Ordinance. These appeals relate solely to the character of land, that is, whether it is pembawa or charian laki-bini. The persons affected may appear either in person or through an advocate (section 19(4)). The main characteristic of this link at present is to draw our attention to the proposition that absence of endorsement of title does not automatically preclude adat in favour of Islamic law. It does emphasize, however, that these are not the only two alternatives of law applicable: there is nothing to prevent the court from finding as a fact that some other adat (temenggong) may be applicable.

Summary and Conclusion

We may best summarize the conflict materials and the authority system by examining Josselin de Jong's binary oppositions (1960: 191–3). He notes that there was not a simple opposition, *adat* vs. *shara'*, in the 1951 incident, but that the ramifications of the incident were much further reaching. These, he arranges in two opposing columns—the binary oppositions (1960: 192) thus:

adat	*sharak*
1. Lembagas	politicians
2. [Political parties]	UMNO
3. 'commoners'	'princes'
4. women	men
5. daughters	sons
6. pesaka	charian
7. land, houses	money
8. rice	rubber

Numbers (1) and (4)–(8) are self-evident oppositions. Number (2) relates to the fact that some support for the adat position was forth-

[1][1967] 1 M.L.J. 212.

coming from members of two, now defunct, opposition parties. We may note that at the elections of 1959 and 1964 all four Negri Sembilan rural seats went to Alliance candidates (Ratnam and Milne, 1967: 365) all of whom were UMNO members. This opposition is thus not relevant at present.

Number (3) refers to the activities of a member of the Negri Sembilan royal house who was opposed to adat mainly on the ground of its 'unfair[ness] to men'. This opposition would conceivably still be valid today if we admit the present day validity of such a binary structure. This is the crux of the whole Islam/adat complex: can it be described in this way? In one respect the answer is 'yes it can': the oppositions are ones which either are or reasonably could be verified by factual data. But the opposition is limited in that it ignores the post independence power structure in the state. One cannot speak of Islam without a reference to the constitution and to legislative acts. The position is similar in the case of adat. In addition both clan chiefs and politicians have connexions with Islam but the activities of both are limited by the constitution and by legislation and also by references to Federal policy matters as set out in such things as the Federal Land Development Authority. The state administration is also involved in any conflict and though it may support one side or the other it will do so because of what it regards as its own best (i.e. administrative) interests.

Similarly, the position of the Yamtuan and the ruling dynasty can never again be unequivocally on the Islamic side. There are too many ties between the Yamtuan, adat and the State constitution for this to be possible.

In brief, it may be concluded that the creation of a parliamentary system of government, which has made provision for a balance between Islam and adat, has effectively removed the possibility of face to face conflict except at grass roots level in a minor way. Except in really exceptional circumstances which cannot be foreseen, the total weight of modern government paraphenalia in all its aspects—legislative, judicial and executive—will prevent a repetition of the 1951 incident. Future clashes will almost certainly take the form of the 1957 and 1968 incidents. But these will be conducted and determined within the systems of authority set out above.