

MEDIATING CULTURE: CUSTOMARY LAW IN YEMEN

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Rashād al-‘Alīmī writes that tribal laws are antiquated survivals, remnants of laws imposed historically by political leaders in pre-Islamic times (Al-‘Alīmī and Dupret 2001). Although this is sometimes the case, and precedents set by leaders do influence customary laws, especially in some of their details, I argue that the principles of tribal law are generated by values that permeate all levels of social life. Rather than reputed survivals, they are constantly recreated by living societies. This largely explains the broad similarities in principles of customary law across Yemen and the Arab region, as well as the similarities between *sharī‘a* and custom. It explains why customary laws do not necessarily change with shifts in regime, in contrast to State law which often does. Paul Dresch alludes to a similar notion when he writes, “Tribalism is not so much a mechanism like so much clockwork but a way of perceiving the world” (1984b:171).

A major principle underlying customary law is the importance attached to the process of mediation. I will focus on mediation in this paper recognizing it as only one facet of customary law but one that is central and basic to almost all dispute resolution in the region. When Westerners observe that “Arabs are fond of litigation” (Stewart 2006:239), they are commenting on the ubiquity of mediation. I will show that disputes resolved through mechanisms of customary law are an extension of mediation processes that permeate social life and that are put into play at all levels of dispute.

That mediation is fundamental to the resolution of conflict in Yemen is widely known (Al-‘Alīmī and Dupret; Adra 1983; Dresch 1981, 1984a,b; Rossi 1948). That mediation is the first resort in the resolution of a wide range of disputes is not recognized as often (but see Caton 1987) and will form the subject of this paper. Unless otherwise noted, case studies described in this paper are based on several periods of field research in Yemen between the years 1978 and 1986, 2001-2004, and in the winter of 2005.¹

¹ Fieldwork in Al-Ahjur in Yemen’s northern highlands was funded by a National Science Foundation Grant for Improving Doctoral Dissertation Research and a Temple University Graduate Fellowship in 1978-79. My fieldwork in 1983 focused on local attitudes toward breastfeeding and fertility and was funded by a MEAward in Population and Development, The Population Council. My 2005 research on changes in dancing and tribal identity was funded by the American Institute of Yemeni Studies. Other research in Yemen was conducted in conjunction with a variety of consulting assignments.

Additional information was gathered through interviews with Yemeni Shaykhs and judges in September 2004 and November 2005, and several meetings with Yemeni folklorists at the home of Muhammad Muhsin Al-Amri in 2005.

The Mediation of Disputes

In inter- and intra- tribal disputes, a middleman is sought to mediate.² He may be a tribal leader who is not involved in the particular dispute, a respected person from outside the tribe such as a *Sayyid*, or any man who has gained a reputation as a good mediator.³ To begin the process, disputants turn their daggers over to the mediator. They may also turn in rifles, pistols or, in lesser disputes, watches. (Women offer watches, jewelry or cash.) With this gesture, known as *'adāla* or *'adal* (equivalence),⁴ the disputants signal that they have submitted to arbitration, that no further acts of aggression will occur during the mediation process, in fact that they will not eat together or communicate with each other except through the mediator until the dispute has been resolved. These weapons or other valuables are returned at the end of the proceedings. Once the mediator is brought in, any continuation of the dispute will be perceived as a serious insult to him, and he can initiate proceedings against the disputants.⁵ The mediator usually is paid for his services, with each side paying half: "Some take very little and others are notorious for their avarice, but the tribesmen value highly the ability to compose disputes and will adhere to a shaykh who has this ability even if...he "eats" their money" (Dresch 1984a:41). If the disputants are not pleased with the decision, they can appeal the case, usually to State courts (on this, see also Rathjens 1951:179).

There are regional variations to this pattern. Dostal (1974:6) writes that disputants in Bani Hushaysh had to pledge 7,000 Yemeni riyals in addition to handing over their weapons as a guarantee that their opponents will not be killed during the proceedings. This places the disputants, who presumably would prefer to kill each other, effectively under each other's protection. Glaser (1884:177) writes that the mediation process begins with a common meal which opens the way for negotiations. Whatever the method used the aim is to insure that no acts of aggression will occur while the dispute is under arbitration.

The mediation process itself, when each side presents its case, is often quite informal. It takes place in a large guest room (*dīwān* or *majlis*) as men chew qat (Catha

² In this paper I will not distinguish between "mediator" and "arbitrator".

³ There have been documented cases in which *Muzayyins* known for their abilities to mediate and knowledge of customary law have been asked to mediate disputes. *Muzayyins* are low status clients of the tribes who are usually drummers, musicians, butchers, barbers and circumcisers.

⁴ Terms vary with region. Walter Dostal (1974:7) reports use of the same term. Elsewhere it is called *'idāl*. In Taiz, it is called *tarakh* (al-'Alīmī and Dupret).

⁵ "Such relations are far more compelling than those which derive from mere common membership of a tribe or section" (Dresch 1984:39). See also Stewart: "The effect of this structure is to preclude violence" (2003:229).

edulis, a stimulant), smoke water pipes or sip hot drinks (if they are not chewing qat). *Qabā'il* do not wait to be invited to attend proceedings. Anyone who is interested attends and takes part in the discussion. Voices may be raised, and opinions are given freely. The mediator at whose house the case is heard follows the consensus of those present in passing judgment. Mediation for disputes that cross tribal boundaries tends to be somewhat more formal and the mediators important personages. According to Rossi (1948:25) only mature male, Muslim *Qabā'il* or *Sādā* who are not currently embroiled in a dispute may testify. More care is taken in recording the dispute, and the mediators and distinguished attendees are asked to sign the document.⁶ Otherwise, the process is similar to the one described above.⁷

Women in the community also meet to discuss the case. They will meet in a separate room of the same house or in another house. In the evenings, cases are discussed at home among family members. When the men return to the *majlis* (meeting or meeting room) the next day, they bring with them not only their own opinions but also those of their wives, mothers and sisters. In nomadic households in Yemen, women may participate from their side of the tent (or of the discussion space in the absence of tents). They may speak through a curtain or participate directly. Thus, although women are formally “invisible” they actively participate in the process.

It may happen that a wrongdoer refuses to submit to arbitration in spite of repeated coaxing by friends, relatives, or other interested parties. In such extreme cases he may be trapped into acquiescence. While he is praying in the mosque a sheep will be brought in. Without his knowledge it will be sacrificed at the entrance of the mosque just before he exits so that he is forced to step over the sheep as he comes out of the mosque. By stepping over the sacrificial animal he has, willy nilly, agreed to submit his differences to mediation. Another way to force disputants to negotiate their differences exploits the value placed on hospitality. A large number of mediators and their entourages “visit” each disputant, forcing them to offer hospitality for as long as the guests remain. The enormous costs soon force the disputants to acquiesce.

More often than not, disputants present their case in the form of short poems and/or rhyming proverbs. Poetry is particularly adapted to mediation because it is indirect, and a good poetic turn can synthesize the complexities of a situation without offending one of the parties. Even when insults are traded during dispute mediation poems are seen more as challenges demanding response in kind than direct hits (Caton 1991). For women and men in Yemen, poetry has historically provided a socially accepted medium for the public expression of deep feelings of sorrow, joy and concern. Most rural and many urban Yemenis can compose short 2-4 line poems or, at the very

⁶ “One needs shaykhs who are sufficiently well-respected or influential for a breach of the peace which is an insult to them to be felt also as an insult by their men so that collective action will ensue to restore the peace” (Dresch 1984a:41).

⁷ See also Gingrich (1989; 1997) and Weir (in press).

least, improvise on commonly heard tropes.⁸ Steven Caton (1991, 2005) describes the use of poetry in formal dispute mediation. In my own fieldwork, I noted that annoyance with family members or affines is often first expressed with two-line poems. This provides the antagonist an opportunity to respond with an apology or to counter with another poem before the dispute escalates.

These are the general rules of the system. In practice, however, there is considerable flexibility in the application of the procedures described. Several mediators may be asked to intercede on behalf of one of the adversaries, the mediator and arbitrator may be the same person or not. In one of the cases discussed below the plaintiff was asked to mediate between those who quarreled on his land. Shouting may replace poetry.

Some quarrels between households may be resolved without the use of an intermediary, especially if they have not drawn public attention. When one party is appraised that it has insulted the second, the culprit (or a representative), will go to the house of the victim with a sheep for slaughter as apology. The meat is shared by the two parties whose differences have thus been resolved (Meissner 1980:6). In Al-Ahjur the victim often forgives the culprit verbally before he actually slaughters the sheep; his gesture is considered sufficient apology and the quarrel is forgotten. Alternately, an individual who wrongs another may simply take a gift of money to the person wronged as an apology.

Mediation as Practiced in Yemen

Mediation is basic to dispute resolution in Yemen even at the highest levels. Inter-tribal disputes as well as disputes between tribes and the State are resolved through mediation if they are resolved at all. Official attitudes to customary law are ambivalent. While on the one hand, State-appointed judges, lawyers and many parliamentarians condemn customary law and insist that *sharī'a* is the only law of the land, others argue that there are no serious differences between *sharī'a* and custom. In practice, even a trained, State-appointed judge will arbitrate disputes according to custom.⁹ There have been occasions in the recent past when the President mediated disputes between tribes or arranged for their mediation (Al-Zwaini 2005). I have been told that the President sometimes pays blood money in order to put an end to blood feuds.

The Second Law of Arbitration (33/1981, Article 21) in the Yemen Arab Republic validated customary law: "*Al-aslāf wal-a'rāf lihā ḥukumhā wa yurā'ī fihā ḥaqq al-damā' wa ḥasm al-khilāf*" (Traditions and customs have their own jurisdiction with

⁸ When women ground grain by hand, they frequently sang their own compositions. These sung poems were an accepted form through which they could express their opinions of potential suitors or other family issues. Currently, local musicians at weddings will tailor their songs to the situation of dancers, providing social commentary in the process.

⁹ The whole process of imposing arbitration on those at odds is common to tribal and governmental practice (Dresch 1989:80).

observances/protections that include the sparing of blood and the settlement of conflict - Al-Zwaini 2005:327, 334 n. 70).¹⁰ Although subsequent laws of unified Yemen no longer support such a legal menu, the revised law of arbitration (1992) gives tacit approval to the resort to mediation. With the exception of disputes that have historically been considered religious and those connected to the “public order” (Al-Zwaini 2005:327), results of arbitration are considered legally binding provided that both parties in a dispute have willingly agreed to arbitration.

Case Studies

The following case studies were collected during field work in Al-Ahjur, a spring-irrigated basin about 45 km NW of Sanaa. Politically, this area of about 25 villages is defined as an *‘uzla* (subdistrict) of the Mahweet Governorate. As in other irrigated regions of Yemen, there is no blood feud in Al-Ahjur.¹¹ The absence of blood feud does not imply that all disputes are quickly resolved. Some conflict, e.g., border disputes, homicide, can last for years or get reopened years later, because full indemnities are rarely paid up. There is no question that the majority of its inhabitants self-identify as tribal (*Qabā’il*). Social organization follows that of the northern highlands, and principles of customary law here are essentially similar to those elsewhere in Yemen (Adra 1983).

In Al-Ahjur, as in other agricultural highland communities, the village is the unit that corresponds most closely to a “blood money group.” It is the unit responsible for resolving disputes within the village and paying reparations when one of its members commits an offense against a member of another village. This is also the unit from which labor is recruited in cooperative projects such as building mosques, schools and roads, and in cleaning cisterns. In the past, when there was a danger of raids from neighboring tribes, the entire village harvested grain together. The village claims rights of access to common grazing land and water sources, but does not own agricultural land in common. The largest land owning group is the household. Water rights for irrigation are tied to particular parcels of land.

Case 1. Ali and Hadi (1979)¹²

The following case, which involves a quarrel between two tribesmen, ‘Alī and Hādī, illustrates several points discussed above. ‘Alī is a hired laborer of a wealthy *Sayyid* (Abd al-Walī) from Sanaa, who resides in Al-Ahjur with his wife and children.

¹⁰ My translation of this article differs slightly from Al-Zwaini’s.

¹¹ I have been told repeatedly that blood feud is only found in areas of rainfed irrigation. Yemenis I have talked with say that those who live in irrigated areas would have too much to lose in a blood feud. They contrast this with rainfed areas which are so poor that the populations has only its honor to defend.

¹² This description is compiled from notes on the case taken by Daniel Varisco, who attended the mediation discussion (Varisco 1982:349-355) and my own notes taken during the women’s discussions of the case (Adra 1983:201-203). Names of individuals and villages are pseudonyms.

‘Alī does not own any land of his own although he does work land that his wife inherited. To rely entirely on wages for subsistence is considered demeaning to most tribesmen, so ‘Alī is subject to a continual barrage of taunts from a young man named Hādī, who irrigates land adjacent to that of the *Sayyid*.¹³

For a few months Hādī has been hurling insults at ‘Alī then running away leaving ‘Alī angrier by the day. One morning Hādī insulted ‘Alī as the latter was irrigating the *Sayyid*’s land. ‘Alī responded by striking Hādī on the shoulder with his shovel scoop (*majrafi*). Hādī reacted by grabbing ‘Alī’s dagger. In the ensuing struggle ‘Alī was nicked in the hand. The drawing of blood made this a serious incident, so Hādī ran away taking ‘Alī’s dagger with him. The angry ‘Alī then diverted Hādī’s share of the water flowing in the channel into the *Sayyid*’s fields. This is Ali’s version of the story. Hādī’s version is that he was hit on his shoulder from the back. He turned around to see ‘Alī’s knife poised ready to kill him. He then grabbed ‘Alī’s knife and fled. He later gave both his and ‘Alī’s daggers to the *Sayyid*, thus requesting the *Sayyid* to mediate the case and indicating his willingness to accept mediation. Abd al-Walī himself is frequently sought as a mediator of disputes in the area.

By the afternoon of the same day accusations were flying throughout the local community. ‘Alī normally chewed qat in the afternoon with his employer. The number of men at this daily chew was usually quite small, but on this particular afternoon the room swelled with men interested in the dispute. Some men had already formed opinions on who was to blame, but others came to see what the mediation process would reveal. Both ‘Alī and Hādī appeared at the session unarmed. Also present were the Shaykhs of ‘Alī’s and Hādī’s villages and the *Muzayyin* of Hādī’s village.¹⁴

During the conversation a great deal of shouting took place, but there was no interrogation by the mediator. The argument looked chaotic. At times, men who were listening would urge calm. Yet both disputants had the opportunity to make their claims and hear the immediate responses of their peers. According to ‘Alī, the fault was with Hādī, who was continually taunting him and committed the shame (*‘ayb*) of pulling a dagger on him. The fact that this was ‘Alī’s own dagger added to the shame. Hādī, on the other hand, claimed that ‘Alī had raised the dagger in an attempt to kill him. “Am I a woman,” he asked, “to let ‘Alī kill me with his dagger?” Hādī said he struggled with the enraged ‘Alī, disarmed him, and ran off to prevent further problems. He then accused ‘Alī of stealing his share of water. ‘Alī replied that he took the water in retaliation after Hādī had run off. Furthermore, the water would have been wasted had he not taken it, since there was no one to divert it. The fact that Hādī nicked ‘Alī and ran off with ‘Alī’s

¹³ As is the case elsewhere in the northern highlands, most tribesmen own some land. Although Hādī and other tribesmen also work for wages for the *Sayyid*, they do so as a supplement to their income. ‘Alī is disdained for getting his income primarily from wage employment, for “taking bread” from the *Sayyid*.

¹⁴ In addition to his roles as musician, butcher, barber and circumcizer, the *Muzayyin* in Al-Ahjur is the ritual expert charged with dividing the *hijār* according to custom. For his services, he receives the head, neck and skin of the animal.

dagger stood out in the minds of many who had come to the chew. The effects of qat heightened the sense of melodrama as both disputants sought to defend their actions.

While the men were discussing this issue, the women of the community gathered in another part of the *Sayyid*'s house to discuss the case with his wife, who also offered her expert opinions. The women who served *qahwa* to the men¹⁵ and prepared the coals for their water pipes lingered in the doorway as long as they could do so with propriety, then reported on the men's discussion to the women assembled inside the house. Sometimes they loitered around the open windows to hear what was being said. Children, who moved freely between the men's and women's meetings were marvelous messengers, providing verbatim accounts of the proceedings.

This was an unusual case in that there was no eyewitness to the struggle. Furthermore, 'Alī freely admitted stealing Hādī's water. Several men noted a further complication to the dispute. The fighting had occurred on the *Sayyid*'s land. This constituted an insult to the *Sayyid*. Fighting, diverting water, grabbing a weapon were all examples of inappropriate behavior, but the disputants' most serious breach in the eyes of the community and the mediator was that they quarreled on the *Sayyid*'s land, an affront to his role as protector. The consensus in the *majlis* was that each man had wronged the other, both had wronged the *Sayyid*, and neither could justify his actions. After about two hours of debate it was clear that both men were at fault. So far, the *Sayyid*, who was mediator and plaintiff at the same time, had made no pronouncement.

There was a further complication in this case. The fight took place near the border where three villages meet. Residents of Bayt Ma'n, a small community on the border, felt that an insult to Abd al-Walī's territory was an affront to the entire community. They argued that their community should partake of the settlement since their honor also needed to be cleansed. Abd al-Walī did not agree.

Eventually, the *Sayyid* wrote down his decision on a small piece of paper. It was based on consensus but ignored Bayt Ma'n's claim. Since both men were at fault, they would together contribute a cow (*hijār*) for damages. This would cost each of them approximately 1,500 YR (\$300 in 1979), a considerable sum for losing their tempers. (It was understood that their respective villages would help them pay this.) The cow would be butchered by the *Muzayyin*, and the meat would be divided between Hādī and his village and 'Alī and his village.¹⁶ For his role in the mediation the *Sayyid* would receive a portion of meat; this portion was increased because the struggle had occurred on his land. Until the sacrifice was made, the *Sayyid* would keep the daggers.

¹⁵ In this case, this was not coffee as we understand it but either tea or *qishr*, a Yemeni drink brewed from coffee husks.

¹⁶ In some regions in Yemen the cost of the animal is added to the entire cash indemnity. Here, it is subtracted from the indemnity. Any additional cash indemnity, not spent on a sacrificial animal, is divided as fees between the shaykh or arbitrator, the *ḍumanā'* and the witnesses.

The cow was bought at the next day's weekly market. As the *Muzayyin* was carving it up, an unexpected event broadened the original dispute. Some men from the two neighboring villages, one of which was Bayt Ma'n, grabbed meat for themselves. Consequently, those to whom the meat had been pledged did not receive their assigned portions. A loud argument and some scuffling ensued. During the confusion the *Muzayyin* and *Dawshān* were jostled about and allegedly nicked with daggers.¹⁷ Despite a heavy rainshower that afternoon, an angry crowd came to the *Sayyid's majlis* to complain about the loss of the meat due to them. The afternoon qat session at the *Sayyid's* house swelled even more than on the previous day. Seven men who had grabbed meat were required to hand over their daggers. Once again the conversation was heated and accusations filled the room. No action was taken, however, because a new village was now involved and its shaykh was not present. Resolution was postponed to the following day.

In the next day's qat session the shaykhs of each village showed up and the debate continued. There was more shouting and more men urging their friends to calm down. (The women also met as they had the previous two days.) The conversation revolved around tribal honor. It was a shame to raise a dagger against another man in anger; it was a shame to run off with another man's dagger; it was a shame to fight on the *Sayyid's* land; it was a shame to harm a member of the *Baī Khums*, who are protected as clients under tribal law.

It was clear to those who had been involved in the original case that the men who had taken the meat had no right to do so. It was decided that, although the residents of the two bordering villages felt they had been wronged, they did not follow customary procedures to redress their grievances. Therefore, they had to abide by the decision made according to due process. They were wrong to grab meat that was to be apportioned to others and to assault the *Muzayyin* and *Dawshān*. Each of the two villages implicated had to buy a cow to be distributed among all of the contenders. The decision was accepted, and there was no further escalation of the problem.

Case 2. Retaliation (1978)

In the following example, a *Qabili* is fined heavily for attacking someone who originally had wronged him. While backing up his truck, *Yaḥya* accidentally crushed a crate of tomatoes belonging to *Ṣāliḥ*. His offer to pay for the tomatoes was refused by the irate *Ṣāliḥ* who then took out his knife and stabbed *Yaḥya* in the back as he walked away. Although the wound was deep *Yaḥya* lived. *Ṣāliḥ*, who initially had been the victim, had to pay *Yaḥya* reparations of 65,000 Y.R. (\$14,444 in 1978) to cover his medical costs and a sacrifice of two cows. Not only had he tried to take the law into his own hands when he should have registered a formal complaint against the careless *Yaḥya*, but he had stabbed a man in the back, a highly dishonorable act. (As with the other cases discussed,

¹⁷ The *Dawshān* is the herald who often acts as public announcer in the market. He gets a share of meat. *Muzayyin* and *Dawshān* are members of protected status groups called *Baī Khums* in Al-Ajur, and harming them is considered a serious breach.

responsibility for reparations was divided among all residents of Ṣālīḥ's village, and the meat of the two cows were shared by members of both villages as well as the mediator.)

Case 3. Shooting a Qat Thief (2004)

One night in 2004 a man was caught trying to steal qat.¹⁸ When the man guarding the field confronted him, he tried to attack the guard with his dagger. The guard then shot and wounded the thief. The wounded man and his village brought a case against the guard, whose entire village was deemed responsible for the costs of the thief's medical treatment.

This case and its resolution led to considerable controversy. Although it followed the precepts of customary law, the victim was, after all, a thief caught red-handed. The shaykhs of all of the villages convened a meeting in which they decided new rules to deal with qat thieves.¹⁹ Currently, if a qat thief is shot in the act and killed, the amount of reparations owed to his survivors is limited to 50 thousand Yemeni Riyals (approximately \$255 in 2005) paid by the entire 'uzla. This renders each household's contribution inconsequential and affordable. If the thief is hurt but not killed, then a maximum of 250 thousand YER is paid (again by the entire 'uzla) for his medical treatment. If, however, the guard beats the thief with a stick and does not use his gun, the thief is owed no amends whatsoever.²⁰ Changing the law through consensus signaled a re-animation of customary processes. Throughout the valley, some communities have elected new shaykhs and new 'uqāl (lineage heads) in order to develop new edicts and to more effectively resolve long-standing disputes.

Case 4. Involuntary Homicide (2005)

In spring 2005, a case of involuntary homicide shocked the community. Three young men, one (Ḥamīd) originally from the community and his friends from neighboring Kawkabān, all residing in Sanaa at the time, had come to Al-Ahjur to attend a wedding celebration. They stayed with Ḥamīd's relatives. As guests they were rowdy, keeping their hosts up late at night, and rather rude. On Friday, they stayed at home instead of attending Friday prayers with the men of the community. At noon, while they were sitting in a *diwan*, one of the men was idly clicking a pistol that he did not realize was loaded. Unfortunately, he inadvertently shot Ḥamīd in the neck killing him instantly.

¹⁸ The amount of qat cultivated in this community has increased geometrically in the past 15 years. Currently, over of the cultivable land is devoted to qat. Although many families are financially better off, Qat cultivation replaces traditional subsistence crops and creates a reliance on cash which increases the incidence of robbery. Those who guard qat fields often carry pistols.

¹⁹ See Stewart (2006:244) and Mohsen (1975:113) for examples of the introduction of new laws within Arab tribal contexts outside Yemen.

²⁰ Battery is considered less problematic than other forms of assault in other Arabic tribal societies as well (Stewart 2003:209; Mohsen 1975: 128-140).

The man was horrified and immediately took responsibility. Police from the nearby town of Shibām were called and took both surviving young men to prison.

The news spread fast, and on the same afternoon the men of the community met at the house where the homicide took place.²¹ The men’s fathers were present. (Their mothers were with the women in another room.) The culprit’s family handed over several weapons to signal and guarantee their submission to mediation. In this case, the discussion (*mujābara*) was not to determine guilt or blame, and no mediator or shaykh was called. All agreed that it was a clear case of involuntary homicide. No blood money (*diya*) was due because it was considered an accident. Still, the case had to be discussed, and the culprit’s family was responsible for the costs of hospitality for those who came to discuss the case and for mourners. This included furnishing them with qat and hot and cold drinks. The family of the man who shot his friend was also held responsible for paying the victim’s burial costs and for feeding mourners who came to give their condolences to the family (They included nearly the entire adult population of the victim’s village as well as many residents of other villages who had marriage or friendship ties with the victim’s family.) Because the police had been summoned, bringing the case to the government’s attention, they would eventually have to pay an additional 300-400 thousand Yemeni riyals (\$1,530-2,041 in 2005) to the court in order to release the two young men from prison. (This is technically an illegal bribe but is so widespread that it was described to me wryly as the “government has to claim its due” - “*al-ḥukūma lāzim ta’khudh ḥaqqahā*”.)

Mediation processes were put into play even when technically there was no dispute – in this case, the men’s meeting provided assurance that no dispute would arise, and it provided support for the victim’s family. If, instead of relying on customary law, the family of the victim had decided to press charges, the culprit would have been tried in public court. I was told repeatedly that it would then have taken about 8-10 years for the case to come to trial.

Marital Disputes and their Resolution

Marital disputes are also resolved through mediation. A wife who feels insulted by her husband or in-laws will resort to mediation. As a first step, she may complain to a third party who will then mediate informally between her and her affines. If, however, she feels harassed or in a double bind, she will leave “in protest” (*ḥanaq*)²² to her father’s house, if he is still alive, or to a brother’s house or other close kinsman.

What needs to happen as soon as possible (usually within three days) is that her husband or his proxy if he is out of the countr should follow with a token of apology – a small gift. He will discuss the problem with her kinsman who ideally supports her position. For a minor problem, a verbal apology and small gift may suffice to bring her

²¹ They could have met anywhere, but this was a large house with a *dīwān* that could accommodate a large crowd.

²² The terms used for this practice vary in different parts of Yemen.

back. If the two sides cannot agree, especially if the case is one of repeated insult or if the husband has taken on another wife, her kin may request divorce and return the bride price to the husband.²³

In some cases, a wife's kin prove less than supportive. They may be reluctant to return the bride price (*sharṭ*); they may want to avoid offending their affines, as is often the case with cousin marriage; or they may simply be a nasty, sexist lot. If a wife wants a divorce and her kin will not support her, she may make herself so difficult to live with that her husband finally requests a divorce and has to pay the *mahr* due to her. Usually outside mediators are not called in, and the case is resolved by the two parties. Yet, no dispute that is made public is entirely unmediated. Marital disputes, and especially cases of *hanaq* are discussed at length by women and men of the community in their informal gatherings, as in the following case:

Case 5. A Dispute over Child Rearing (1983)

One young mother took refuge in her father's house because her husband did not want her to respond to her baby's cries at inconvenient times during the night. She felt that this put her in a double bind. She remained in her father's house for a few months, refusing to return home. At social gatherings, she politely refrained from discussing her complaint, although everyone else did so. Some women were supportive while others coaxed her to return to her husband. She ultimately did return, but not before she had made her position clear.

Case 6. The Cantankerous Father-in-Law (1978)

Some marital disputes, however, require the intercession of formal mediators as the following case reveals:

Randa, a woman whose husband (Sa'd) was away in Saudi Arabia, lived alone with her ill-tempered father-in-law, Aḥsan.²⁴ Aḥsān constantly scolded her and made unreasonable demands on her time. She had no problems in getting along with her husband when he was at home, so she did not want her father to request a divorce. But life with her father-in-law had become unbearable. She went home in protest to her father, Muḥammad. Muḥammad decided to keep her with him at his own expense (*iltazamha*) until her husband returned from Saudi Arabia. Sa'd could then exert pressure on his father to curb his excesses. Aḥsan was left alone with no one to fetch water and cook for him. Realizing that both father and daughter were adamant, he sought the help of mediators from Randa's village and secured their agreement to intervene. On an appointed day and without advance notice to Muḥammad, ten men, including the village

²³ If she or her family request divorce, they have to return the bride price (*sharṭ*) her husband paid. If her husband requests divorce, she keeps the bride price and he has to pay her *mahr*.

²⁴ In parts of the northern highlands the Arabic name Ḥasan was pronounced Aḥsan.

shaykh, accompanied Aḥsan on a visit to Muḥammad in the afternoon when most chores are over and formal visitation and qat chews occur.

The mediators first asked Muḥammad to reiterate Randa's complaints. He stated these as she had told them to him then added that his daughter had just cause (*hijja*) and that he would accept nothing less in reparations than the slaughter of a bull and 3,000 Yemeni riyals. This was tantamount to saying that he would not agree to return his daughter since Aḥsan could not possibly afford this sum. (A bull would have cost 4,000 riyals, bringing the total in dollars to approximately \$1,550 in 1978.) At this point, the mediators protested that Aḥsan had no way of collecting this amount of money. They agreed that Randa had been wronged, and that Aḥsan should not continue in his reprehensible behavior but argued that the reparations requested were unreasonably high. Muḥammad remained unmoved; he would keep his daughter at home.

The mediators then removed their head coverings and placed them on Muḥammad's lap in entreaty (*jihān*). By doing so they were asking Muḥammad to forgive (*ya'fī*) Aḥsan on their honor. This was pressure that Muḥammad could not resist without insulting his guests, so he was forced to give in. But he had made his point; it was only under the most extreme pressure that he forgave his adversary, and Aḥsan would not easily insult his daughter again. To do so would be an affront not only to her and, by extension, her father, but to the men who had risked their honor and their relationship with their neighbor for his sake.²⁵ Through further negotiations it was agreed that Aḥsan would pay the still considerable sum of one thousand riyals (\$200) in reparations. Five hundred riyals would be given to Randa, and the remainder was to be distributed among the mediators each of whom received 50 riyals. Throughout this exchange, one of the mediators wrote down the proceedings and the decision. When Aḥsan had paid the required sum Randa went back to live with him. She bought a gold coin with her share of money and wore it as a pendant. Thereafter, Aḥsan curbed his bad temper considerably.

The radical difference between the amount of reparations initially demanded by Muhammad and those finally paid Aḥsan is typical. High reparations consistent with local perceptions of the seriousness of the injury are demanded initially; then the victim is entreated to show generosity and forgiveness by accepting a smaller sum.

Case 7. The Protector as Mediator (1983)

The resolution of this dispute involved a wife seeking refuge with an unrelated man. Taqiyya, whose husband had married a second wife, wanted a divorce. Not only was she hurt at her husband's re-marriage, but she did not get along with her co-wife and felt that her husband was behaving cruelly toward her son. Normally in such circumstances, Taqiyya's father would be expected to initiate divorce proceedings. In this case he refused to request a divorce. Her husband also refused to divorce her. Meanwhile, Taqiyya's quarrels with her co-wife and her husband's brother's wives with whom she

²⁵ Compare this with Steward's discussion of *jaahih* (2003:267).

shared a kitchen were beginning to threaten the peace between Taqiyya's natal village and her husband's, as each village insisted on damages for wrongs done to one of their members.

Taqiyya felt that she could no longer remain in her husband's house, and her father refused to keep her at home. The unhappy woman decided to seek the help of her father's brother in Sanaa. On her way to Sanaa she accepted a ride with a *Sayyid* known to her. Since neither Taqiyya nor the *Sayyid* knew the address of her father's brother the *Sayyid* took her into his household as protégé, and she lived for some time with his family. By taking responsibility for Taqiyya, this *Sayyid* was obliged to take an active part in the negotiations between the families concerned and to lend his support toward ameliorating her condition. Taqiyya did not sacrifice an animal, nor did she utter the prescribed formula. To establish a protector/protégé relationship it was sufficient that she sought the *Sayyid's* help and that he took her into his household. She was roundly criticized by her affines and local gossips for putting her reputation on the line and riding in a car alone with the *Sayyid*, but ultimately her actions were justified by customary law. That this *Sayyid* had a reputation for respecting tribal women was in her favor as well.

Case 8. Ramadan Dispute (1979)

Whenever a quarrel breaks out in public observers will intercede voluntarily whether or not they know the adversaries personally. In such cases the observers, who may be women, offer their opinions freely and negotiate with the adversaries urging them to come to their senses. These informal methods of intercession are usually successful and have considerable preemptive value. If a quarrel develops too quickly and a fight breaks out before a third party can intervene, as may happen, for example, during the fasting month of Ramadan when tempers are quick and reflexes slow; the observers immediately grab the adversaries and pull them away from each other. Those pulled apart in this manner usually remain apart. Intercession in disputes is important. If a quarrel breaks out with no one to intercede, the disputants will shout loudly and angrily to attract the attention of a *shaykh* or other mediator.²⁶

In the following case, mediators intercede without formal invitation, but their intercession clearly deters physical violence. Near the end of the month of Ramadan in 1979 a truck parked in a busy marketplace was being loaded with goods and people who were returning home to their respective villages. Suddenly, two men standing on the back of this truck began shouting at each other very loudly. As I looked towards the direction of the sound, I noticed that the man who was shouting loudest was also furtively looking around him. It soon became clear that the shouting was designed to attract the attention of passers by. Men (and **women?**) jumped onto the back of this truck trying to calm the

²⁶ As Dresch writes, "If conflict breaks out in a market, a third party who is present is obliged to intervene and make peace, regardless of his relation, if any, to those at odds. If he takes sides and joins the squabble, then he too is guilty of a breach of the market-peace" (2005).

adversaries. As soon as others joined him, the man whose face I could see started making gestures as if to strike his adversary. The “mediators” immediately intervened by pulling him back. Another group was pulling his adversary back. It was an extraordinary piece of impromptu theater, choreographed to make a complaint safely. It struck me at the time that this approach stands in stark contrast with a John Wayne mentality in which “manliness” requires that one strike first and talk later.

Disputes within the Family

Disputes among agnatic kin do not fall within the jurisdiction of customary law; thus they involve little if any formal mediation. Nevertheless, these disputes tend to be mediated because this is the procedure people are comfortable with. In practice, all family members privy to the dispute will try to mediate and contain the situation. Disputants may call on maternal kin to exert pressure on paternal kin. Mothers are important mediators within the family because of the considerable pressure they can exert on husbands. Respected older aunts or uncles may be able to exert pressure on their siblings or their offspring. Ultimately, however, not much can be done if powerful members of the family choose not to resolve a dispute. Even the government courts are unwilling to intervene in disputes that occur within the family (see, for example, Würth 2005). This reluctance to quarrel with kin (agnatic or maternal) puts wives married to cousins in a difficult position and leads to the following proverb: “Bint al-nās ‘alā-l-rās wa bint al-‘amm alā-l-maq‘am”, loosely translated as “Other people’s daughter is treated as a guest [but] the father’s brother’s daughter is made to sit at the door like a servant.”

Children

Strong disapproval of physical violence is evident in the socialization of children. Children are rarely punished in Yemen no matter what they do. Repeated fighting among children, however, one of the few transgressions of children that merit punishment. When children come to blows they are simply separated by an adult present. When separated in this way children usually remain apart. From an early age, then, children learn to rely on a third party to keep disputes from escalating.

Mediation in Context

I have tried to show through case studies that mediation - the reliance on a third party to help resolve disputes - is a widespread cultural value. It is the process of choice in disputes ranging from those involving entire tribes and the State to personal quarrels between individuals, and it is a process that is taught to children at a young age. Mediation as the basis of customary law is not, then, imposed on hapless tribes by the State. Rather, it is generated by the value system of the society itself.

I have argued elsewhere that the tribal value system in Yemen prioritizes both mutual support and responsibility (between members of a group) and personal autonomy (Adra 1983; 1998). A coercive legal system that requires some people to impose punishment on others would contradict the tribal valuation of personal autonomy, as well

as the egalitarianism among tribesmen assumed by Yemeni tribes. The intervention required of those in the community, however community is defined, is the logical outcome of the assumption that members of a community are responsible for each others' welfare. The apparent breakdown of customary process in disputes occurring within the household reflects the cultural extension of autonomy to the household, which is not subject to customary law or community interference. Like other cultural processes, mediation "makes sense" to the Yemeni tribal population and its continued viability depends on the extent to which this population continues to value mutual responsibility as well as individual autonomy.

Yet, neither customary law processes nor value systems operate in a vacuum. Historically, there have been times when other options of dispute resolution have been available and utilized. Most important among these have been recourse to State courts and a discourse that pits *sharī'a* against customary law.

Even within a customary law framework, recourse to State courts or a government-appointed judge is, and has been historically, an option of appeal when disputants are not pleased with the outcome of arbitration. Although a few judges distinguish between customary law and *tāghūt*, denouncing only the latter, most judges I have talked with automatically condemn customary law as un-Islamic and oppose it to *sharī'a*. In practice, however, their decisions tend to follow customary law except for cases of flagrant disregard of Quranic injunctions, such as the denial of inheritance to women.²⁷ This was evident in the *Sayyid*'s decision in Case 1. As A. M. A. Maktari has shown for irrigation law in Laḥj, customary law was largely codified rather than changed in the mid-20th century.

Others who condemn customary law are urban elite and modernists who, like Al-'Alīmī, see customary law as an unnecessary and embarrassing survival. In Yemen, these critics tend to favor *sharī'a* over custom. In doing so, they ignore the fact that mediation is a basic principle in Islamic jurisprudence. For example the Quran counsels resort to mediation in the case of disputes between husband and wife: "If you apprehend a breach between husband and wife, then appoint an arbiter from among his people and an arbiter from among her people..." Surat al-Nisā' 4:36. The Prophet played the role of mediator more often than a coercive ruler. In his *The Case for Islamo-Christian Civilization*, Richard W. Bulliet (2004) argues that the *ulamā'* saw themselves primarily as the conscience *mediating* against the natural tendency of rulers to be tyrants. The Yemeni State's acceptance of arbitration was discussed earlier in this paper. Mediation, then, is a cultural given that is validated by Islam and the Government of Yemen as well as customary law. Interestingly, mediation as the procedure of choice in the resolution of disputes is not limited to tribal communities in Yemen. Urban communities, groups that do not self-identify as tribe, and even squatter communities in Yemen customarily elect

²⁷ Other frequent violations of Quranic injunctions, like exchange marriage and the *kubāra* charged by the father's brother in cases where the deceased has not left male descendants, are usually ignored even by *Qādīs*.

an *'āqil* to mediate their disputes and represent the community in its relations with the outside world.²⁸ (This is essentially the role of the tribal shaykh.)

Perhaps a more serious threat to the prevalence of mediation lies in rapid socio-economic and political changes that have led to widespread transgression of customary processes. In Al-Ahjur, these are of two types, an increase in the utilization of State mechanisms and an increase in transgressions of custom.

The State has stationed soldiers in the nearby town of Shibām. If someone refuses to negotiate a difference or to fulfill an obligation, a complaint may be lodged against him in Shibām at which point soldiers are sent to his house. Exactly what the soldiers are supposed to do is not clear. Presumably, they are sent to initiate legal proceedings. In fact, what happens is that they demand payment in cash. (This amounted to 50 riyals or \$11 in the late 1970s and 1980s; currently, the cost is 1,000 riyals or \$5.)

In late summer, 1979, the services of these soldiers were used in an unorthodox way. The young sons (approximately 9 years old) of two tribesmen, Ḥamūd and Ismā'īl, quarreled, the first accusing the second of hitting him with a stick. Ḥamūd, went directly to Shibām to ask that soldiers be sent to chastise Ismā'īl instead of following customary procedure by complaining to the village *shaykh*. The first that Ismā'īl heard of the case was when he saw soldiers at his door. Refusing to pay the soldiers, he went directly to Shibām to investigate the charges. Known as a conscientious *'ayn* or *'āqil* of the village, Ismā'īl complained bitterly that Ḥamūd had gone to Shibām without first lodging his complaint with the *shaykh*. This option has been exercised several times in the past 25 years, but it is usually seen as an expression of spite rather than a genuine interest in conflict resolution. Surprisingly, it has not yet become the norm.

In winter, 2005, I was told that many more cases are now appealed to the public court in Shibām. When I asked why, I was told that disputants were no longer accepting arbitration: "Cases go on forever now." As I heard about recent disputes and their resolution, I realized that although this indicated a significant increase in recourse to public courts, mediation and arbitration are still the preferred forms of dispute resolution. Informal estimates suggest that in Yemen as a whole, at least 80% of all disputes are resolved through arbitration and not through State courts. Like the Bedouin described in Stewart (2006:274), Yemenis find local mediation cheaper, less corrupt and faster.

Nevertheless, transgressions of customary law appear to be on the increase. Wherever I went tribes and shaykhs complained that customary processes are consistently violated. As examples, they cite the unannounced cutting off of roads, revenge killings in cities and markets that are protected territories according to custom, failure to protect women and children in tribal warfare, and the arbitrary imprisonment of men by certain tribal leaders. Dresch (1987) translates a drawn out case that betrays blatant disregard mediators' honor as well as of custom.

²⁸ This information was gathered in research related to a DFID consultancy in 2005.

A recent flagrant violation of custom that came to my attention involves a group of women who went to a neighboring community to attend a wedding. On their way, they met women from a third community, also on their way to the wedding. The two groups of women quarreled and came to blows on privately owned land. Later, they agreed that each family/village would give the mediator 50,000 riyals (\$255) as guarantee. When the case was resolved, the mediator declared that he could not find the money and refused to return it. For these families, this was an unaffordable sum to lose. But they also did not feel free to push the issue further by taking on the mediator.

Conclusion

I have described the process of mediation as it often works. Cases discussed include a variety of types of disputes as well as examples in which customary law was disregarded by the disputants or mediators. As is evident from these cases, the causes of disputes are varied. The major causes of quarrels are insults or perceived insults. Someone's ill-tempered remarks will begin a series of hostile statements and name calling that develop into acts of physical aggression. Other anti-social behavior, such as theft or deliberately walking over someone's newly planted field, will instigate quarrels. Individuals may quarrel over whose turn it is to irrigate (Varisco 1983). A frequent cause of disputes between affines involves perceived insulting behavior toward women by their husbands or husbands' kin. If a man marries a second wife while still married to his first wife, he will find himself in a dispute with his first wife's father that is likely to end in the divorce of the first wife at her father's request. For all of these disputes customary law calls for mediation in preference to retort or attack. Fighting is not considered an acceptable way to settle disputes, and there are strong sanctions against individual acts of violence.

I suggested that recourse to mediation is not simply a survival from the past but that it is generated by value systems that render mediation the logical alternative to other ways of resolving disputes. In response to criticism of customary law by religious scholars and modernist politicians, I also argued that these values are intrinsic to Islamic law and recognized by State law. Mediation appears so basic to the culture that even communities that do not self-identify as tribal resolve their disputes through an elected mediator. This foundation in cultural values explains the duration of customary law in Yemen. In mediating disputes according to customary law, tribes are validating and re-creating a value system that prioritizes mutual responsibility and protection, on the one hand, and a respect for autonomy on the other.

Yet values are nowhere static. Social, economic and political changes have impacted customary law. Examples of its transgression are rife. It is possible that recent monetization of the economy and rapid urbanization, as well as nation building threaten the values on autonomy and group responsibility as culturally defined. On the other hand, a number of tribal communities have met in the past four years to revitalize customary processes. Only time will tell which options will win out.

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