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Courtrooms of conflict. Criminal law, local elites and legal pluralities in colonial Java

Ravensbergen, S.

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Courtrooms of Conflict

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Cover image: Landraad Pati. Woodbury & Page, ca. 1865. Left to right: Chief Jaksa Mas Ngabehi Merto Poero (standing), Chinese Captain Oei Hotam, Regent Adhipati Ario Tjandro Adhi Negoro, Resident H.E. de Vogel, Registrar D.J. ten Zeldam Ganswijk. [KITLV No. 3516]

Courtrooms of Conflict

Criminal Law, Local Elites and Legal Pluralities in Colonial Java.

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Prof.mr. A.W. Bedner
Prof.dr. H.W. van den Doel

Copromotor
Dr. A.F. Schrikker

Promotiecommissie
Dr. M. Bloembergen (Koninklijk Instituut voor Taal-, Land- en Volkenkunde)
Prof.dr. M.P.C. van der Heijden
Prof.mr. J.M. Otto
Prof.dr. R. Raben (Universiteit van Amsterdam, Universiteit Utrecht)

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Glossary

acte van beschuldiging	legal document; indictment
acte van verwijzing	legal document; the decision (of a judge) to refer a case to a certain law court
adat	custom(s)
Adipati	high priyayi title
agama	religion
anachodas	Chinese traders
Ario	high priyayi title
bupati	regent; regional representative of the ruler (Mataram); in colonial Java the highest regional Javanese administrative official.
controleur	European district administrator (official below assistant resident)
demang	local Javanese administrative official; official directly above the village chief; in the Ommelanden district chief.
drost	Dutch overseer and sheriff in a (countryside) region
gouvernementslanden	government lands, the directly ruled (dual rule) regencies of Java.
haji	pilgrim to Mecca; muslim who had made the pilgrimage to Mecca, also used as an honorific.
jaksa	Javanese judge; Javanese public prosecutor.
kabupaten	regent's residence, or regency
Kandjeng	high priyayi title
kebaya	Indonesian garment; blouse-dress combination
keterangan	solution, solved case
kraton	palace, residence of the ruler
kris	Javanese sword
kyai	Islamic teachers not in service of the colonial government; respected man of Islamic learning
kyai fakih	Islamic judge in pre-colonial sultanate Banten
landdrost	Dutch representative of the colonial government in a (countryside) region
magang	apprentice, unpaid clerk

mantri	low level Javanese official with specific function (f.e. mantri polisi is a police official)
Mas	lower priyayi title
madhhab	school of law
mandoor	overseer, (police) assistant
ngabehi	local chief, often equivalent to regent
Ommelanden	Environs of Batavia
ondercollecteur	local tax collector in service of colonial government (priyayi rank)
padu	Javanese laws
pamong praja	civil service in Java after 1942
Pangeran	high priyayi title; usually of regent
pantjaniti	paseban; courtyard of a Javanese ruler
paseban	courtyard of the regent or wedono
patih	high administrator of a Javanese kingdoms, during the nineteenth century the regent's right hand man (chief minister of regent or ruler, in dutch: rijksbestuurder).
penghulu	high Javanese-Islamic official and Islamic judge in the religious law court.
pesantren	Islamic school
pradata	Royal or Indian law
praktizijn	attorney
prajurits	armed men, troops of the regent.
prefect	title for resident under Daendels' government
procès verbal	legal document; written report of proceedings
Raden	high priyayi title
Raden Adjeng	aristocratic title for unmarried Javanese girl
Raden Aju	wife of regent or aristocrat
radikaal	certificate necessary for colonial government positions
regent	bupati; Regional representative of the ruler (Mataram); in colonial Java the highest regional Javanese administrative official.
revisie	review by the colonial Supreme Court in Batavia

rijksbestuurder	Javanese chief minister of a region where no regent was appointed
sembah	formal greeting to a higher-ranked person
Sunan	Susuhunan; ruler of Surakarta (Solo)
surambi courts	Islamic courts in Mataram (at the front porch of the mosque)
Susuhunan	Sunan; ruler of Surakarta (Solo)
tandak	dancing; dancing party
Tumenggung	prince; Colonial state: title for prominent priyayi; title, usually of regent
ulama	religious teacher and scholar
Vorstenlanden	princely lands, the indirectly ruled states of Central Java
wedono	district chief, Javanese administrative official in charge of district under the supervision of the regent and patih.
wong cilik	little people, the common man

Note on spelling: I added –s to certain Indonesian and Dutch words in the plural (f.e. penghulus, jaksas, regents, residents) to aid readers unfamiliar with the Indonesian and/or Dutch language. I made an exception for the word *priyayi*—which can refer both to the singular, and plural or the Javanese nobility class in general—as these distinctions are clearly marked in the text. Another exception is the law court central to this dissertation, the *landraad*, which is written according to Dutch spelling, the plural being *landraden*. Modern Indonesian spelling is used for Javanese and Malay words and place names, except for Jakarta which in the nineteenth century consisted of Batavia and Ommelanden (environs), each judicially organised in a different manner. Personal names are written as noted by the nineteenth-century Dutch clerk, or as mentioned in the *Almanac of the Netherlands Indies*, because the correct modern Indonesian (or Arabic) spelling cannot be reconstructed in all cases. The term 'Javanese' is used to refer to the local population of the island Java. The distinction between Sundanese, Javanese and Madurese is only made if this was explicitly mentioned in the sources.

Abbreviations and Archival Referents

AS	Algemene Secretarie. ANRI.
ANRI	National archives of Indonesia; Arsip Nasional Republik Indonesia, Jakarta
Bt.	Besluit. AS, ANRI.
GB	Grote Bundel. ANRI.
MR	Mailrapport. MvK, Nl-HaNa.
IB	Indisch Besluit. MvK, Nl-HaNa.
IZ	Inlandsche Zaken. ANRI.
IR	Native Regulations 1848; "Reglement op de Uitoefening der policie, de burgerlijke regtspleging en de strafvordering on de Inlanders en de daarmede gelijkgestelde personen op Java en Madura" (*Inlandsch Reglement*).
KV	Colonial Report; *Koloniaal Verslag.*
MvK	Archive of the Dutch Ministry of Colonial Affairs; Ministerie van Koloniën. Nl-HaNa.
Nl-HaNa	Dutch national archives; Nationaal Archief, The Hague
PR	Provisional Regulations 1819; "Een reglement op de civiele en criminele regtsvordering onder den inlander."
RO	Court Regulations 1847; "Reglement op de Regterlijke Organisatie en het beleid der justitie in Nederlandsch Indië."
RR	Colonial Constitution 1854; "Reglement op het Beleid der Regering van Nederlandsch Indie van 1854" (*Regeringsreglement*).
S	Staatsblad; Dutch bulletin of Acts and Decrees.
Vb.	Verbaal. MvK, Nl-HaNa

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1 — Criminal Law and the Colonial State

In March 1901, the people of Temanggung, a town in central Java, were shocked by a murder. Newspapers reported that a Javanese coachman was brutally killed in a robbery attempt on his mail coach.[1] After investigations—carried out by Javanese and Dutch officials in charge of police affairs (the *patih* and assistant resident)—the missing mailbox was found in a house in the neighbourhood of Paraän. A Javanese blacksmith, Soepodikromo, his servant and four family members were suspected. After a month, they were tried by the colonial circuit court. For three days, court sessions were held and forty-six witnesses were interrogated. The court proceedings attracted much attention and in a courtroom filled with spectators, mostly Chinese and Javanese, the suspects were declared guilty by the Dutch circuit judge. The blacksmith and his servant were sentenced to death. According to the Dutch colonial newspaper *De Locomotief*, the convicts were rather passive and inscrutable: "As to be expected from fanatical natives, the convicts listened to their verdict without any facial expression."[2] The reporter described how several *selamatans* (feast meals) were held in Paraän to celebrate the conviction of the murderers. Some months later, after the governor general in Batavia had turned down the convicts' clemency requests, the blacksmith and his servant were hanged.[3]

The media coverage of the "mail coach murder case" in Temanggung reflects how the colonial government preferred criminal cases to be handled and represented in the press. A strong and wise Dutch judge was—in front of an audience of Javanese and Chinese subjects—in complete control of the court proceedings: "The ... circuit judge administered this case with a composure and calm, which cannot be appreciated enough, and this

[1] "De overvallen postkar", *Rotterdamsch nieuwsblad*, April 25, 1901, 6.
[2] "Moordzaak-Paraän", *De Locomotief: Samaransch handels- en advertentie-blad*, August 9, 1901, 2. "Met onbeweeglijke gezichten, zooals alleen van fanatieke inlanders te verwachten is hoorden de veroordeelden hun vonnis aan."
[3] "Ter dood gebracht", *Het nieuws van den dag voor Nederlandsch-Indië*, February 4, 1902. Although death penalty had been abolished in the Netherlands in 1870, in colonial Indonesia the death penalty would remain part of the legal system. See Chapter 3.

was much in favour of the trial."[4] Also, Assistant Resident Hofland, a Dutch official in charge of police investigations, was praised for his persistent police work. When Hofland was promoted to resident some months later, a local newspaper recalled his excellent contribution to the "mail coach murder case."[5] Furthermore, the case had been solved quickly and the convicts were punished severely. In other words, the court case was a successful expression of strong colonial rule, and of effective 'Western justice' brought to 'the East'.

In reality, criminal law practice in Java was much more complicated than the reports about this case suggest. When taking a closer look at the level of the courtroom itself, a different world comes to life. One that goes beyond an exercise of top-down colonial power, and beyond 'Western justice' brought to 'the East'. It reveals how imperial justice came into being through a precarious system of dual rule in which a high number of local actors were central. In fact, the Dutch circuit court judge had not passed the verdict on his own. It was decided by ballot, together with two Javanese court members. The *penghulu* (Javanese-Islamic official) had been asked for advice on religious and cultural matters. Also, Assistant Resident Hofland would have been unable to solve the case without the information networks and investigations done by the *patih* (regent's right hand man), the *jaksa* (Javanese public prosecutor), and their network of spies. Thus, the colonial law courts were deeply implicated in the existing Javanese power structures and legal traditions. Dutch control over the procedure and practice of criminal in Java was far more tenuous and contested than they wished to convey.

This dissertation investigates the role of criminal law and colonial courts in the process of state formation in nineteenth-century Java. The colonial state in Java was characterized by a system of dual rule in which the administration was divided into two branches. The Javanese branch—the *pangreh praja* (rulers of the realm)—consisted of local Javanese elite families whose members were appointed as officials (*priyayi*). They governed the Javanese population, were responsible for police affairs, and

[4] "Moordzaak-Paraän," *De Locomotief: Samaransch handels- en advertentie-blad,* August 9, 1901, 2. "*De [..] Omgaand Rechter legde bij de behandeling dezer zaak een bezadigdheid en kalmte aan den dag, die niet genoeg te waardeeren is en de berechting zelfs zeer ten goede is gekomen.*"
[5] "Uit Magelang," *De Locomotief,* September 26, 1901.

executed colonial policies. The Dutch branch—the *Binnenlands Bestuur* (civil administration)—consisted of Dutch officials, who were temporarily appointed in the residencies. They governed the European population and directed the priyayi in their responsibilities. The legal system was segregated as well, with separate courts and legislation for non-Europeans and for Europeans. This division of labour between the Javanese priyayi and the Dutch officials, however, did not lead to two completely separated worlds, since there were, inevitably, moments of contact, encounter and collaboration in order to establish and maintain rule. The colonial courtrooms especially, were instrumental spaces of contact, and conflict, between the Javanese and Dutch governing elites. Even though in principle, according to the ideal of dual rule, Javanese priyayi administered justice over cases in which no Europeans were involved, an exception was made for law cases considered to be important for the reinforcement of colonial rule—mainly criminal cases. These were administered by pluralistic courts—the circuit courts and the landraden—presided over by a Dutch official who decided the verdict together with at least two Javanese priyayi.[6]

The pluralistic courts—a definition and discussion of this term follows below—were the only sites in colonial Java where the representatives of most regional European and non-European power structures came together while on duty, and decided on the verdict together. Consequently, legal pluralities were forged and the perspectives of Dutch and Javanese officials, as well as Chinese captains and Javanese-Islamic advisors, all influenced the law court sessions. Precisely because of this, research into the legal spaces of the landraden and circuit courts will teach us more about dual rule in colonial Java, in which local elites governed the Javanese population partly alongside, partly subordinate to, and partly as an integral part of the Dutch colonial government. This dissertation focusses on the grey zones and overlapping areas of, and limits to, dual rule as revealed by criminal law practices. I unravel developments in the collaboration and tensions between the two branches of the dual rule system in nineteenth-century colonial Java, and do this by investigating the changing legal

[6] The circuit courts, established in 1814, were presided by Dutch judges. Landraden (the first landraad was established in 1747 in Semarang) were presided by the (assistant) resident until 1869, when a start was made with the introduction of 'independent' judicial officials presiding the courts. The first Indonesian landraad president was only appointed in 1925. See Part 3 of this dissertation.

pluralities and political dynamics in the courtrooms of the landraden and circuits courts, where criminal justice over the Javanese population was administered. This dissertation demonstrates how and why the connections between nineteenth-century dual rule and criminal justice led to inequality, uncertainty and injustice for the local population.

Fig.1 Former landraad building Tangerang (*Meester Cornelis*), Jakarta in 2012.

1.1 Colonial State Formation and Criminal Law

After arriving on the island of Java in the seventeenth century, the Dutch gradually interfered in, and ultimately overruled, the different existing Javanese kingdoms and sultanates. In the nineteenth century, a colonial state in Java was still in the making as well as an economy built on the large-scale export of agricultural products deemed essential for Dutch economy. Sugar factories and tea plantations, and a growing rural Javanese population as the labour force dominate histories of this century, but the daily lives of the Javanese were significantly shaped by the developing state in other ways as well. Vice versa the colonial state was itself transformed by various local dynamics. Law courts are significant sites to study in that respect.

In young states or new regimes, in general, law courts are a primary means of establishing legitimacy and reinforcing control. As political scientist Martin Shapiro puts it, "Judicial services, like medical services, are a way into the countryside." The downside of interventions in existing legal systems for a new ruler are the costs and, if the countryside does not welcome new judicial services, unrest.[7] This dilemma was apparent in the Dutch colonial situation, and in Java, the Dutch colonial government generally preferred to leave civil law as it was. Criminal law, on the other hand, was actively used to maintain and reinforce colonial power. By the nineteenth century, the importance of criminal law for the early colonial state was taken as self-evident by Dutch officials. As jurist Brunsveld van Hulten wrote in the first issue of the journal *Law in the Netherlands Indies* in 1849, "There is no subject of law that is of more daily importance and of more suitability to increase and consolidate the attachment of the people to the government by effective regulations."[8]

In practice, the process of state formation is never linear, because the state consists of several sources and layers of power that often contradict and compete with each other.[9] The tensions between the colonial governments in The Hague and Batavia, regional administrators, the colonial Supreme Court and local law courts, all shaped the state in Java. Moreover, *colonial* state formation followed a unique path compared to European states, being a particularly diffuse process of interacting local and colonial sources and layers of power. Research into colonial state formation leads to questions about indirect and direct rule, brokerage, and colonial knowledge.[10] Jonathan Saha, suggests to not see *the* colonial state and *the* colonial law as a monolithic entity, and makes a case for taking the lower courts and its daily practices as a focal point, in order to understand the colonial state and its legitimacy: "…colonial law can be seen as a set of practices that were constitutive of the colonial state. In other words, through people's experiences of and involvement with legal institutions and practices, the

[7] Shapiro, *Courts*, 22, 24.
[8] Brunsveld van Hulten, "Overzicht der wettelijke bepalingen", 34. *"Geen onderwerp van wetgeving is van meer dagelijksche toepassing en aanbelang, en meer geschikt om door doelmatige voorschriften de gehechtheid van eene bevolking aan het Bestuur te bevestigen en te bestendigen."*
[9] Lund, "Rule and Rupture", 1199-1201
[10] Stoler and Cooper, *Tensions of Empire*, 20-22.

colonial state, as an imagined entity, was made in everyday life."[11] In Java, officials from different backgrounds, Javanese and colonial, met in the courtroom and administered justice together. I am interested in these encounters—and the related moments of contacts and conflict—in the courtrooms of Java. In the words of Stoler and Cooper, I am interested in the "tensions of empire."[12] More importantly, I am interested in how these tensions shaped the colonial state itself.

As described above, in the government lands (*gouvernements-landen)* of Java the colonial state took the form of dual rule, a policy between direct and indirect rule. The priyayi were traditional local elites—the position of the regent (the highest priyayi) was made hereditary under Dutch rule—but functioned simultaneously as colonial officials who could be transferred and dismissed by the colonial government. The indirectly ruled princely lands (*vorstenlanden*, the sultanates of Central Java) followed a different course of state formation and are beyond the scope of this research.[13] Colonial state formation in the government lands of Java has been addressed in historical research before. Historians Wim van den Doel and Heather Sutherland each analysed one of the two branches of the dual system.[14] As Sutherland explains, the dynamics of dual rule were complex: "Their interaction was not simply that of administration superior and inferior, but was also of continuing bargaining between elites of two races and of two cultures. Each group had its own vested interests, its own traditions and received wisdom, its own values, perceptions and prejudices."[15] Others—for example Marieke Bloembergen, Margreet van Till and Annelieke Dirks—have focused on the information networks of colonial rule in practice and thereby addressed issues related to criminal law practice, such as the police and crime.[16]

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[11] Saha, "A Mockery of Justice," 190-191. John Comaroff made a similar call to focus more on the dynamics of colonial legal institutions: Comaroff, "Colonialism, Culture and the Law," 305–14.

[12] Stoler and Cooper, *Tensions of Empire*, 37.

[13] See for and overview and discussion of the legal system in the princely lands: Van den Haspel, *Overwicht in Overleg.*

[14] Van den Doel, *De Stille Macht;* Sutherland, *The Making of a Bureaucratic Elite.*

[15] Sutherland, *The Making of a bureaucratic elite*, 2.

[16] Bloembergen, *De geschiedenis van de politie in Nederlands*-Indië.; Van Till, *Batavia bij nacht*.; Dirks, *For the youth,* 202-229. Dirks provides insights in the late colonial state practices regarding juvenile delinquency, and the experiences of young local suspects (and their parents) with the colonial legal system at the landraad level.

However, all research projects mentioned concentrate on the period after 1870, around the start of the "modern colonial state,"[17] with a focus on the early twentieth century when the Ethical Policy dominated colonial policies and discourse.[18] The early to mid-nineteenth century is often described only briefly as a rather stable period. In Sutherland's words, "as long as Javanese society was relatively stable, the modus vivendi developed by Dutch and indigenous officials over more than a century was absorbing local shocks of economic change and sporadic unrest."[19] Historians who do focus on the nineteenth century have confirmed this picture of stability, often in relation to the economic cultivation system (*cultuurstelsel,* 1830-1870).[20] Yet, this relative stability raises questions about how this modus vivendi was possible and could exercise so much power that unrest occurred only sporadically, despite an oppressive cultivation system. Onghokham did research in this direction examining the development of the priyayi from their position in pre-colonial Javanese states to their role in the colonial state.[21] Breman also questions the idea of stability during the mid-nineteenth century by investigating the local consequences of forced cultivation in the Priangan area.[22] Yet, the place and impact of criminal law practice itself in the process of colonial state formation is still underexposed.[23] Therefore, in this dissertation, I focus on the intertwinement of dual rule and criminal justice to show how this deeply impacted the strategies of colonial control over the Javanese population in the nineteenth century.

Contributions to the legal history of the Netherlands Indies by legal scholars have been very informative for this research in getting a grasp of the

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[17] Van den Doel, *De Stille Macht*, 21.

[18] The Ethical Policy was the early-twentieth century Dutch colonial policy (ca.1894-1920) of 'developing' and educating the local population under expanding Dutch rule and bureaucracy. For a discussion of the Ethical Policy, and its ambivalent and various interpretations and implications: Locher-Scholten, *Ethiek in fragmenten.* 176-213.*;* Dirks, *For the youth,* 2-9. The period of the Ethical Policy exceeds the scope of this research and will only be shortly adressed in the Epilogue.

[19] Sutherland, *The Making of a bureaucratic elite*, 2.

[20] Fasseur, *Kultuurstelsel,* 47.; Fasseur, "Violence and Dutch rule in mid-19th century Java, 4."; Van Niel, *Java under the Cultivation System*, 115.

[21] Onghokham, *The residency of Madiun.*; Ibid. "Social Change in Madium."; Ibid. "The Jago in Colonial Java."

[22] Breman, *Koloniaal profijt van onvrije arbeid*, 274, 360.

[23] Different authors have argued in favor of more historical research on colonial law in the Netherlands Indies. See for example: Smidt, *Recht overzee, een uitdaging.* And more recently: Salverda, "Doing Justice in a Plural Society."

Dutch colonial legal system. John Ball provided rich information about the numerous colonial regulations and law courts before 1848.[24] Cornelis Briët and Nick Efthymiou presented insights in the development of the colonial Supreme Court in Batavia and colonial legislation, and Peter Burns scrutinized twentieth-century Dutch legal thought behind colonial formal legal policies.[25] The focus of these works is merely on legislative and institutional regulations though, and the colonial state and its practices remain largely hidden. Exceptions are the works on the legal position and uses of justice by the Chinese and Arab communities in colonial Indonesia by Patricia Tjiook-Liem and Nurfadzilah Yahaya.[26] Interesting archival research in this field was also done by historian and jurist Cees Fasseur, who published extensively on nineteenth-century Java. Law was a recurrent subject in his work, although he focused on the Dutch perspective on colonial law. His intention to publish a book on the legal history of the Netherlands Indies unfortunately never came to fruition.[27]

Inspiring in connecting the themes of the colonial state, criminal law and courts is James R. Rush's *Opium in Java*. Although he is not mainly concerned with the subject of the colonial legal system, he gives an insightful description of the nineteenth century courtroom and argues that the landraad had an ambivalent character: "This ambivalence sprang from the Dutch attempt to impose an ever-more-thorough political and economic presence in Java while at the same time maintaining the balance of interests and relationships on which their authority had come to rest." Rush argues that the landraad was therefore all about "channeling influences" of the regional elites. He shows how the captains of the Chinese were advisors in the landraad and used their position to influence court cases to protect their people, as well as to their own benefit.[28]

In this dissertation, I am interested in this "channeling [of] influence," because it reveals the political dynamics and conflicts within the

[24] Ball, *Indonesian Legal History 1602-1848.*
[25] Briët, *Het Hooggerechtshof van Nederlands-Indië.*; Efthymiou, *De organisatie van regelgeving voor Nederlands Oost-Indië.;* Burns, *The Leiden Legacy.*
[26] Tjiook-Liem, *De rechtspositie der Chinezen in Nederlands-Indië.;* Yahaya, *Courting Jurisdictions.* The work of Dan Lev and Ab Massier is also insightful in this respect, explaining (among other issues) the histories of local lawyers and legal education for Indonesians. Although their work focusses on the twentieth century, it contributes to a broader understanding of the practices of colonial law in nineteenth-century Java as well.
[27] Fasseur, *Rechtsschool en raciale vooroordelen,* 10.
[28] Rush, *Opium to Java,* 108-135, citation: 109.

actual practice of criminal justice. The pluralistic courts suited dual rule by leaving the administration of the Javanese population to the Javanese priyayi. But they also fit the aim of using criminal law as a tool to uphold the colonial state, and were therefore presided over by a European official and subordinate to the colonial Supreme Court. The pluralistic courts in this manner evolved into a complex site. Islamic legal advice was provided by the penghulu, who also functioned as a judge in the religious courts. The decision-making process among the Javanese court members and the Dutch president took place behind closed doors. The Dutch residents combined their administrative powers with a number of judicial responsibilities, such as presiding the landraden. And the position of the jaksa changed from judge to prosecutor and advisor. Scrutinizing these various dynamics will inform us about dual rule in practice, and about criminal law as a political tool. The channeling is made visible through a focus on the (changing) dynamics among the Javanese and Dutch elites at the pluralistic courts, the main actors in the pages to follow.[29] Criminal law – as imposed through the dual system and the pluralistic courts – was an important, but fragile, political force in sustaining the colonial state.

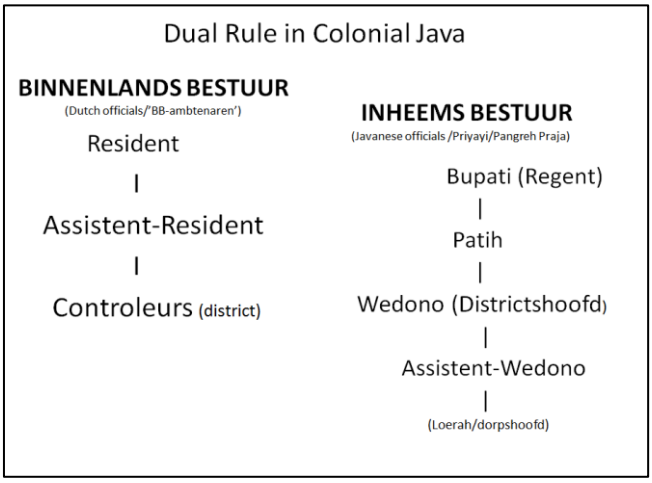

Fig.2 Dual Rule government lands colonial Java.

[29] In this dissertation I am mainly concerned with the Javanese and Dutch elites, and I will not further analyse the Chinese Captain's advisory role in court. Interesting work on the Chinese and the (colonial) legal system in nineteenth century Java is done by a number of historians, for example: Rush, *Opium to Java.;* Kuiper, *The early Dutch sinologists.*; Erkelens, *The Decline of the Chinese Council of Batavia.;* Chen, *De Chinese gemeenschap van Batavia.*

1.2 Legitimizing Difference

The colonial legal court system in Java was organized according to the dual character of the colonial state: 'Europeans' and 'Natives' were tried in separate courts, and according to the colonial regulations the Javanese were to be judged according to their 'own' laws and customs. What these Javanese laws *were*—Islamic or customary or combinations of those—would remain subject of a never-ending debate among Dutch officials and jurists, as to be discussed in Chapter 3. In any case, the leading principle of the dual system that the different population groups fell under their 'own' laws and customs, led to a segregated dual legal system. Miscegenation had given rise to an Indo-European population in Java, but Indo-Europeans were judicially categorized as either Native or—after formal acknowledgment of paternity by the European father—European.

Formally, there was a difference between the era of the *Verenigde Oost-Indische Compagnie* (VOC, 1602–1799) era and the nineteenth century insofar as—according to the regulations—people were divided according to religion during the first period and to race during the second.[30] In practice, however, VOC society was also characterized by a "proto-racist" attitude by the Dutch that divided the population according to a combination of skin colour, culture, class, and religion. This expressed itself in separate quarters for several population groups—for example Balinese, Chinese, Javanese and Ambonese—in Batavia, where civil law cases were largely left to the respective leaders of the communities.[31] Continuing into the nineteenth century, an enduring tri-partite division developed: Dutch, Chinese (later more broadly referred to as Foreign Orientals), and Natives, in which the last two were treated the same for the purposes of criminal law.[32] Christian Javanese also held the legal status of Native.[33]

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[30] Fasseur, "Hoeksteen en struikelblok," 219. "In the days of the VOC (..) religion, not race, was the principal criterion for classifying people as far as they lived under the sway of the Honourable Company."

[31] Raben, *Batavia and Colombo,* 213-216.; Tjiook-Liem presents a similar argument and questions the importance of the VOC criteria of religion (*geloofscriterium*) for an equation in legal status with Europeans: Tjiook-Liem, *Rechtspositie der Chinezen,* 75.

[32] Tjiook-Liem, *Rechtspositie der Chinezen,* 94. The equation of the Chinese with the Natives originated from 1824 and was codified in 1848. The tri-partite division of Natives, Europeans and Foreign Orientals was formalized as well, but 'Natives' and 'Foreign Orientals' were subjugated to the same (pluralistic) courts regarding criminal law. For a concise historical overview of the legal dual system and racial classification in the Netherlands Indies, see also:

This dual division of Europeans and non-Europeans would not always follow racial lines, though, since exceptions were made by the colonial government based on more pragmatic choices. In 1855, for example, the Chinese were subjected to European courts in certain civil cases because of the complexity of trade conflicts (with Europeans) in which Chinese entrepreneurs were often involved. At the same time, the Chinese were still adjudicated in the pluralistic courts in all criminal cases. They went to the Chinese Council for family law cases.[34] The Arabs experienced a similar complicated position within the dualistic system, a chief difference being that in many civil cases (mainly family law), as Muslims they came under the Javanese religious courts (*priesterraden)*. The position of Javanese litigants seems less complicated at first sight. In the main, they were directed to either the pluralistic colonial courts or the religious courts. After the introduction of a *privilegium fori* in 1829, however, high-ranking priyayi came under the jurisdiction of European instead of the pluralistic courts, although they would still be judged according to their "own" laws. After 1871, all Asians could request to be 'equated' with Europeans in legal status.[35] Bart Luttikhuis has argued that the legal category 'European' was not exclusively racial in the Netherlands Indies, due to the incorporation of Indo-Europeans in the European category and, after 1871, the possibility for non-whites of being equated in legal status to the European legal category, a decision made on one's (Western) way of life and class.[36] Moreover, in daily life the ethnic divisions were much less clear than the dual system suggests, and class, gender and religion were also important, as Ulbe Bosma and Remco Raben, and Jean Gelman Taylor have shown.[37]

Fasseur, "Hoeksteen en struikelblok." (translated in English as: "Cornerstone and Stumbling Block."), and Fasseur, "Van Vollenhoven and Law in Indonesia."

[33] Immink, *De regtspleging voor de inlandsche regtbanken*. Part 1, 22-27.

[34] For an extensive analysis of the legal position of the Chinese in the Netherlands Indies, see: Tjiook-Liem, *De rechtspositie der Chinezen*. From 1917 onwards, the Chinese fell under European family law (S1917, no.129).

[35] Fasseur, "Hoeksteen en struikelblok," 226. All Japanese were equated with the Europeans in 1899, which was a diplomatic choice on the part of the Dutch administration. In 1905, there were 997 Japanese in the Netherlands Indies (of which more than eighty percent women).

[36] Luttikhuis, "Beyond race."

[37] Bosma and Raben, *De oude Indische wereld*.; Taylor, *The Social World of Batavia.* See for a discussion on the race/class debate in the historiography on the Netherlands Indies: Protschky, "Race, class, and gender."

It is important, however, to realise that exceptions to the segregated legal system applied either almost exclusively to a limited number of people or only with regard to civil law cases in which Europeans had an economic interest. Criminal law was a different story and more closely mirrored the colonial power structure. Segregation along mostly racial lines was of importance in this regard, using 'race' here as a socially constructed category that at times had blurred borders with class and religion.[38] Even though in practice more was possible than on paper, in the end it remained a segregated legal system with severely unequal chances and legal guarantees for 'Natives' all of which caused legal inequality. They held a second-rank status of subject, not citizen, as explicitly stated in the new nationality law of 1892.[39] To organise the legal system along racial lines had not been a preconceived plan. It was, rather, a pragmatic continuation of earlier legal practices, as will be further discussed in Part 1.[40] Yet, the segregated legal system was *maintained* very consciously and held negative consequences for the local population of Java, in particular—as I will argue throughout this dissertation—regarding the partiality of the pluralistic court judges, the uncertainty about criminal laws and the poor criminal law procedures.

The dualistic character of the legal system was not undisputed, but it was so central for maintaining colonial power, that reforms were scarce. The unequal features of the colonial legal system were addressed at times, but would hardly be resolved. This not only, as described above, because criminal law was highly political, in particular in the imperial context, but also because of a colonial liberal justification of unequal justice. Law was part of the broader colonial ideology and of legitimizing colonial states. In British India, the colonial enterprise, and the legal system in particular, was already in the eighteenth century promoted as a liberal mission to free the oppressed local population from their despotic rulers,[41] although whether this should happen through implementation of universal principles of law, or by

[38] Stoler, *Carnal Knowledge and Imperial Power,* 144. Stoler argues that "..racisms gain their strategic force, not from the fixity of their essentialisms, but from the internal malleability assigned to the changing features of racial essence."
[39] Fasseur, "Hoeksteen en struikelblok," 218-219, 221. In this article, Fasseur designated race, and racial stratification, as the cornerstone (and stumbling block) of Dutch colonial rule, and called for a comparative research into the common roots of racial stratification in the Netherlands Indies and *apartheid* in South Africa.
[40] Tjiook-Liem, *Rechtspositie der Chinezen,* 93.
[41] Wiener, *An Empire on Trial,* 1.

allowing "Indian despotism" to continue under the supervision of enlightened British leaders, was widely debated.[42]

Ideas about enlightened justice and the rule of law, however, clashed with the unequal and authoritarian colonial reality. In this regard, the historian Martin Wiener uses the metaphor of the "arena" for colonial law courts, where the essentially unenlightened character of the colonial state was revealed. Wiener also argues, though, that colonial reality was more complicated than just full-blown racism with a "thin layer of legal liberalism." Enlightened ideals about both the legal system and the civilizing mission were real, often incorporated in the legal system, and passionately defended by their proponents (all with their own interests and ideals) within the context of colonial reality. Government officials, private individuals, and judges all had different expectations about what criminal justice was. In British India, the expensive and large legal court system was more related to the mission of spreading civilization and justice than to securing imperial needs.[43] Elizabeth Kolsky has rightfully shown that liberal reforms such as uniform legal codification did not necessarily contribute to a fair legal procedures though, because notions of inequality between races were still part of the codes and legal practices.[44] Over time, a colonial liberalism developed, legitimizing the politics of difference in the colonial context.[45]

While long discussed within histories of the British empire, colonial liberalism—and the rule of law in the imperial context—has yet to be studied with regards to Dutch colonialism. The civilizing rhetoric was not lacking in the Netherlands Indies either, although it was less propagated as a colonial ideology at first. During the early nineteenth century, Dutch administrators and jurists felt the need to bring "enlightened" ideas to Java in the form of a Western legal system, or wished to understand the local legal traditions, such attempts at understanding also being part of this civilizing ideology. These ideas were persistent and would emerge in different shapes throughout the nineteenth century. Particularly when, from the second half of the nineteenth century on, liberal influence in the Netherlands increased,

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[42] Metcalf, *Ideologies of the Raj*, 27.
[43] Wiener *An Empire on Trial*, 4-6. Wiener argues in his work on colonial justice across the British Empire: "Law lay at the heart of the British imperial enterprise. And criminal justice was at the core of law."
[44] Kolsky, *Colonial Justice in British India*, 11.
[45] See for example: Lake, "Equality and Exclusion."; Mehta, "Liberal Strategies of Exclusion".; Metcalf, Ideologies of the Raj, 28-65.; Pitts, *A Turn to Empire*.

Western law was promoted as a means of 'civilizing the Javanese people'. Simultaneously, it was questioned whether the Javanese were 'ready' for Western laws, and the importance of applying Islamic or customary laws was discussed. That the Dutch considered themselves superior in their legal thinking was overarching to all these discussions. Landraadvoorzitter Willinck wrote in 1897 that the coloniser was the "liberator" of Eastern people from despots and thereafter the "educator" of the people. He argued that the Dutch had the "heavy task" to "gain the trust of the uncivilised subjects" as parents of their children.[46]

I will investigate the consequences of colonial liberalism in Java for the practices of law in the pluralistic courtrooms. By taking an actor-focussed approach, and by focussing on moments of change, I show how Dutch administrators as well as colonial liberal jurists connected ideas about the rule of law with the imperial reality and their convictions about the Javanese people, consequently advocating a partial system of (in)justice at the pluralistic courts.

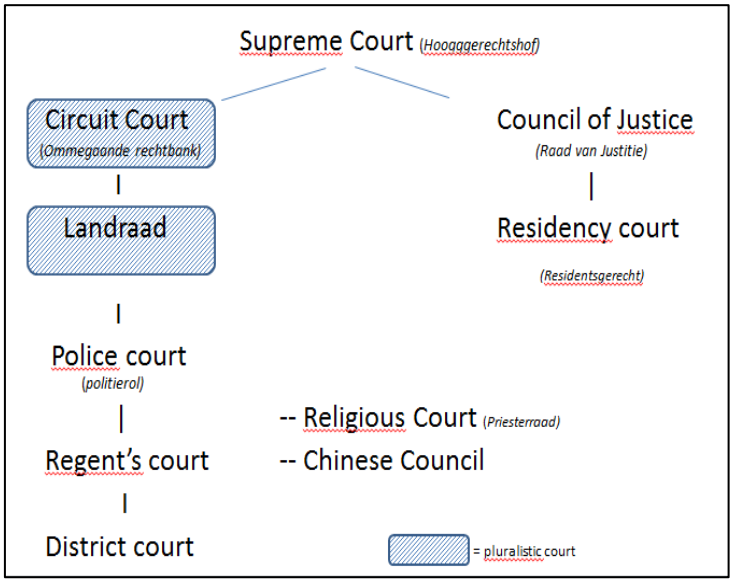

Fig.3 Dual legal system government lands Java, 1819-1901.

[46] Willinck, "Desa-politie en justitie", 1-2.

1.3 Institutionalised Inequality

This dissertation focusses on the adjudication of the majority of the population on Java—Sundanese, Javanese, Madurese, and other Indonesians residing in the cities and countryside of Java; that is to say, the overwhelming part of the population who were inescapably regarded as Native for judicial purposes. Above we discussed the broader ideological grounds for the institutionalized inequality of the criminal legal system. Now, an overview is given of the segregated legal system and its different kinds of courts. There were six different colonial courts where the population in Java was tried in the period from 1819 until 1901. These were divided into "purely native courts" (*zuiver inlandsche geregten*), the "mixed law courts" (*gemengde regtbanken*, pluralistic courts), and "purely European law courts" (*zuiver Europesche Regtbanken*). This meant there were law courts with only Javanese judges, with both Javanese and European judges and officials, or with only European judges. Developments in the legal system in the government lands of Java will be discussed extensively in this dissertation, but for now a concise overview of the nineteenth-century dual law court system will suffice.

The purely native courts were the district courts (*districtsgeregten)* and the regency courts *(regentschapsgeregten)*. The judge of the district court was the *wedono* (Javanese district administrator), who was assisted by as many lower Javanese officials as was deemed necessary by the resident, who for his decision on this consulted the regent. The district court dealt with complaints on berating or insulting, for which a maximum fine of three guilders could be imposed. This was only the case with the "actual native" local population. People judicially equated with them—such as the Chinese—were not subject to this law court.[47] The regency courts were those where offenses were tried for which a maximum imprisonment of six days or a fine of maximal ten guilders could be imposed. The regent—or if he was absent, the patih—was the judge of the regency court, assisted by the penghulu, jaksa, and as many lower indigenous chiefs as necessary as advisors.[48]

[47] RO 1847, Chapter 2, Paragraph 1, artt. 77-80: 21.

[48] Van Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 23. In 1819 criminal cases were excluded from this court and only civil cases were adjudicated, in which the conflict was twenty to fifty guilders.

The second category law courts, the "mixed law courts"—which I will refer to as pluralistic courts—are the central concern of this dissertation. First, the landraden were the "regular daily judges" (*gewone dagelijksche regters)* of the local population. Regarding criminal law, the landraad administered justice in cases of crimes that were not severe enough to be sent to the circuit court, and offenses for which fines of fifty to five hundred guilders or more than three months in prison could be imposed. Cases with larger fines were redirected to the Council of Justice. The landraad was a collegiate court, in which a European administrative official (or, after 1869, a Dutch judge) functioned as the president, with two Javanese officials appointed from the regional priyayi as court members. These Javanese members of the landraad were representatives of the judicial service one or two days per week. The rest of the week they were responsible for colonial administration. After the jaksa's proclamation of the indictment, the interrogation of the suspects and witnesses, and the advice of the penghulu and Chinese captain, the members decided over the case behind closed doors.[49] From 1862 on, permanent registrars (*griffiers*) were appointed to the landraden; before then, lower European administrative officials had fulfilled this position. The landraad in this form would continue to exist until 1942.

The second type of pluralistic court, the circuit court (*ommegaande rechtbanken*), was a travelling law court in which justice was administered for all crimes for which the suspect could receive the death penalty or the "punishment next to the death penalty". In addition, cases of extortion (*knevelarij*) and threats to colonial rule such as betrayal, rebellion, insulting the government, and resistance to the government fell under the circuit courts' jurisdiction.[50] In Java, the death penalty could only be imposed on "natives and those equated with them" by the circuit courts, which were presided over by a European jurist and four Javanese judges. Also present were a registrar, the chief jaksa, and the chief penghulu.[51] The Supreme

[49] Immink, *De regtspleging voor de inlandsche regtbanken*. Part 1, 105-122.
[50] Van Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 25.
[51] S 1890, no.20. Reglement op de administratie der politie en de krimineele en civiele regtsvordering onder den Inlander in Nederlandsch-Indië, art. 99: *"De Landraden zullen kennis nemen van alle misdaden door Inlanders, Chinezen en andere personen behoorende tot de Indische volkeren, in de residentie gepleegd, met uitzondering: 1. Van moord, manslag, verraad, oproer, valsche munterij en alle daartoe betrekkelijke en als zoodanig strafbaar gestelde misdrijven, roof met geweld, brandstichting en van andere welke met den dood zouden kunnen gestraft worden…"*

Court reviewed (*revisie)* all cases, those decided by the landraden as well as those decided by the circuit courts.[52] In 1901, the circuit courts were abolished and thereafter all criminal cases were decided by the landraden.[53]

The third "purely European" category of colonial courts consisted solely of European judges. These courts appeared on the branch of the legal system meant only for the European population. The Council of Justice (*Raad van Justitie*) was the forum for offenses and crimes like those handled by the landraden and circuit courts, but the court administered justice over Europeans; "natives being equated with Europeans" (made European in legal status and rights, *staatsblad-Europeanen*); non-Europeans, often priyayi, with a privilegium fori; and non-Europeans who were suspected of a crime they had committed together with a European (*connexiteit*). Thus, if both Javanese and European suspects were involved in one case, all suspects would be tried by a European law court. Intricate cases such as slavery (after abolition), piracy, and cases of bankruptcy were also subject to the Council of Justice. This council had a collegiate judiciary with three judges; one presiding and two subordinate judges.

The Supreme Court (*Hooggerechtshof*) was the successor of the High Council (*Hoge Raad)*, until 1819 the highest court in the colony. Of particular importance for this dissertation is that the Supreme Court through the review system (*revisie*) supervised over all verdicts executed by the lower law courts, except for those decided by the police magistrate. From 1819 onwards the Supreme Court had this right to review and thereby intervene in criminal verdicts decided by the lower courts. The Supreme Court held the power to lower the imposed punishment or even vacate (*nietig verklaren*) the judgment.[54]

Finally, the police magistrate (*politierol*, literally: police register) is not often discussed as a law court, though in fact it functioned as such. The resident was the sole police judge in case of offenses and minor crimes. Complaints against "natives and those with them equated" were handled by him. In 1848, the punishments to be imposed were restricted to a maximum of twenty rattan strokes, imprisonment for three days, being pilloried for a

[52] Van Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 25.
[53] S 1901, no.13.
[54] Termorshuizen-Arts, "Revisie en herziening," 331, 336-337.; Ball, *Indonesian Legal history*, 180.; S 1819, no.20. "Instructie voor het Hoog Geregtshof van Nederlandsch-Indië," art. 56 and 57. After 1901, review was done by the Councils of Justice.

maximum eight days, and forced labour at the common works for a maximum of three months. The police magistracy was controversial because it lacked procedures, there were few legal guarantees, and it lacked control by a higher court. In 1914, the police magistrate was abolished and replaced by the *landgerechten*. The *landgerecht* judge operated without local advisors and administered justice over both non-Europeans and Europeans. He dealt with minor crimes, light abuse—the victim had still to be able to work—and offenses with a maximum fine of five hundred guilders or three months of imprisonment.[55]

Next to the official colonial court system there were two other semi-independent councils with judicial duties to fulfil. The Chinese Council (*Chinese Raad*) and the religious courts ("priest courts," or *priesterraden*), which decided over family and inheritance cases of the Chinese and Javanese populations, respectively. The religious courts were brought under colonial government authority in 1882 and from that time onwards, Arabs were subject to these Javanese-Islamic courts. In 1890, the Arabs requested their own council, but this was denied.[56]

The complicated law court system gave at times rise to much confusion when discussed among Dutch scholars, officials and politicians, especially those without practical experience in Java, as we will see at different moments of debate on (repudiated) reform analysed in this dissertation. Yet, regarding criminal justice it was clear that the majority of the local population of Java was subjugated to the pluralistic courts. It was through the pluralistic courts, that colonial power became visible on a local level. The four—later five—circuit courts travelled (until 1901) within their area of jurisdiction and held court sessions in each residency every few months. The landraden continued to exist through the end of the colonial era and were based in most residency towns. The number of landraden in Java increased from two in 1800 to eighty-nine in 1874. In the cities, court sessions took place in landraad buildings erected in a neo-classicist architecture style. In smaller towns in the countryside, court sessions were also held, for example, on the front porch of the house of the Dutch resident or the Javanese regent. It was also possible to move the complete landraad

[55] Jonkers, *Vrouwe justitia in de tropen*, 47.
[56] Yahaya, *Courting Jurisdictions*, 84-87.

session to the village where the crime had been committed.[57] Then, a procession approached on muddy roads, its members on foot or horseback. Former landraad judge C. W. Wormser recalled in his memoirs:

> I walked ahead, up the hill through the *desa* [village], followed by the guards and *desa* chiefs, then there was, riding a horse, sir Pieters [the registrar], named Don Pietro in his white high-necked coat [*toetoepjas*] wearing a floppy brown soldier hat; after him—on horses—came the Landraad members, the public prosecutor and the Mahommedan priest. They talked and laughed the entire journey. The procession was concluded by village chiefs, guards, and coolies carrying [*pikolden*] the luggage and comestibles.[58]

When the party arrived, a courtroom was improvised with the use of a folding screen and a green tablecloth: "We held sessions in an open *pondok*, constructed beforehand of bamboo ... or in the open meeting room of the village, or in the porch of the village chief, or in the courtyard of the house where the crime was committed."[59] Regardless of the exact location of the court session, by spreading a "faded green cloth" [*verlept-groene laken*] on a table, a courtroom was created at once.[60] Improvised or not, with their green table cloths, court members, advisors, and officials, the pluralistic courts made colonial rule visible in all corners of Java.

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[57] In certain instances, for example when a big number of witnesses who had to come from far, criminal cases were adjudicated outside of the (assistant)-residency capital in an improvised courtroom at site.

[58] Wormser, *Drie en dertig jaren op Java,* 35. *"Ik liep voorop door de desa tegen de berghellingen op, dan kwamen oppassers en desabestuurders, daarop volgde, te paard, allereerst de heer Pieters [de griffier, SR], genaamd Don Pietro in witte toetoepjas en met een slappen bruinen soldatenhoed op; op hem volgden te paard de Landraadsleden, de officier van justitie en de Mohamedaansche priester. Ze praatten en lachten den ganschen tocht. De optocht werd besloten door desabestuurders, oppassers en koelies die bagage en eetwaren pikolden."* Wormser was a Landraad president in Java during the early 20th century.

[59] Wormser, *Drie en dertig jaren op Java,* 35. *"In een open pondok, van te voren uit bamboe en atap opgezet, of in de open vergaderzaal der desa, of in de voorgalerij van het desahoofd, of op het erf van het huis waar het misdrijf was gepleegd, hielden wij dan Landraadzitting."*

[60] Oostwoud Wijdenes, "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 11.

Fig.4 Drawing of a landraad session in Pati. [*De Indische Archipel,* ca.1865].

Left to right: Chief Jaksa Mas Ngabehi Merto Poero (standing), Chinese Captain Oei Hotam, Regent Adhipati Ario Tjandro Adhi Negoro, Resident H.E. de Vogel, Registrar D.J. ten Zeldam Ganswijk.

1.4 Legal Pluralities and Pluralistic Courts

Court case files preserved in Indonesian regional archives (kept in the national archives in Jakarta) present insights into the practices of law at the landraden of the early to mid-nineteenth century Java as revealed by the following example. On the night of 28 October 1834, in a village in the vicinity of Batavia, a burglary was committed in the house of a local woman named Njai Djora. The loot consisted of a copper rice kettle, a knife, half a bushel of rice and—to complete dinner—some bananas. Short thereafter, the grass cutter Badak and gardener Djanoesien Singke were arrested on suspicion of having committed this and another burglary.

On Wednesday, 3 December, of the same year, they appeared before the landraad in the Batavian suburb of Meester Cornelis. This law court was presided over by the Dutch Assistant Resident Fredrik H. Doornik. Also present in the role of court members were the overseer Abdul Rahiem, Captain Abdul Haliem, and Lieutenant Mohamat. The position of registrar

was fulfilled by Lucas C. Bruijninga. The two suspects were brought inside the courtroom, after which Adjunct Jaksa Johan Abiedien Naija Gatie[61] announced the indictment. A gardener, a female merchant, a female dancer, and a Chinese guard of the bazar were interrogated as witnesses. After these depositions, the adjunct jaksa and Chief Penghulu Fakier Abdul Moedjied Jubidie[62] were asked for their advice—based on Javanese-Islamic laws and customs—on the guilt of the suspects and a suitable punishment. Both agreed that while the guilt of Badak had been proven, there was insufficient proof of the guilt of Djanoesien Singke. Regarding Badak's punishment, the penghulu advised "cut[ting] off the right hand." In response, the jaksa referred to a colonial regulation abolishing all cruel and mutilating punishments and advised imposing thirty rattan strokes and four years in a chain gang in Java.[63] The assistant resident and the Javanese members together decided on the verdict behind closed doors. The verdict shows they followed the advice of the jaksa. Badak was found guilty and sentenced to thirty rattan strokes and four years of chain gang. Djanoesien Singke was acquitted and released immediately.[64]

The description of this criminal case from 1834 portrays a landraad in full swing, and immediately brings to the fore the pluralistic character of the courts, both with regard to the laws applied and the actors active during the proceedings. In addition to being courts that made the colonial state visible in Java, as described before, the pluralistic courts were predominantly sites of contact and conflict. Colonial law offered ways to establish, legitimize, and strengthen colonial rule, but central to this process were pluralities. Legal traditions from the Netherlands moved to Java where several other legal systems already existed, including both written and unwritten Javanese and Javanese-Islamic laws, quite often alongside each other and interconnected. As a result, as

[61] RA 1834, 45. The name of the Adjunct Jaksa was not mentioned in the procedural documents and has been derived from the almanac. Generally, Jaksas originated from the Javanese priyayi class, but exceptions were made in multi-cultural Batavia which lacked a Javanese priyayi class. The exact ancestry of Jaksa Johan Abiedien Naija Gatie is unknown.
[62] RA 1834, 45. The name of the peghulu was not mentioned in the procedural documents and has been derived from the almanac.
[63] S 1819, no.20. Provisioneel Reglement op de Criminele en Civiele Regtsvordering Onder den Inlanders, art.120.
[64] ANRI, GS, Tanggerang. No.27.III.

studied by legal scholar M.B. Hooker, a complex situation of legal pluralism arose and evolved.[65]

Legal pluralism is a long debated concept among legal scholars, focussing on the relations between state and non-state laws. Questions about power are central to these scholarly debates on and research into legal pluralism: Who had the power to define what "law" was? The power to execute the laws? The power to use the laws?[66] Researching answers to these essential questions will provide us with a better understanding of the workings of dual rule, with its multiple power structures, in colonial Java.

Although legal pluralism has been subject to heated debates among legal scholars and legal anthropologists for decades, historians of empire entered this field of study in more recent years, stimulated by the work of Lauren Benton, and have utilised it for the matter of historical analysis. Historians of the nineteenth century colonial state in Java, however, have not devoted much attention to the possibilities that the framework of legal pluralism has to offer. Regarding colonial Java, it has been described how most Dutch administrators and jurists ignored the 'traditional' customary laws of Java until the famous adat school led by Cornelis van Vollenhoven 'discovered' them in the twentieth century, how they misinterpreted the Islamic laws and courts (with the exception of some, most prominently Christiaan Snouck Hurgronje), and on how they early on introduced Western laws in criminal justice. Albeit true in its outcome, the historical processes of the nineteenth century are worth a more in-depth analysis on itself. What were for example the contacts and conflicts between Javanese and Javanese-Islamic legal traditions and its representatives, within the context of colonial law? In order to understand such processes, Lauren Benton and Richard Ross define legal pluralism as "a formation of historically occurring patterns of jurisdictional complexity and conflict." They focus on the conflicts amongst legal traditions, which evolve historically into a complex entity.[67]

This historical approach of legal pluralism studies the practice of law and pays attention to the dynamics of legal practice and the involvement of local actors in the legal system, and relates it to the process of colonial state

[65] Hooker, *Legal pluralism*, 250-275.
[66] Griffiths, "Legal Pluralism", 289. Griffiths presents an overview of legal pluralism discussions in social theory. For the more recent application of legal pluralism by historians, see: Halliday, "Laws' Histories: Pluralisms, Pluralities, Diversity,"
[67] Benton and Ross, *Empires and Legal Pluralism*, 4.

formation. Early-modern legal pluralism was eventually altered through historical change and movement into a more hierarchical judicial order.[68] Yet, although states often rejected too much legal pluralism in the case of criminal law, a weak pluralism remained. In Java, an interesting development occurred in this respect. While in general the colonial state was heading towards a bureaucratic and "modern" state, the pluralistic "early-modern" landraden were maintained until the end of the colonial era in 1942. This seems remarkable. A study of imperial courts in China, where there was a combination of "metropolitan and native judges," has been described as an "intermediate stage." When the state-building process progressed and the central government managed to increase its power, "local participation" in the courts often disappeared.[69] Interestingly, in Java the local elements in the landraden and circuit courts remained, although—as we shall see—the positions of the non-European elements were constantly under discussion. Nonetheless, the Javanese priyayi remained to function as voting court members. Javanese-Islamic laws were formally maintained for a substantial part of the nineteenth century and the Islamic penghulu remained appointed as an advisor in criminal cases, despite criticisms on his advice. The jaksa's position as a prosecutor, although the quality of his investigations was under discussion, was beyond doubt.

This persistence of legal pluralities in colonial Java brings us to the green table of the courtroom where the verdicts were decided, and to the practices of law. Burbank and Cooper emphasize that legal pluralism was more a sort of expanding "habit" than a well-thought-out plan. From that perspective, the *-ism* of legal pluralism is misleading. Therefore, Halliday has argued to operationalise the term "legal pluralities" instead of "legal pluralism," to place practice rather than the state at the centre of analysis, which itself was formed by practice.[70] This seems a fruitful approach for Java, where over time legal pluralities arose and pluralistic courts were set up with both Javanese and European officials. Clearly, the cross-cultural

[68] Ross and Stern, "Early-modern notions of legal pluralism," 110–113. The early-modern history of Europe shows that regional legal systems were tolerated by centralizing powers in order to gain acceptance for unification processes from the regional and local notables. However, also ideologically legal pluralities were not rejected. Therefore, early-modern legal pluralism "was not simply about the tension between forward-looking centralizing theorists and resistant, pluralistic conditions "on the ground'."

[69] Shapiro, *Courts*, 59-60.

[70] Halliday, "Laws' Histories: Pluralisms, Pluralities, Diversity," 267.

dynamics in the courtroom were not equal encounters though, due to the presence of hierarchies that differed from place to place and from situation to situation. Besides, in empires in general, hierarchy was present not only between cultures, states and religions, but also within these entities among the several layers of academics, jurists, and law courts. Halliday therefore also warns against a legal history that overlooks the centrality of formalism in the colonial jurists' minds, despite a reality full of pluralities. There was a tension between a "longing for certainty" on the one hand—in Java on the part of the Supreme Court for example—and the use of legal pluralities and the uncertain practice of law—in the courtrooms of the pluralistic courts—that was not easily caught in formalism.[71]

In applying the concept of legal pluralities on research into colonial Java, we also have to define our terms carefully. Legal pluralism, or legal pluralities, can be a confusing concept when applied to the dual system in Java. In the historiography on colonial Indonesia, the concepts "legal pluralism" and "plural society" have sometimes been mobilized by historians to designate the segregated character of Dutch colonial policy.[72] However, this does not exhaust the full potential of this term and the possibilities of engaging in the debate on legal pluralism, since in the broader historiography on law and empire, as discussed above, legal pluralism (or legal pluralities) has been used as a concept to attain an understanding of encounters and conflicts between different legal cultures. I argue this approach to be fruitful for the legal history of the Netherlands Indies as well, and aim to shed light on the evolving legal pluralities and hybrids *within* the formal segregated dual system of Java, to achieve a better understanding of the workings of Dutch dual rule in conjunction with legal practices.

The segregated legal system for several population groups itself, I describe as the *dual legal system*. The landraden and circuit courts—in which various legal traditions were applied on the local population—I designate as *pluralistic courts*. I borrow the term "pluralistic court" from

[71] Halliday, "Longing for Certainty, Across Law's Oceans."; Burbank and Cooper, "Rules of Law," 279-289.

[72] Cribb, "Legal Pluralism and Criminal Law in the Dutch colonial order," 47-66; Luttikhuis, "Beyond race," 3.; Lev, "Colonial Law and the Genesis of the Indonesian State," 57-60. As mentioned before, legal anthropologists of Indonesia did use the framework of legal pluralism in a broader, more dynamic way, and often also devote attention to policies (though not practices) in the colonial period, see for example chapter 1 Lukito, *Legal pluralism in Indonesia.*

legal anthropologist and historian Ido Shahar's institutional approach to legal pluralism, in which the organisational character of (colonial) pluralistic courts is central.[73] In my dissertation, the definition of a pluralistic court is one in which (1) several actors fulfil a role originating from more than one legal tradition, and (2) the laws and regulations applied originate from more than one legal tradition. In theory, according to colonial regulations, the landraden and circuit courts meet these two criteria. However, in this dissertation I unravel whether and to what extent this was the case in practice, how this developed over time and what the implications were for the character of Dutch colonial rule in Java. I argue that legal pluralities did not occur 'accidently' at the pluralistic courts, but were consciously and strategically used in criminal law practices, or in the words of Halliday: "Laws' pluralities showed their capacity both to liberate and to oppress.[74]

1.5 Methodology and Sources: Exploring the Courtroom

Over the nineteenth century, reforms leading to a centralization of the state, unification of laws, and modernization of the bureaucracy were imposed in colonial Java. Yet, as mentioned above, the pluralistic courts continued to exist until the end of colonial rule. This resulted in a practice of criminal justice which was quite at odds with the theoretical principles of the "modern" colonial state itself at that time. The main question to be asked in this dissertation is therefore: In what ways did jurisdictional, political and personal encounters in the pluralistic courtrooms of colonial Java shape criminal law and the colonial state in the nineteenth century?

To answer this question, I will investigate several important issues encountered when institutionalizing and applying criminal law practice in Java. I start from an actor-focussed approach and focus subsequently on the long historical processes of shaping the pluralistic courts and its practices. Who were to be the judges? Dutch magistrates, Dutch judges, or Javanese judges? And, which laws applied when administering justice over the Javanese population? Islamic, customary, or Dutch law? How was the prosecution of the Javanese elites arranged? Why did the jaksa—still a judge in the eighteenth century—become the public prosecutor of the landraad? Why was the penghulu appointed as the legal advisor? I relate the bigger

[73] Shahar, "Legal Pluralism incarnate," 135.
[74] Halliday, "Laws' Histories: Pluralisms, Pluralities, Diversity", 262.

issues and questions to the reality of the courtroom and, in particular, to the actors involved in criminal law practice. Although the practice of colonial criminal law in pluralistic courts is central, these practices are observed and analysed by research into the overlapping debates and politics that influenced this practice. The connection and interaction between macro policies and micro practices is central in each of the issues discussed. How did the street-level bureaucrats communicate with the higher levels of the state? What was their impact on the bigger debates? How did they influence the process of colonial state formation through their practices?

Besides, I not only discuss reforms and bigger debates regarding criminal justice, but also search for the things left unsaid, the regulations left unwritten. Historian Julia Stephens proposed to bring in the aspect of "uncertainty" as a vital element of colonial justice, showing how not only litigants (referring to literature on forum shopping in civil cases) but also colonial courts used the uncertainty of flexible law codes, the option to choose from several legal traditions, as a way to exercise power. She therefore stresses that although knowledge might equal power, uncertainty proved powerful as well.[75] The concept of "uncertainty" is useful when taking a closer look at the workings of the pluralistic courts in colonial Java. I will not only investigate the rules and procedures written down and confirmed in regulation, but also what was not formally decided. Where was uncertainty allowed or even used by the pluralistic courts? What was decided behind closed doors? What was the role of this kind of uncertainty and space for negotiation within the dual rule system and within colonial state formation?

To answer these questions, and to understand the pluralistic sites where various (legal) cultures met requires bringing together the historiographies on pre-colonial Javanese legal traditions, Islam, political ideologies, and colonialism in Java. It also requires archival research in those documents produced by the officials of the pluralistic courts. The Netherlands Indies' archives (1800–1942) offer a profound challenge in that respect, because, as far as is known, all archives of colonial law courts (including those of the Supreme Court and the Department of Justice) are

[75] Stephens, "An Uncertain Inheritance," 767-770.

lost.[76] The nineteenth-century law journals have been preserved, but these were only published after 1848 and provide limited information about the actual criminal law practices of the pluralistic courts. However, administrative archives in Jakarta and The Hague provide a rich variety of sources offering insights into the everyday practice of legal pluralities at the nineteenth-century law courts of Java.

In the Arsip Nasional Republik Indonesia (ANRI), in Jakarta, the residency archives (*Gewestelijke Stukken;* GS) contain a number of complete files of landraad cases, of which I found and collected a total of 48 criminal cases from five different regions—Gresik, Semarang, Pekalongan and a majority from Batavia's Ommelanden (see Appendix 2, Table 1).[77] Correspondences on regional legal issues are also preserved in these archives. Most of the information on legal issues in the residency archives originates from the first half of the nineteenth century, when the resident was still actively involved in criminal justice, as the landraad president. The archive of the general secretary of Batavia (*algemene sekretarie*; AS) provided rich sources on colonial criminal law as well, containing not only the correspondences regarding various legal reforms, but also files of pardon requests (unfortunately without the case files itself attached) and resumes and genealogies of local court officials. Although collecting files systematically was not possible, the ANRI sources nonetheless provided ample opportunities to explore the practices of law at the regional level of the colonial state. The archive of the Ministry of Colonial Affairs (*Ministerie van Koloniën*; MvK) in The Hague provided abundant information as well, in particular on more high-level discussions on legal reforms, but also on very sensitive cases regarding priyayi suspected of criminal affairs.

By studying a wide array of sources, from all levels of the colonial state, the complexity of decision making processes in the colonial state, and the controversies between local-level practices and high-level policies become visible. The archival sources gathered from diverse corners of the state archives are supplemented by journal articles, nineteenth-century handbooks on law, newspaper articles, and memoirs. Dutch jurists were not

[76] This in contrast to the better preserved archives of some VOC legal institutions, which are kept in The Hague and Jakarta.

[77] Complete landraad files of criminal cases: 4 from Semarang, 19 from Western Quarters of the Ommelanden (Tangerang), 4 from Gresik, 19 from Southern Quarters Ommelanden (Meester Cornelis, Jatinegara), 2 from Pekalongan. See Appendix 2, Table 1.

generous in devoting their memories to paper, but there are some late-nineteenth exceptions to this, offering accounts of the jurists' experiences in the courtrooms. Some early-twentieth century memoirs and private letters are also used to provide better insight in the late nineteenth-century legal practices. Even fewer priyayi published their experiences in the nineteenth-century pluralistic law courts. Through a close reading of the colonial sources, along and against the grain to understand the institutions and the archives it produced, with a focus on the colonial encounters between the Javanese priyayi and the Dutch officials in the court room, I attempted to overcome this deficiency in the sources.[78] Important primary sources in this respect were the nineteenth century photos of landraden, and portrait photos of priyayi. The photo of the landraad of Pati (cover image), for example, was taken by the British photographers Woodbury & Page on the request of the regent Adipati Ario Tjondro Adhi Negoro, in ca.1865. The regent not only wanted pictures of him and his family, but also of the landraad. It was this photo—as well as other photos taken on the request of priyayi and landraad presidents—that showed me the number and variety of actors in the colonial courtroom. Many questions asked in this dissertation started from a close observation of these kind of photos, and the objects and actors present.

The four parts of this dissertation have a thematic approach, and we will be travelling in each part through the entire nineteenth century. When necessary for answering the research question I will also cross the temporal borders into the earlier VOC period or the early twentieth century. The dominant focus of my research, however, is on the period between 1819 and 1898, when the pluralistic courts and the colonial state were in full development.[79]

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[78] Stoler, *Along the Archival Grain,* 50.*;* Wagner and Roque, *Engaging Colonial Knowledge,* 1-32.

[79] The VOC era is beyond the scope of this research project. However, to be able to understand the institution, legislation and practices of the pluralistic courts, it was important to nonetheless make a start with a reconstruction based on what had already been written. VOC court cases are mainly used for writing the social histories of marginalized groups such as women and slaves. See for example: Jones, *Wives, Slaves and Concubines.;* Niemeijer, *Batavia.* Much is still unknown about the exact workings of the VOC law courts. An exception to this is the work of Mason C. Hoadley on the early seventeenth-century Cirebon-Priangan regions, which focusses on legal practices. Law courts and practices in other regions, such as the landraad of Semarang and the law courts of Banten, however, has not been researched thoroughly yet. The most informative overview of all the VOC courts in Java are the studies *Indonesian Legal History* by John Ball, and fort he Priangan area: *Priangan* by De Haan. For Batavia, the comparative study *Batavia and Colombo* by Remco Raben

Part 1, "Anchoring Colonial Rule," investigates the relationship between colonial state formation and legal pluralities in colonial Java. Courts and codes are central to this part. A *longue durée* approach connects the VOC era with the nineteenth-century colonial state to find out how and why pluralistic courts were established and which laws were codified for these courts. The evolving construction of the pluralistic courts is traced in the various regions of Java. With regard to the law codes, the local informants consulted are compared in order to understand their impact on the subsequent nature of legal pluralities.

In part 2, "Legitimizing Law," we will take a closer look at two local knowledge holders of pre-colonial Javanese legal traditions, who were incorporated in the colonial pluralistic courts. I will investigate why the penghulus and jaksas were appointed, and remained appointed, as legal officials, and how they used the legal space of the pluralistic courtroom. Regarding the jaksas, moreover, their intermediary role is scrutinized. The mode of outsourcing parts of the legal system to the Javanese elites was essential to dual rule, but also left the Dutch simultaneously deprived of local knowledge and information networks. This increased the need for brokers, especially the jaksas, who were central actors in this process.

Part 3, "Room to Manoeuvre," positions the judges (both Dutch and Javanese) at the centre of analysis. It investigates how priyayi court members and Dutch presidents cooperated as judges in the pluralistic courts. It analyses the manifestation of dual rule in law courts as an expression of colonial force, and questions how this constellation opposed modern ideas about the rule of law that were propagated by Dutch jurists. These liberal jurists successfully argued for reforms in the colonial legal system, but this section will also show how eventually these colonial jurists furthered the project of colonial state formation by continuing the unequal practices of the colonial legal system, leading to 'a rule of lawyers' in the pluralistic courts.

Finally, in part 4, "Limits to Dual Rule," I will explore the tensions between the pact between the priyayi and the Dutch colonial government, by analysing major cases involving (1) extortion of the Javanese population, and (2) conspiracies by priyayi against the Dutch. These kinds of cases reveal the character of dual rule that would usually remain hidden but came

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provides insights. Some information about the workings of the Board of Aldermen (*Schepenbank*) in Batavia is also found in Jones' *Wives, slaves and concubines.*

out in times of crisis. This part shows where the limits of dual rule were, and what the consequences were of relying on the priyayi to impose colonial rule; for the colonial state, for the priyayi and for the Javanese people.

PART I — ANCHORING COLONIAL RULE

By the early nineteenth century, the sultanates of Cirebon and Banten in West Java and the outer regions of the central Javanese Mataram empire, reaching from west to east Java, had become 'the government lands' of the Dutch colonial state. In the centre of Mataram, the princely lands, the local rulers remained in place, indirectly ruled by Dutch administration. In the government lands the pre-colonial regional elites, the priyayi, who had been local representatives of the Javanese king or sultan, continued exercising power in service of the Dutch ruler. The era of the VOC and the period of the nineteenth-century colonial state are often viewed as two separate time frames with their own characteristics. However, in addition to contributions to historical research on the transitional era from company-state to colonial state, I aim to focus on continuity rather than change.[1] The origins of the colonial pluralistic courts in Java go back to the eighteenth century, when the first landraden were introduced in the countryside, within an existing dynamic environment of precolonial law courts. Pluralistic courts were important to the long historical process of anchoring colonial rule.

Formally, from 1621 onwards, according to the principle of concordance (*concordantiebeginsel*), Roman Dutch law was followed in Dutch governed areas of Java, but with the additional principle that this would be the case insofar as possible and practical. This provided space for

[1] Schrikker, "Restoration in Java", 132–144. Van Niel, *Java's northeast coast 1740-1840.*; Van Goor, "Continuity and Change."; Atsushi, *Changes of regime and social dynamics in West Java.*; For an overview of the state organisation of Mataram and its continuities in the nineteenth-century princely lands, see: Moertono, *State and Statecraft in Old Java.*

the application of Javanese customary and Islamic laws.[2] These were used outside of Batavia in particular, because in the countryside local laws were largely retained. Therefore, concentrating too much on the formal VOC policy in Batavia, the centre of Dutch colonialism, where all population groups were subject to the same courts and laws, provides an incomplete legal history. But also in Batavia the emphasis on racial division was already evident in early modern times, as can be seen from the separate quarters where ethnic groups lived and were policed by their own chiefs.[3] Cribb accurately defines the "universal" Statutes of Batavia (*Statuten van Batavia*) of 1642 as the only exception to an otherwise dominant tradition of separate jurisdictions.[4]

I will argue that there was a continuity of pluralistic courts from the VOC era to the nineteenth-century state, and subsequently ask how and why these pluralities continued, and investigate what this tells us about colonial state formation in Java. In the eighteenth century, in most regions in Java, the Dutch intervened in criminal law practice and simultaneously attempted to more or less adjust to the local legal traditions. This policy followed more general patterns of allowing local legal systems and laws, which was common in early-modern states in general.[5] Therefore, I do not observe the pluralities as odd singularities of a centralising state, but as phenomenon that were part of the state processes, as Halliday has argued: "For the early modern state was not simply a site of pluralities. It was made by them."[6] Legal pluralities and regional differences were familiar in the Dutch Republic itself. In 1813, there were no less than 128 criminal law courts in the province of Holland. This number quickly decreased during the nineteenth century when uniformity was introduced through the nationwide implementation of French legislation.[7] However, whereas a uniform legal system was introduced in all provinces in the Netherlands, in Java the pluralistic courts continued to exist and it was codified that the Javanese were tried according to their "own" laws and customs.

[2] Van Wamelen, *Family life onder de VOC*, 76.
[3] Raben, *Batavia and Colombo*, 214 and 265.
[4] Cribb, "Legal Pluralism and Criminal Law in the Dutch Colonial Order," 47-66.
[5] Benton, *Law and Colonial Cultures*, 127.
[6] Halliday, "Laws' histories," 268.
[7] Bosch, "Het Openbaar Ministerie in de periode van 1811–1838", Ch.1, Paragraph 2.

At the same time, the process did move in the direction of more state control over jurisdictions, and consequently local authorities and laws were identified and written down, with alterations and codification as result.[8] Chapter 2 offers an institutional genealogy of the pluralistic courts and traces the developments of the pluralistic character of the landraden and circuit courts. Thereafter, I turn from the courts to the codes. Western colonial powers in general, the British displayed a similar behaviour in British India, aimed at an unequivocal answer to their question of what Islamic law *was*. Their persistent codification fever, however, was in contrast with the Islamic legal traditions, in which multiple legal authorities could be consulted and various outcomes were possible.[9] Yet, whereas the British incorporated Islamic law into their colonial law, the Dutch remained indecisive about whether the laws of Java were Islamic at all. Chapter 3 focusses on the colonial codification of Javanese, Islamic, and Dutch-colonial laws by the Dutch. In particular, the focus is on the informants they consulted and how they affected the compilation of colonial criminal codes. Altogether, this part's attention lies on the legal pluralities from an institutional and legislation perspective. The next two parts are more actor-focussed, on the jaksa and penghulu, and the priyayi and Dutch court members.

[8] Benton, *Law and Colonial Cultures*, 127.
[9] Yahaya, *Courting Jurisdictions*, 75-76.

2 —A Genealogy of Pluralistic Courts

Through an institutional approach and by focussing on long-term developments, this chapter examines the genesis of the landraden and the circuit courts in Java. After a brief description of the pre-colonial legal pluralities and the impact of the arrival of Islamic influences, the origins of the first pluralistic VOC law courts in Java during the eighteenth century are described. Through this long history, this chapter explains why certain actors became members, advisors, and other officials of the pluralistic colonial courts and investigates the continuities and discontinuities from the VOC period into the nineteenth century colonial state.

2.1 Legal Pluralities and Javanese Kingdoms, ca. 1500–1800

Java has a rich history of legal pluralities. In the Hindu-Javanese kingdoms such as Majapahit during the fourteenth and fifteenth century, the judicial system was divided into *pradata* (royal or Indian law) and *padu* (Javanese law). The king personally decided over *pradata* cases—very serious cases or cases dealing with threats to peace and order such as murder, rebellion, robbery, and arson. Other crimes considered of a more private character, such as theft, were adjudicated according to *padu* traditions by the jaksa,[1] a word that comes from the Sanskrit term *adyaksa* and can be translated as superintendent or chairperson.[2]

With the arrival of Islam in the region, Islamic law began to influence legal decisions. After Javanese rulers began converting to Islam at the end of the fifteenth century, Islamic officials soon became part of the legal administration of several Javanese sultanates and kingdoms. The interpretation of the sharia followed in Java was the *Shafi'i madhhab* (school of law) within Sunni Islam.[3] However, the application of *Shafi'i* judicial principles and the exact role of Islamic officials in the legal system differed from one Javanese ruler to the other. The rulers of Banten, Cirebon, and

[1] Lubis, *Islamic Justice in Transition*, 58.
[2] Driessen, *Schets der werkzaamheden in strafzaken,* 35. See Chapters 4 and 6 for a more elaborate discussion on the origins of the jaksa profession and rank.
[3] Otto, *Sharia Incorporated,* 436–437.

Mataram each had their own way of dealing with the arrival of Islamic law, as I will now briefly discuss.

In the Banten sultanate in western Java, Islamic law traditions would be quite thoroughly implemented compared to other regions in Java. Banten became an independent sultanate in 1568. It was the only sultanate in Java in which it is certain that there was an Islamic law court with a single judge, the *kyai fakih*.[4] The *kyai fakih* mastered the Arabic language, he was part of the sultan's court, and he lived in one of the stone houses of the sultan.[5] The sultan was the mediator in local conflicts brought to him by headmen, who were often first welcomed by the prime minister or the *kyai fakih*.[6] By the second half of the eighteenth century, the *kyai fakih* was the judge in all cases. However, he did not exclusively apply Islamic law, since customary laws remained applicable in Banten as well.[7]

The sultanate of Cirebon was established in the same period, but the influence of Islamic law arrived later than in Banten. Instead, the influence of, first, Mataram and, a few decades later, of the VOC was more apparent. Following the death of the sultan in 1662, Cirebon was divided in three parts when three sons succeeded him. The sultanate was still governed as one entity with a centralized legal system, though. Important legal issues affecting the sultanate's interests were decided by the meeting of the sultans (or their *tumenggung*, princes) in the capital. All other law cases were administered by the so-called Court of Seven Jaksas (*Karta Pepitu*, or *Jaksa Pepitu*).[8] Islamic officials were also present in seventeenth-century Cirebon, and at some point during the first half of the eighteenth century an Islamic Igama (*agama*, religion) Court was established. Following the specific political situation in the Cirebon sultanate, this religious court operated as a collegiate court. Since each of the sultans (there were four after 1697) was consulted by his own penghulu all four of the penghulus had to be equally

[4] Reid, *Southeast Asia in the Age of Commerce*, 181–185.

[5] Ota, *Changes of regime and social dynamics in West Java,* 24, 210. During the nineteenth century the Dutch in Banten spelled this as "kyai fokki", who was by then the highest Islamic official of the residency.

[6] Ota, *Changes of regime and social dynamics in West Java,* 57.

[7] Ball, *Indonesian Legal History* , 50.

[8] Ball, *Indonesian legal history*, 48-49. Suzerainty to Mataram was accepted by Cirebon in 1650. In 1681 Cirebon signed a contract with the VOC. Around this time the VOC was already inflicting considerable influence over the Jaksa Pepitu as will be discussed later on in this chapter. The number of the Jaksas followed the Hindu-Javanese tradition of Majapahit (and its heir Demak), where the royal court consisted of seven ministers.

important in court. Hence, the four penghulus decided over legal cases together.[9] Penghulu literally means head, leader, or chief, and in Java it was the title of the highest-ranking royal religious official.[10]

The central-Javanese empire of Mataram (approximately ca.1500-1755) retained the traditional division between *pradata* and *padu*, but during the reign of Sultan Agung (1613–45), experts in Islamic law were added to the royal court. Pradata was then changed to *surambi*, named after the front porch of the mosque where law court sessions were held. The laws in force drew on Islamic, local, and Hindu traditions.[11] The subsequent ruler of Mataram, Amangkurat I, was less fond of the Islamic influence and reinstated the *pradata* court in his palace. However, under subsequent rulers, the Islamic penghulu would become part of the legal system of Mataram again, often as an advisor to the king in *pradata* cases. The penghulu also administered justice in cases on which Islamic law had a direct bearing, such as those involving marriage, divorce, and inheritance.[12] Although in Mataram many legal issues were transferred to the jurisdiction of the penghulus, other cases remained to be judged by the jaksas, who were responsible for maintaining law and order in the name of the *bupati* (regional representative of the ruler). In these cases, customary law was applied, with growing influences of Islamic law.[13]

As Mataram slowly disintegrated in the eighteenth century, the penghulus and their law courts increasingly moved from the central royal court to the regional mosques, which resulted in regional *surambi* courts existing alongside jaksa courts.[14] Neither the *surambi* courts nor the jaksa courts administered justice independently; rather, they advised the highest administrative authority. Both court types followed a mix of Islamic and customary law.[15] However, as I will discuss in part 2, the growing influence

[9] Ball, *Indonesian legal history*, 60–63.
[10] Note that in Malaysia and parts of Indonesia, penghulus are local headmen or chiefs. Yet, in pre-colonial and colonial Java the penghulus were religious officials, leading the religious bureaucracy. In contemporary Java, the penghulus are marriage officials. See Chapters 4 and 5 for a more elaborate discussion on the origins of the penghulu profession and rank in Java.
[11] Reid, *Southeast Asia in the Age of Commerce. Volume 1*, 176–177.
[12] Ball, *Indonesian legal history*, 46.
[13] Lubis, *Islamic Justice in Transition*, 60.
[14] Reid, *Southeast Asia in the Age of Commerce. Volume 1*. 176–177.; Ball, *Indonesian Legal History*, 59.
[15] De Waal, *De invloed der kolonisatie op het inlandsche recht*, 12-13.

of the penghulus in several regions in Java did not come about without a struggle. Rivalries between the penghulus and the jaksas could be fierce.

2.2 Legal Pluralities and the VOC, 1602–1799

The VOC accepted and applied legal pluralities early on when administering justice over local populations in the areas they controlled in the Indian Ocean world, such as Ceylon and the Moluccas. The first landraad in the Indonesian archipelago was established in Ambon in 1616, where local headmen and European members of the court of justice administered justice together over the local population. Also, outside of the areas directly governed by the VOC, where the legal systems officially remained the responsibility of the local rulers, several codifications were nonetheless made of local laws and some law courts were controlled or even introduced by meddlesome VOC officials.

In seventeenth-century Java, only Batavia was brought under direct VOC rule. This changed during the eighteenth century, when Dutch influence increased across Java, especially in Semarang and Cirebon and environs. This also enlarged the impact of the Dutch on the legal systems in rural Java. The first landraad in Java was established in Semarang in 1747, but even before that time there had been Dutch interventions in the local legal systems that would later influence the colonial court system. In general, there were three different regions in Java in which the VOC legal administration varied: Batavia and the *Ommelanden* (literally, surrounding areas) and the West Priangan regencies; Cirebon and the Cirebon-Priangan regencies; and Java's northeast coast. To obtain a better understanding of the earlier experiences with a landraad, we will examine that of Ambon before moving to Java to discuss the three main regions mentioned, and the VOC interventions in the legal systems there.

Ambon

The first court with the designation "landraad" in the Indonesian archipelago was established in Ambon. During the seventeenth and eighteenth centuries, there existed a system of several "small landraden" and one "big landraad." The smaller landraden were courts made up of the region's village chiefs. They decided over small cases such as insult and debts. The Big Landraad (*Grote Landraad*) of Ambon (established in 1617) comprise of fourteen village chiefs of Leitimor (South Ambon) together with European members

of the Council of Justice and the Political Board (*Politieke Raad)*. The European governor was the president. The Grote Landraad handled appeals of cases tried in the small landraad, and was the court of first instance for all other criminal cases and civil cases of more than fifty *rijksdaalders*.[16] The laws were a combination of customary law, ordinances (*plakkaten*) from the Dutch administration of Ambon, the government in Batavia, and the Statutes of Batavia (*Bataviase Statuten*). The fact that all local members of the Grote Landraad were Christian village chiefs from Leitimor displeased the Islamic village chiefs from Hitu (North Ambon), and in 1688 two Islamic chiefs were added to the Grote Landraad, although they were not allowed to rule in cases with Christian suspects.[17] So far, no historical research has been done into the exact workings of the Grote Landraad of Ambon, and it is not clear, for example, whether the local members had a vote over the final verdict.[18]

Batavia, the Environs and West Priangan

In Batavia, an official policy stated that all inhabitants would be judged by Dutch laws and VOC regulations.[19] Therefore, all population groups in the city were subject to the Council of Justice, the committee for marriages and small court cases (*kommisariaat voor huwelijken en kleine gerechtszaken*), and the board of aldermen (*college van schepenen*).[20] Despite this centralised and unified legal system, some legal pluralities can be traced nonetheless. The VOC divided Batavia in separate quarters, or villages, according to the inhabitants' ethnicity. There was a Bugis quarter and a Bali quarter for example.[21] A mediator (*voordrager*) supervised all these different quarters

[16] One *rijksdaalder* was 2,4 *guilders*.
[17] Knaap, *Kruidnagelen en Christenen*, 39-42.
[18] No historical research has yet been done on the Ambon Landraad. The nineteenth century archives in Jakarta contain information and procedural documents of this court. However, since I focus exclusively on Java, the archival sources about Ambon were not consulted for this research.
[19] During the VOC era (1602–1799), in Batavia the *Statuten van Batavia* (Batavia Statutes) were introduced in 1642. In 1766, the Statutes were adjusted in the New Batavia Statutes. These New Statutes were never formally implemented. Following the *Concordantiebeginsel* (principle of concordance), Europeans in the Netherlands Indies were insofar possible tried according to Dutch laws.
[20] Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 5. The *baljuw* acted as the public prosecutor. The board of aldermen exercised both administrative and judicial duties.
[21] The quarters were led by local officials, such as the Balinese captain and the Ambonese lieutenant (the military rank titles being an inheritance from Portuguese times).

and their legal decisions. More important cases were decided by him, and he could refer cases to the board of aldermen. He also had the right to act as a police judge and execute fines or punishments quickly. However, legal pluralities were common, since all quarters were led by their own chiefs who dealt with small cases and inheritance issues according to customary law.[22]

Also at the board of aldermen itself, non-Dutch legal influences appeared. During the first half of the seventeenth century, the board of aldermen was in fact even a pluralistic court, since it was not only compiled of three VOC officials and four civilians, but also of two Chinese as members. Immediately in 1620, the first Chinese member (the Chinese Captain) was appointed with a "consultative vote" and in 1625 the second Chinese member followed.[23] The general VOC board in the Netherlands, the Gentlemen Seventeen (*Heren VXII),* were satisfied with this policy. They even advised that in case large numbers of inhabitants of other Asian countries would start to reside in Batavia, the board of aldermen should appoint members from these groups as well. This extension of the pluralistic character of the board of aldermen would never become reality though.[24]

The Chinese members of the board of aldermen were appointed to offer advice according to the customs and laws of their country. It is not clear whether this was applied in actual court cases, or if the Chinese captain merely served as a translator. In any case, the laws and customs of the Chinese were formally ratified as legitimately applicable in 1640. Two years later, the Statutes of Batavia also acknowledged the heritage law of the Chinese and other non-Christians. However, a few decades later the Chinese in Batavia were increasingly distrusted by the Dutch and after 1666 no Chinese captain would be appointed to the board of aldermen. In 1720, it was decided that the Chinese heritage laws could be consulted, but they were not observed as formal laws.[25] Only a Chinese translator remained present in court. He translated from Chinese into Malay, and another translator would translate this into Dutch. The oath was also still taken in the Chinese manner, by cutting off the head of a rooster.[26]

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[22] Ball, *Indonesian Legal History,* 52-53.
[23] Raben, *Batavia and Colombo,* 200-203.
[24] Van Wamelen, *Family life onder de VOC,* 89-90.
[25] Van Wamelen, *Family life onder de VOC,* 89-90.
[26] Raben, *Batavia and Colombo,* 203.

No local Javanese was ever appointed to the board of aldermen, but if an Islamic witness was called by the court, he or she did take an oath according to Muslim practice. An ordinance of 20 January 1681 decided that the Muslim "priest" (*Mahomedaansche priester)* who took the oath with a Muslim witness would from then on receive one *rijksdaalder*. Before then, he performed this task without payment.[27]

In the Ommelanden and western Priangan, the board of aldermen held jurisdiction as well. Due to the vast distances, however, in practice other VOC officials administered justice there.[28] In the Ommelanden, the Aldermen's Board was assisted by the *drost* (Dutch overseer and sheriff) and the native commissioner.[29] West Priangan came under the sovereignty of the VOC in 1677 and the native commissioner was responsible for that region as well. Eventually, the status of the native commissioner in both the Ommelanden and Priangan became more or less like that of the governor of the Northeast Coast: an official with an almost unlimited power, often a family member or protégé of the governor general. He held the power to apply administrative measures and impose banishments in chains.[30] In West Priangan, conflicts arose in the field of criminal law though, since the native commissioner held responsibilities like those of the local courts. Even when Priangan had been part of Mataram, it had been situated far enough from the centre of this kingdom that it had retained its own law courts. During VOC times, these local courts chaired by the *bupatis* (whom the Dutch referred to as *regents*) continued to exist. Eventually, the authorities determined in practice which kind of criminal cases would be administered by the Javanese regents and which by the Dutch commissioner.[31]

Cirebon and East Priangan

The influence of the VOC on criminal justice in Cirebon and East Priangan dates from the early eighteenth century. The sultanate of Cirebon fell under

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[27] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek*. Part III, 68. Plakkaat, Januari 20, 1681.
[28] Van Wamelen, *Family life onder de VOC,* 89. In 1620 the board of aldermen was constituted and its jurisdiction stretched from Banten to Cirebon and from the Java Sea to the South Sea. In practice, however, much remained unclear about the actual regions over which it held jurisdiction.
[29] Later on, the *drossaert* would exercise justice independently in the Ommelanden. The native commissioner (Gekommitteerde tot en over de zaken van den Inlander) was the successor of the mediator (voordrager).
[30] Van Wamelen, Family life on*der de VOC,* 117–118.
[31] Ball, *Indonesian Legal History,* 54.

the sovereignty of Mataram, but had been squeezed between Banten and Batavia. When Mataram weakened, in 1681, Cirebon preferred a contract with the VOC over being dominated by one of the other Javanese rulers. With the centralized rule of Mataram gone, the Cirebon sultans at first returned to their original legal system, executed by the jaksas and based on Javanese-Hindu laws.[32] However, as described above, during the eighteenth century, a growing Islamic influence would lead to the establishment of the Islamic Igama Court, presided over by penghulus. The Cirebon courts continued to operate during the VOC era, but Dutch residents regularly intervened in cases if they deemed this necessary for VOC rule. In 1688, for example, Resident Willem de Ruijter prevented Islamic officials from intervening in a case of robbery that Sultan Sepuh wanted to judge according to Islamic law. The resident insisted he had made an agreement with the sultans of Cirebon and not with the *paepen* (literally, priests). His son, Pangeran Aria Cirebon, accepted the argument and a 1690 agreement between the Dutch and the Cirebon Sultanate held that Muslim personnel were not allowed in the legal courts presided by secular judges.[33]

The obstruction of Islamic law by Dutch officials was ultimately not very successful. By 1765, the penghulu court of Cirebon had become more important than the jaksa court. It not only decided over cases with a religious connotation, such as family law cases, but also over serious crimes involving the death penalty.[34] Simultaneously, VOC intermingling had also continued. From the early eighteenth century on, there was an administrative-judicial council in Cirebon presided over by the Dutch resident. The four sultans and the tumenggungs were court members. The council was a continuation of the meeting with the sultans, and would later be referred to as a landraad by the Dutch.[35] The council supervised the criminal verdicts of the religious court.[36]

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[32] Hoadley, "Company and Court", 143-145.
[33] Hoadley, *Selective Judicial Competence*, 30.
[34] Ball, *Indonesian legal history*, 60–63.
[35] Gaijmans, *De Landraden op Java en Madura*, 2. Hoadley does not describe the law court in Cirebon, presided by the resident, as a landraad. Hoever, the handbook by Gaijmans from the nineteenth century defines the Cirebon court as a landraad. The Asian Charter of 1803 also speaks of a landraad in Cirebon: Asian Charter, Attachment Lit. C. *Instructie voor de Gouverneur-Generaal van Bataafsch Indien*. Art.34. *"De Gouverneur-Generaal in Rade zal zorg dragen, dat behouden blijven de Landraden, tegenwoordig op Semarang en Cirebon aanwezig."*
[36] Kern, *Javaansche Regtsbedeling*, 25. *"De vonnissen der panghoeloe-vierschaar waren dus van den aanvang af aan zeker toezicht onderworpen."*

The Dutch resident was also responsible for prosecuting crimes and was entitled to have the last word on the verdict, either on his own initiative or because he received orders from Batavia to do so.[37]

VOC interventions were not only directed against the Islamic courts. They also criticized jaksa court procedures, specifically the requirement for unanimous decisions. Therefore, after 1721, the Court of Seven Jaksas was no longer given any influence in criminal cases, because the VOC thought the formal procedures of that court too inefficient. Furthermore, during the 1740s, the VOC replaced the sultans with the tumenggungs in the administrative-judicial council. The tumenggungs had formerly been in a state of "complete subordination" to the sultan, but were transformed into influential officials acting in the service of the VOC.[38] Altogether, the Javanese legal traditions were increasingly altered by VOC rules. Yet, simultaneously, local law courts and legal pluralities were consciously maintained by the VOC. In 1765, the Dutch introduced a compendium of local Cirebon laws to be used by the administrative-judicial council. The compendium, the *Pepakem Cirebon*, was based on the advice of jaksas and tumenggungs, as will be further discussed in chapter 3.[39]

In East Priangan, one of the four sultans of Cirebon, Pangeran Aria Cirebon, had received jurisdiction over the region in 1706.[40] The regents of East Priangan retained their own courts, presided over by the jaksa in name of the regent. They applied a combination of Islamic and customary law, and Islamic advisors were present during court cases. The verdict had to be sent to Pangeran Aria Cirebon and the Dutch resident of Cirebon. Also in this region, the VOC intervened in criminal law. In 1715, for example, Resident Johan Frederik Gobius opposed the involvement of religious officials in law courts. According to him they were often *saids* and other Arabs "from overseas" (*van de overwal*).[41] Therefore, he decided that they should not be allowed to advise in cases decided by jaksas.[42] However, the growing influence of the penghulus would be unrelenting in this region.

[37] Hoadley, "Company and Court", 146.
[38] Hoadley, "Company and Court." 148.
[39] Ball, *Indonesian legal history*, 60, 73-74.
[40] Hoadley, "Company and Court." 144.
[41] Kern, *Javaansche Regtsbedeling*, 35. Sayyid means direct descendant of the Prophet.
[42] Ball, *Indonesian Legal History*, 55-56.

Semarang; the first landraad in Java

The first official landraad in Java was set up in 1747 for the rural areas in the Semarang area, due to expanding VOC influence on the Northeast Coast of Java in the mid-eighteenth century. The VOC had controlled Semarang since 1678, but in 1743 and 1746 the VOC expanded its influence in the rest of the Northeast Coast of Java.[43] The inhabitants of the city of Semarang remained subject to Dutch laws and the Council of Justice, whereas the landraad administered justice over all Javanese who resided in the immense Northeast Coast region and were not subjected to Mataram. The landraad decided over civil and criminal cases between Javanese and Javanese exclusively.[44]

At the time of the establishment of the landraad in Semarang, Governor General Gustaaf Willem van Imhoff (1743–50) was already experienced when it came to landraden, because he had just arrived from Ceylon (Sri Lanka) where several landraden were already operating. The landraad of Semarang was not an exact copy of the examples of Ceylon, but was adjusted to Javanese circumstances. At the landraad of Galle, in southern Ceylon, the emphasis was on civil law, as in this region land law was important for the VOC. In Semarang and environs, maintaining order and peace was the incentive to establish the landraad, and the emphasis was on criminal justice. Another difference is that the local chiefs of Ceylon were attached to the landraad as advisors, whereas in Java the Javanese regents voted on the verdict.[45]

The landraad of Semarang consisted of at least seven Javanese regents and was presided over by the European governor. The chief jaksa (*groot jaxa* or Javanese *fiscaal*) was the public prosecutor. The other jaksas were responsible for the police investigations in one of the districts and reported to the chief jaksa. Minor cases were still adjudicated by the regents themselves, or by the jaksas performing in their name.[46] The cases had to be

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[43] Gaastra, *De VOC*, 63-64. By the mid-eighteenth century, an intense succession battle was going on in the Central Javanese empire Mataram. The VOC, not observed as a powerful threat by the Javanese, attempted to expand its influence through supporting the Sultan. In 1755, Mataram was divided among two rulers. Then, the VOC obtained the right to expand its influence in the Northeast Coast region by paying a compensation to the sultan.

[44] Ball, *Indonesian legal history*, 57.

[45] Rupesinghe, *Negotiating custom*, 69.

[46] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 5, 525-526. Plakkaat "Oprigting van een landraad te Semarang/" November 30, 1747. *"... zo wierd goedgevonden en verstaan, dat tot Samarang zal worden geformeert een landraad, bestaande uyt seven der voornaamste regenten, onder de praesidie van den commandeur, sullende den Adepatty van Samarang,*

decided according to the "Javanese laws" insofar as they were "acceptable" to the Dutch.[47] The regulations mention nothing about a role for the penghulus in the Semarang landraad, although the Semarang Compendium compiled especially for the landraad (to be discussed in the next chapter) was Islamic in orientation.[48] In 1750, it was decided that each verdict had to be sent to and approved by the High Government (*Hoge Regering*) in Batavia.[49] Verdicts were executed in the courtyard (*paseban*) of the regent.[50] The introduction of the landraad of Semarang was yet another extension of VOC intervention in the local legal systems of Java, although its impact should not be overestimated. In 1799, the Dutch colonial official Dirk van Hogendorp wrote that it was rare for the landraad of Semarang to gather more than once a year.[51]

Thus, halfway through the eighteenth century in Java there existed a landraad in Semarang and the Javanese administration of justice in Cirebon was already influenced considerably by legal traditions of the VOC. Due to the pluralistic character of the courts in which the VOC intervened, the courts differed by region, because they were adapted to the local circumstances. In Cirebon, there were four sultans. In Semarang, the seven regents of the Northeast Coast were important. However, despite the regional differences, there were also important similarities between the courts of the two regions. First, they were pluralistic, with Javanese judges in the majority though under a European president. Second, in both instances,

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nevens de oost en westerstrand regenten, altoos permanente leeden van dien Raad, dog de andere ambulatoir zyn, voor twee of drie jaar, en by forme van nominatie van jaar tot jaar moeten voogedragen werden ten getalle van agt om vier daar uyt te kiesen, sullende een boekhouder als scriba daar in fungeeren uyt de Europeese dienaren, nevens een Javaanse Secretaris, en van voorsz. agt leden in het crimineele altoos seven moeten present zyn, als er iets gedisponeert werd, dog voor het overige dien landraad regt te laten spreeken en de saken afdoen naar de Javaanse wetten, voor so verre by ons tollerabel zyn, waar van een compendium sal moeten geformeerd en dit heen gesonden worden ter visie en approbatie ... terwijl in ieder district sal moeten gehouden werden een Jaxa om meer na noodsakelykheyt en over alle deselve tot Samarang een groot Jaxa of Javaanse fiscaal om van de voorvallende delicten, dog de dagelykse geschillen van weynig belang onder de gemeente daat van uytgesloten, also die door de regenten moeten worden afgedaan."

[47] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 5, 525-526. Plakkaat "Oprigting van een landraad te Semarang/" November 30, 1747. "*..saken afdoen naar de Javaanse wetten, voor zo verre by ons tollerabel zyn.*"

[48] De Haan, *Priangan.* Part 4, 417.

[49] Ball, *Indonesian legal history*, 57.

[50] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 5, 526.

[51] Ball, *Indonesian legal history*, 60.

justice over the Javanese population was administered according to their own laws and customs, though influenced by European laws and customs—sometimes due to intervention by VOC residents acting independently, sometimes because entire new courts were established on the orders from Batavia. Third, in both councils the emphasis was on criminal cases, which were deemed to be of the highest importance for colonial rule in Java. Fourth, there was no separation of powers and the courts were subject to political influence. These same four characteristics apply equally to the landraad in Ambon. Finally, in Java there was a slow but steady increase in the number of colonial courts. In the mid-eighteenth century, Governor General Jacob Mossel (1750–61) had even sought to introduce several landraden in western Java, although this was rejected by the Council of the Indies.[52]

2.3 Pluralistic Courts in Transitional Times, 1800–1816

Political instability, the arrival of the VOC, the growth of Islam, and local circumstances all altered the Javanese legal systems in different ways during the eighteenth century. This dynamic process was still ongoing when the VOC collapsed in 1799. The Dutch government adopted the VOC possessions in the Indonesian archipelago and—with a short but important British interlude from 1811 until 1816—transformed them into a colonial state during the nineteenth century. This process of colonial state formation involved the introduction of an extensive, uniform colonial legal system in Java. Yet, the continuities with the VOC period are notable.

Ideals of the Asian Charter

During the early nineteenth century, the Dutch fiercely debated about how criminal law should be applied to the different population groups in Java. In 1803, a transitional colonial committee presented the Asian Charter, which laid out the foundations of the colonial state in Java. The liberal Dirk van Hogendorp and the conservative Sebastiaan Cornelis Nederburgh, both influential members of the committee and former VOC officials, were of contrasting opinions about the nature of colonial rule and colonial justice. The charter's advice on the legal system seems to have been a compromise

[52] Ball, *Indonesian Legal History*, 71.

of both reform and more conservative viewpoints represented in the committee:

> The administration of justice over the Native will continue to proceed according to their own laws and customs. With use of the right instruments, the Indies government will arrange that in those territories that are under the highest direct power of the state, this [administration of justice] will be cleaned of abuses against the native laws or customs that have crept in, and that receiving fast and just justice, either by the increase in the number of landraden, or by the appointment of lower landraden, will be encouraged and facilitated, as well as cleaned and freed from all wrong intervention by any political power.[53]

Thus, the charter's advice on the legal system regarding the local population was threefold. It urged an increase the number of law courts; it recommended that the local population be judged according to their own laws and customs; and it called for the removal of political influence from the legal system.

The call for an increase in the number of courts was merely a response to the unsafe situation in the area around Batavia. One reason for this were the long distances that witnesses had to travel to the board of aldermen in Batavia. Due to this, they would sometimes be away from home for weeks and they fell ill easily in Batavia's unhealthy climate. As a result, according to the committee, witnesses would rather remain quiet about their knowledge of crimes committed. Also, victims and their family members

[53] Asian Charter, 1803, Art. 86. In Mijer, *Verzameling van instructien*, 253. *"De rechtspleging, onder den Inlander, zal blijven geschieden volgens hunne eigene Wetten en Gewoonten. Het Indisch Bestuur zal, door gepaste middelen, zorgen, dat dezelve in die Territoiren, welke onmiddellijk staan ondere de Opperheerschappij van den Staat, zoo veel mogelijk, werde gezuiverd van ingeslopen misbruiken tegen de Inlandsche Wetten of Gebruiken strijdende, en het bekomen van spoedige en goede Justitie, het zij door vermeerdering van het getal der thans substisteerende Landraden, of door de aanstelling van onder-Landraaden, werde bevorderd en gemakkelijk gemaakt, mitsgaders van alle verkeerden invloed van eenige Politieke Magt gezuiverd en bevrijd."*

tended to take justice into own hands and avenged themselves on the perpetrators: "In that way one crime is born from another, and the entire Land, finally, the scene of Robbery and Murder."[54]

The committee emphasized that their recommendation that native people be tried according to their own laws and customs was not heartfelt advice. In fact, it went directly against liberal ideas on equality in law held by Van Hogendorp, in particular. But the committee saw itself bound to advocate the application of a different judicial treatment of the non-European population. On this point, the committee emphasized that they had followed existing regulations and the "thorough expertise" of two prominent jurists residing in this residency town."[55]

The committee's advice to separate the judicial and administrative powers was significantly more innovative.[56] In their provisional instruction to the governor general, we can read how they envisioned this in practice. The landraden would no longer be presided over by the Dutch resident, but by a separate Dutch commissioner. The committee also advised against the current policy of appointing Javanese regents as court members. Instead, they were to be replaced by independent "honourable" Javanese.[57]

The charter would not be implemented in practice, though. And if we take a closer look at the landraden in Cirebon and Semarang during the years after the Asian Charter, they appear to have functioned more or less as they had in the VOC period. An important indication of this regarding the Semarang landraad is a drawing from 1807 (see Figure 5), which shows six Javanese regents in full regalia and a European wearing a gown, all standing

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[54] Asian Charter, 1803. In Mijer, *Verzameling van instructien,* 185-186. *"..zoo wordt dan de eene misdaad uit de andere geboren, en het geheele Land, ten laatsten, een tooneel van Roof en Moord."*

[55] Asian Charter, 1803. In Mijer, *Verzameling van instructien,* 209. *"…in het oog houdende de Plaatselijke omstandigheden van het Land, in het welk deze Instructie zal moeten dienen, welke niet toelaten, in alles dat zelfde richtsnoer te volgen, en vooral in zommige opzichten, eene onderscheiding noodzakelijk maken, tusschen de behandeling van Europezen en Oosterlingen, waartoe wij met moeite zijn overgegaan, doch echter met de volle overtuiging, dat zulks niet anders konde worden daargesteld."; "de doorwrochte kunde van twee voorname Rechtsgeleerden binnen deze Residentie-plaats."*

[56] Asian Charter, 1803. In Mijer, *Verzameling van instructien,* 161. *"…eene zorgvuldige afscheiding der administratie van de Justitie van het Politiek Gezag, en voldoende voorzorge, dat het laatste nimmer op de eerste eenen willekeurigen invloed kan oeffenen."*

[57] Asian Charter, Art.34, 1803. In Mijer, *Verzameling van instructien,* 281. *"…niet, gelijk tegenwoordig, uit Regenten, doch uit andere bekwame en aanzienlijke Javanen, aan dezelve eenen behoorlijken Titel en Rang, met een zeker jaarlijksch Tractement, toevoegende, en geregelde Zittingen latende houden."*

behind a table with papers, probably the verdicts, watching the enforcement of punishments. This drawing will be discussed in greater detail in chapter 4.

Cirebon was placed under direct control of the colonial government in 1806.[58] Hardly anything is known about the workings of the Cirebon landraad in the early nineteenth century, but the archives contain a copy of the (undated) instructions for a landraad in Cirebon.[59] The landraad seems to have been a continuation of the judicial-administrative council,[60] although there were some changes. For example, the position of the sultans seems to have been restored, at least formally. According to the instructions, criminal cases were brought under the jurisdiction of the landraad, which consisted of the Dutch resident, all (by then three) sultans, the regent (*pangeran)* of Gebeng, and the Javanese prime ministers (*rijksbestierders*), and regents of the Cirebon-Priangan regions.

There also seems to have been more willingness to incorporate Islamic legislation and advisors to the court. The sultans were not only assisted by a tumenggung (who had their own subordinates), but also by a high priest (*hogepriester*), and two lower priests (*onderpriesters).* Besides, justice was administered according to the Islamic Semarang Compendium. This means that the Pepakem Cirebon, based on local laws, was no longer applied. It is clear, though, that in the end the European resident was still predominant during trials. He was the president of the landraad and held the right to bring the case to the Council of Justice in Batavia if he disagreed with the verdict of the landraad. Also, court sessions were held in his residence in Cirebon and the enforcement of the judgement took place on the square in front of his house.[61]

Altogether, the legal practices from the VOC period continued during the early nineteenth century with slight local changes. The Asian Charter would never be implemented in practice. However, Governor

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[58] De Haan, *Priangan.* Part 4, 628. "Cirebonsche contract." September 1, 1806.

[59] NL-HaNA 2.21.004.19 Van Alphen en Engelhard 019A, no.259. *"Memorie Instructif voor de Heeren Sultans en verdere Regenten en Hoofden in de landen van Cirebon, alsmede voor het Collegie van den Landraad, de opperpriesters, en Djaxas aldaar, zo te aanzien van de algemeene en huisselijke zaeken, als de civiele en crimineele regtsplegingen."* Signed by J.A. van den Broeck. Undated (approximately post-1806 since there is a reference to the King of Holland).

[60] Ball, *Indonesian legal history* 63.

[61] NL-HaNA 2.21.004.19 Van Alphen en Engelhard 019A, no.259. "Memorie Instructif: Derde afdeeling Regterlijke Magt", art.1, 2, 9, 14 and 11.

General Herman Willem Daendels (1807–10) would use it as an inspiration for his reforms.[62]

Fig.5 Dutch judge and Javanese rulers witnessing the execution and mutilation of criminals, Java, 1807. [© The British Library Board, c13568-99, WD 2977].

Thundering Reforms: Herman Willem Daendels

When Daendels arrived in Java in 1808 there were colonial law courts only in Batavia and the Ommelanden, Priangan, Semarang, and Cirebon.[63] When he left in 1810, there were four large landraden and there were smaller law courts in all residencies of the Northeast Coast of Java. The "thundering general" laid ground for an extended network of law courts.

With regard to his legal reforms, for a start Daendels took to heart the warning of the Asian Charter about the danger in the Ommelanden due to lack of law courts. In Batavia, the Board of Aldermen continued to exist, but in the Ommelanden, reforms were introduced to organise justice closer by

[62] Ball, *Indonesian legal history* , 87.
[62] Maurice Collis, *Raffles*, 92.
[63] Van Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 4.

and on a more regular basis. Henceforth, a special official—the *landdrost*—would administer justice together with two landowners as assessors. His court—a *landgerecht*[64]—held sessions in three, later four, places. The police chiefs (*schouten)* of the four districts in the Ommelanden were in charge of investigating and prosecuting crimes. In each district, the landgerecht held sessions only four times a year.

Daendels also more or less followed the Asian Charter in its advice to try Javanese according to their own laws, a subject I will elaborate on in chapter 3. In case of religious issues such as marriage and succession cases, the landdrost could add two "native" or Chinese assessors to his court. The landdrost acted as mediator in civil cases. The verdicts of the landdrost could be appealed at the board of aldermen. In 1810—subordinated to the landdrost—a *drost* was appointed in the Ommelanden to maintain the peace.[65]

From that moment on, the native commissioner was no longer responsible for the Ommelanden and was instead only responsible for the Jakarta and Priangan Uplands. His new title was "Landdrost of the Jakarta and Priangan Uplands." In these regions, justice was also brought closer to the local population. On 16 June 1808, a travelling court (*ambulant gerigt*) was established that administered justice over the local population.[66] This pluralistic court consisted of the regent and the chief penghulu of the district in which the crime was committed and two overseers assigned by the landdrost, and it was presided over by the landdrost. According to the instructions, justice was administered according to native laws and customs "that up until then were [the] rule." The court travelled to the district where the crime was committed.[67] Chinese, Christians, and "people who belonged elsewhere" had to be transferred to their "own" judges.[68]

When Daendels started his reform project, he established a landraad in Surabaya and one in Anjer (Banten). The landraden of Semarang and

[64] The landgerechten as installed by Daendels were the predecessors of the landraden. Thus, they are different from (and not related to) the twentieth-century landgerechten replacing the police law in 1914.
[65] Ball, *Indonesian Legal History*, 91-93.
[66] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 14. June 16, 1808, 794.
[67] Van Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 4; Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 15. August 8, 1808, 90. "*..die tot duscverre ten regel hebben gestrekt..*"
[68] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 15. August 8, 1808, 89. *"elders te huis horende personen."*

Cirebon continued to exist. Interestingly, procedures in each landraad seem to have been tailored somewhat to regional particularities. For example, in the landraad of Banten (brought under Dutch rule in 1808), the Javanese members were the local prime minister and two districts chiefs (*kliwongs*).[69] The penghulu offered advice.[70] Whereas the landraad in Banten judged only criminal cases, the landraad of Cirebon also administered justice in civil cases.[71] Also in the Banten landraad, justice was administered according to the "Javanese laws, and, in cases where it is impossible to follow these, to the ordinances and orders of the Land and the written laws."[72] The introduction of the landraad in Surabaya was a means of covering the immense area of the Northeast Coast of Java, which previously had been completely subject to the landraad of Semarang. Surabaya's landraad consisted of seven regents as members with the governor (*gezaghebber*) of the East Corner of Java (*Oosthoek*) as president.

The big landraden of Java's Northeast Coast in Semarang and Surabaya delivered verdicts in cases of thefts from temples, violation of graves, manslaughter, and treason, as well as in cases involving crimes committed by regents, jaksas, and their family members.[73] The lower landgerechten handled all civil and criminal cases that did not fall to the big landraden. It was decided for both the big landraden as the landgerechten that cases involving both a Javanese and a European, Chinese, or other non-Javanese person would be heard by the European law court.[74] Both the big landraden and the landgerichten were presided over by a resident—Daendels called them *prefects*—or a landdrost. In both types of courts Javanese members were appointed as well. They were the regents and "other prominent natives." Justice was applied according to Javanese laws and customs (see Chapter 3). Finally, peace courts (*vredesgerichten*) were established in which regents, lower Javanese officials and priests dealt with small cases such as marriages and insults. Also in this court, Cases where at

[69] Ota, *Changes of Regime* 147.
[70] Van der Chijs, *Nederlandsch-Indisch Plakaatboek*. Part 16. "Herfstmaand 1810. Instelling van een Landraad te Anjer", 417-418.
[71] Van Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 6.
[72] Van der Chijs, *Nederlandsch-Indisch Plakaatboek*. Part 16. "Herfstmaand 1810. Instelling van een Landraad te Anjer", 417-418. "*Javaansche wetten, en, waar die niet kunnen worden gevolgd, naar de placcaten en orders van den Lande en het beschreven regt."*
[73] Van Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 9.
[74] Gaijmans, *De Landraden op Java en Madura*, 3.

least one party was non-Javanese were directed to the European courts. This was also the case for crimes that were considered a threat for the public safety.[75] When establishing all these courts, Daendels more or less followed the advice of the Asian Charter to apply Javanese laws and customs, although he abolished punishments involving mutilation such as the cutting off limbs. Beheading with a dagger (*kris*), burning (*brandmerken*), flogging, work on a chain gang, and imprisonment were still allowed. We will elaborate on the subject of punishments in chapter 3.

The third advice of the Asian Charter, however, Daendels ignored. He certainly exerted his political influence on the legal system and criminal justice. With regard to the criminal law practice over the Javanese population, the punishment of the attackers of Salatiga is telling. In 1808, Salatiga was attacked and set on fire by a gang of seventy to eighty robbers. When fighting off the attack, one robber was killed, after which he was quartered (*gevierendeeld*) and his head was spiked on a pole and exhibited next to the main road. After this incident, Daendels temporarily organised a "judicial committee" who were allowed to announce verdicts without trial. The judicial committee, consisting of the president of the Council of Justice of Semarang and others not named in the ordinance were sent to Salatiga to punish the two captured prisoners and other as yet uncaught suspects "without any kind of trial, through immediate execution." The judicial committee was to be strengthened by the regent of Semarang and the chief penghulu "in order, enhanced by their influence, to direct with greater fruitfulness the prescribed investigation and to obtain the knowledge as to the true causes and motives, which gave the incentive for the mentioned predatory behaviour."[76]

Daendels' rule has been described as a "turning point" in colonial Java for his administrative centralization reforms.[77] And indeed, the addition of courts is a clear sign of the efforts to curb the power of the Javanese elites in several regions. However, regarding the composition of the courts it is important to note that he decided to preserve certain regional distinctions, a

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[75] Mackay, *De handhaving van het Europeesch gezag*, 97.

[76] Van der Chijs, *Nederlandsch-Indisch Plakaatboek*. Part 15. June 12,1808, 785-786. "*Zonder vorm van proces, bij wege van parate executie* (…) *Ten einde, door hunnen invloed gesterkt, met te meerder vrucht het voorgeschreven onderzoek te kunnen dirigeren en tot de kennis te geraken van de ware oorzaken en beweegredenen, welke tot het meermelde roofzuchtig gedrag hebben aanleiding gegeven*."

[77] Carey, *Daendels and the Sacred Space*, 3.

habit inherited from VOC times, and each landraad retained its own characteristics.

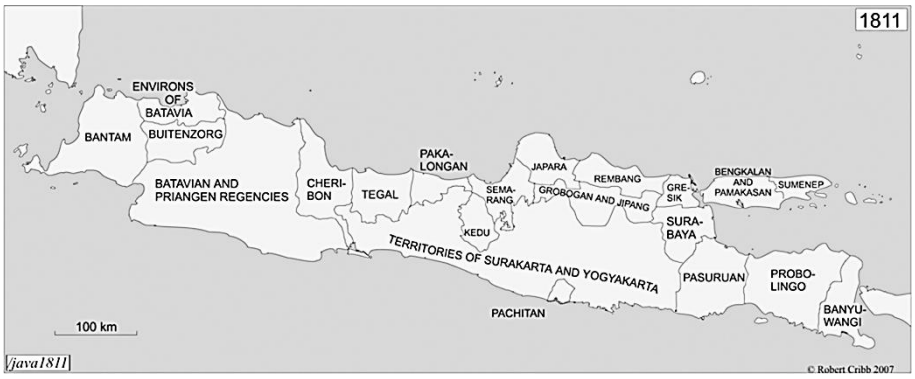

Fig.6 Java's administrative divisions at the conclusion of Daendels' rule, 1811. [Cribb, *Digital Atlas of Indonesian History*].

The British Impact: Thomas Stamford Raffles

From 1811 to 1816, England controlled Java. Governor General Thomas Stamford Raffles attempted to further curb the power of the Javanese elites. He attacked the palace of the sultan of Yogyakarta; the sultan of Banten was forced to cede land; and the sultans of Cirebon surrendered their last independence.[78] Regarding the legal system, whereas Daendels had adjusted the pluralistic law courts to regional differences, Raffles imposed a significantly more uniform court system by introducing identical circuit courts and landraden. Moreover, the Javanese members of the landraad were demoted to the role of assessors in an advisory role. This meant that the resident, who remained the president of the landraad, was now a single judge.[79] Both the penghulu and the jaksa were asked for their advice, and when there was no private prosecutor (*aanklager*), the jaksa was appointed as public prosecutor:

> The resident or his assistant shall sit in it as sole judge or magistrate. The bopátis [sic] of the several districts, or their deputies, shall attend to assist the

[78] Bastin, *The Native Policies of Sir Stamford Raffles,* 45-46.
[79] Raffles, *The History of Java,* 321.

> resident, through every stage of the proceedings, with their advice, or with such information as he may require. The head jaksa and penghulu shall be in waiting, to expound, where necessary, the law, to state the local usage, and to take down notes of the evidence. The jaksa of that district in which any crime has been committed, shall be the public prosecutor, where no private one appears.[80]

The big landraden were replaced by the new circuit courts. The landgerechten were renamed landraden.[81] The introduction of the circuit court for more serious criminal cases—"murder, treason, gang-robbery, or any other for which the sentence may amount to death"[82]—was of importance, since this court was presided by a trained jurist. I will discuss in part 3 the consequences of Raffles' separation of powers with respect to the circuit courts.

Also, the British jury system was introduced. The jurors of the circuit court were at least five men who "ought to be as near on an equality, as to rank in life, with the prisoner, as possible." Although no one below the rank of village chief was allowed to sit on a jury "as persons below that office, or in the very low orders of life, can be supposed to possess either independence or knowledge sufficient to qualify them to execute justly the duties of the situation."[83] On 4 September 1817 (when the Dutch had returned, but the British system was still active) a Javanese man, Tjitro Diwongso, was tried accordingly by a circuit court in Pekalongan. He was accused of public robbery in which a Javanese man, Moro Diwongso, was killed. The jaksa presented ten possible jurors, from which five were drawn. After the interrogation of the witnesses, the jury withdrew for "quite a while" and declared the accused innocent. The penghulu and jaksa agreed and Tjitro Diwongso was acquitted. The names of the jurors suggest that they were not priyayi, for their names are not preceded by the titles *raden* or

[80] Driessen, *Schets der werkzaamheden*, 33–36 and 49.; "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java", in: Raffles, *The History of Java*. Appendix D. Art.90.
[81] Raffles, *The History of Java*, 321.
[82] "Regulation A.D. 1814, art.100.
[83] Regulation A.D. 1814, art.159.

raden mas, another sign that the British system indeed reduced the role of the Javanese elite in administering justice in colonial courts.[84]

In small cases in the countryside, *bupati* courts and officers' or division courts were established. The second was a council presided over by Javanese police officers to rule on petty offences "such as abusive language and inconsiderable assaults or affrays" at least twice a week.[85] The *bupati* courts dealt solely with civil cases, and were presided over by the *bupati* assisted by the jaksa and penghulu.[86] In Batavia the Council of Justice and the Board of Aldermen were merged, since there was no longer a difference between company officials and others. A bench of magistrates (three magistrates and a president) was introduced to rule in smaller cases (police cases). They could impose fines or corporal punishments: for the Chinese, there was a maximum of flogging or two years' forced labour on a chain gang, and for Europeans a maximum of three months of imprisonment, banishment, deportation, or a fine up to three hundred Spanish dollars. This bench of magistrates was comparable to the English justice of the peace. In Semarang and Surabaya, there was only one magistrate each, and they only decided over criminal cases with a maximum of six months' imprisonment for non-European and Chinese convicts, or six weeks' imprisonment for Europeans.[87]

Raffles also introduced a resident's court in the princely lands of Yogyakarta and Solo in central Java. These administered justice in cases of conflict between Chinese and Javanese born outside of the princely lands. If in one of these cases a Javanese originating from the princely lands was involved as well, the colonial resident's court also held jurisdiction. All this was a remarkable change in the status of the princely lands since, until this moment, the justice system had completely been in the hands of the rulers and penghulus. Raffles also reduced the power of the religious law courts in the princely lands in criminal cases, and Javanese rulers lost their right to impose the death penalty without the approval of the British.[88]

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[84] ANRI, IZ, no.121. The names of the jurors were Mangoen Dirdjo, Toespo Joedo, Sarjan, Kaliep Noerie, Kaliep Hieman

[85] Regulation A.D. 1814, art.47.

[86] Regulation A.D. 1814, art.66.

[87] Ball, *Legal history of Indonesia*, 129–130.

[88] Carey, *Power of Prophecy*, 385-386. This sowed seeds of revenge, as will be described more extensively in chapter 3.

Altogether, the justice system would become, when compared to the reforms of Daendels, more independent due to the introduction of circuit court judges. Furthermore, the part played by the Javanese elite was reduced, since they became advisors in court rather than judges. However, in general, the implementation of Raffles' reforms was in line with the strategy applied earlier by Daendels. For example, Raffles introduced direct government, but there was no abandoning (yet) of the Dutch policy of acknowledging Javanese rulers and chiefs and maintaining local customs.[89] Despite Raffles' vigorous policies of introducing a uniform legal system in Java, he did not let go of the pluralistic character of the colonial courts.

2.4 Pluralistic Courts and the Early Colonial State, 1819–47

After the Dutch returned to power in the Indies, a new regulation arranged the most urgent matters regarding the colonial legal system in Java. Initially framed as provisional, the regulation would in fact remain in force until 1848. During that time, the number of pluralistic colonial courts on the island further increased, and in 1824 the landraden were even introduced to the cities, a completion of the dual law court system.

Provisional Regulations of 1819

In 1816, the commissioners general responsible for the transition from English to Dutch rule set up a committee consisting of three jurists,[90] who were given the assignment to provide advice on the colonial legal system.[91] This committee prepared new instructions that defined the central objectives of the legal system.[92] Their Provisional Regulation of 1819 kept a significant part of Raffles' reforms intact—including the independent circuit judges and the complete structure and organisation of the law courts in Java—but they abolished jury trials and the landraad became a collegiate court again.

We know from the procedural documents of a court session of the High Council in Batavia of Monday, 17 November 1817, that the Dutch

[89] Furnivall, *An introduction to the history of Netherlands India*, 62.

[90] The commissioners were C. Th. Elout, A. Buyskens en G. Baron van der Capellen. The lawyers were Herman Warner Muntinghe, Pieter Simon Maurisse en Pieter Merkus

[91] ANRI AS B. January 10, 1819, no.6. Unfortunately, I have not been able to find in the archives the files belonging to this Besluit. We do know that in the ANRI, they were relocated to a file in a later year, but there the files were missing there as well.

[92] PR 1819, S 1819, no.20. "Reglement op de administratie der politie en de krimineele en civiele regtsvordering onder den Inlander in Nederlandsch-Indië."

clearly could not get used to the system of jury trials. Twelve sworn men were present as a jury to decide over criminal cases involving non-European suspects. The session commenced without any problems. The slave Njoman from Bali,[93] owned by an old Chinese woman, was condemned to death for murdering a female slave. He admitted guilt, but he had been "angry and blinded by anger." During the court session, a Malay and Chinese translator were present. The sworn men decided after deliberations that the man had to be condemned to be hanged. After this decision, the council planned to continue to the next case—a "native man" accused of arson, but this was not happening because one of the jury members, a notary, rose from his seat and announced that he had to return to his work: "he agitatedly continues, that he was summoned to protest a bill on Tuesday, and whether the council would compensate the damage ... after which he declared [he would] not be able to stay, rose from his seat and left."[94] After this incident it was proposed to fine sworn jurors if they did not show up.[95] The abolition of jury trials in 1819 must have been welcomed by the notary.

Apart from the abolition of jury trials, the British system of "private prosecutors" was retained only for police law. For example, at the end of the 1820s, a woman in Semarang was convicted by the resident to twenty lashes under police law for pledging a golden strap, having been accused by a European man named Waterloo.[96] In Batavia, the magistrate from the British period was also abolished. The resident administered police law, whereas all other criminal cases, in which punishments of more than eight days of the pillory or fines of more than three guilders were applicable, were sent to the Council of Justice.[97]

[93] Until 1855, slavery was allowed in the Netherlands Indies. The international slave trade had been abolished in 1818. Taylor, *The Social World of Batavia*, 125.

[94] ANRI AS R. December 5, 1817, no.13b. *"kwaad en in mijn gezigt verduisterd"* (..) "..*hervat hij met heftigheid, dat hij geroepen was om nog dinsdag een wissel te protesteren, en of de raad dan de schade zoude vergoeden ... Waarop hij zich verklaarde van niet te kunnen blijven, op stond en heen ging*."

[95] ANRI AS R. December 5, 1817, no.13b.

[96] Arsip Karesidenan Semarang, 1800–1880/863.

[97] ANRI AS R. January 27, 1824, no.14. Missive Supreme Court member G.T. Blom, March 19, 1822. *"De straffen, welken de Magistraat in de Britse tijd kon opleggen, waren rottingslagen, publieke arbeid aan de ketting voor minder dan zes maanden, geldboete onder de vijftig piasters."*

As noted earlier, another important institutional change was that in 1819 the landraden became collegiate courts again.[98] The power of the priyayi in general would not be completely restored, since they remained officials subject to and part of the colonial civil service,[99] but they were rehabilitated as court members entitled to vote in the landraad.[100] Furthermore, in 1819 it was decided that the landraden and circuit courts would also administer justice over the Chinese and other "foreign Orientals," who by that time had started living throughout the countryside in larger numbers.[101]

Finally, the governmental structure in urban Java was made more uniform with respect to the countryside. In the Ommelanden, for example, a jaksa and a penghulu were appointed in each quarter.[102] However, this was not yet a dual legal system as it existed in the countryside, since the entire population in Semarang, Batavia and Surabaya was still subject to the same courts. The completion of the dual legal system in urban Java would follow a few years later in 1824.

Pluralistic Courts Introduced in Urban Java, 1824

In 1824, the landraden and circuit courts were also introduced in Batavia, Semarang, and Surabaya. The direct incentive for the reform was a request from a number of Chinese traders (*anachodas*) in 1821 that suited those Dutch officials who were already in favour of expanding the dual legal system to the cities. They used the request to open discussions on this topic among colonial officials and jurists.

The anachodas had requested for permission to sue their debtors in a different manner. The anachodas, who often moored at Batavia to sell their cargo and to trade with the local Batavian Chinese, complained about the procedures of the Council of Justice. These were so expensive and lengthy that the anachodas, who often only stayed in town for as long as four or five months, had already left when the verdict came. Therefore, they filed a

[98] Maurice Collis, *Raffles*, 1982, 92.
[99] Bastin, *The Native Policies of Sir Stamford Raffles*, 71.
[100] Collis, *Raffles*, 92.
[101] Gaijmans, *De Landraden op Java en Madura*, 5.
[102] S 1819, no.37, art.12. The Ommelanden were from the on called the Western, Southern and Eastern Quarters (Batavia and suburbs were the Northern Quarters).

request to make the Chinese captain responsible for the adjudication of these conflicts and to make his decisions legally valid.[103]

General Secretary (*Algemeen Secretaris*) Pieter Merkus—previously attorney general and co-author of the Provisional Regulations of 1819—acknowledged the need for a swift adjudication of the Batavian Chinese, but he was unwilling to transfer this responsibility to the Chinese captain, which led to a situation in which court cases lacked any Dutch supervision. According to him, pillory for unwilling debtors could lead to abuses and, moreover, he feared that the Arabs might also start asking for their own court. However, Merkus did use the opportunity to reflect on the regulations of 1819, two years earlier, and on how non-Europeans were tried in civil and criminal cases. He wrote that non-Europeans outside of the cities were privileged over those in the cities because they had courts with judges of their "own clan" whose "knowledge and values resemble theirs and who, moreover, decide over the cases on the advice of those who are considered to be knowledgeable about their laws."[104]

According to Merkus, there were several reasons to change the judicial system for non-Europeans: the procedures of the Council of Justice were lengthy and expensive; often the conflicts were about small amounts of money, not in any proportion to the high cost of litigation, and, in particular, to the cost for an attorney (*praktizijn*). Moreover, non-European litigants were unable to decide themselves if the attorney delivered work of appropriate quality, because they could not understand him. Local suspects and litigants could not follow the court sessions either, since the proceedings were held in Dutch. In criminal cases, there were all kinds of formalities, which might have been useful for the Javanese elite, Merkus said (though these were nearly non-existent in Batavia), but not for the common Javanese. Merkus did not present a new proposal or reform, but he urged that these problems be solved.[105]

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[103] NL-HaNA 2.21.007.57 Schneither, no.14. Files belonging to R. January 27, 1824/14. Letter Attorney General Pieter Merkus to the Supreme Court. July 16, 1821.

[104] NL-HaNA 2.21.007.57 Schneither, no.14. Files belonging to R. January 27, 1824/14. Letter Attorney General Pieter Merkus to the Supreme Court. July 16, 1821. "*..hun eigen volksstam wier begrippen en zeden met de hunne overeenkomen en die bovendien in de aan hunne uitspraak onderworpene zaken beslissen op de voorlichting van degenen die geacht worden met hunne wetten bekend te zijn."*

[105] NL-HaNA 2.21.007.57 Schneither, no.14. Files belonging to R. January 27, 1824/14. Letter Attorney General Merkus to the Supreme Court. July 16, 1821.

Attorney General Pieter Hendrik Esser also saw reasons to alter the legal procedures over the "natives" and Chinese in Batavia. Previously, small cases had been dealt with by the police (after the magistrate of the British had been abolished), but recently a new resident was appointed who followed the regulations meticulously. These stated that the resident could impose a maximum punishment of eight days of pillory, and he forwarded other (still small) cases to the public prosecutor of the Council of Justice. These included the case of the "native Lemin," servant of Lieutenant Colonel de Stuers, who had stolen money from his master, and that of Rasidie, who had lived since childhood with the Arab Sech Mohamad Jabidie and had now stolen silverwork to gamble with. According to Esser, these kinds of cases had to be decided more quickly than was possible using the long procedures of the Council of Justice.[106]

The considerations of the public prosecutor of the Council of Justice Jan van der Vinne were foremost administrative. In October 1821, eight suspects had been acquitted for a lack of proof. All of them had confessed during police interrogations but had withdrawn their confessions in court. Among the accused were people suspected of poisoning as well as a "major felon" (*een groot booswigt*) who, according to Van der Vinne, had committed an "indisputable murder" (*gewisse moord*). Furthermore, in one case concerning a theft from the marine warehouse, Van der Vinne had urged the resident to handle these cases in a punitive way (*correctioneel afdoen*) by the police, but the resident had replied he did not have the authority to do so. According to Van der Vinne, the "native" delinquents would generally revisit their confessions and start denying their guilt after twenty-four hours in prison. Right after their arrest, they would still "reside in the first regrets and the tortures of their conscience"[107] and therefore confess easier. Therefore, trials had to take place as quickly as possible by the resident himself. However, as described earlier, the resident did not have the authority to mete out punishments more severe than a fine of three guilders or eight days of pillory. Van der Vinne concluded cynically that these were

[106] NL-HaNA 2.21.007.57 Schneither, no.14. Files belonging to R. January 27, 1824/14. Letter Attorney General Esser to the Supreme Court. December 21, 1821.
[107] ANRI AS R. January 27, 1824, no.14. Letter public prosecutor of the Batavia Council of Justice Van der Vinne to Attorney General Esser. Batavia, September 5, 1823. *"..verkeren in de eerste wroegingen en pijnigingen die gewetens."*

> certainly wonderful punishments for keeping control over 10.000 unwilling slaves, 25.000 Chinese rascals, and 100.000 free natives. A slave cook who is not willing to cook well, a native who smashed a window pane somewhere, a Chinese who buys up stolen trousers, are all tried by the Council of Justice. This cannot have been in the spirit of the legislator. What then is the police? What police power is trusted to the resident of Batavia? What methods does this official have to maintain good peace and order?[108]

Although Attorney General Esser considered Van der Vinne's tone way too agitated, he agreed with the idea of a separate way of adjudicating Batavia's non-European population, and was in favour of a special native court, as proposed by both Van der Vinne and Merkus albeit for different reasons.[109] However, a committee consisting of Supreme Court members did not agree with all points made by Merkus. The committee felt that the procedures of the Council of Justice had already been shortened—in the Netherlands the proceedings were much longer—and, moreover, in cases involving sums of up to one hundred guilders, an attorney was not obligatory. They also did not consider it a problem that non-Europeans were often unable to communicate with their attorney due to language barriers, because they expected communication in Malay to be perfectly possible. However, the committee did agree on the formation of a separate law court for minor offenses

[108] ANRI AS R. January 27, 1824, no.14. Letter public prosecutor of the Batavia Council of Justice Van der Vinne to Attorney General Esser. Batavia, September 5, 1823. "*...zeker geweldige poenaliteiten, om daarmee 10.000 onwillige slaven, 25.000 schurken van Chinezen en 100.000 liberale inlanders in bedwang te houden. Een slavenkok die niet goed koken wil, een inlanders die ergens de glazen inslaat, en eene Chinees die een gestolen broek opkoopt, behooren voor den Raad van Justitie te regt te staan. Dit heeft immer nimmer de geest van den wetgever kunnen zijn, wat is dan politie? Welke politioneele magt is dan aan den Resident van Batavia toevertrouwd? Welke middelen heeft dien ambtenaar dan toch om de goede orde en rust te handhaven?"*

[109] ANRI AS R. January 27, 1824, no.14. Attorney General Esser to the Governer General Van der Capellen. Batavia, September 7 , 1823.

committed by non-Europeans. In this court, both local and Chinese chiefs would be seated as members.[110]

Supreme Court member G. Th. Blom had done some research into the recent legal history of Java and concluded that for several decades prior, the local population in the cities of Semarang and Surabaya had been subject to different laws: "First they had native judges and native laws, thereafter European judges and native laws, and at present they have European judges and European laws." He agreed with Merkus on the point that the Javanese population outside of the cities was in a better legal position. After all, these people were tried according to Javanese laws and simpler procedures. And although the landraden and circuit court there were presided over by a European, the other judges were Javanese. Blom had also noticed that for minor offenses, the non-European population in Batavia instead of going to the colonial courts often went to their own chiefs, who, according to Blom, were unsuited to resolve these issues. Therefore, he pleaded for a law court that could handle this kind of cases quickly.[111]

Blom was of a different opinion regarding important civil cases that, he felt, still should be directed to the Council of Justice, especially when prominent Chinese with major business interests were involved: "The Landraad of Surabaya would be not a little embarrassed, when they are assigned to settle a dispute between Kan Toko and Han Tjanpot. It would be utterly useless when such weighty cases were subjected to the native court."[112] However, he was strongly opposed to appointing "Chinese or Moorish" members to the new law court handling criminal cases. Instead, the Chinese just had to consider it a favour that they would be subject to Javanese rather than European laws, that is "people, who are in much more

[110] ANRI AS R. January 27, 1824, no.14. Advice Supreme Court to Governer-General Esser. Batavia, January 16, 1822.

[111] ANRI AS R. January 27, 1824, no.14. Report Supreme Court member Blom. Soerabaya, March 19, 1822. "*Eerst hebben zij inlandsche regters en wetten, vervolgens Europesche regters en inlandsche wetten gehad en thans hebben zij Europesche regters en wetten*." On request of the committee, Blom wrote a historical overview of the legal system in Java starting with the landraad of Semarang in 1747.

[112] ANRI AS R. January 27, 1824, no.14. Report Supreme Court member Blom. Soerabaya, March 19, 1822. "*...de Landraad van Soerabaja moet niet weinig verlegen zijn, wanneer aan denzelven de beslissing van een der geschillen tusschen Kan Toko en Han Tjanpot worden opgedragen. Het is volstrekt nutteloos, dat diergelijke gewigtige zaken voor de inlandschen regtbank komen*."

resemblance with them regarding their religion, laws, morals, and customs, than we are."[113]

Merkus on the other hand was a proponent of the addition of Chinese assessors to the new law court. He drafted concept regulations in which he proposed a new court, presided over by the resident and with two European inhabitants, a Chinese and a local chief as members.[114] Eventually the proposal did not pass completely; the distrust of the Chinese was too great.[115] Instead, the landraden, already active in the countryside, were introduced in the cities, the only difference being that two European members were added and that the local court members in Batavia were referred to as "assessors" rather than "members." Yet, the Javanese court members had the right to vote, so in practice the procedure seems to have been the same as in the other landraden in Java.[116]

Hence, in 1824, the dual system in Java was completed in both the countryside and the cities. The non-European population went to different law courts than the Europeans.[117] The pluralistic character of the landraad was maintained and the Javanese were still officially judged according to "their native laws and customs."[118] Each had had his own reasons to support

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[113] ANRI AS R. January 27, 1824, no.14. Report Supreme Court member Blom. Soerabaya, March 19, 1822. "*....lieden, die met hen in godsdienst, wetten, zeden en gewoonte veel meer overeenkomst dan wij hebben*."

[114] ANRI AS R. January 27, 1824, no.14. Concept regulations drafted by Merkus, undated [ca.1823]. Merkus proposed to name the new court "*Residentsraad*" or "*Raad tot Zaken van de Inlander*". Merkus eventually convinced Blom on the issue of the Chinese assessors, but this was of no consequence anymore, because the committee preferred having local chiefs as assessors exclusively (see: ANRI AS R. January 27, 1824/14. Letter Blom to the Governer-General Van der Capellen. January 14, 1824).

[115] S 1824, no.4, "Publicatie van den 27sten Januarij 1824, waarbij het Reglement op de administratie der politie en der Criminele en Civile regtsvordering onder den Inlander, binnen de jurisdiction der steden Batavia, Samarang en Soerabaija, onder eenige wijzigingen wordt ingevoerd." Art.15. Only in civil cases, two Chinese officers were present as advisors. *"In civile zaken tusschen Chinesen onderling, zullen twee Officieren van die natie, met geen van beiden in het geschil betrokken zijnde, door den Voorzitter van den Landraad, bij denzelven als adviseur geroepen, en hun gevoelen geraadpleegd."*

[116] S 1824, no.4, "Publicatie van den 27sten Januarij 1824", art.3. "Te Batavia zal de Landraad bestaan uit den resident (…) mitsgaders vier Assessoren, waarvan twee Europesche, en twee Inlandsche Hoofden." The requirement for European court members at the Landraad of Batavia was abolished in 1856 (S 1856/69).

[117] Only in civil cases in which there was a dispute of over more than 100 guilders, was there the possibility for non-Europeans to bring their case to the European Council of Justice, if both parties agreed on this. S 1824/4, art.14. Cases dealing with disputes of over 500 guilders, were open to appeal at the Council of Justice at all times.

[118] As decided by the still active provisional regulations of 1819 (S 1819/20, art.121).

this plan. Merkus did this from the conviction that it would be better for the Javanese population to try them according to their own laws and customs. Others, such as Van der Vinne, merely observed the introduction of landraden as a means of judging the local population at a faster pace and to be able to maintain better control. We will come across these names more often when discussing other legal debates of the early 1820s. Merkus[119] and Esser[120] often represented the views of liberal jurists who sought change, whereas Van der Vinne represented the interests of the more conservative administrative officials.

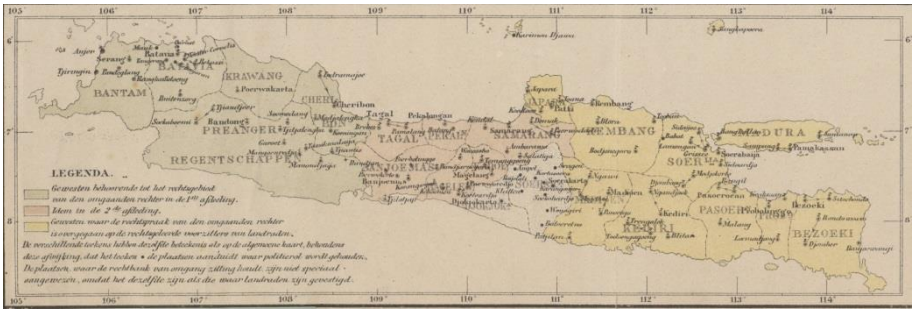

Fig.7 Map showing all landraden in Java, 1883. "Kaart aangevende den bestaanden toestand met betrekking tot het rechtswezen in Ned. Indië, behalve wat betreft de districts- en regentschapsgerechten." [KITLV DB 1,5].

Anchors of Colonial Rule

From the previous deliberations of the early 1820s and the introduction of the landraden in the cities, we know that during the early colonial state the pluralistic law courts were viewed as a way to keep control over the local population, to use the expertise of the Javanese elite, and, simultaneously, to supervise this same elite. In 1846, Chinese captains were finally added to the landraden and circuit courts as advisors in cases in which a Chinese was accused or involved as a litigant.[121] From that year on, almost all the

[119] Although over time, Merkus would become more conformist in his viewpoints, in particular when he was Governor General (1841-1844). See Chapter 7.2.1.
[120] Fasseur, *Indischgasten*, 68. P.H. Esser was a judge in Haarlem before he went to Java in 1820, with his wife and eleven children. He died five years later in 1825.
[121] RO, 1846, art.7. As discussed in the introduction, the legal position of the Chinese differed during the nineteenth century. In 1854, in Java and Madura the Chinese were again subjected

influential representatives of the region's several power structures gathered in the landraad courtroom, administering justice together.

The number of landraden in Java increased from two in 1800 to sixty-two in 1848.[122] In that year, it was decided that landraden would also be established outside of the capital towns of the residencies, wherever necessary.[123] In 1866, landraden were also situated in all districts where an assistant resident was based, and landraden were maintained in Bekasi and Trengalek as well.[124] In 1874, there were eighty-nine landraden in Java (see Figure 7). The frequency of court sessions also intensified and the number of persons tried by colonial courts increased (see appendix 2, Tables 2 and 3). Whereas during the eighteenth century, the landraad of Semarang gathered once a year, in 1838, J. J. X. Pfyffer zu Neueck mentions in his travel account that landraad sessions in Java were held "almost every month."[125] The landraad of the crowded Batavian suburb of Meester Cornelis shows an even higher frequency. In 1834, court sessions were held each Wednesday.[126] From 1848, each landraad was obliged to hold sessions at least once a week and besides that as often as possible.[127] In the early twentieth century, many landraden held sessions on a daily basis, and due to the introduction of landraad vice-presidents, two sessions could be held simultaneously.[128]

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to the European courts in civil cases. In criminal cases, they remained subjected to the landraden and circuit courts.

[122] Gaijmans, *De Landraden op Java en Madura.* Attachment 1 *"Opgave der plaatsen op Java en Madura, waar Landraden zijn gevestigd met vermelding der daartoe betrekkelijke bepalingen."*

[123] Gaijmans *De Landraden op Java en Madura*,7.

[124] S 1867, no 2.

[125] Pfyffer zu Neueck, *Schetsen van het Eiland Java*, 154.

[126] ANRI, GS Tanggerang, no.27.III . Landraad sessions held in "mr. Cornelis' in the South quarters of the Environs of Batavia: 5–11–1834, 19–11–1834, 26–11–1834, 3–12–1834, 10–12–1834 and 17–12–1834. All were theft cases.

[127] RO, 1846, art.91.

[128] See for example: Indisch Familiearchief, no.8, Hueting. Letter Kees to his parents in law. Blitar, April 7, 1920. *"Zooals ik jullie al schreef heb ik het nu nog al erg druk. Ik heb elke dag zitting. Dat begint 's morgens om 8 uur. Van 6-7 bekijk ik voor 't laatst de zaken van die dag; dat zijn meestal een stuk of vier, allemaal misdrijfzaken, meestal diefstal. Als alle beklaagden en getuigen aanwezig zijn duurt de zitting tot 12 uur, een paar keer is het wel 2 uur geworden, maar dat is wel wat te lang. Na afloop dan een uur of halfeen eten we. Om 4 uur begin ik weer met zaken van die morgen na te zien, nieuwe zaken door te kijken om ze een week later te kunnen berechten, en nieuwe binnengekomen zaken door te lezen. (...) Daar ik hier de 2e president ben en de 1e ook elke dag zit, is er voor mij geen zittingsruimte. Daarom heb ik eerst*

The landraad sessions were visible gatherings, held in white court buildings in the cities or—as happened often in the countryside—outside near the regent's residence or near the site where the crime had been committed. Then, a courtroom was improvised by covering a table with a green cloth. The court procedure was set, and all the officials involved had their own seat in the courtroom. The landraad president was seated in the centre with the secretary on his left so that he could give instructions easily. To his right there was the highest-ranking Javanese judge. The jaksa sat to his right, whereas the second Javanese judge took his place to the left of the secretary. Next to him, farthest to the left, was the penghulu. The placement of the Javanese members was of importance, as explained by the jurist Adrianus Johannes Immink in 1889, "because it would be against all native understandings of decency to—for example—place the regent next to the secretary and a wedono next to the president."[129]

At the start of the session it was the duty of the jaksa to read aloud the indictment. Then, the suspect responded by declaring whether he had "heard and understood" the indictment and possibly by making any remarks. On 9 October 1820, at the landraad of Semarang, a man named Singotroeno responded by saying that he was not guilty of stealing a *baatje* (*kebaya*; Indonesian garment), but that it had been woven by his wife and thereafter produced into a garment by a fellow villager.[130]

Then the witnesses were called. The wife of the victim declared that her husband was robbed and that someone had dug under their house to do so. A few days later she had seen the stolen *baatje* drying in the sun on a bamboo tree (*aan eene bamboe*). The tailor, a neighbour, and another villager also delivered witness statements. They took the oath based on their "own religion." Witnesses were only allowed to take an oath if they were not family members, or were related to the suspect in a professional relation; nor could slaves swear an oath. The interrogation of the witnesses took place by the landraad president, but the jaksa and the other members were allowed to ask questions if they asked the president's permission. Since the president

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een tijdje gezeten in de pendopo van de patih en nu zit ik in de paséban van de regent, d.i. een soort vergaderplaats. Ze zijn beide heel open, alleen met een dak."

[129] Immink, *De regtspleging voor de inlandsche regtbanken.* Part 1, 2-3. *"Daar het toch tegen alle inlandsche begrippen van betamelijkheid zoude indruischen om bijvoorbeeld een regent naast den griffier te plaatsen, en naast den president een wedono."*

[130] ANRI GS Semarang, no.4112. Landraad criminal case Singotroeno, Semarang, October 9, 1820. "*..welverstaan en begreepen*.."

was often not capable of speaking the local language, the jaksa acted as the translator. After each witness account, the suspect was confronted was allowed to offer a response.[131]

After all the witness interrogations were finished, the members and advisors withdrew behind closed doors and the president of the landraad would ask the chief jaksa and the chief penghulu for their advice. In that case of the stolen *baatje*, they declared it sufficiently proven that the suspect was at least guilty of laying hold of stolen goods. Besides, they were of the opinion that "the prisoner, according to the Islamic laws, should be punished with at least three months of hard labour on a chain gang to work on the public works here, in return for food without salary (*kost zonder loon*), [and he should] return the baatje to its owner; the Javanese man Krio." The landraad followed the advice of the advisors and declared the suspect guilty.[132] Verdicts were published in two or more languages. During the first half of the nineteenth century, the verdicts were handwritten and often published in Dutch and Javanese or Jawi. During the second half of the century, verdicts were written on pre-printed forms in Dutch or Malay. Then, Malay was increasingly used as the colonial bureaucratic language.[133]

Over the course of the nineteenth century, the pluralistic landraden would be under discussion every now and then, but until the end of the colonial era, pluralistic colonial courts continued to operate, as I will discuss throughout this dissertation. The jaksa lost his position as an advisor, but still acted as a public prosecutor, and the penghulu continued to provide advice on Javanese laws and customs. The Javanese members retained their right to vote on the verdict.

2.5 Conclusion: Persistence of Pluralities

During the first decades of the nineteenth century, two resolute colonial governors general, Daendels and Raffles, laid the foundation for an extended network of pluralistic courts, work completed by the Dutch in 1824 when the landraden and circuit courts were introduced in the cities as well. Daendels,

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[131] Van Heijcop ten Ham, *Berechting van misdrijven,* 153–155.

[132] ANRI GS Semarang, no.4112. Landraad criminal case Singotroeno, Semarang, October 9, 1820. "*..den gevangene volgens de Mahommedaansche wetten moet worden gestraft met ten minste drie maanden kettingslag om aan de gemeene werken alhier te arbeijden voor de kost zonder loon, mitsgaders restitutie van het baattje aan den eijgenaar daarvan den Javaan Krio."*

[133] Sneddon, *The Indonesian Language,* 87.

especially, has been portrayed as the founding father of the modern colonial state.[134] Indeed, he acted vigorously. His establishment of colonial law courts all over Java certainly contributed to the expansion and standardization of the legal system. However, this process was not so much a clean break with the VOC period as it was a continuation of a long-term process of legal pluralities that evolved throughout Dutch colonial history. After all, the basic principles of the landraad during the nineteenth century remained the same. First, justice was applied with the use of indirect rule, with the growing influence of European elements in pluralistic law courts. Second, the Javanese population was theoretically still tried according to Javanese laws and customs (to the extent that these were "acceptable" to the Dutch), although the influence of European laws increased. Third, the emphasis remained on criminal law. Fourth, there was no separation of powers. And, finally, the increase in the number of landraden had already started—although very slowly—during the eighteenth century.

Interestingly, the Asian Charter of 1803 had pointed towards a possible break with the VOC period when it recommended the separation of judicial and political powers. The charter's advice with regard to the landraden was to increase the number of councils, to judge the local population according to their own laws, and to abolish the "wrong influence" of political power on these courts.[135] In fact, only the last advice was a break with the eighteenth-century practice, and since it was precisely this advice that would *not* be followed, the landraad remained largely organised according to the basic principles of the eighteenth-century councils. Both the British and the Dutch retained the residents as landraad presidents. It is important to note, however, that Raffles did make a start with the separation of powers, by introducing professional judges as presidents to the circuit courts, a reform that would be upheld by the Dutch after 1819, although they reinstalled the priyayi as voting members.[136]

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[134] Among others: Kommers, *Besturen in een onbekende wereld*, 102–124.
[135] Heijcop ten Ham, *Berechting van misdrijven door landraden*, 3.
[136] Bastin. *The Native Policies of Sir Stamford Raffles*, 40. Raffles wished to keep the administrative and judicial spheres separated from revenue collection. This was unsuccessful given the numbers of exceptions to the rule in practice. Rather than caring for an independence judiciary, he was aiming at the implementation of direct rule, by turning the Javanese elite into colonial officials in service of Western government.

Altogether, the eighteenth-century landraden in Cirebon and Semarang were a direct prelude to, first, the dual system as it expanded during the early nineteenth century, and, second, to the existence of pluralistic courts *within* the non-European branch of the dual system. The landraden became pluralistic in a uniform manner, though, since each residency got a landraad that was organised in exactly same manner. When comparing the first half of the nineteenth century to the eighteenth century, the expansion of the number of landraden across Java and the uniformity in the organisation of these law courts were the biggest changes.

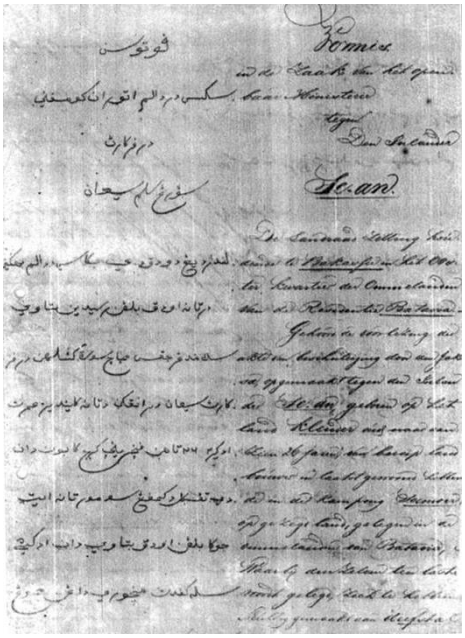

Fig.8 Verdict Landraad Bekasi written in Jawi and Dutch, 1846 [ANRI, GS Tangerang, no.91.5].

3 — Laws of Java

The dual legal system with its pluralistic courts that had been anchored in early nineteenth-century Java was founded on the core principle that the Javanese population would be adjudicated according to their "own" laws and customs, insofar as these were as they were not in contradiction with "the general principles of equity and justice".[1] There are two complicated aspects to this phrase, which led to much ambiguity. First, it remained vague about what the "general principles of equity and justice" were.[2] Second, it was unclear what *the* "native laws and customs" of Java were exactly. There was simply no agreement on this among the Javanese themselves. Regional differences and a multitude of religions and legal traditions made this an incredibly complicated question—impossible in fact—to answer. In spite of these ambiguities, legal codification remained a primary goal for the Dutch. This chapter discusses the efforts to codify criminal law in colonial Java. In doing this, I will focus on two aspects: the extent to which legal pluralities occurred in the codification of colonial criminal law in Java, and the influence of (a lack of) local informants consulted by Dutch officials drafting the codifications.

3.1 The VOC Compendia, 1602–1799

Although VOC contracts with local rulers generally emphasized that religious groups would retain their own laws and rituals, in practice VOC

[1] The principle was constituted in the 1819 Provisional Regulations, article 121, and in the 1854 Colonial Constitution, article 75. The Provisionial Regulations spoke of "native laws", whereas the Colonial Constitution spoke of "religious laws", but also included the "local institutions and customs". This had to do with the ignorance of and discussions among the Dutch regarding Javanese-Islamic traditions. I will elaborate on this later in this chapter. S 1819, no 20, art.121: *In het opmaken der condemnatien zullen gevolgd worden de inlandsche wetten en gewoonten van het eiland, behoudens echter dat dezelve niet strijdig zijn met de algemeen bekende beginselen van regt, en de bevelen mitsgaders de wetten van het Gouvernement.*; RR, art.75: *..worden door den inlandschen regter toegepast de godsdienstige wetten, instellingen en gebruiken der inlanders, voor zoover die niet in strijd zijn met algemeen erkende beginselen van billijkheid en regtvaardigheid.*

[2] Although this kind of expressions can be found in legal codes up to today, the term "general" was particularly problematic in the colonial situation with its various unequal legal constructions.

officials did intervene.[3] Interference with Javanese legal systems was often related to the VOC's economic interests, concerns about peace and order, and its attitude towards Islam. We have seen in chapter 2 how this altered the composition of courts, but it also impacted the laws applied by these courts. During the eighteenth century, several VOC officials in Java collected laws and unwritten customs and compiled compendia consisting of both substantive and procedural laws.

The impact of the VOC on legislation in Cirebon is apparent, one indicator being a change in the procedure of presenting evidence. According to Javanese traditions, evidence was presented by oral accounts by expert witnesses, historical information, and natural landmarks. Around 1740, this system of evidence had been completely replaced by written documents, which referred to a procès-verbal and Javanese-Dutch legal texts.[4] In 1765, Cirebon's laws were collected and published as the *Pepakem Cheribon*.[5] Dutch resident Pieter (P. C.) Hasselaer (1757–65) compiled this code in cooperation with the tumenggung and jaksas of the sultans. It contained both criminal and civil laws and was based on several written Javanese legal texts.[6] Some of these texts demonstrate Islamic influences, but this was either not known or acknowledged as such by the Dutch.[7] In chapter 2, we discussed how Dutch residents in this area attempted to (without much success) curb the power of the Islamic officials in legal cases. The increasing influence of Islamic law in Cirebon would nevertheless continue during the eighteenth century. This depended on the personal preferences of the sultan, according to colonial archivist De Haan: "Whereas a pious Sultan would give preference to the advice of the 'temple priests,' a less devout one would definitely consult the 'old women' as

[3] Steenbrink, *De Islam Bekeken Door Koloniale Nederlanders,* 61.
[4] Hoadley, *Selective Judicial Competence*, 124.
[5] Ball, *Indonesian legal history,* 60-71.; "Javaansch Regt. Cheribonsch Wetboek (Papakkum)", *Het regt in Nederlandsch-Indië: regtskundig tijdschrift* 3 (1850): 71-99,143-174, 217-234.
[6] As addressed in Chapter 2, the Javanese-Hindu legal traditions followed the pradata and padu division in legal issues. However, in the Pepakem Cheribon the VOC divided the Javanese laws alongside the European criminal and civil law system.
[7] Ball, *Indonesian Legal History*, 73.; Kern, *Javaansche Regtsbedeeling,* 6. The Javanese law books from which the Pepakem Cirebon was drawn were *Raja Nistaja, Undang-Undang Mataram, Jaja Lengkara, Kutara Manawa* and *Adilulah (Suria Alam).*

being the bearers of the unwritten traditions."[8] VOC officials, however, preferred jaksa verdicts over those of the Islamic courts although the authority of the jaksa courts was gradually minimised as well, since the Dutch considered the unanimous judgments required in these court as unwieldy. Instead, a preference was given to judging through the tumenggungs acting in the name of the sultan.

Nonetheless, in general the VOC regarded and accepted Islamic law as a legitimate part of the Javanese legal tradition.[9] In 1761, for example, the Freijer Compendium was published for the Ommelanden. Although Governor General Jacob Mossel's plan to introduce landraden in western Java had met resistance from the Council of the Indies, they agreed on a compilation of the existing customs of succession, inheritance, community goods, and marriage among the local population. This compilation was to be used by the Board of Aldermen's and other colonial courts. Chiefs of the several communities in Batavia and the Ommelanden were asked to write down their civil laws and customs. Subsequently, Native Commissioner Diederik (D. W.) Freijer used the collected information to draft one codification. For this, he cooperated with Islamic "priests" and VOC officers.[10] Criminal laws were not collected, because in Batavia criminal cases were adjudicated according to VOC regulations and European laws.

For the landraad of Semarang (1747) the Dutch—on the initiative of Governor General Van Imhoff—had also compiled a special compendium of Javanese laws. Yet, this one was mainly about criminal law. For the compilation of this so-called Semarang Compendium, or the Mogharaer Code, Islamic officials were asked for advice.[11] According to the Dutch, it was drawn from the Islamic legal text *Mogharaer* (and possibly another legal text called *Moghalie*). Much remains unknown about the compendium, but it is clear that the content of the Semarang

[8] De Haan, *Priangan*. Part 1, 406 *"...hield den devoot Sultan zich liefst aan eene uitspraak van "tempelpaapen," een minder vrome besliste niets zonder raadpleging van "oude wijven" als draagsters der ongeschreven traditie."*

[9] Steenbrink, *De Islam bekeken*, 64. In 1681 for example, a regulation was made to pay a fee to the Islamic officials who took the oath of the Islamic witnesses in the board of aldermen in Batavia.

[10] Ball, *Indonesian Legal History*, 71–73.

[11] Ball, *Indonesian legal history*, 69–70.; Kern, *Javaansche regtsbedeeling*, 99. Kern argues that the *bupatis* had wished to take back the pradata cases from the regional *surambi* courts, this being the reason for an Islamic focus in the Semarang Compendium

Compendium does not correspond with the Islamic *al-Muḥarrar* to which it refers.[12] In practice, European laws and punishments were often applied and imposed.[13] Either way, as already described, the compilation of compendia by the Dutch would continue during the eighteenth century.

All compendia were the result of VOC officials being advised by local informants in combination with the consultation of written texts. More research has to be conducted on VOC officials' investigations into the Javanese legal traditions before we can say more about the legal sources the texts were based on or, moreover, about the process through which the compendia came into existence. It is clear, though, that the VOC officials had to rely on local informants who provided them with information on relevant Islamic-Javanese, Hindu-Javanese, and other local laws and customs. Needless to say, the applied laws derived from various legal traditions were not at all static and underwent several changes during the eighteenth century. Various informants—either the jaksas in towns or countryside, the penghulus affiliated with the royal courts, penghulus in the regions further from the royal centre, as well as teachers of various Sufi orders—could advocate different applications of all these traditions.

Different Sufi orders (*tariqas*) existed alongside each other at the end of the eighteenth century, the Shattari tariqa being the most common in Java. But Islam was not only performed through tariqa *shaikhs* (*leermeesters*, or teachers). With the decline in power of the Javanese royal courts, more Muslims followed one of the tariqas. In the eighteenth century, the same important *Shafi'i* books were read by most pupils (*santri*) in Islamic schools (*pesantren*, in the case of the Shattari tariqa, often called *pondok*), causing an increasing uniformity in Islamic schooling.[14] At the same time, the regional customary laws and legal practices continuously blended in with *Shafi'i* traditions.

From the sixteenth century to the eighteenth, when Islamic law gained influence in Java, controversies between the penghulu and the jaksa grew. In Mataram, penghulu courts became increasingly more important than the older jaksa courts. In Cirebon, despite Dutch attempts to prevent

[12] Kooria, "Dutch Mogharaer, Arabic al-Muḥarrar and the Javanese Law-Book."
[13] Ball, *Indonesian legal history*, 70.
[14] Laffan, *The makings of Indonesian Islam.* 26-27, 34-39. Over time, Javanese kings declared several villages with an Islamic religious function, such as a sacred grave or a religious school, free from tax duties. These villages were called *perdikan*.

this, Islamic law practices by the penghulus also increased, and there was an increasingly limited space for Javanese law specialists, the jaksas. In part 2, we will take a closer look at the position of the penghulus and jaksas, and the consequences of the expanding role of Islamic law and Dutch responses to this, on the criminal law practices in the pluralistic courts. For now, it is sufficient to realise that the Dutch who used the knowledge of the penghulus and jaksas were influenced by them when compiling compendia. Who they chose as their informants certainly mattered. In Cirebon, they picked the jaksa, in the Northeast Coast the penghulu. This led to very different legal compendia for the two regions.

Eventually, however, the increasing dominance of Islamic law was inevitable. The regulations of the early nineteenth-century Cirebon landraad points to a definite dominance of Islamic law. Remarkably, the Pepakem Cheribon is not mentioned in the regulations, having been superseded by the Semarang Compendium. On 25 June 1808, Resident Van Lawick requested that the Hoekoem Sarak (possibly a reference to *hukum shariah*, or sharia law*)* be sent to him; he meant the Semarang Compendium, which he was obliged to use in Cirebon.[15] The instruction of the Cirebon landraad indeed mentions the Hoekoem Sarak "as used in Semarang."[16] This shows the transition to more Islamic law, since the Pepakem (1765) was based on Javanese-Hindu codes, whereas the Semarang Compendium (1749) was based on Islamic law. Minor criminal cases, such as petty thefts and deceit, were dealt with by the jaksas in the still existing jaksa courts. According to the instructions, they followed the Freijer Compendium and the Semarang Compendium.[17]

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[15] De Haan, *Priangan.* Part 4, 629. *"Den 25 Juni 1808 schrijft diezelfde Resident: "Alhier heeft men altijd zeer willekeurig en op een wetbock wat niemant regt verstaan kan, in het uitsprccken van vonnissen te werk gegaan," zoodat hij den Secretaris Gcneraal vcrzoekt, hem te doen geworden "het wet boek of Hoekom Sarah (het beschreven recht van den Islam) bij den Landraad te Samarang in gebruik ... Ik insteere hier te meer op, alzo de bepaling is, dat men vooreerst volgens dat wetboek zal te werk gaan, voor zo verre er geene vaste en nadere wetten bepaald zijn.' Dus toen had de Pepakem finaal afgedaan."*

[16] NL-HaNA 2.21.004.19 Van Alphen en Engelhard 019A, no.259. "Memorie Instructif: Derde afdeeling Regterlijke Magt", Art.9. *"De manier van procedeeren word door de wet bepaald, en moet geschieden ten aanzien van den Javaan met Javaan, of Cheribonder met Cheribonder, na de Hoekom Sarak of Compendium der Mahomedaansche Wet, welke bij den Landraad te Semarang in gebruik is geschieden."*

[17] NL-HaNA 2.21.004.19 Van Alphen en Engelhard 019A, no.259. "Memorie Instructif: Zesde afdeeling Orde voor de Jaxa's van de sultans en de overige regentschappen."

3.2 Dutch Confusions over Javanese Laws, 1803–48

The Asian Charter of 1803, as discussed in chapter 2, recommended continuing the VOC practice of subjecting the Javanese population to their own laws and customs. The charter even favoured reducing the intermingling of Dutch with Javanese laws that had taken place during the VOC era. It advised the legal system to be "cleaned from abuses that had crept in, being incompatible with native laws and customs."[18] From 1803 until 1848, the Dutch search for Javanese laws to apply would therefore continue, leading to confusion among Dutch jurists and officials who were, more than before, aiming at a simple, ready-to-apply solution—an approach incompatible with the plural legal landscape in Java at the time. The combining of the Dutch and Javanese legal traditions was therefore often ad hoc. It continued uninterrupted nonetheless, with far-reaching consequences for criminal law in particular.

"General Principles of Justice"

Arriving in 1808, Governor General Daendels agreed with the Asian Charter that local Javanese legal systems should not be altered too abruptly, but from a self-serving perspective. He aimed at keeping the peace by maintaining Javanese legal traditions, but was not in favour of applying local laws when they went against his own interests. Therefore, he told the residents to use their daily experience in the courts to find out where the local legal system had to be reformed.[19]

The resolutions announced by Daendels show that he responded pragmatically to the given circumstances and adjusted his policy regarding criminal law accordingly. In 1808, for example, a Javanese man named Setjo was imprisoned in Semarang. He had confessed to murder, but the Semarang landraad decided to not prosecute him because he could not be tried according to the Javanese laws. In response to this decision, the Political Council (*Raad van Policia*) decided to adjudicate Setjo at the Council of Justice according to colonial laws. By doing this, however, they

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[18] Asian Charter, 1803, art. 86. In Mijer, *Verzameling van instructien*, 253. *"De rechtspleging, onder den Inlander, zal blijven geschieden volgens hunne eigene Wetten en Gewoonten. Het Indisch Bestuur zal, door gepaste middelen, zorgen, dat dezelve in die Territoiren, welke onmiddellijk staan ondere de Opperheerschappij van den Staat, zoo veel mogelijk, werde gezuiverd van ingeslopen misbruiken tegen de Inlandsche Wetten of Gebruiken strijdende.."*

[19] Ball, *Indonesian legal history*, 100.

took him away from his "competent" (*competente*) judge—the landraad—and since this was against the idea of applying Javanese laws, Daendels decided to intervene using a political measure. Setjo was forced to work on a chain gang until he could be tried.[20] Apparently no solution was found in which suspects like Setjo could be adjudicated under Javanese laws, because some months later Daendels decided in his "Regulations for Landraden and Landgerechten in Java" that judges could deviate from Javanese laws in cases where the application of those laws would mean that someone could not be convicted.[21]

Daendels introduced several of these kinds of interventions in the application of Javanese laws and customs. When crimes threatened "peace and order," in particular, Daendels preferred European laws to Javanese ones. He aimed at a situation in which Europeans laws were applied in cases that were a direct threat to the safety, as is clear from a letter written in 1809. In the missive, Daendels reminded J. Kloprogge, resident of Japara, that he was only allowed to apply Javanese laws in cases which were "in direct connection with the morals and customs of the Javanese."[22]

As a general policy Daendels proposed leaving it up to the resident to administer justice in cases that were a threat to the public safety (such as robbery) together with two assessors; it does not mention whether they had to be European or Javanese. All other criminal cases, manslaughter arising from "disputes out of hate and envy between Javanese and Javanese," for example, could be left to a pluralistic court that would apply local laws.[23] Daendels asked the High Council to elaborate on this plan, but it was never actually implemented. Interestingly, had it been, it might unintentionally have led to a situation relatively close to the Javanese *pradata-padu* division.

Altogether, Daendels made three exceptions regarding the application of Javanese laws. The first were cases that Javanese laws did

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[20] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 14, 768-769. Plakkaat, May 26, 1808. "Inmenging in rechtszaken."

[21] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 15, 649. Plakkaat, April 4, 1809. "Voorschriften voor landraden en landgerechten Java."

[22] Daendels, *Staat der Nederlandsch Oostindische Bezittingen.* Attachment "Organique Stukken Batavia", thirteenth of the Winter season, no.35. "..*in een direct verband staande met de zeden en gewoonten der Javanen*."

[23] Daendels, *Staat der Nederlandsch Oostindische Bezittingen.* Attachment "Organique Stukken Batavia", thirteenth of the Winter season, no.35. "..*disputen uit haat en nijd van Javanen tot Javanen."* The pluralistic court was the Landgerecht.

not cover. Daendels decided for example, that cases should be tried if, according to Javanese law, the "aggrieved person" (*beleedigde persoon*) or his or her descendants were not allowed to demand justice or were still minors. In these, the prosecutor (*fiscaal*) would demand justice in name of the government. The Javanese regents strongly disapproved of Daendels' measures, but their complaints were of no avail. The second exception concerned cases in which the Dutch considered the penghulu's recommended punishment too light or too severe. Mutilating punishments, for example, were abolished, although burning was officially still allowed (see chapter 6). The third exception involved cases in which the Javanese procedures did not lead to enough proof to convict.[24]

In fact, these three exceptions together meant that European laws were given priority over Javanese laws if the European judge (the resident) decided so. At the same time, however, Daendels did not deviate from the general principle that the Javanese were to be tried according to their own laws and customs. Even in criminal cases, the Javanese laws still had to be followed. And he introduced the penghulu as a legal advisor at the law courts in the Priangan, the Ommelanden, and Banten.

During the British interlude, Raffles was similarly ambivalent on the issue of the local laws. He stated that Javanese laws were only to be followed when they did not contradict "the generally acknowledged legal principles or the colonial regulations," without defining what was meant by "generally acknowledged."[25] On the other hand, Raffles emphasized that it was important for the colonial officials to know the ancient institutions of the island, and he appointed both the jaksa and penghulu as legal advisors in the pluralistic courts.

With the return of Dutch rule to Java, the vague and ambivalent interpretation of "acceptable" was more or less maintained and certainly not clarified. The Provisional Regulations of 1819 stated that the pluralistic courts had to administer justice according to the "native laws and customs," although only if "those were not in opposition with the generally known principles of justice, and the orders as well as the laws of the

[24] Ball, *Indonesian legal history*, 98–100.
[25] Raffles, *The History of Java*, Vol.1, 287. "*..de algemeen erkende rechtsbeginselen noch met de koloniale verordeningen*."

government."[26] Thus, if the colonial government encountered a Javanese law or custom with which they disagreed, they could easily diverge from the principle of the application of local laws by drafting a new colonial rule or observing it as in contradiction to "generally known principles of justice." Simultaneously, however, the penghulu and jaksa continued to act as legal advisors in the pluralistic courts, and no one in 1819 suggested fully replacing the Javanese or Islamic laws with colonial criminal laws.

Colonising Javanese Laws, 1819–48

Although the jaksas, penghulus, and Javanese members of the pluralistic courts were responsible for the transfer of their knowledge of Javanese law and custom, there was the continuous ambition among the Dutch to compile a criminal code for the colony. About the Netherlands itself, it is said that the nineteenth-century was "littered with wrecks of stranded criminal codes."[27] This shows both how complicated it was to compile a criminal code and also how strong codification fever was during the nineteenth century. This was no different in the colonies. In the 1820s attempts were made to codify a substantive and procedural criminal code for the Netherlands Indies. Even though they failed, the discussions among those involved in the drafting process show how jurists in the Dutch East Indies struggled with the idea of including local laws in criminal colonial law.

In 1824, Merkus prepared instructions for the Javanese and European members of the landraden.[28] In the manual, the court members were made familiar with their moral responsibilities as judges. Following upon Merkus's work, former Attorney General of the High Council Johannes (J. C.) Ellinghuijsen designed more extensive regulations for the substantive and procedural criminal law for the landraden and circuit courts. Included as an attachment to these drafts was the eighteenth-century

[26] S 1819, no.20. Art.121: *"In het opmaken der condemnatien zullen gevolgd worden de inlandsche wetten en gewoonten van het eiland, behoudens echter dat dezelve niet strijdig zijn met de algemeen bekende beginselen van regt, en de bevelen mitsgaders de wetten van het Gouvernement."*

[27] Bosch, *Strafrecht. De ontwikkeling van het strafrecht in Nederland*, 75.

[28] ANRI AS R. December 31, 1824, no.22. "Voorschriften ten dienste van de regters inde Landraden en regtbanken van Ommegangen, in de administratie der criminele justitie."; Mijer, "Bijdrage tot de geschiedenis der codificatie in Nederlandsch Indie", 295. Merkus prepared the instructions on commission of Governor General van der Capellen.

Semarang Compendium. Ellinghuijsen had incorporated the Islamic punishment *tacir (tazir*) in his draft as well; which was an arbitrary correction in minor crimes and meant that it was up to the judge to decide what the punishment would be. However, a marginal comment perhaps written by Ellinghuijsen notes: "Superfluous, will not be applied by the judge."[29] Neither Merkus's nor Ellinghuijzen's instructions were introduced, and they were stored away in the archives.

The same happened to several other proposals for new regulations compiled in 1830 by a committee that included Merkus and Van der Vinne.[30] This committee designed a draft regulation largely based on the Provisional Regulations of 1819 together with some resolutions announced subsequently. Notably, this regulation primarily focussed on the current colonial experiences of Dutch jurists and administrative officials and not necessarily on the Javanese customs. Yet, the desire to codify Javanese laws remained. In 1828, Governor General Léonard (L.P.J.) burggraaf du Bus de Gisignies decided that the VOC's Freijer Compendium—in which civil Islamic laws had been collected—had to be updated.[31] Regarding criminal law, however, a definitive shift had occurred. The VOC's Semarang Compendium—with mainly criminal laws—was no longer mentioned.

The tendency to emphasize Dutch laws over Javanese, continued steadily. In 1830, the Dutch jurist G.C. Hageman was specially appointed as president of the Supreme Court in Batavia, because of his experience in the committees that had designed the Dutch legal codes between 1814 and 1816.[32] One of his special assignments was to produce a criminal code for the Netherlands Indies. Hageman was in favour of introducing as many Dutch laws as possible in the colony. He also expected this to be possible, since the introduction of the foreign French legislation to the Netherlands

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[29] ANRI AS R. December 31, 1825, no.22. Letter from Ellinghuijsen. November 15, 1824. *"Overbodig, wordt toch niet toegepast door de rechter."*

[30] Immink, *Regterlijke Organisatie,* Introductie, II. P. Merkus (who had become a member of the Council of the Indies), Supreme Court member G.J.C. Schneither, temporary member and registrar of the Supreme Court H.J. Hoogeveen, chief baljuw of Batavia J. van der Vinne and *advocaat-fiscaal* (prosecutor in special courts such as the cassation court) F. van Teutem.

[31] Van Heijcop ten Ham, *De Berechting van Civiele Zaken en van Misdrijven*, 28.; S 1828/55.

[32] Van Kan, *Uit de Geschiedenis onzer Codificatie*, 4. Briet, *Het Hooggerechtshof van Nederlands-Indië,* 220, 247-250.

had been proven possible as well. Thus, whereas the colonial committees before 1830 had mainly engaged with the codification of a typical colonial legislation based on earlier Dutch colonial ordinances, Hageman decided that Dutch law—as applied in the Netherlands—itself had to be followed more thoroughly.

Hageman's stance would not make him popular among some of the colonial jurists and officials based in Batavia, who thought colonial Java very different from Dutch circumstances. Not long after his appointment, Belgium had separated itself from the Netherlands and Hageman decided to wait for more news on new legal codes in the Netherlands before starting with drafting the colonial codes.[33] When, in 1836, Hageman was urged to finally make a start with his research into the Indies' legislation, he responded that he did not consider it necessary to change the current procedures in criminal cases in the Indies. A member of the Council of the Indies, obviously annoyed, wrote in the margins of the letter: "The President displays such little knowledge of the workings of the Criminal laws among the Natives."[34] Thereafter, the Council of the Indies repeated its assignment again and decided—a few days later—to give him a second assignment on top of the first one: Hageman also had to start a research into the "nature of Javanese criminal laws." Again, a comment pencilled in the margins of this resolution reflects little trust in Hageman. The commentator questioned whether Hageman would understand why an investigation into Javanese criminal laws would be part of his assignment to proposed changes in the Dutch East Indies' legal system.[35] A few months later, Hageman resigned as president of the Supreme Court without completing a single legal code.

In 1839, colonial jurist Pieter Mijer lamented that he did not expect the introduction of new colonial legal codes soon, by which he meant mainly a substantive criminal code for the non-European population.[36] He was right. In 1847 and 1848, several legal codes were introduced, but a criminal code for non-europeans would not be introduced until 1872. In 1848 only the "most urgent" provisions regarding criminal substantive

[33] ANRI AS R. February 20, 1836, no.2. Letter G.C. Hageman, December 19, 1835.
[34] ANRI AS R. February 20, 1836, no.2. Marginalia. *"Hoe weinig kennis toont de President te hebben van de werking van de Kriminele wetten bij inlanders."*
[35] ANRI AS R. February 23, 1836, no.14. In the margins of the resolution.
[36] Mijer, "Bijdrage tot de geschiedenis der codificatie in Nederlandsch Indie," 296.

laws were regulated.[37] This regulation mainly concerned a description of the allowed punishments.[38] Flogging and branding were abolished, but beatings with a rattan were still allowed.[39] Whereas Javanese convicted of theft faced flogging or chain labour, Europeans were not to be condemned to hard labour or flogging but would most likely spend some years in prison.[40] Imprisonment was not considered suitable for the "native" population, because they would not experience the sitting down in a prison as a punishment due to their lazy nature, as explained in 1849 in a law journal: "Everyone well acquainted with Native customs, will easily understand the usefulness of this [chain gang labour], because generally imprisonment is not seen as a punishment by the Natives, who desire nothing more than ease and quiet. Moreover, labouring outside is much more positive to the health condition of the Natives."[41]

It is certain that punishments for Javanese convicts were harsh. A comment in the margins of a pardon request file from 1845 reflects the

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[37] S 1848, no.6. "Bepalingen ter regeling van eenige onderwerpen van strafwetgeving, welke een dadelijke voorziening vereischen."

[38] S 1848, no.6. "Bepalingen ter regeling van eenige onderwerpen van strafwetgeving, welke een dadelijke voorziening vereischen." Art.20. The following punishments could be imposed to "natives and those equal to them': death penalty, punishment "next to death" (chain labor with a minimum of ten and a maximum of twenty years outside of the island where the verdict had been made and preceded by display under the gallows), forced labour up to ten years outside or in chains (outside or on the island where the verdict had been made and this could also be in change for a certain amount of financial compensation for the labor executed, if this was decided as such by the judge), imprisonment up to five years and, finally, a beating with a rattan could be imposed by the judge as a punishment as well. As an additional punishment a maximum of forty rattan strokes could be imposed. The resident also obtained the right to impose rattan flogging by police law, in that case there was a maximum of twenty strokes.

[39] Remarkably enough, this was six years earlier than in the Netherlands, where the predominantly conservative Eerste Kamer (senate) had stopped the reform. There, abolition of corporal punishments would only be official in 1854, although since 1848, flogging and burning would not be performed anymore.

[40] S 1848, no.6, art.8. Bepalingen ter regeling van eenige onderwerpen van strafwetgeving, welke een dadelijke voorziening vereischen. The punishments allowed to impose on Europeans were: death penalty, house of correction (*tuchthuis;* with a maximum up to twenty years and display under the gallows in case of the punishment "next to death'), banishment from the Netherlands Indies (often to the Netherlands), being declared infamous (*eerloosverklaring*) or imprisonment.

[41] Schill, "Iets over de omschrijving der straffen," 438. "*Elk een die met de Inlandsche huishouding bekend is, zal de nuttigheid daarvan spoedig doorgronden, daar toch eene eenvoudige opsluiting in het algemeen, voor den inlander, die niets liever dan gemak en rust verlangt, geene straf te noemen is, en daarenboven de arbeid in de open lucht voor de gezondheidstoestand van Inlanders veel voordeeliger is te achten."*

existing doubts on the logic behind the replacement of the death penalty with twenty years' chain labour: "It is truly impossible to denote twenty years of chain labour as a pardon," stated one of the members of the Council of the Indies in a note, attached to a pardon request. "Few natives would survive twenty years of chain labour, or even half of it, I believe."[42]

The other regulations—a procedural code (*Inlandsch Reglement*, hereafter Native Regulations) and the regulations of the judicial administration (*Reglement op de Regterlijke Organisatie*, hereafter Court Regulations)—were finalized, although not without heated discussions between the committee and prominent colonial officials. The regulations were initially compiled in the Netherlands, by a committee consisting of experienced colonial judges, presided by over by the jurist C. J. Scholten Oud-Haarlem.[43] Both the organisational Court Regulations and the procedural Native Regulations took the Provisional Regulation of 1819 as a starting point, and likely also the never introduced draft regulation of 1830. At the same time, however, they attempted to formalise and equalise the Indies' legal codes with the Dutch codes. Clearly, this was not always welcomed by the colonial administrators. Van der Vinne wrote fierce responses against a too-rapid introduction of European legislation to the local population. However, he was also not in favour of the application of local laws. Instead, it appears that he was aiming for a conservation of the existing colonial legislation with its significant influence and control by the colonial administrative officials. Administrators were particularly opposed to curbing the power of the resident vis à vis police magistracy and presiding over the landraad, as proposed by Scholten van Oud-Haarlem.[44] Eventually, after Scholten Oud-Haarlem's premature resignation in 1845,

[42] ANRI, AS B. November 3, 1845, no.1. Marginalia, member of the Council of the Indies (name unknown). "*Eene gratie kan men het waarlijk niet noemen iemand twintig jaar kettingarbeid te laten verrigten ... Ik geloof dat er weinig inlanders zijn die twintig jaren kettingarbeid of zelfs de helft overleven.*"

[43] Van Kan, *Uit de Geschiedenis onzer Codificatie*, 12. The president was the prominent jurist C.J. Scholten Oud Haarlem. Also seated in the committee was the lawyer Gérard (G.J.C.) Schneither who had been part of the 1830 committee with Merkus. Later, the circuit court judge B.G. Rinia van Nauta would participate in the committee as well. (The committee had started off in the Netherlands Indies, but when Scholten Oud-Haarlem returned to the Netherlands, he continued the work there with a new committee. Pieter Mijer had been a member of the first committee)

[44] Van Kan, *Uit de Geschiedenis onzer Codificatie*, 37, 47. Administrators opposing reforms regarding the residents as landraad presidents were foremost from J. van der Vinne, J.C. Baud and H.J. Hoogeveen.

due to his opposition on this issue, jurist H.L. Whichers would finish the legal codes in 1847 and 1848, avoiding this controversial subject. I will discuss the long-drawn-out issue of the separation of judicial and administrative powers—and its consequences for the Javanese—in part 3 of this dissertation.

In any case, the emphasis was firmly placed on a confirmation of existing Dutch-colonial criminal laws, and Javanese informants were no longer consulted on criminal law issues. Scholten van Oud-Haarlem had obtained information only from prominent Dutch officials and judges. And even regarding civil law, Javanese knowledge holders were ignored during the legislative process. During the early 1850s, Whichers attempted to introduce the application of Dutch law to the Javanese population in civil and commercial law. He sought information from the Councils of Justice in the Netherlands Indies, residents, the Chinese councils, and Arab chiefs, but made no use of Javanese informants.[45] It is outside the scope of this research, but relevant to note that while opinions differed, officials consulted generally believed that the Chinese could be subject to the Europeans laws, but that this was inappropriate for Arabs and Javanese due to their Islamic faith and, in the case of the Javanese, also due to their assumed 'inferior civilisation.' So, Whichers proposed to declare European civil and commercial law applicable to all foreign Asians—both Chinese and others—and to introduce these European laws gradually to the Javanese population. Due to major resistance by Governor General Rochussen the reform was ultimately abandoned despite its approval by the Supreme Court, Attorney General, and Council of the Indies. The regulation was implemented only for the Chinese.[46]

Altogether, the new colonial legislation for the Javanese confirmed the already existing difference in colonial policies regarding civil and criminal law. Whereas most fields of civil law continued to be

[45] Van Kan, *Uit de Geschiedenis onzer Codificatie*, 164.

[46] According to Rochussen, only when the entire Javanese population would have become Christian, it would be possible to introduce European legislation: "I observe the demolition or disintegration of the Javanese society as imprudent and unauthorized, as long as no other fully developed civilization exists to replace it, and this is improbable as long as the Native remains Muslim and has not become a Christian." (*Ik acht de slooping of verbrokkeling der Javaansche maatschappij gewaagd en onstaatkundig, zoolang men er geene andere volstandige maatschappij voor in de plaats kan stellen en dit laatste is niet denkbaar, zoolang de Inlander Mohamedaan blijft en geen christen is.)* Cited in: Van Kan, *Uit de Geschiedenis onzer Codificatie*, 164–166.

administered through Javanese religious and customary laws, criminal law was more firmly placed within the Dutch-colonial legal traditions. An *Indies' Journal of Law* article published in 1850 confirms the completion of this process. The editors had taken interest in the Javanese and Islamic law and thought that the landraad officials and judges of the landraad of Semarang might benefit from knowledge of them when administering justice in criminal cases. Therefore, they printed the Semarang Compendium in the journal. Interestingly, however, they had been unable to find a single copy of the compendium in Java itself, for the Semarang Compendium had fallen into disuse by that time.[47]

A strange situation occurred. Although the starting point of judging the Javanese according to their own laws and customs was maintained, the colonial government made no effort to compile compendia of local laws, and the VOC compendia were no longer applied. Moreover, no substantive colonial criminal law code for the Javanese population was produced in 1848, since only procedural and institutional aspects of the pluralistic courts were confirmed in regulations. From this, it seems that either the consultation of the jaksas and penghulus—permanent advisors in the pluralistic courts—had led to a system in which Dutch judges did not have to be knowledgeable about Javanese laws, because the local advisors were present in the courtroom for advice anyway. Or, another possibility, in practice Dutch laws were applied after all. In parts 2 and 3 of this dissertation, I will investigate whether in practice the jaksas, penghulus, and Dutch and Javanese court members applied local laws and customs in the pluralistic courts.

3.3 Dutch conflicts over Javanese laws, 1848–72

The colonising of Javanese criminal law together with the introduction of advisors in the pluralistic courts—who held the knowledge about local and religious laws and customs—had removed the need to record Javanese laws. Yet, there was still the formal aim in the regulations of applying local laws to the Javanese population in criminal cases, as well. In the process of debating about a criminal code for the local population, the influence of proponents of closely following the Dutch criminal code was rapidly rising. Both during the compilation of article 75 of the Colonial

[47] "Javaansch-Mahomedaansch regt," 362.

Constitution (*Regeringsreglement*) in 1854, and during the eventual introduction of the Criminal Code for Natives in the Netherlands Indies (hereafter: Native Criminal Code) in 1872, these liberal jurists came into conflict with the proponents of the application of Javanese laws and customs. In the meantime, the only Dutch who still attempted to define the Javanese laws were academics in Delft and Leiden, in the Netherlands. Thus, between 1848 and 1872 three types of Dutch actors were involved in the discussions on colonial law: colonial jurists and officials still convinced of the importance of applying local laws; Dutch scholars specialised in Islamic law, who did not have a lot of influence in this period; and an increasing number of liberal jurists.

The Ambivalent Article 75

During the first half of the nineteenth century, in colonial criminal law, the content of Javanese laws had increasingly been removed from the equation. Nonetheless, the colonial constitution of 1854 was stipulated to retain the "religious laws, institutions, and customs of the natives" insofar as these did not contradict the "generally acknowledged principles of equity and justice."[48] However, by this time the Dutch state and society had changed

[48] RR 1854, art.75. In fact, Article 75 repeated articles from various previous colonial regulations, in particular art.121 of the 1819 Provisional Regulations. The Governor General still held the right to draft legislation, in liaison with the Council of the Indies, and to declare this applicable to the local population if necessary. In other cases, the Javanese religious and local laws and customs were applied insofar as not in contradiction with the "general acknowledges principles of equity and justice": "*Voor zooveel de Europeanen betreft, berust de regtspraak in burgerlijke en handelszaken, alsmede in strafzaken op algemeene verordeningen, zooveel mogelijk overeenkomende met de in Nederland bestaande wetten. De Gouverneur-Generaal is bevoegd om, in overeenstemming met den Raad van Nederlandsch Indië, de daarvoor vatbare bepalingen der verordeningen, des noodig gewijzigd, toepasselijk te verklaren op de inlandsche bevolking of een gedeelte daarvan. Behoudens de gevallen waarin zoodanige verklaring heeft plaats gehad, of waarin inlanders zich vrijwillig hebben onderworpen aan het voor de Europeanen vastgestelde burgerlijke en handelsregt, worden door den inlandschen regter toegepast de godsdienstige wetten, instellingen en gebruiken der inlanders, voor zoover die niet in strijd zijn met algemeen erkende beginselen van billijkheid en regtvaardigheid. Naar die wetten, instellingen en gebruiken wordt, onder gelijk voorbehoud, ook door den Europeschen regter gevonnisd in zaken der aan zijne regtspraak onderworpen inlandsche hoofden en bij de kennisneming in hooger beroep van door den inlandschen regter, in burgerlijke en handelszaken, gedane uitspraken. Op die wetten, instellingen en gebruiken wordt door één Europeschen regter, bij zijne regtspraak naar de voor Europeanen vastgestelde wetgeving, zooveel mogelijk acht gegeven, wanneer inlanders, biten het geval waarin de bij het 2^{e} lid bedoelde verklaring heeft plaats gehad, of het geval van vrijwillige onderwerping aan gezegde wetgeving in de bij wettelijke bepalingen aangewezene gevallen, als verweerder in*

profoundly and much more discussion was possible in the Parliament in The Hague on this ambiguous article 75.

The phrase "general principles of equity and justice" led to especially fierce discussion in the Dutch parliament. At first, among those members of parliament who had never been to the Netherlands Indies there was a lot of misunderstanding about the term "native court" (*inlandsche rechtbank*), which referred to the landraden. Liberal jurist Johan R. Thorbecke—chief drafter of the Dutch Constitution of 1848—wondered if Javanese judges would understand what exactly these "general acknowledged principles" were. He was the only one to note that even Europeans could not agree on these general principles: "I cannot suppress the notion, that with regard to these principles, there does not exist consensus on this anywhere, and most likely also not between us and the Native judge."[49] Another member of parliament, the conservative (*anti revolutionair*, counter revolutionary) baron Willem van Lynden, had done some superficial reading into Islamic and Javanese legal traditions and quoted from the law code *Hangger Pradata*, that cutting off the right hand was applied in theft cases, while the left foot was amputated after a second theft: "repeat offenders find themselves in a precarious position. For each repetition of a crime they lose another arm or leg," he concluded to show his disapproval of applying Islamic laws. The experienced Indies official and former Governor General Jan Jacob Rochussen had to interrupt the debate to explain that the so-called "native courts" were presided over by Europeans and that the *Hangger Pradata* was only executed in the princely lands in Central Java, where mutilating punishments had been abolished in 1847. This explanation reassured Van Lynden about the "mutilated Javanese". However, during the ongoing discussion, Jean Chrétien Baud passed him a book about local laws that made Van Lynden worry again, because it described a legal system that conflicted with European legal

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burgerlijke of handelszaken voor hem te regt staan. Bij de regtspraak over inlanders, in het 3de en 2de lid van dit artikel bedoeld, neemt de regter de algemeene beginselen van het burgerlijk en handelsregt voor Europeanen tot rigtsnoer, wanneer het de beslissing geldt van zaken, die bij de hiervoren bedoelde godsdienstige wetten, instellingen en gebruiken niet geregeld zijn"

[49] "Handelingen Tweede Kamer 1853–1854", August 3, 1854, 1343. Thorbecke: *"Ik kan evenwel de opmerking niet onderdrukken, dat ten aanzien dier beginselen geene overeenstemming bestaat ergens, en waarschijnlijk ook niet tusschen ons en dien inlandschen regter."*

traditions. Van Lynden gave the example of women who, according to these *adat* rules, could not claim an inheritance.[50]

This scene is not described here to demonstrate the lack of knowledge that many members of parliament had about the Netherlands Indies. In fact, most of their contributions to the debate were reasonable and legitimate. Apart from a lot of confusion, the outsider views of some politicians show the discrepancy between theory and reality. Van Lynden pointed out that the differences in the several legal traditions in Java were so different from each other that article 75 had to be "a mere phrase which seems well, but in effect comes to naught."[51] The liberal Daniël Van Eck also expressed his concerns about the conflicting laws. He imagined law courts where European and Javanese judges with contradicting laws combatted each other. In reality, this was not the case, which shows that theory was not followed. Indeed, in reality, European criminal laws had already proven dominant. This was almost literally confirmed by the Minister of Colonies Charles F.P. Pahud: "That the legislation in the Indies is as much as possible based on the Dutch legislation, will not—so I trust—be refuted by anyone."[52]

Rochussen considered article 75 to be realistic though. He compared the situation in the landraad with the traditional Javanese royal courts where the king—in this case the Dutch resident—represented all the power, and could decide whether he would follow the advice of the council members or deviate from it if it was not in accordance with the Dutch principles of equity:

> According to the local [i.e., *Indische*] notions, the administration of justice is the duty of the sovereign. According to these notions, judges do not differ from assessors, who inform the sovereign (...)

[50] "Handelingen Tweede Kamer 1853–1854", August 3, 1854, 1344. Accessed through www.statengeneraaldigitaal.nl Van Lynden: *"Men ziet dat de recidivisten er niet best aan zijn. Voor iedere herhaling van misdrijf een arm of been minder,"*

[51] "Handelingen Tweede Kamer 1853–1854", August 8, 1854, 1346. Accessed through www.statengeneraaldigitaal.nl Van Lynden: *"een loutere phrase, die fraai schijnt, maar in der daad op niets uitloopt."*

[52] "Handelingen Tweede Kamer 1853–1854", August 8, 1854, 1346. Accessed through www.statengeneraaldigitaal.nl Pahud: *"dat de wetgeving in Indie zooveel mogelijk is gebaseerd op het Nederlandsche regt, zal, naar ik vertrouw, door niemand worden gelaakt."*

> Hence, the European official represents the sovereign in the law courts. He will receive advice based on the strict laws of Islamic or ancient local laws or customs, and he will deviate from it in the event that the advice is in contradiction with the principles of equity and justice, as noted in this article.[53]

Thus, according to Rochussen the president of the landraad was actually a sole judge, even though this is not how it was defined in the colonial regulations, because the landraden were collegiate courts where Javanese priyayi were voting members. Minister Pahud, on the other hand, argued that European laws were followed. Van Eck concluded from this that article 75 was a dead letter. In the end, however, a majority of members of parliament followed Rochussen, and article 75 would be included in the Colonial Constitution of 1854. In parts 2 and 3 of this dissertation, we will take a closer look at the practice in the pluralistic courts to see if article 75 was a dead letter in reality.

Dutch Scholars and Islamic Texts

In 1842, a Royal Academy was established in Delft to train future colonial officials. Governor General J. C. Baud had taken the initiative to promote such training because he was worried by, among other things, the lack of knowledge of local languages among colonial officials with judicial responsibilities. Baud had prevented the death penalty being applied to three innocent Javanese when he had reviewed the procedural documents of the case and found that the president of the law court, due to his poor knowledge of the Javanese language, had convicted the wrong persons.[54]

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[53] "Handelingen Tweede Kamer 1853–1854", August 8, 1854, 1345. Accessed through www.statengeneraaldigitaal.nl Rochussen: *"De regtspraak is volgens de Indische begrippen het regt van den souverein. Regters zijn naar die begrippen niet anders dan assessoren, die den souverein voorlichten... . En nu is de fictie dat de souverein of de vertegenwoordigers van de souverein, na gehoord te hebben wat regt is en hoe de lieden van zijne rade hem adviseren, alleen beslist, alléén regt spreekt. Nu vertegenwoordigt in die regtbanken een Europeesch ambtenaar den souverein, die hoort wat regt is en wat men hem aanraadt, en wanneer hij dit onbillijk vindt en strijd met die regels van billijkheid en regtvaardigheid, waarvan in dit artikel sprake is, dan wijkt hij van dat strenge regt af, dat hem is voorgedragen als te zijn hetzij het Mohammedaansch hetzij het oud landsregt of gebruik."*

[54] Fasseur, "Van Vollenhoven and Law in Indonesia", 241-242.

Some of the professors of this school in Delft, did research on Javanese-Islamic law. However, their work seems to have had barely any influence on the drafting of a criminal code for the Javanese population.

The professors observed the Javanese laws to be of a merely Islamic character. They were working in Delft and would search from there for written sources of Islamic law produced in the Indonesian archipelago. Albert Meursinge (1812–50) was the first, publishing a *Handbook of Islamic Law* in 1844. In the preface, Meursinge wrote that he had written the handbook, after his appointment to teach at the Royal Academy, and found that no such handbook existed. It had not been possible either to make use of British books on Islamic law, because a different "sect" (*sekte*, referring to the Hanafi madhhab) within the Islam followed in the British colonies. According to Meursinge, using the existing VOC compendia would not be a proper solution, because these were a multitude of collected provisions without "coherence and without any reasoning" and finding a "guidance of general principles" in this text, to be used by judges, was too hard.[55]

Therefore, Meursinge had been searching for a text that could clarify the Shafi'i legal doctrine. The result of this endeavour was the publication of a text owned by professor Caspar G. C. Reinwardt, who had received the manuscript as a present from the Raja of Gorontalo (Sulawesi). It was a copy of a text written halfway the seventeenth century by a "priest in Achin [Aceh]" who had travelled to Arabia and produced the Malay text commissioned by his sultana. This original was a version of Abd al-Ra'uf's *Mir'at al-tulib* (Mirror of the Seekers), which came close to being a kind of handbook since it listed common principles which were subsequently explained.[56] Meursinge published the Malay text in the Arabic script, and decided to not translate it into Dutch, because he considered it a suitable text for students to learn the language. Besides, Javanese readers would also be able to read it now: "when, however, he is developed well enough to be able to understand and follow the line of

[55] Meursinge, *Handboek van het Mahommedaansche Regt.* Introduction II-III. "*Schier geheel uit eene menigte van als mogelijk onderstelde gevallen en de aanwijzing van hetgeen de wet in ieder van die gevallen bepaalt; alleen met dit onderscheid, dat men ze hier zonder zamenhang en zonder alle redenering aantreft; waardoor het moeielijk, ja dikwijls onmogelijk wordt, in dien verwarden doolhof een' leidraad van algemeene beginselen te vinden, die de regter bij zijne beslisising te volgen heeft."*

[56] Laffan, *The makings of Indonesian Islam*, 94-95.

argument."[57] Meursinge emphasized in his preface that the publication had cost him a lot of effort, because according to him the Islamic jurists often proceeded "quite arbitrarily and indistinctly."[58]

In 1853, another Delft scholar, Salomon Keyzer, published a Dutch translation of a Javanese translation of an Islamic text, al-Haytami's *Tuhfat al-muhtaj* (Gift of the Needy), better known among the Dutch as the *Kitab Toephah*. Just as Meursinge, Keyzer focussed on the Islamic written traditions, or the 'pure' Islam, and did not make use of local informants. He used a version of the *Kitab Toehpah* from the archive of Nicolaus Engelhard,[59] translated by the regent Soerja Adi Menggala at the beginning of the nineteenth century (exact year unknown).[60]

Although Keyzer observed that Islam was important to the Javanese, he did not hold their knowledge of Islam in high esteem. In 1856, Keyzer argued that the "laws" referred to in article 75 were Islamic, the "institutions" Hindu, and the "customs" (*adat*) Javanese. However, he disagreed with this grouping and was convinced of the dominance of Islam and considered *adat* a poor substitute (*uitvloeisel*) for Islam. The Javanese would be unaware of the insights into their own religion caused by a lack of knowledge, argued Keyzer: "Such substitutions are simply regarded as customs or usages by the Javanese, because the Islamic law books are scarce, most Javanese rarely read, and because these books are usually written in Arabic, a language mastered by only a few Javanese."[61]

He also did not expect much from the knowledge of the penghulus about their own religious law. Keyzer thought that the absence of qadis and muftis explained the "ignorance" of the penghulus. He considered them "priests" who were made responsible for legal advice. Keyzer seems not to have been fully aware of the longer tradition of penghulu courts in Java

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[57] Meursinge, *Handboek van het Mahommedaansche Regt.* Introduction VII. "*wanneer hij overigens genoeg ontwikkeld is om den gang der redenering te kunnen vatten en volgen*."

[58] Meursinge, *Handboek van het Mahommedaansche Regt.* Introduction VIII. "*..vrij willekeurig en verward*.."

[59] Laffan, *The makings of Indonesian Islam*, 96.

[60] Keyzer, "De codificatie van het inlandsch regt op Java", 56.

[61] Keyzer, "De codificatie van het inlandsch regt op Java", 45-56. "*Zulke uitvloeisels worden onder de Javanen eenvoudig als gebruiken of gewoonten beschouwd, omdat de boeken over het Mohamedaansch regt schaars zijn en de Javaan over het algemeen al heel weinig leest en omdat zij bovendien meestal in het Arabisch geschreven zijn, een taal, waarmede maar een zeer enkele onder de Javanen voldoende bekend is om ze te kunnen verstaan."*

and their workings. In his articles, he only compared the conditions in other Islamic colonies such as French Algeria and British India. He suggested making a start with the codification of Islamic laws based on the *Kitab Toehpah* as a guideline for both penghulus and European judges. However, Keizer also stated that in order to appreciate Javanese laws, his students in Delft first had to study the "pure" Islamic legal literature, to understand the derogations in law in the Indies.[62]

Scholars of this period were not at home in the Indies, thereby making themselves rather useless to practical implications for colonial law. They studied texts instead of talking to Javanese penghulus or *kyais* (Islamic teachers not in service of the colonial government) to obtain information of Islamic law, and underestimated the level of knowledge these Javanese teachers and officials had. Moreover, whereas they regarded mystical Sufi orders as misleading mystical powerholders guilty of malfeasance, they saw the more reformist sects such as the Wahhabis as equally dangerous.[63] It was only during the 1860s that more information was collected on both the traditions of Javanese Islam and the contemporaneous influx of knowledge and Islamic reforms from Mecca. Ironically, this information came not from research by scholars, but from Christian missionaries interested in the practiced religion of Java. Whereas the Protestant minister Wolter R. baron van Hoëvell had during the 1840s, and without really speaking to the *kyais*, stated that the Javanese were actually not Islamic, later missionaries such as Gerhardus J. Grashuis, A. W. P. Verkerk Pistorius, and C. Poensen took an interest in and published on the *pesantren*.[64]

Although both Meursinge and Keyzer were certainly looking for a connection with contemporary legal practices in Java and made strong claims about it, they were based in the Netherlands and did not interact with Javanese informants or experts. And even though they clearly wanted their knowledge to be applied in Java, they did not exercise influence on the Dutch committees drafting colonial legal codes. Instead, these committees focussed on Dutch legal traditions combined with the needs in

[62] Keyzer, "De codificatie van het inlandsch regt op Java", 56; Cees Fasseur, *De Indologen*, 262.; Keyzer, *Het Mohammedaansche strafregt naar Arabische, Javaanse en Maleische bronnen,* introduction (vii).
[63] Laffan, *The makings of Indonesian Islam*, 99, 107.
[64] Laffan, *The makings of Indonesian Islam*, 110–115.

colonial Java, and were therefore more interested in the experiences of Dutch residents and the few Dutch jurists present in Java.

The Native Criminal Code of 1872

As the debates on both article 75 and the nature of Javanese law show, making a colonial criminal code became a real challenge because opinions among the Dutch involved in the process differed so widely. During the 1850s and 1860s, liberal jurists would increasingly gain importance in both the Netherlands and Java (we will say more about this in part 3) and, therefore, the idea of introducing European laws to the local population gained more widespread acceptance. In 1866, former Supreme Court Judge F.F.L.U. Last was assigned to design one criminal code for the "natives and those with them equated." The assignment explicitly stated that "the provisions of the Criminal Code for Europeans in the Netherlands Indies should be followed and copied as much as possible."[65] The Criminal Code for Europeans had been introduced in the colony earlier that year and was based on the French penal code.[66]

Last himself was not in favour of applying European laws to the Javanese population, though. He interpreted his assignment with article 75 in mind, and commenced collecting Islamic and local laws. This took quite a long time and his approach was not approved upon by other colonial jurists, who in these years increasingly argued from a liberal viewpoint.[67] T. H. der Kinderen, director of the new Department of Justice established in 1870, subsequently designed a criminal code that was in fact a reworking of the Criminal Code for Europeans. The Native Criminal Code was introduced in 1872.[68]

The law code was translated into Javanese, although the quality of the translation was criticised by the chief jaksa of Pekalongan, Raden Mas

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[65] NL-HaNA 2.10.02 MvK, Openbaar Verbaal. August 20, 1866/67; "Besluit 27 junij 1866 no.2. Commissie voor de zamenstelling van een Strafwetboek voor Inlanders met deze gelijkgestelde personen", *Het Regt in Nederlandsch Indië* 23 (1867): 435-436. *"zoveel mogelijk zullen gevolgd moeten worden en overgenomen de bepalingen van het (...) vastgesteld Wetboek van Strafrecht voor Europeanen in Nederlandsch-Indië."*

[66] Jonkers, *Handboek van het Nederlandsch-Indische Strafrecht*, 2.

[67] Winckel, "Het ontwerp-strafwetboek voor inlanders en daarmee gelijkgestelden", 3. According to Winckel, Last "destroyed" the by him collected Javanese laws after his assignment had been withdrawn.

[68] When the Native Criminal Code was introduced in 1872, the legal authority of the indigenous, Old Dutch and Roman law was abolished.

Pandji Hadiningrat. He discarded the translation for its poor quality: "Those who contain some knowledge of the Javanese language will have to admit that the translation not only distinguishes itself by its lack of clarity ... but also by significant alterations and violations, to such an extent that the meaning of some articles is even in direct opposition to the original text."[69] Translations in Malay of the Criminal Code were produced in 1888, 1890, and 1898, to be used by jaksas and local landraad members.[70]

In the Native Criminal Code, there was no direct reference to any Javanese or Islamic law. The explanatory note nonetheless says that the "nature of the native" had been considered. For example, adultery was punished less severely compared to Europeans.[71] However, in fact, room was only left for Javanese, Islamic, and local laws and customs—as advised by the penghulus and court members—in article 37 of the criminal code, which offered space for mitigating circumstances.[72] In chapters 5 and 9, we will discuss if and how this worked out in practice. In any case, as the ethnologist G. A. Wilken described it a decade later, the Native Criminal Code of 1872 had been drafted with "full neglect of the Islamic and Native legal notions."[73] The liberal jurists of this period did not consider this to be a problem at all. To the contrary, they observed it to be a favour to the Javanese to give them a "more civilised" law, or, as Dutch jurist W. A. J. Van Davelaar stated in 1884, "we present something truly

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[69] Hadiningrat, "Boek-bespreking", 61-65. *"Wie eenigszins kennis bezit van de Javaansche taal toch zal moeten zeggen, dat de vertaling zich niet alleen onderscheidt door onduidelijkheid (...) maar ook door belangrijke wijzigingen en verminkingen, zoo zelfs dat er artikelen gevonden worden, die lijnrecht strijden met den oorspronkelijken tekst."*

[70] See for example: Redeker, *Boekoe kaädilan hoekoeman atas orang bangsa Djawa dan lain bangsa, jang di samaken dengen bangsa Djawa di India Nederland dengan pengertijan jang ringkas, aken di pake oleh Djaksa-Djaksa, dan Lid-Lid dari Landraad dan dari Raad Sambang*. Samarang: Van Dorp & Co, 1888.

[71] Der Kinderen, *Wetboek van strafregt voor inlanders in Nederlandsch-Indië, gevolgd door eene toelichtende memorie*, 180. Explanatory note art.254.

[72] Der Kinderen, *Wetboek van strafregt voor inlanders in Nederlandsch-Indië, gevolgd door eene toelichtende memorie*, 139. Explanatory note art.37. In case of death penalty, the judge at the European courts was not allowed to decide impose a milder punishment due to mitigating circumstances. At the pluralistic courts this was possible. *"met opzigt tot Inloanders is het echter noodig geacht deze bevoegdheid aan den regter te schenken, omdat het maar al te vaak in de praktijk voorkomt, dat zij de zwaarste misdrijven plegen uit beweegredenen, die inderdaad vallen in de termen der verzachtende omstandigheden, in dit artikel opgenomen."*

[73] Wilken, "Het strafrecht bij de volken van het Maleische ras", 512. *"met algeheele verwaarloozing der Mahomedaansche en Inlandsche rechtsbegrippen."*

higher compared to that we have taken away from them; we only advance the development process."[74]

3.4 Adat Law or Unification, 1872–1918

The Native Criminal Code of 1872 reflected the beliefs of the liberal jurists in universal laws; the application of different laws to various population groups did not fit their ideology. In part 3, I will elaborate on how this influenced criminal law practice in the pluralistic courts, and how Dutch jurists applied the ideology in a rather selective and self-serving manner. In any case, at the end of the nineteenth century, this dominance of the legalistic liberal approach would slowly diminish. A new generation of colonial jurists became interested in the nature of both Javanese-Islamic and Javanese-customary law. Representatives of this new generation rebelled against the liberally-oriented jurists. During this period, the disparities between proponents of Dutch, colonial, or customary law would become less clear. Regarding criminal law, the outcome would nonetheless be a "liberal" unified criminal code in 1918, but with maintenance of a separate criminal procedural law and the maintenance of separate courts for the non-European and European population groups.

Arab informants and Adat "Discoverers"

Whereas discussions on Javanese-Islamic law no longer influenced the development of the substantive Native Criminal Code of 1872—which was fully based on Dutch-colonial laws—the increasing colonial intervention in the religious courts in the period from 1872 to 1890 did influence the Dutch perspective on Javanese legal traditions in general. Also, the so-called "discovery" of Javanese customary (*adat*) law led to new visions among colonial jurists. Therefore, we will now shortly explore these two issues and their corollaries.

A fear of Islam had always been apparent among the Dutch, but it would intensify during this period. Partially due to increased steamship traffic, as a result of the opening of the Suez Canal in 1869, the number of Indonesians performing the *haj* grew. After a revolt in Cilegon (in Banten) in 1888, which had religious facets, the fear increased. In 1882, the

[74] Van Davelaar, *Het strafproces op Java en Madoera*, 6. *"...stellen wij werkelijk iets hoogers in de plaats van "t geen wij hun ontnemen; wij verhaasten alleen het proces van ontwikkeling."*

religious law courts were placed under more direct colonial governance to supervise the Islamic judiciary more closely. Initially, the Dutch were hesitant to intervene in the religious courts for fear of negative consequences. Therefore, rather than ignore scholars, as in earlier decades, now they *did* consult scholars during the decision-making process. The discussions on the religious courts were not held by the liberal Supreme Court members, who had little knowledge of Islamic law. Instead, a number of Dutch scholars who specialised in Islam and Islamic law, and their Arab counterparts, were influential. Most prominently, L.W.C. van den Berg and Christiaan Snouck Hurgronje would be consulted as specialists and functioned as advisors of the government.

Van den Berg was a pupil of Keyzer, but his research displays more awareness of the Javanese practices of Islam and Islamic law. In 1874, he compiled the handbook *The Principles of the Islamic Law according to the Imams Aboe-Hanafit en asj-Sjafe'it*, based on both Hanafi and Shafi'i legal principles and intended for use by Dutch students and the presidents of landraden and circuit courts.[75] In 1879, Van den Berg was appointed a government advisor on Islamic law and was closely involved in the implementation of the 1882 reform, which brought the religious courts under direct colonial control. Van den Berg also translated Nawawi's *Minhaj al Tilanbin.*[76] This was the first legal Islamic text directly translated from Arabic by a Dutch scholar. The predecessors of Van den Berg had always worked with Malay or Javanese translations or interpretations. Van den Berg was in close contact with an Hadrami informant, Hasan Bãhabir, who assisted him while translating the *Minhaj*. Bãhabir was the Arab captain and a member of the Orphan Chamber (*Weeskamer*) in Batavia.[77] Van den Berg also collaborated with Javanese informants. In 1887, he produced a list of books used in Javanese *pesantren*, collected with the help of Chief Jaksa Adiningrat.[78]

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[75] Van den Berg, *De Beginselen van het Mohammedaansche Recht.* Introduction (*voorrede*, page 1) and 146. Van den Berg also included a chapter on criminal law, although he noted that this part of Islamic law had almost completely lost its "practical purpose" (*praktische belang*) for the Dutch.

[76] Kooria, *Cosmopolis of Law*, 33. The *Minhaj al Tilanbin* is a foundational text of the Shafi'i madhhab, from the thirteenth century.

[77] Yahaya, *Courting Jurisdictions*, 68-69.

[78] Laffan, *The makings of Indonesian Islam*, 116.; Van den Berg, *De Mohammedaansche geestelijkheid*, 14.

Christiaan Snouck Hurgronje was the second government advisor on Islamic affairs, and he presented himself as an innovator in the field of Islamic studies. He disagreed with older scholars who claimed that the Javanese would not be "real" Muslims—a claim often made by colonial officials as well. Simultaneously, Snouck Hurgronje observed himself the founder of adat law, a codification project of local Indonesian customary laws that he developed in collaboration with the Dutch jurist Cornelis van Vollenhoven.[79] Snouck Hurgronje was interested in both written and unwritten laws and was of the opinion that previously only the missionary C. Poensen had done proper research into these local legal traditions. At first, Snouck Hurgronje was based in the Netherlands and received most information through his informant, Aboe Bakar, who resided in the Hejaz. He was also in contact with Regent Soerianataningrat of Lebak, who informed him on the legal texts circulating in Java. Then, in an ultimate endeavour to mingle with Muslim communities, Snouck Hurgronje went to Mecca. Thereafter, he went to the Netherlands Indies, where he would stay until 1906. He was appointed a government advisor in 1889 and his first action was a tour of Java, during which he visited several *pesantren*.[80]

Once arrived in the Netherlands Indies, Snouck Hurgronje would partly be influenced by, as Van den Berg was, Arabs residing in Java. From 1888 onwards, Snouck Hurgronje was an ally of Sayyid Uthman, a Hadrami born in Batavia. In a direct response to the revolt in Banten, Uthman had been appointed advisor on Arabic affairs by the colonial government in 1891.[81] He was critical of the local customary elements in Javanese Islam practices and was, for example, against the prints of talismans on the back pages of Quran verses.[82] Due to his aversion of several tariqats, Uthman was not all that popular among the Javanese, but because of his cooperation with Snouck Hurgronje he did manoeuvre himself into the position of advisor on Islamic legal issues. He also exercised influence on the religious courts in Java by producing the regulations for these law courts in 1881, when they were brought under the supervision of the colonial administration.[83] Uhtman wrote a handbook

[79] Otto, *Sharia Incorporated,* 440.
[80] Laffan, *The makings of Indonesian Islam*, 137, 141-142, 147-154.
[81] Yahaya, *Courting Jurisdictions*, 96-99.
[82] Laffan, *The makings of Indonesian Islam*, 57.
[83] Laffan, *The makings of Indonesian Islam*, 162.

entitled *Kitab al-Qawanin al-Shar'iyya,* which was translated as *De Gids voor de Priesterraden* (The guide for the priest courts) in 1894. In the words of historian Nurfadzilah Yahaya, "Sayyid Uthman shrewdly allied with Snouck [Hurgronje] in order to gain influence, not just over the Arab communities, but over the entire Muslim community in the Netherlands Indies and beyond."[84]

The objectives of the Arabs complemented the codification fever of the nineteenth-century Dutch. As a diaspora group, the Arabs had an interest in a uniform and universal Islamic legal system. It was also in their interest to develop a uniform Islamic legal system in the Netherlands Indies and other colonies, in particular because of their marriages with local women. One consequence of Dutch scholars being informed by Arab informants, however, was that the Arabs considered themselves much more knowledgeable about Islamic law than the Javanese, who were not taken seriously in this regard. Moreover, Van den Berg and Snouck Hurgronje were getting tangled up in the competition between the rival Arab informants Hasan Bãhabir and Sayyid Uthman.[85] The translations and opinions by Van den Berg and Snouck Hurgronje were often shaped after advice of Arab informants, who had their own interests in influencing the legal system.[86]

Although influenced by his Arab informant, theoretically Snouck Hurgronje agreed with Van Vollenhoven that, according to the reception theory (*receptietheorie*) they developed, adat law was dominant in the lives of ordinary Indonesians, and Islamic law was only acceptable if it had already become part of the local legal tradition.[87] Above all, Islamic law

[84] Yahaya, *Courting Jurisdictions*, 102, 122.

[85] Even though Snouck Hurgronje argued to completely disagree with Van den Berg, who he thought misinterpreted Islamic law, in practice the two men did not differ as much as often believed. Theoretically, Van den Berg followed the idea of receptio in complexu which stated that generally Islamic law ruled the lives of Indonesian muslims, whereas Snouck was a proponent of the reception theory, stating that adat law was dominant in the lives of ordinary Indonesians. In practice, however, Van den Berg seems to have been aware of the influence and validity of adat in religious court verdicts. And, as discussed below, Snouch Hurgronje futhered the influences of Islamic legal ideas from the Middle East. For a discussion on the competition between Van den Berg and Snouck Hurgronje, see: Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 73-77.

[86] Yahaya, *Courting Jurisdictions*, 50, 81-83.

[87] Van Huis, *Islamic courts and women's divorce rights in Indonesia,* 74. The reception theory was in contrast to the receptio in complexu which stated that generally Islamic law ruled the lives of Indonesian muslims; Burns, *The Leiden Legacy*, 236-237. In this, Van

had to refrain from political life. In practice, however, Snouck Hurgronje was inconsistent. As legal anthropologist Stijn van Huis has argued, "his opinion with regard to the content of judgments of penghulus reveal a prescriptive and puritanical stance on Muslim family law issues. … Thus, Snouck Hurgronje, the renowned adat law scholar, actually promoted Islamic law at the expense of traditional practice, whereas Van den Berg tended to recognize the judicial tradition of the penghulus."[88] The ambivalent attitude of Snouck Hurgronje would also influence the selection process of penghulus for the pluralistic courts, as will be discussed in chapter 6.

In the Netherlands, however, the reception theory and the adat school would gain importance in the early twentieth century and regarding research into adat law, contrary to Islamic law, the Dutch depended on local informants. Van Vollenhoven, in particular, relied on Indonesian informants for his adat law collections. He did not do the field work himself, and most of the collecting information was done by his Indonesian students. Political scientist Dan Lev has argued that the collection of the adat law itself was not free of political aspects as well, since it was often directed against Islam and stimulated by local elites, who, like the Dutch, felt threatened by Islamic influences in society.[89]

Unification and Continued Segregation

Towards the end of the nineteenth century, the interest in Javanese laws would also gain a foothold among the colonial judiciary. With regard to

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Vollenhoven observed Germany as how not to do it. There, his idol Von Savigny was eventually caved for Roman law instead of following German local laws. Van Vollenhoven was determined to not make a mistake like that in the Netherlands Indies, and not allow any more Dutch or Islamic elements.; Van Vollenhoven, *De ontdekking van het adatrecht*, 11. Van Vollenhoven argued that the VOC compendia were of better quality that the "younger mayhem" (*jongere wanwerk*) of Der Kinderen. Van Vollenhoven emphasized the importance of understanding local laws and ordering them. Therefore, he promoted the segregated legal system, although according to his ideology the co-existing legal systems had to be equal instead of unequal as it had been the case until then.

[88] Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 77.

[89] Daniel S. Lev, "Colonial Law and the Genesis of the Indonesian State," 66. "…from fear, both Dutch and local, of Islamic expansion, the adat law scholars spent much intellectual energy proving that Islam had made few inroads into adat. This was not a realistic or even theoretically sensible view of the interweaving evolution of Islamic and other values in the changing societies of Indonesia. But it served to transform adat increasingly into the conservative legitimating sumbol of local authorities, who appreciated the help, against Islamic challenges."

criminal law, prominent jurists divided into those who were in favour of the adat school versus those who, in line with the liberal tradition, continued to strive towards unification of all laws for both the non-European and European population.[90]

On Wednesday, 10 October 1906, for example, the Dutch parliament in The Hague discussed the two opposing ideas on how the legal system for the Indonesian population should be organised: unification or adat law. The former Minister of Colonies A.W.F. Idenburg had proposed effectuating greater equality in the legal status of the various population groups in the Netherlands Indies. Idenburg was a proponent of unification and proposed to alter article 75 of the Colonial Constitution. However, participants in the debate in Parliament were looking at this subject from several diverse perspectives and had different solutions in mind for clarifying the legal principles through which to govern the Indonesian population.

Henri van Kol, a member of the Social Democratic Workers' Party (Sociaal Democratische Arbeiders Partij, or SDAP), was convinced that law had to adjust to the society and not vice versa. Therefore, Indonesians had to be judged according to customary law. The French, and also the Germans, had been inspired by the Dutch example of dualism during the Colonial Congress in 1900, and now, Van Kol lamented, this went out of the window due to the urge for unification:

> During the conference in Paris in 1900, where representatives of all powers, men who have won their spurs in the field of colonial politics, have declared unanimously that the preservation of the native institution in each field is the duty, and should be the aim of, every colonial Power. To date, we have set an example in this. Now, one plans to wilfully destroy that which is found desirable in our colonial politics. In France and Germany, where they recognized the wrong of the Europeanising of

[90] L. W. C. van den Berg had become a proponent of unification in the 1890s, because he wanted to improve the position of the Christian 'Natives', being the spokesman of the Christian political party (ARP; *Anti-Revolutionaire Partij*) in Dutch Parliament, 1911-1923. Fasseur, "Cornerstone and Stumbling Block", 39-40.

> the law, they have abandoned this approach, and now we would be taking this route that others are departing from.[91]

Van Kol also presented himself as a follower of Van Vollenhoven, who regarded Islamic law of little importance in the Netherlands Indies. Van Kol had a very narrow understanding of reception theory and discarded all Islamic influences on Javanese legal traditions. He argued that "adat is purely native and is, foremost in Malay countries, in direct opposition to that which the Quran preaches."[92] J. H. De Waal Malefijt, a member of the Protestant-Christian Party (Anti Revolutionaire Partij, or ARP) was diametrically opposed to the followers of the adat school. He believed that the road to unification had been travelled long since, and that the process had to be accelerated.

In the end, Minister of Colonial Affairs Dirk Fock, who had been a private lawyer in Semarang and Batavia from 1880 to 1898, was in favour of unification, and on 30 December 1906, a legislative proposal to unify both substantive and procedural—and both civil and criminal—law was accepted. A committee led by Stibbe was assigned to compose the drafts. However, due to firm opposition from the followers of the "adat law school," in particular by Van Vollenhoven, the unified civil and procedural codes never became "effective law."[93] In the mid-1910s, the ideas of Van Vollenhoven won out over unification.[94] Thereafter, in civil law cases, the adat school prevailed. In the New Colonial Constitution (Indische Staatsregeling) of 1925, Islamic law was officially declared secondary to

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[91] "Handelingen Tweede Kamer", October 10, 1906. www.statengeneraaldigitaal.nl Van Kol: "*Op het congres te Parijs in 1900, waar vertegenwoordigers waren van alle mogendheden, mannen, die op het gebied der koloniale politiek hun sporen hadden verdiend, werd eenstemmig verklaard, dat handhaving van de inlandsche instelling op elk gebied, de plicht en het streven moet zijn van elke koloniale Mogendheid. Daarvan hadden wij tot heden het voorbeeld gegeven en thans gaat men het goed wat in onze koloniale politiek gevonden wordt, moedwillig vertrappen. In Frankrijk en Duitschland, waar men het verkeerde heeft ingezien van het Europeaniseren van het recht, keert men er op terug, en nu zouden wij den weg gaan inslaan, die door anderen verlaten wordt."*

[92] "Handelingen Tweede Kamer", October 10, 1906. www.statengeneraaldigitaal.nl Van Kol: *"Adat is zuiver inlandsch en vaak vooral in Maleische landen in lijnrechten strijd met hetgeen de Koran leert."*

[93] Fasseur, "Cornerstone and Stumbling Block," 40.

[94] Bloembergen, *De Koloniale vertoning*, 57.

adat law.[95] In civil law practice, the different interpretations within the adat school became visible. Land law—often decided over by landraden—would be influenced by Van Vollenhoven's adat school, and customary laws were applied. Family and divorce issues, however, remained subject to the religious courts and became, partly due to the interference of Snouck Hurgronje, of a more Islamic character.[96]

The so-called "discovery of the adat law" of the early twentieth century, however, was of minor influence on criminal law. The unification of the Criminal Code of 1918 became the only colonial law code that would be unified for both Europeans and non-Europeans—mainly because the Native Criminal Code of 1872 was already based on Dutch law. This was supported by a fairly broad majority, due to the particular importance of criminal law for the colonial government. Leiden law professor Carpentier Alting expressed this as follows in a speech in 1907, when he became the new chair of Main Subjects of Contemporary Law, Criminal Law, and Criminal Procedural Law of the Netherlands Indies: "The state, whenever regulating in the field of criminal law, acts as the maintainer of the rule of law and [the state], when doing so, cannot obey any other will than his own, he cannot accept any other principle as true than the one which has become his possession after centuries of pondering."[97] Carpentier Alting chose a middle road in the adat versus unification debate, claiming that he was convinced that civil cases could be decided by adat law, though observing that this would be impossible in the case of criminal law.[98]

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[95] S 1925/415, art.134 (2).

[96] Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 77-78.

[97] Carpentier Alting, *Rede Indisch strafrecht*, 19. *"De Staat, waar hij regelend optreedt op het gebied van strafrecht, handelt als handhaver der rechtsorde en Hij kan daarbij niet gehoorzamen aan een anderen wil dan zijn eigene, geen ander beginsel als het ware aannemen dan hetwelk zijn eigendom is geworden na eeuwen van denken."*

[98] Carpentier Alting, *Rede Indisch strafrecht*, 24. Interestingly, Carpentier Alting—and Van Deventer had done this as well during the 1906 debate in parliament—referred to the British policy regarding this subject and in particular to Macauley who had argued that legal certainty had to be top priority. In case of civil law, legal certainty was achieved if the law aligned with that what the people observed as just. In criminal law this was different, because here the state had to decide what was just. Again, he referred to a Brit, Sir John Strackey, who had defended the introduction of the Indian Penal Code of 1860— based on European legal principles—with the argument that a European government was the representative of civilization at war with barbarity. Carpentier Alting thought this last part to be of a too strong character, but he did agree with Strackey.

Also, Carpentier Alting thought that the colonial criminal code should be different than the Dutch criminal code, because it had to be adjusted to the types of crimes that existed in a particular society. He gave the example of *wang teboesan* (theft, after which the person robbed received back the stolen goods in return for money), a crime identified by Carpentier Alting as typical for the Netherlands Indies.[99] This would be implemented in the unified Criminal Code of 1918. The Criminal Code was almost identical to the Dutch Criminal Code, with a few articles unique to the Netherlands Indies. Divination was prohibited, as well as wearing amulets and organising cock- or cricket fights without official permission. Other articles reflected colonial administrative concerns, such as designating "deliberately spreading lies to foment trouble" as a crime. Furthermore, "coercion by a civil servant to confess or provide a statement" was penalised.[100]

When examining the informants consulted, the political debate in the Netherlands on unification was often based on the practical experience of colonial jurists, private lawyers, or judges. It was a European discussion in which political colour prevailed. Defending the rights of Christian Indonesians, the interests of Liberals, or the convictions of Socialists all played their part. Although the influence of the adat law school was limited in the case of criminal law, there were consequences for criminal law practice. Criminal cases could potentially be influenced by customary law. For example, in cases of adultery, which penalised by the colonial Criminal Code, whether a marriage was legitimate was decided according to adat law.[101] Of greater impact, however, might have been the extent to which judges were influenced by the general ideology of the adat law school. It exceeds the scope of this research, but it would be interesting to investigate whether the interest in adat law caused the landraad presidents to make their judgments based on flexible interpretations of colonial criminal laws defending this by referring to a difference in civilization, race, and culture (see epilogue). Finally, punishments such as the death penalty and forced labour continued to exist in the unified criminal code, but were in practice

[99] Carpentier Alting, *Rede Indisch strafrecht,* 28.
[100] Fasseur, "Een vergeten strafwetboek, " 37-53.
[101] Jonkers, *Vrouwe Justitia in de Tropen.* 10–19.

only imposed on Indonesians.[102] There was a unified criminal code, but punishments continued to be applied unequally.

Moreover, and with considerable impact, criminal procedural law would never be unified, and the dual law court system was never abolished, causing an ongoing inequality between Europeans and non-Europeans. If, after a lengthy pre-trial detention, a suspect was put on trial, there were fewer legal guarantees for non-Europeans than for Europeans. For example, the European procedural code stated that an accused should receive the indictment at least one day before the court session. He also had the right to see the list of witnesses. Moreover, he was defended by a lawyer. Javanese suspects did not have all these legal guarantees: "Until the day of his trial, he does not know—along formal lines—more about the case for which he has been apprehended, than that he is being held in pre-trial detention. And it is left to him to guess and surmise which facts and which crime he will be accused of, which witnesses will be called by the Public Prosecution Service, and which pieces of evidence will be presented in his accusation." Thus, the accused had no means to prepare for his defence and, according to the jurist J. J. C. Gaijmans, he also held "none of the least protection against the Public Prosecution Service."[103] The consequences of the dual character of procedural law were plentiful. House searches by the police and pre-trial detention are examples of this, as will be further discussed in part 3. The local population had fewer legal guarantees and the police and justice system had all kinds of coercive instruments: "Coercion against person, coercion against goods, of the accused, of the witnesses, of other persons."[104]

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[102] Ravensbergen, "Nederland hield doodstraf in Indië in stand." If a governer general was an opponent of the death penalty, such as D. Fock (1921-1926) he would always grant mercy. In the later years 1929-1936, however, death penalty was imposed on 27 non-Europeans suspected of murder, of whom only 13 were granted mercy.

[103] Gaijmans, *De Landraden op Java en Madura*, 70. *"Tot op den dag zijner verschijning ter terechtzitting is hem, langs wettigen weg, niet meer van de zaak, waarvoor hij in rechten is betrokken, bekend, dan dat hij zich in voorloopige hechtenis bevindt, en wordt het hem overgelaten te raden en te gissen welke feiten en welk misdrijf hem ten laste worden gelegd, wie de getuigen zijn waarvan het Openbaar Ministerie zich zal bedienen, en welke bewijsstukken ten zijnen bezware zullen worden voorgebracht."*

[104] Idema, *Landraad-strafprocesrecht*, 117. "*Dwang tegen den persoon, dwang tegen het goed, van beklaagde, van getuigen, van derden."*

3.5 Conclusion: The Impact of Informants

Javanese jaksas, Islamic penghulus, Dutch residents, Delft scholars, Arabs, and local investigators: the informants whom the Dutch selected to serve as specialists, to determine which "native laws and customs" should be applied, came from a diverse range of backgrounds. Much emphasis has been put on how the Dutch would only have "discovered" adat law at the end of the nineteenth century. However, in earlier periods officials, scholars, and judges were very well aware of the existence of local customs in the Javanese legal traditions. They all just dealt with it differently. Throughout the nineteenth century, most observers agreed on the importance of Islamic law to the Javanese. It was only the adat law school, in the early twentieth century, that believed Islamic influences to be harmful to the preservation of adat. Yet, Islamic influence on the legal system were already present, and increasingly dominant, from the eighteenth century.

During the nineteenth century, the tendency in colonial criminal justice was towards an increasing prominence of European laws, with a residual role for Islamic and customary laws. This culminated in the Native Criminal Code in 1872, which was largely based on the Netherlands Indies' Criminal Code for Europeans of 1866. The informants consulted were increasingly Dutch colonial officials instead of Javanese experts. However, due to a fear of Islam and despite a lack of knowledge of the Javanese legal system, the Dutch colonial government would not formally diverge from the policy of adjudicating the Javanese population according to their own laws, customs, and traditions.

It does not clarify much to speak of a dichotomy—a division in two strands—between the supporters and opponents of the preservation of customary law. Instead, if a division is necessary at all, it would be more correct to speak of a division into four strands: strict proponents of the export of Europeans law to Java (concordance principle); proponents of a "colonial law" based on European laws, but adjusted to the Netherlands Indies—and colonial power interests—and therefore lacking some of the "enlightened" European legal principles such as the separation of powers (rule of law) as we will see in part 3, below; proponents of the application of Javanese law and a combination of Islamic and customary laws; and proponents of "recovering" adat law by removing Islamic principles and traditions from customary law. These divisions were not stable, but

differed by the subject matter at hand or the constellation of power interests at play. Moreover, proponents of a distinct colonial law based on European antecedents often used the arguments of those who supported the application of Javanese law as though they favoured this direction, although some jurists, such as Merkus, at certain times attempted to combine a sincere interest in Javanese laws with the development of a colonial law.

Without exception, however, all four strands aimed at an "improvement" of Javanese legal traditions, not excepting followers of the third strand such as Snouck Hurgronje, who intervened extensively in justice as applied by Javanese religious judges. Also, without exception, throughout the nineteenth century, while investigating Javanese law, the Dutch merely discussed the Javanese but did not talk *with* them.

Fig.9 Landraad session in Banyumas, between 1897 and 1903. [KITLV no.119285].

Fig.10 Landraad session (landraad president De Flines), ca. 1915. [Stadsarchief Amsterdam, archive De Flines, no.856].

PART II — LEGITIMIZING LAW

At the beginning of the nineteenth century, the Dutch legitimized colonial law by incorporating pre-colonial knowledge holders of Javanese legal traditions in the pluralistic colonial courts. I will now turn to a more actor-focussed approach and investigate how these knowledge holders held, in the words of Lauren Benton, the "burden of translation" of the colonial courtroom into something that was understood by the Javanese population as a legitimate court. As Benton argues: "Staging loud and impressive theatrical events was relatively easy for colonizers; making these displayes mean what they were intended to mean was much more difficult."[1]

In early-nineteenth century Java this process turned out to be rather complicated, in particular, since at that moment the Javanese jaksas and the Javanese-Islamic penghulus were entangled in longstanding jurisdictional disputes. At first, the problem of how to apply Javanese legal traditions was basically 'solved' by appointing both jaksas and penghulus as advisors in the pluralistic courts. Over time, however, the jaksa would be stripped of his advisory role and became the public prosecutor, whereas the penghulus remained attached to the pluralistic courts as a legal advisor. In the coming chapters, the transformation processes of both the penghulu and the jaksa is traced to answer the question why the penghulus and jaksas entered, and remained part of, the pluralistic courts.

Research on colonial justice in British India demonstrates why and how local advisors used colonial spaces. For example, until the 1860s, the British consulted Hindu pandits during court sessions. Since few colonial judges mastered Sanskrit, they were in fact completely dependent of the

[1] Benton, *Law and Colonial Cultures*, 16.

pandits, who convinced the British to observe the Brahmins as the most prominent population group in the Indian society.[2] Research into local nineteenth-century qadi registers assesses the strategies deployed by Islamic judges to secure their position under British rule.[3] On the other hand, over time, a cooperation with the colonial government could also turn out to be less favourable for the local actors in question. The qadis in British India would eventually lose their established position, as historian Chris Bayly has described: "Progressively the kazi had ceased to be a judge and counsellor of rulers; he became merely a member of a Muslim 'caste' who married people."[4]

In Java, similarly, the penghulus and jaksas would exercise their authority through the colonial courtrooms while simultaneously suffering from marginalization over time. Like the Indian qadis, the penghulu became a marriage official in contemporary Indonesia. Remarkably, although extensive historical research has been done on the history of Islam in Java, the penghulu is hardly mentioned in this historiography.[5] Clifford Geertz, for example, only briefly describes the penghulu as "a somewhat marginal officer in the colonial bureaucracy."[6] An exception to this is the work of the former Adviser on Islamic Affairs G. F. Pijper, and, more recently, the work of the historian Muhamad Hisyam, who wrote a rich study on the social position of the penghulus and the considerable changes in their position during the late nineteenth century.[7] Recent work done by legal anthropologist Stijn van Huis provides insights into the position of the penghulus and the religious courts in Cianjur.[8] Little is known, however, about the penghulus during the early nineteenth century or about the exact position of the penghulus in the pluralistic courts, even though they were observed by the Dutch as *the* representative of the Islamic population.

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[2] Metcalf, *Ideologies of the raj*, 11, 23-24.
[3] Lhost, "Writing Law at the Edge of Empire."
[4] Bayly, *Empire and information*,166.
[5] Regarding the nineteenth-century the following (recent) works focus specifically on Islam in Java: Ricklefs, *Polarising Javanese Society: Islamic and Other Visions.*; Laffan, *The makings of Indonesian Islam.*
[6] Geertz, *Religion of Java*, 132-133.
[7] Pijper, *Studiën over de geschiedenis van de Islam.*; Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration.*
[8] Van Huis, *Islamic courts and women's divorce rights in Indonesia.*

The jaksas also eventually suffered from their transformation within the colonial legal system. Political scientist Daniel Lev depicts the jaksa of the early independent Indonesian state as a colonial relic from the past whose status could not compete with that of the Indonesian court judges. Referring to the late colonial period, he describes them as "the once lowly jaksa, often poorly educated and unused to exercise authority."[9] However, as I will argue below, this image does not correspond with the picture of the jaksa that speaks from the nineteenth-century archival sources. The discrepancy between this elitist jaksa of the early colonial state and the lowly post-colonial jaksa leads to the question what exactly happened to the profession and position of these Javanese public prosecutors. As with the penghulus, the historiography is almost silent on the jaksas, and they are often only mentioned as officials with judicial responsibilities.[10]

Through analysing the origins and professional development of both the penghulus and the jaksas, this part aims to go beyond the dominant colonial stereotypes of these actors. I argue that colonial depictions were instrumental in shaping the responsibilities and position of the penghulus and jaksas within the colonial legal system, but also that they simultaneously gave them space to manoeuvre. The jaksa, especially, used the pluralistic courts as a space to optimise his position as intermediary between his priyayi network and the colonial offices he worked in. Over time, however, the Dutch stripped him of most of his responsibilities and thereby marginalised an important local official. As Bayly has argued for British India, a static idea of local actors and intermediaries reflected an insecure and prejudiced colonial state: "British assessments of crime, religion, and native lethargy were more often reflections of the weakness and ignorance of the colonisers than a gauge of hegemony."[11] In Java as well, both the Javanese elites and the Dutch officials had an interest in controlling the site of the courtroom and of criminal justice itself. The lack of local knowledge, and their reliance on local informants, caused fear and doubt on the part of Dutch officials. The advisors provided access to more knowledge, but simultaneously, as I argue throughout the coming chapters, fed the distrust.

[9] Lev, *Legal evolution and political authority in Indonesia*, 75-76.
[10] See for example: Sutherland, *The making of a bureaucratic elite*, 9.
[11] Bayly, *Empire and information*, 143.

4 — Local Advisor Controversies

The penghulu-jaksa controversy provides a unique window into how pre-colonial legal pluralities were incorporated in the emerging colonial courts in Java, and how courtroom conflicts emerged and evolved. This chapter focusses on the Dutch motivation in appointing Islamic penghulus, rather than jaksas, as the main legal advisors in criminal cases. It also explains why, despite a desire for uniformity among Supreme Court members in Batavia, the consultation of local legal advisors remained central to the colonial legal system. The consequences of this tension between the Supreme Court and the policy of maintaining pluralities are scrutinized in order to further understand the complexities of colonial state formation in the early nineteenth century.

4.1 Advising together, 1800–19

As discussed before, in most Javanese regions the pre-colonial jaksa held the knowledge of Javanese laws while he also was the policing and prosecuting authority and had been the judge in *padu* cases. Due to the increase of Islam and Dutch power, he lost a significant portion of his role as judge to both Islamic penghulus and administrative—Javanese and Dutch—officials during the eighteenth century. Over time, his policing and prosecuting responsibilities would become his primary task. The struggle between jaksas and penghulus in certain regions was still ongoing around 1800 though. The archivist De Haan wrote on Cianjur (in West Java): "In Cianjur around 1800—where piety had settled in the palace—a fierce conflict arose between the patih, son of the regent, who wished to apply Islamic law, and the jaksas armed with old Javanese legal codes. The jaksas were forced into compliance by the patih with firm support of the rattan."[1]

The first penghulus in Java were most likely prominent local converts to Islam. Their knowledge about implementation of sharia was at

[1] De Haan, *Priangan* Vol. 1, 412. *"Omstreeks 1800 bespeuren wij te Tjiandoer, waar de vroomheid haar zetel in de dalem had opgeslagen, een heftig conflict tusschen den Patih, zoon van den Regent, die Moslimsch recht toegepast wil zien, en de met hunne oud-Javaansche wetboeken gewapende djaksa's, die nu door den vroomen Patih met krachtige ondersteuning van de rattan tot meer meegaandheid worden overreed."*

first especially needed for concluding Islamic marriages.[2] During VOC times, in Batavia, at the Board of Aldermen, the "Islamic priest" (then still referred to as *molla*) was a well-known face, since he took oaths.[3] As described in earlier chapters, during the eighteenth century, the position of the penghulu had been subject to several dynamics simultaneously taking place in Java and his position, and the influence of the Islam in general, displayed a rising trend. The penghulus in Java were not only judges, but also administrators, imams of the mosque and religious teachers. They also operated as muftis, people consulted by the ruler for an explanation of Islamic laws.[4] All these positions were not necessarily carried out by one person. There could be several Islamic officials in one residency. It was an unwritten rule that the position of penghulu was hereditary.[5] Many, although not all of them, were hajis. Family law cases—marriage, inheritance, and divorce—were decided on by the religious courts, consisting of penghulus, who were under the responsibility of the regent from 1820.[6] During the nineteenth century, the penghulu maintained his various functions and he was also appointed as an advisor to the pluralistic courts.[7]

Although Daendels has been identified as the first person to add the penghulu as an advisor to the landraad,[8] in Cirebon penghulus were already present in the landraad in the early nineteenth century. They are mentioned in the landraad of Cirebon regulations as officials in the council. The jaksa, on the other hand, is only mentioned as the official in service of the "native prosecutor." Besides, the Javanese prosecutor took an oath in an Islamic manner "under the Quran" (*onder den AlKoran*). In this oath, he also submitted to the king of Holland and the governor general. At the

[2] Hisyam, *Caught between Three Fires*, 14.
[3] Van der Chijs, *Nederlandsch-Indisch Plakkaatboek.* Part 15, 975. Plakkaat, November 22, 1809. "Toekenning aan den molla of inlandschen priester bij het collegie van Schepenen eener maandelijksche toelage van 15 rijksdaalder." Previously, the "native priest" received a similar compensation from the city budget (*stadskas*).
[4] Hisyam, *Caught between Three Fires*, 19.
[5] Hisyam, *Caught between Three Fires*, 43.
[6] S 1820/22. "Reglement op de verpligtingen, titels en rangen der Regenten op het eiland Java." Art. 13: *"De Regent heeft toezigt over de zaken van de Mahomedaansche Godsdienst, en zorgt dat aan de Priesters het oefenen van hun beroep, overeenkomstig de zeden en gewoonten der Javanen, worde vrijgelaten, zoo als in huwelijkszaken, boedelscheidingen en dergelijken."*
[7] Pijper, *Studiën over de Geschiedenis van de Islam in Indonesia,* 66.
[8] Ball, *Indonesian legal history,* 97.

same time, he promised to follow Islamic laws insofar as they were written down in the Semarang Compendium.[9]

We discussed in chapter 2 how Daendels established several pluralistic law courts in western Java, where the penghulu fulfilled a position. In the Priangan, the penghulu was given an extra prominent position, because Daendels gave him responsibility for the population censuses, which were of importance for the Priangan system. In exchange, the penghulu received additional tax revenues.[10] Daendels also established pluralistic law courts in the Northeast Coast of Java, but in his report on this, Daendels did not mention the penghulu in his description of the Landgerechten—the later landraden—of that particular region. He did mention that the peace courts (*vredesgerigten*, the later *regentschapsgerechten*) were constituted of "*regenten, bepattijs, pangoelons.*"[11] It is not completely clear, though, whether Daendels correctly understood the then existing Javanese legal system. On the Javanese administration, he wrote:

> Thus, the regents stayed at the head of affairs. After them, two bupatis followed, one called the inner- and the other outer-bupati [*Binnen-* and *Buiten-Bepatty*; among other duties, the inner-bupati was responsible for police affairs]. Ranked after them was the chief jaksa or chief priest. He was responsible for the maintenance of the religious institutions and ceremonies, and also for the conservation of all customs and habits, et cetera.[12]

From this citation, it seems that Daendels was either (wrongly) under the

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[9] NL-HaNA 2.21.004.19 Van Alphen en Engelhard 019A, 259. "Memorie Instructif", supplements.
[10] Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 119-124.
[11] Daendels, *Staat der Nederlandsch Oostindische Bezittingen*, 43.
[12] Daendels, *Staat der Nederlandsch Oostindische Bezittingen*, 41. *"De regenten bleven dus aan het hoofd der zaken. Op hen volgden twee bepattys, de een een Binnen- en de ander Buiten-Bepatty genoemd. [de binnen-bepatty zorgden onder andere voor de politie, sr] Op de Bepatty's volgde in rang de Groot Jaxa of Opperpriester. Deze was belast met de handhaving der godsdienstige instellingen en plegtigheden, en tevens met de zorg voor de instandhouding van alle plaatshebbende burgerlijke inrigtingen, gewoonten, gebruiken enz."*

impression that the jaksa and penghulu were one and the same person, or he was consciously leaving it as an open question since in some regions the jaksa, and in others the penghulu, was observed as the head of religious affairs.

Altogether, it seems that during Daendels' administration the penghulu was part of the pluralistic courts in western Java—Cirebon, Bantam, and Priangan—whereas this was not the case in the residencies of the Northeast Coast region. This resembles the situation of the VOC landraden, where the landraad of Cirebon did receive advice from the penghulu during court sessions, while the landraad of Semarang probably did not, although the penghulus were involved in the compilation of the Semarang Compendium. It is possible that in Daendels' time the penghulu also acted as an advisor to the landdrost of the Ommelanden, because the landdrost was permitted to work with two Javanese or Chinese experts as assessors.[13]

The historian John Ball has argued that Daendels' appointment of the penghulu as a legal advisor "illustrates the European over-emphasis of the religious part of Javanese law." The jaksa would have been much more knowledgeable about Javanese laws and customs, so it would have made more sense to appoint him. However, as Ball also admits, by that time the jaksa had already become less important as a judge, whereas the penghulu courts in many regions had expanded their jurisdiction.[14] Besides, the penghulu courts had made use of a combination of local and Islamic laws as well. Thus, Daendels' preference for the penghulu may have been inspired by the idea that Islam was the main component of Javanese law; but it is also possible that he considered the penghulu the most knowledgeable official regarding Javanese legal traditions in general.

Raffles chose a different approach. He rightly understood the pre-colonial Javanese legal system as consisting both penghulu and jaksa courts.[15] This led to his policy that in the landraad the jaksa and the penghulu were *both* asked to explain the local and religious laws and customs.[16] He was aware of the declining influence of the jaksa, but wished to maintain his position: "The priests also exercise a considerable influence

[13] Ball, *Indonesian legal history*, 97.
[14] Ball, *Indonesian legal history*, 97.
[15] Raffles, *The History of Java*, Volume 1, 277.
[16] Raffles, *Substance of a Minute*, 164.

and although the power the jaksa, or law officer, is essentially reduced since the establishment of Mahometanism, and a great part of his authority transferred to the panghúlu or Mahometan priest, he is still efficient, as far as concerns the police and minor transactions."[17]

Raffles seems to base himself here on information about the situation in Java at that time. He reported on the situation in Japara (Northeast Coast, close to Semarang) before the arrival of the British—his informant is unknown. He described the *surambi* courts in which the penghulu presided and in which four religious officials were seated: "The forms of the court are regular, orderly, and tedious; all evidence is taken down in writing, and apparently with much accuracy." The regent would pronounce the eventual verdict. The jaksa courts consisted of the chief jaksa and other jaksas: "the function of this court being of less importance of a more mixed nature, and less solemn because less connected with religion, are still more subject than that of the penghulu to the rude interference of the executive authority."[18]

It is also remarkable that Raffles made the advice of the penghulu and the jaksa of a more binding nature. If the regent in a regent's court (*bupati* court) case wanted a decision that ran counter to the advice of the jaksa and the penghulu, he had to inform the resident, who would issue a final decision.[19] This was the same for the landraad (resident's court) where the resident had to inform the governor general if he wished to deviate from the advice of the jaksa and penghulu.[20] The jaksa and

[17] Raffles, *History of Java.* Vol. 1, 269.

[18] Raffles, *History of Java.* Vol. 1, 269. Raffles had also collected a number of old Javanese legal texts, such as the *Suria Alam*, which he added as an attachment (Appendix C) to the *History of Java.*

[19] Raffles, *History of Java.* Appendix D. "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java." Art.77.

[20] Raffles, *History of Java.* Appendix D. "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java." Art.105–106. *"In every instance where the opinions of the Panghulu and Jáksa are in accord with the judgment of the Resident, and in which the punishment fixed to the crime does not amount to imprisonment or transportation for life, the sentence of the Resident shall be final, and be immediately carried into execution. (Art.106) But whenever the opinions of the Panghulu and Jáksa shall be in opposition to that of the Resident, or in which the punishment of the crime shall amount to imprisonment or transportation for life, all the proceedings shall be immediately transmitted to Government, with the Resident's statement of the reasons and regulations on which he has formed his opinion; but he shall delay the pronouncing sentence, until the approval of the Honourable the Lieutenant Governor shall have been obtained."*

penghulu were also required to write down and sign their opinions in the vernacular language, and send this and the resident's statement to the government.[21] In the circuit courts, the judge also had to apply the local law as advised by the penghulu and jaksa, but he was allowed to deviate from this advice, although he had to explain why he had decided to do so.[22]

Despite his interest in the Javanese legal system and the appointment of both the jaksa and the penghulu as advisors in government lands, Raffles did not treat the penghulu in the princely lands of Central Java with much tact, and he violently conquered the sultan's palace (*kraton*) there. Also, he introduced the requirement that all persons not subject to the sultan but residing in the princely lands be tried by colonial law courts in criminal cases. This provoked anger both at Diponegoro's royal court and among the Islamic clerics.[23] It even brought these two groups closer to each other, whereas before the issue of Islam had divided them. Historian Peter Carey argues how this added to Diponegoro's strength in the years before the Java War: "Unlike the issue of Islamic religious practice, which tended to divide Diponegoro's court and santri supporters, the former favouring a less strict observance than the latter, British moves against the competence of the royal and religious courts in criminal cases united the two groups. Diponegoro's demands to be recognized as the regulator of religion with special competence over issues of criminal justice thus had widespread resonance."[24]

There are also indications that the influence of the jaksas and penghulus on criminal law was not equally strong across Java. Resident A. S. Cornets de Groot of Gresik (Northeast Java) wrote a report in 1823 describing the duties fulfilled by the Javanese officials in that area before 1819. He described how the jaksa (*djeksa*) prosecuted crimes and presided over civil cases. His house was situated to the left of the regent.[25] There

[21] Raffles, *History of Java.* Appendix D. "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java." Art.107.
[22] Raffles, *History of Java.* Appendix D. "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java." Art.168.
[23] Carey, "Revolutionary Europe and the Destruction of Java's Old Order." 167–188.
[24] Carey, "Revolutionary Europe and the Destruction of Java's Old Order." 179.
[25] Cornets de Groot, "Verslag over residentie Grissee over 1822", 14:2, 268; 15:1, 87. The Resident Cornets de Groot (of Gresik) translated "djeksa" into "sincere judgement or judge": "*Het woord Djeksa betekent "opregte uitspraak of regter.*"

was also a *nijaka*, a judge, without whom the regent could not render a judgment. *Nijaka* is a term in sanskrit meaning "subordinate," but Cornets de Groot translated it as "local judge" (*plaatselijke rechter*). He did not note which laws were applied, so we are not certain what kind of judge the *nijaka* was. It is interesting, though, that the penghulu seems to have had no voice in criminal justice. This is remarkable because the penghulus were without doubt important in this area. There was a holy grave in Gresik, which was one of the first areas in Java in which Islam was established. Cornets de Groot did mention in his report that the penghulu took care of this grave, and decided over marriage and divorce cases.[26] It is possible that the penghulus were attending the criminal cases, or that the other judges were applying Islamic law, but this was not noted down by Cornets de Groot. In any case, Raffles introduced both the jaksa and the penghulu as advisors in all landraden and circuit courts in Java.

The combined advice-giving by the jaksa and penghulu was maintained by the Dutch in the Provisional Regulation of 1819. It provided a more defined role for the procedures followed by the advisors. During a court session, first they were asked for their advice (*gevoelen*), and during a second round they would advise with the court about the punishment that should be imposed according to the "native laws."[27] There was one big difference compared to Raffles' time, however: after 1819, the court was no longer obligated to follow the advice of the penghulu and the jaksa. The Javanese members of the court—who regained their right to vote—and the Dutch president could decide to ignore the advice and decide otherwise without informing a higher authority about it. Unfortunately, I have been unable to find the deliberations of the committee that designed the regulation of 1819 in the archives, so the exact rationale for this remains unclear. It is clear, however, that due to this the position of the regents was strengthened and that of the jaksas and penghulus diminished. This was contrary to Raffles' policies who, in his turn, did this the other way around.

[26] Cornets de Groot, "Verslag over residentie Grissee over 1822", 15:1, 93.

[27] S 1819, no.20, art.112. "*Het onderzoek afgeloopen zijnde, zal het gevoelen van den hoofd-jaxa en van den hoofd-panghoeloe over de zaak worden gevraagd, en tevens de straf welke de inlandsche wetten stellen op de misdaad, waarvan de gevangene wordt beschuldigd."*

4.2 Advisors and Prosecutors, 1819–48

Slowly but steadily, between 1819 and 1848 the jaksa in the colonial pluralistic courts would transform into the public prosecutor, whereas the penghulu remained an advisor. This happened gradually in practice, and it was eventually formalized in the regulations of 1848.

There were regional differences in this process. Some procedural documents are preserved from the landraad of Gresik from the time it was presided over by Resident A. S. Cornets de Groot in the early 1820s. In these cases, it is shown that both the jaksa and the chief penghulu were provided advice in the landraad. On Wednesday, 12 December 1821, for example, during a court session six persons were tried on suspicion of cattle theft and hiding and fencing buffalos. Resident Cornets de Groot was president, the first secretary G. J. Evertreich acted as the registrar. The four Javanese members were the Regent Tumenggung Djoyo Adie Negoro of Gresik, the Police Chief Djoyo Negoro, the City Patih (*Patty Kotta*) Djoyo Duromo, and Ingebij Merto Dipoero. Chief Jaksa Rekso Dirdjo and Chief Penghulu Merto Agomma were present as well.[28] Three suspects were accused of having stolen two buffalos from the Javanese Proyo Troeno (alias Po Sonno) two months before. Another suspect had hidden the buffalos and another two had bought the buffalos from the thieves for twenty-five guilders even though they knew the buffalos were stolen. The four thieves had divided the gains among themselves. During the court session, the jaksa presented two witnesses. One declared that the suspects had told him they were planning on selling the buffalos; the other was the victim, who declared that he had gone to the regent because a lower-ranking chief was not making any progress with the police investigations, probably because one of the suspects was a chief himself. The regent had believed this story and immediately imprisoned Singo Diwongso, a *kamitoea* (village chief). The members of the landraad declared all the suspects guilty after the jaksa and penghulu had delivered their advice. A week later, a Chinese suspect was tried by the landraad and the jaksa and penghulu again offered their advice.[29] In all four preserved cases from Gresik, the jaksa and the penghulu either separately gave similar advice or advised jointly. The procedure changed slightly depending on the session

[28] ANRI IZ, no.121. Landraad case Pa Bajang, Pa Giena, Singo Wongso, Tro yoijo, Singo Dewongso and Songo Wingso. Grisée, December 12, 1821..
[29] ANRI IZ, no.121. Landraad case Pa Moor. Gresik, December 20, 1821.

though. During one, the landraad members declared the suspect guilty and only asked the jaksa and penghulu for their advice afterwards. In another session, the jaksa and the penghulu were asked for their advice before the court ruled on the defendant's guilt.[30]

In Semarang, the jaksa and penghulu gave joint advice as well. On Thursday, 24 May 1830, the landraad of Semarang gathered to try a theft case. Four Javanese coolies were suspected of having committed a theft in the house of a Chinese trader. Assistant Resident Dirk Donker presided over the landraad because the resident was absent. The two Javanese court members were the priyayi Kyai Adipathij Soero Adi Hendjolo and Raden Soerio Wenoto. The president and members followed the joint advice of the Chief Jaksa Raden Ingebeij Nitie Nedoro and the Chief Penghulu Hadjie Mahmoed to condemn three suspects to be flogged and to perform five years of hard labour (without chains). They advised acquitting the fourth suspect due to a lack of evidence. Thus, also in Semarang, according to the procedural documents, the jaksa and the penghulu gave joint advice. In the procedural documents a short and unspecified reference was made to "the Islamic laws."[31]

The advice giving at the landraden in the suburbs of Batavia was organised differently. Here, the jaksa and the penghulu were asked for their advice separately—and they often disagreed. Whereas in Semarang the jaksa and the penghulu were both clearly legal advisors, in the vicinity of Batavia the jaksa represented the colonial institutions rather than the local traditions. On 9 November 1831, at the landraad of the south quarters of the Ommelanden, the chief penghulu Imam Achmad Redjap advised cutting off the right hand of a farmer named Dril. He was suspected of the theft of a headscarf at the bazar and robbing a person near the post office. Then, the jaksa Raden Soeria referred to Article 120 of the 1819 provisional regulations, in which all cruel and mutilating punishments were forbidden, and recommended thirty rattan strokes and two years of chain

[30] ANRI, IZ, no.121. Landraad case Pa Bajang, Pa Giena, Singo Wongso, Singo Diwongso and Singo Krongso. Gresik, December 12, 1821, Landraad case Pa Moor. Gresik, December 20, 1821. Landraad case Singo Tjindro. Gresik, December 12, 1821.

[31] ANRI, GS Semarang, no.4114. Landraad case Soedoo, Padjidin, Goedik and Sidik. Semarang, May 24, 1830. "*de Mahommedaansche wetten."*

labour. The court members followed the jaksa's advice, which was similar to his plea as a prosecutor.[32]

Thus, from the procedural documents from the Northeast Coast regions, there is no apparent conflict between the jaksa and penghulu regarding the content of the applied laws, insofar as this is possible to conclude from the documents. In Batavia and Ommelanden, there was disagreement between the penghulu and the jaksa; but this could be because the jaksa was already acting more like a public prosecutor who represented the colonial administration, while the penghulu gave substantive advice based on Islamic laws. Moreover, it could be of influence that in Batavia and Ommelanden the jaksa and penghulu were only (officially) appointed in 1819.

In 1825, an evaluation by colonial officials was done on how the introduction of the landraden in the cities had been received. The Council of Justice in Semarang stated in their report that the advisors of the landraad were both the penghulu and the jaksa, advising on Islamic laws and local customs and traditions, respectively. It also emphasized that the Javanese members of the landraad, the majority of the members in the collegiate court, were likely to be influenced by the advice of the chief jaksa and the chief penghulu: "The advice is in all probability based on Islamic laws, or the customs and usages of the natives. Due to this, their opinion will inevitably be of major influence on the Native chiefs who constitute the majority of the members of the landraad."[33]

It becomes clear from the evaluation written by the resident of Semarang though, that the influence of the penghulu at the landraad there was observed as more considerable than that of the jaksa. He concluded that decisions in the landraad were made according to Islamic law, because the Javanese members would listen to the penghulu who would advise according to the Quran: "They predominantly will follow the advice of the Chief priest, who never deviates from the Quran."[34]

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[32] ANRI, GS Tangerang, no.28/I. Landraad case Dril. South Quarters of the Ommelanden. November 9, 1831.

[33] ANRI, AS, B. December 13, 1825, no.3. Letter from the Council of Justice. December 27, 1824. *"...dit gevoelen is waarschijnlijk gegrond op Mahomedaansche wetten, dan wel het komen en gebruikelijkheden onder den Inlander, en daar haar lieden opinie noodwendig op de Inlandsche hoofden, die het meerder getal der Leden van den Landraad uitmaken, van een groote influentie moet zijn."*

[34] ANRI, AS, B. December 13, 1825, no.3. *"...die meest al in het advies van den Hooge Priester, welke nimmer van de Koran afwijkt, het meest belang stellen."*

The colonial regulations also reveal the changing position of the jaksa in the pluralistic courts. In the Provisional Regulation of 1819, the penghulu and jaksa still took the same oath—in the hands of the landraad president—during the acceptance ritual of their office, in which they committed to answer all questions asked on the "written law or the long-established *local* custom."[35] Eleven years later, however, in the never-introduced law codes of the Merkus Committee of 1830, it appears that the penghulu already was considered to be more suitable as an advisor than the jaksa. The explanatory note stated that the jaksa would no longer be asked for his knowledge of Javanese laws, because he was not very knowledgeable about this anyway: "One has left out the advice provided by the jaksa (*jaxa*) regarding the native legislation, after bringing in his plea, since the necessity has not been proven. Especially not, since the penghulus understand and master this subject better than the jaksas."[36] Maintaining the penghulu as an advisor at the pluralistic courts did not come from the heart though. The committee report mentions that they had decided to maintain the position of the penghulu, merely because they did not dare to stop inviting him as an advisor. However, the advice from the penghulu was hardly ever followed in criminal cases, according to the committee:

> Although one has to confess, that this advice—whenever based on the native laws—has little or no value, since it was almost never followed in criminal cases. Also, regularly, the president of a Landraad has great difficulties in preventing the views of the assessors [that is, the Javanese court

[35] S 1819, no.20, art.154: *"Ik beloof en zweer het mij opgedragen ambt met ijver en trouw te zullen waarnemen; dat ik alle de mij gedane vragen hetzij in geschrifte of bij monde, opregt en naar mijne beste kennis zal beantwoorden, en zonder partijdigheid opgeven wat de geschreven wet of van ouds gevestigde plaatselijke gewoonte is, en niets dat niet met zoodanige wet of gewoonte is, en dat ik geene giften, gaven of geschenken zal aannemen voor het uitbrengen van mijn gevoelen, wanneer het door eenige regtbank gevorderd zal worden."*

[36] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië. No.73. Explanatory note, 1830. Explanation of the articles 207 and 212. *"... men heeft echter het nader advies van den jaxa, ten aanzien der inlandsche wetgeving, na eenmaal zijnen eisch te hebben ingebragt, vermeent te moeten weglaten, als zijnde de noodzakelijkheid daarvan niet gebleken, vooral niet, daar de panghoeloe's te dien opzigte de zaak beter dan de jaxa's verstaan en meester zijn."*

> members] to be biased in the direction of the advisor, when the advice was in conflict with the generally acknowledged principles of justice and legal decrees.[37]

Thus, despite the reference to the slight application of local laws by the pluralistic court, this citation also suggests that the members of the pluralistic courts were influenced by the penghulu. This is further confirmed by a letter written by Circuit Court Judge Rinia van Nauta based in Semarang in 1838. He was even of the opinion that the penghulu should be turned away from court, because he influenced the assessors.[38]

In the next chapter, we will delve deeper into the advice given by the penghulus and how Javanese-Islamic laws were applied in practice. For now, it is enough to know that in the Court Regulations of 1847, the jaksa was no longer officially an advisor. The advisory position of the penghulu in the pluralistic courts was maintained. From then on, the oath taken by the jaksa referred only to the colonial regulations to be followed when he executed his responsibilities.[39] The oath taken by the penghulu had changed only slightly, and still referred to the written laws and to the "long-established custom," the only difference being that the word "local" was not mentioned anymore.[40] The advice of the jaksa had now become his

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[37] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië. No.73. Explanatory note, 1830. Explanation of the articles 207 and 212. *"…ofschoon men moet bekennen, dat deze adviezen wanneer zij op de inlandsche wetten zijn geschoeid, wienig of geene waarde hebben, Als bijkans nimmer, vooral in het crimineele, opgevolgd wordende, en het daarbij den voorzitter van eenen Landraad dikwerf vele moeiten kost, om indien die adviesen strijdens zijn met de algemene beginselen van regt en wettelijke bepalingen, het gevoelen van de assessoren niet daar naar te zien overhellen."*

[38] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië. No.76. "Ingekomen brief bij de Indische commissie van 1837 inzake een suggestie van een rechter te Samarang om zowel de panghoeloe's — hoofden van de moskee — als de assessoren bij rechtszittingen te weren," 1838.

[39] RO, 1847, art.114. *"Ik beloof en zweer dat ik de mij opgedragene bediening met ijver, eerlijkheid en onzijdigheid zonder aanzien van persoon, zal waarnemen; dat ik nimmer eenige giften of geschenken zal aannemen van eenig persoon, van wien ik weet of vermoed, dat hij eenige zaak heeft, of zal krijgen, in welke mijne ambtsverrigtingen zouden kunnen te pas komen; en dat ik mij bij de uitoefening mijner bediening in alles zal gedragen overeenkomstig de wettelijke bepalingen, en de krachtens deze aan mij gegevene Instuctiën en Bevelen."*

[40] RO, 1847, art.8 in connexion to art.114: *"Ik beloof en zweer de aan mij opgedragene werkzaamheden met ijver en trouw te zullen waarnemen; dat ik al de aan mij gedane vragen, hetzij in geschrift, hetzij in bij monde opregt en naar mijn beste kennis zal*

plea as the prosecutor. Besides, one or two Chinese advisors were added to the pluralistic courts in cases where Chinese were involved.[41]

4.3 Local Advisors versus the Supreme Court

As discussed in part 1, in colonial criminal law two contrasting Dutch practices predominated. First, there was the formal policy of separate jurisdictions, deriving from the belief that it was best to administer justice over the Javanese population according to their "own" laws and customs. It was this policy the pluralistic courts were supposed to carry out, and the reason why the local legal advisors had been attached to them in the first place. However, the second approach aimed at more uniformity among the pluralistic courts in Java and was vividly expressed by several Dutch Supreme Court judges in Batavia. The Supreme Court judges did not necessarily oppose the segregated legal system itself, with its simpler procedures and harsher punishments for the Javanese than for Europeans. However, they were often formalists striving for uniform practices among the landraden throughout Java and so did not necessarily favour the courts' pluralistic character and the application of local laws recommended by Javanese court officials. The quest for uniformity fit with contemporaneous developments in the Netherlands, which also sought a uniform legal system with less regional variety.

The tensions between the pluralistic and uniform aims became apparent quite early in the nineteenth century. In the evaluation of the

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beantwoorden, en zonder partijdigheid opgeven, dat de geschrevene Wet of van ouds gevestigde gewoonte is, en niet, dat niet met zoodanige Wet of gewoonte overeenkomstig is; dat ik mijn gevoelen, wanneer mij dit door den regter wordt afgevraagd, naar waarheid en in alle opregtheid zal uitbrengen, en dat ik geene gaven of geschenken heb aangenomen noch zal aannemen, die mij zijn of mogen worden aangeboden om mij hiervan te doen afwijken."

[41] RO, 1847, art.7. *"Wanneer Oostelingen, de Mahomedaansche godsdienst belijdende, of Chinezen, in burgerlijke zaken of in strafzaken van welken aard ook, in eersten aanleg als verweerders of beklaagden zijn betrokken, en zij, met opzigt tot de in geschuld zijnde zaak, niet regtens zijn, of zich niet vrijwillig hebben onderworpen aan de wettelijke bepalingen voor Europeanen, zullen voor zoo veel de Mahomedanen aangaat, een priester van hunne godsdienst, en voor zoo veel Chinezen betreft, één of twee hoofden, of bij ontstentenis van deze, één of twee daartoe geschikte personen van dien landaard, door het geregt of, bij regterlijke collegiën, door den President aan te wijzen, de teregtzittingen bijwonen; en zal het gevoelen van zoodanige advyseurs worden ingewonen, bepaaldelijk ten aanzien van de ter zake betrekkelijke godsdienstige of andere Wetten of gebruiken, ten einde daarop bij het doen der uitspraak worde gelet. De inhoud der aldus uitgebragte advysen, moet in de notulen, of in het proces-verbaal der teregtzitting, worden opgenomen."*

introduction of the landraden to the cities in 1824, the resident of Surabaya mentioned that at the landraad the "Javanese method of evidence" was applied and that "religion and laws" were followed. Also, people were now judged by their own chiefs, and the language spoken in court was Javanese, so that litigants could now understand the proceedings. All of this, he considered a major improvement over the earlier situation. The number of civil cases had increased, from which he concluded that the local population was willing to use the landraad and knew how to find the new institution.[42] However, he pointed out that difficulties appeared when cases were appealed at the Council of Justice, because there the judges were not trained in applying Javanese laws and customs. In response to this evaluation, the Supreme Court decided that the landraden should henceforth register in their verdicts precisely how they had applied Javanese laws.[43] The procedural documents examined for this dissertation show that probably very few landraden ever followed this rule. References to local laws do not come any further than the description "according to the Islamic laws" or "according to the native laws." From the preserved procedural documents, it seems that advisors advised the Javanese members of court, after which the voting started. Therefore, the Dutch president probably only communicated with members about the verdict and not with the advisors directly. Moreover, the higher courts such as the Councils of Justice and the Supreme Court were not informed about the Javanese laws and customs.

Although based in Batavia, the Supreme Court's activities impacted the practices of the regional pluralistic courts because each criminal verdict was sent to the Supreme Court for review, a policy originating from VOC times, when all verdicts of the landraad of Semarang were sent to the Supreme Court for confirmation.[44] The Supreme Court also circulated guidelines to the lower courts for creating at least a degree of uniformity in the application of criminal law to the Javanese and

[42] ANRI, AS, Bt. December 13, 1825, no.3. Letter from the Resident of Surabaya, January 26, 1825. One of the court members in the Landraad of Surabaya was the former prime minister (*rijksbestuurder*) of the Princely Land of Solo, where the legal system was partially independent from the colonial administration. The number of civil cases had increased to 258, from 30 March to 31 December (number before is not mentioned, but the Resident states the increase is remarkable).
[43] ANRI, AS, Bt. December 13, 1825, no.3; S 1825, no.42.
[44] Gaijmans, *De Landraden op Java*, 2; Ten Ham, *Berechting van Misdrijven door Landraden*, 32 (footnote 2).

Chinese population. They sent their disgruntled remarks on sloppy verdicts to the residents—to achieve more uniformity in the legal system and leave less room for regional diversity. In 1822, for example, the resident of Semarang was reprimanded for applying punishments that were not appropriate according to the Supreme Court in Batavia. The convict Senen had been punished with two years of work on a chain gang for theft, whereas in another case Pak Sidah had been given three years of chain labour for only planning a theft.[45]

We must be careful, however, not to see all Supreme Court members as of one mind. In particular, Merkus was not in favour of too much uniformity, as discussed in earlier chapters. He was convinced of the advantages for the Javanese population of a justice system applying local laws. It was one of the reasons, he pleaded—from 1821 onwards—for the introduction of pluralistic courts in the cities. During the discussions on this topic, he had provided the example of buffalo theft, which had to be punished with flogging, branding, and four years on a chain gang labour according to colonial regulations. However, this was not in accord with Javanese laws, which prescribed that if an owner had left his buffalo unsupervised, and had let them walk around freely in the meadow, buffalo theft had to be punished with a mild fine.[46] Other judges of the Supreme Court were not convinced by this argument.

To the contrary, they were concerned about the lack of uniformity between the landraad verdicts, and they thought it "incomprehensible" that Merkus was not concerned about these regional differences. They gave the example of burglary; one landraad decided on fifty rattan strokes and six months of the chain gang for this crime, whereas another imposed three

[45] ANRI, GS Semarang, no.4113. Letter from the Supreme Court to the Resident of Semarang, July 29, 1822.

[46] NL-HaNA 2.21.007.57 Schneither, no.14. Letter attorney general to the supreme court. Batavia, July 16, 1821. *"Volgens de in vroegere jaren gemaakte en thans nog bestaande wetten moet degeenen die aangemelde misdaad (buffel en veediefstal) schuldig bevonden worden, gestraft worden met geesseling, brandmerk en tot vier jaar kettingarbeid. Klaarblijkelijk is deze strafbepaling hare oorsprong verschuldigd aan begrippen uit het vaderland herwaards overgebragt, daar dezelfde lijnregt strijdig is met heteen bij de Javasche wetten omtrent dezelfde misdaad worden gevonden. Volgens deze toch wordt juist in tegenoverstelling van de Nederlandsche wetten, de diefstal van een in de weide loopend en door iemand bewaakt wordend beest, eenlijk met restitutie en eene zeer ligte straf geboet, waarschijnlijk om dat zoodanig een beest niet blijkende in iemands bezit te zijn, eenigzins als res nullius te beschouwen is. Wordt nu zulk een dief voor een raad van justitie, te recht gesteld zoo ondergaat hij de straf welke bij uitheemsche wetten is gesteld."*

years of forced labour in similar cases.[47] The Supreme Court also denounced the regulations of 1819 for leaving too little space to overrule local laws. According to the Supreme Court, this led to "ridiculous verdicts" and, therefore, they were in favour of formalizing which Javanese laws would continue to exist and which would not. They also thought this had to wait until the criminal code of the Netherlands was finished, though, because the law in Java had to be in concordance with this. Temporarily, a provisional regulation could be made for buffalo, horse, and cattle theft.[48] However, as discussed in the previous chapter, the attempts by Merkus and others would be consigned to the archives, the principle of applying Javanese-Islamic laws would be retained in the Colonial Constitution, and it would take a few more decades before a criminal code was introduced.

Thus, the uncertain circumstances regarding criminal law practice continued, and knowledge of this topic among most Dutch officials would not increase. Preserved files of pardon requests also show that Supreme Court members did not possess much knowledge of Javanese laws and customs. In 1827, for example, a Javanese wrote a request for his son, who used to be the *demang* (district chief) of Pajaragan (in the Besuki residency) and had been condemned to death for murdering his brother. He had not personally committed the murder, but he had ordered it. The father—or the writer of the request written in Arabic, possibly a *kyai*—refers in the letter to relevant texts in Islamic books that discussed murder on contract:

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[47] NL-HaNA 2.21.007.57 Schneither, no.14. Report Supreme Court. Batavia, 16 januari 1822. *"De verschillende aard der vonnissen die het Hof van alle kanten dezer resorten ontvangt, en die de revisie van de Procureur-Generaal passeert met zijn conclusien, ter approbatie, dan is het onbegrijpelijk dat die dat verre van den anderen verschillen kunnnen over een en dezelfde misdaad, door weinig of geene omstandigheden verzwaren, bij voorbeeld, op huisbraak, doorgraving, stelen, zelfs sommigen met geweld en kwetzing, wijdt den een der Inlandsche Raden tot 50 rottingslagen en zes maanden ketting, een ander tot 100 rottingslagen, een derde drie jaren klinken in de ketting, een vierde geesseling, drie en zeven jaren kettingarbeid, een vijfde geesseling, bandmerken, 10 en 20 jaren bannissement in de ketting, en dan weder tot geene lijfstraf."* In 1824, they again wrote disapprovingly on the regional differences in legal practices: "A dissimilarity that is so significant that ... a crime punished in one residency with flogging and three years of banishment in chains, is punished in another residency with fifty to one hundred rattan strokes and one-and-a-half to three years of chain labour." ANRI, AS, R. December 31, 1825, no.22. Letter Supreme Court, Batavia, January 5, 1824. The letter was a response to Merkus' manual for the Javanese and European members of the Landraden. See also Chapter 3.2.2.

[48] NL-HaNA 2.21.007.57 Schneither, no.14. Report Supreme Court. Batavia, 16 januari 1822.

> The book *Tahrie* says: ... if he does not commit violence, then he who gives the order, will not be prosecutable, but only the assassin.
>
> The book *Nahayan* says, in a similar case, that those who order the assassination are prosecutable, whereas others are of the opinion that both he and the assassin are guilty, thus depending on the view of the judge.[49]

The father requested that this be taken into consideration when deciding over the fate of his son. However, in his "considerations and advice," the attorney general did not comment or even mention the arguments made by the father at all. Instead, he argued—making use of terms in Latin—that the convict "since long had been possessed with the *animus nocendi* [criminal intent] regarding his brother," and, he also concluded, "the *dolus malus* [bad or evil deceit] manifests itself here very clearly."[50]

The Dutch-centric stance of the Supreme Court is remarkable, especially when compared with legal practices in British India. There, the *Indian Law Reports* produced by the higher colonial court are even characterized as a "new source" of Islamic law in South Asia. British colonial judges drew extensively on Islamic legal sources, which had been translated and reworked into handbooks by British jurists, and they referred to earlier comparable cases. This was very different in the Netherlands

[49] ANRI, AS, R. October 12, 1827, no.21. Letter Hongga Troena to governer general, Besuki, July 27, 1827. *"In het boek Tahrie wordt gezegd: ... indien hij geen geweld pleegt, zoo zal hij die het bevel geeft, niet strafbaar zijn, maar alleen de moordenaar. In het boek Nahayan wordt gezegd dat in het zelfde geval, degeen die den moord gelast strafbaar is, terwijl anderen van mening zijn, dat hij benevens de moordenaar schuldig is, hangende zulke van het gevoelen van den regter af."* The letter was translated from Arabic to Dutch by the chief official of the department of Native Affairs. It is the only example I found of a concrete reference to a Islamic (or Javanese) legal text in the archive files dealing with criminal law. Mahmood Kooria shared his expertise on this matter and attempted to trace the law texts referred to: "Tahrie" possibly refers to the Taḥrīr, but he did not find the citation itself in this text (neither in the core-text nor in its three commentaries). The second citation (from the book "Nahayan") comes from the Nihayat al-zayn, and parts of that sentence are also in the Minhaj al-Talibin and the Tuhfat al-muhtaj. For a discussion of the long genealogies of the Minhaj, Tuhfat and Nihayat, see: Kooria, *Cosmopolis of Law.*

[50] ANRI, AS, R. October 12, 1827, no.21. Letter Attorney General Hork to the Supreme Court, Augustus 31, 1827. *"...reeds lang met de animus nocendi ten aanzien van zijnen broeder is bezield geweest ... de dolus malus straalt hier ten klaarte door."*

Indies, where the Supreme Court deemed Islamic law too hot to handle. In the case of criminal law, Islamic law was clearly circumvented, as discussed before, but in civil cases there seems to have been no attempt to get involved with Islamic legal traditions and ideas, either. Legal historian Yahaya presents the telling example of a civil case administered in 1884 by the Dutch Supreme Court in Batavia on *waqf*, an Islamic religious institution managing alienated land. The land had been abandoned since 1815, during the British interregnum, therefore the verdict refers to earlier British legal documents on this case. The difference in style is significant, as Yahaya points out: "The [Dutch] report was remarkably devoid of religious references. Nowhere was the word 'waqf,' or even 'trust,' or 'endowment' used. While the British law report of the same waqf [quoted in the Dutch law report] cited Javanese and Islamic law, Dutch authorities cited only Roman and Dutch law in Java."[51]

The differences between colonial justice in India and Indonesia are plentiful, but it is noteworthy here that in the British colonies justice was administered by a British judge who, until 1875, made use of the Anglo-Muhammadan Law, a civil and criminal Anglo-Islamic code produced by the British themselves. The Dutch, on the other hand, relied on Javanese intermediaries such as the penghulu, but also Javanese court members who held the right to vote on the verdict. This might have taken away the necessity for the Dutch to obtain in-depth knowledge on local legal traditions themselves. The result was a criminal law practice that was almost completely based on European legal traditions—even before the introduction of the Natives Criminal Code of 1872—because the Supreme Court demonstrated little interest in the local laws.

When it was in their own interest, though, the Supreme Court could refer to the advisors of the pluralistic courts in their argumentation. In 1840, for example, writing about a Javanese condemned to death for murder, the resident of Kediri suggested taking into account the "uncivilized state in which the Javanese in some areas of the inner regions still are." However, this did not convince the attorney general, because the penghulu and the jaksa—"knowledgeable Natives of writings and law ...

[51] Yahaya, *Courting Jurisdictions*, 28, 134, 115.

who are supposed to fully understand the circumstances and the notions of the people"—had concurred with the verdict.[52]

4.4 Conclusion: Advisors and Prosecutors

The early nineteenth-century colonial state continued the VOC policy of legitimizing colonial law through local knowledge holders. In response to the already existing jaksa-penghulu controversy in Java, the successive colonial governments until 1819 decided each in their own way on where and who to accept as legal advisors in the local pluralistic courts. After 1819, the jaksa and penghulu were asked for their legal advice together. In practice, the penghulu would increasingly be seen as the knowledge holder of Javanese-Islamic legal traditions, whereas the jaksa was gradually removed from this role. This was formalised in the regulations of 1848.

The Supreme Court has been praised by Dutch legal historians for attempting to moderate the extremely harsh verdicts given to Javanese convicts.[53] However, from the perspective of the pluralistic court's aims, a remarkable aspect of this effort was the complete disregard of local Javanese laws and customs, which differed among different Javanese regions. At the same time, despite the ignorance of the Dutch residents and Supreme Court judges regarding the contents of the local legal regimes, the penghulu remained the pluralistic law courts' advisor. The doubts held by the Dutch regarding Islamic law and the Native Criminal Code on Dutch laws in 1872—two developments discussed in part 1—did also not keep the penghulu from being appointed a legal advisor in the pluralistic courts. Therefore, in the next two chapters, we will investigate the developing careers and strategies—the marginalisation and agency—of, respectively, the penghulu and the jaksa in the pluralistic courts over the course of the rest of the nineteenth century.

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[52] ANRI, AS, Bt. January 24, 1840, no.2. Letter Resident D.G. van Teijlingen of Kediri to the governor general, November 5, 1839: *"den ongeciviliseerde staat, waarin den Javaan nog op sommige plaatsen in deze binnenlanden verkeert."* Letter (temporarily appointed) Attorney General C. Visscher to the Supreme Court, November 16, 1839: "…*inlandsche schrift- en wetgeleerden (...) die den staat en de begrippen van het volk geacht worden volkomen te kennen."*

[53] Termorshuizen, "Revisie en Herziening," 339. Briet, *Het Hooggerechtshof van Nederlands-Indië*, 143.

5 — Mutilated Ritualization: The Penghulus

Despite the indistinctness about the application of Islamic law in colonial law practice, the penghulu remained appointed as an adviser to the landraad for the entire period of colonial rule. In this chapter, I will assess why the penghulus remained affiliated with the pluralistic law courts, even though the court members and president in practice did not listen to the legal advice provided by him. And, given this, why—both from the perspective of the penghulu and of the Dutch colonial government—the penghulus remained appointed advisors, despite their increasingly marginalized position in the landraad. Making use of early nineteenth-century landraad cases, I will debunk the colonial stereotype of the penghulu always advising to cut off hands, and position the penghulu in a broader social world in order to understand the development of their profession and their role in the colonial state.

5.1 The Penghulu in the Courtroom

During a pluralistic court session, the penghulu held two responsibilities. First, he was responsible for the oath-taking of the Javanese suspects and witnesses. According to the *Shafi'i* school of law, the oath had to be taken in the mosque.[1] However, in the landraad, taking the oath of suspects and witnesses took place during the court session in the courtroom, preceding the interrogation of the suspect and the witness accounts. The penghulu held the Quran above the head of the suspect or the witness (see Figure 8). According to Islamic law, it was not obligatory for witnesses to take the oath. From a moral perspective, the witness was obligated to speak the truth, but if, for example, an extremely harsh punishment could result from someone's testimony, the witness was allowed to refrain from providing incriminating testimony. However, according to the Dutch system, witnesses *were* obligated to take an oath and the pluralistic courts followed the Dutch procedure in this.[2] The Dutch colonial regulations did not

[1] Halim, "Contestation of the Oath Procedure." 21.
[2] Halim, "Contestation of the oath procedure," 22-24. After 1882, when the religous courts were brought under direct colonial supervision, the Dutch oath procedure also became obligated for the religious courts. In 1903, the Penghulu of Kraksaän filed a complaint on

specify what the text of the oath should contain, but according to the *Shafi'i* school of law, the oath contained at least the following words: "I swear" (*ahlaf* or *aqsam*) or "I testify" (*ashhadu*) followed by "in the name of Allah, no God but him" and with the addition of "who Knows what is hidden and what is obvious" (*al-ladhi ya'lam min al-Sirri ma ya'lam min al-'alaniyya).* These guidelines were probably applied by the penghulus in Java as well.[3]

Fig.11 Oath taking at a landraad. [KITLV no.90757].

The second portion of the penghulu's responsibilites in the pluralistic courts, would lead to more debate. As discussed before, the

this obligated oath-taking. However, government advisor Christiaan Snouck Hurgronje decided the complaint to be unjustified, since a voluntary oath-taking would demand "witnesses with high moral standards", to be able to decide whether or not to take the oath. Snouck Hurgronje considered the number of such witnesses residing in Java too few.

[3] Halim, "Contestation of the oath procedure," 21 and 25.; Literature on the VOC era mentions that at that time the Islamic oath was taken by putting two fingers of the right hand on the Quran: Jones, *Wives, slaves, and concubines,* 86. For the nineteenth century, the sources only mention that the Quran was held above the head of the suspect or witness. I did not find anything in the colonial sources about the text of the oath itself.

penghulus provided legal advice—together with the jaksa until 1847, thereafter alone. Quite early in the nineteenth century, however, the pluralistic courts began to ignore the advice of the penghulu. The Dutch claimed that the penghulus' "archaic advice" of cutting off the right hand was the reason for ignoring their advice. The nineteenth-century archival materials collected for this dissertation, however, present a different and more regionally varied picture, which I will discuss below.

Javanese-Islamic Legal Advice in Pluralistic Courts

The exact Islamic sources that penghulus in the pluralistic courts based on their decisions is not clear from the criminal cases examined for this dissertation. In the preserved procedural documents and files of criminal cases, a reference is often made to "the native laws" or "the religious laws," but which legal sources the penghulu referred to is never specified. It is possible that the penghulu did refer to his legal sources during the court session, but that it was not noted by the registrar. It is also possible that the penghulus themselves were unclear about the laws or customs on which they based their advice.

For now, we can only see a difference in the references made to either "native" or "Islamic" laws, although this could also be a (random) choice of words from the registrar and not necessarily an accurate reflection of the legal sources used by the penghulu. However, there is a rather consistent difference between the choice of words between Semarang and the Batavia area. In Semarang in September 1820, for example, the house of a Javanese man named Krio was robbed. Several goods were stolen, among them a *kebaya* (Javanese dress). A man named Singotroeno was accused of the theft and brought to court on Monday, 9 October 1820. When their advice was asked, Chief Penghulu Hadjie Machmood and Jaksa Maas Ingebey Nittiprodjo first declared that they thought the accused was guilty of "having received and laid hold on stolen goods." They then offered their opinion that the suspect should be punished according to Islamic law, with a minimum of three months of forced labour at the public works, and that he should return the *kebaya* to Krio.[4] Thus,

[4] ANRI, GS Semarang, no. 4112. Landraad case Singotroeno, October 9, 1820. *"Zij hoofd jaksa en hoofd panghoeloe van gevoel zijn, dat den gevangene volgens de Mahommedaansche wetten moet worden gestraft ten minsten met drie maanden kettingslag*

reference is only made to the Islamic laws and not to other Javanese laws or customs. This was different in the Western Quarters of the Ommelanden where there are references not to Islamic law but to "Native laws."

As discussed in chapter 4, the relation between the penghulu and the jaksa also differed by region. In Batavia and the Ommelanden, where the landraad had only recently been installed, the jaksa was truly a public prosecutor who referred to the Dutch regulations, whereas the jaksa and the penghulu in Semarang provided their advice jointly. According to Henri Pierre Grobbee, in Priangan and Banten, Islamic law was used more often and more thoroughly than elsewhere. He argued that the people in most areas of Java still held on to a mix of Islamic, Hindu, and animist prescriptions.[5]

Future research on civil law cases at the landraden, and foremost on the laws applied in the religious penghulu courts, could provide us with a much better understanding of the Islamic law referred to and applied by the penghulus. Recently, legal anthropologist Van Huis has attempted to do this by comparing an ordinance of Sultan Agung from the seventeenth century with a description by Van den Berg from the nineteenth century, both on divorce cases in Java. From this, he argues that the laws applied originated partly from the *Shafi'i* school of law and partly from local customary law, with the latter providing a stronger position for women.[6]

Even though the precise origins of the penghulus' legal advice in criminal cases remains unclear for now, the landraad cases collected for this dissertation offer insight into the types of punishment the penghulu recommended. We will now take a closer look at the penghulus' advice regarding punishment, and then we will answer whether the penghulu always recommended mutilation as a punishment, as the Dutch claimed.

Cutting off Hands

The punishments imposed in eighteenth-century Java reflected influences from several traditions. Among those of particular concern to the Dutch in

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om aan de gemeene werken alhier te arbeijden voor de kost zonder loon, mitsgaders restitutie van het baattje aan den eigenaar daarvan den Javaan Krio."

[5] Grobbee, *De Panghoeloe Als Adviseur in Strafzaken*, 1-2.

[6] Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 66-68. Van Huis shows an even longer influence of colonial compendia on Indonesian law, by showing that the 1991 compilation of Islamic laws displays much resemblance with the eighteenth-century Freijer Compendium.

the nineteenth century were Shafi'i *hudud* punishments. They especially disapproved of the cutting off of hands. *Hudud* offenses were those forbidden in the Quran. Some, such as adultery, theft, and highway robbery were punishable, under strict conditions, by fixed punishments such as stoning or amputation of the hand; other *hudud* punishments included banishment and beating.[7] Most *hudud* punishments were also part of the Javanese and Dutch punishment traditions, such as whipping and banishment, and their origins in colonial Indonesia are therefore hard to trace.

In 1715, the Dutch resident of Cirebon Joan Frederick Gobius (1714–17) reported that in most parts of Java—except the less Islamic-oriented areas like Cirebon, the Ommelanden, and the east coast—corporal punishments were "handled" by Islamic officials.[8] It is known that the *kyai fakih* in Banten imposed *hudud* punishments. Other sources show that also in Cirebon mutilation was carried out. Apart from these Islamic influences on the sentences, common Dutch punishments such as branding, chain gang and displaying a corpse after execution also became routine practice in Cirebon.[9] In 1766, for example, the New Batavian Statutes stated that the regents of Central Priangan were entitled to punish buffalo thieves with chain labour, which was not a local punishment.[10]

In the eighteenth century, the Dutch felt no constraint themselves on corporal punishments. In Amsterdam, for example, theft and robbery were commonly punished with whipping and branding, and less regularly cut-off thumbs and cheek cuts were performed as well. With the arrival of enlightened ideas on criminal justice, however, corporal punishments became controversial.[11] Despite this, the Dutch still used these in Java in

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[7] Hallaq, *An Introduction to Islamic Law*, 155-156. The Dutch misused the term Hadd (*hudud*) by using it as a reference to exclusively mutilating punishments. *Hudud* in reality are certain offenses (such as adultery, drinking alcohol, theft and highway robbery) for which the punishments are decided by the Quran and the Sunna.

[8] Ball, *Indonesian Legal History*, 59. Ball uses the word "handled." It is unclear whether he means that the Islamic officials imposed the punishments or only executed them.

[9] Hoadley, *Selective Judicial Competence*, 29.

[10] Kern, *Javaansche Regtsbedeeling*, 53.

[11] Spierenburg, *The Spectacle of Suffering*,199, 221. In the Netherlands, corporal punishments were abolished in 1854 The last public execution was in 1860 and in 1870 the death penalty was abolished. In the Netherlands Indies, corporal punishments were abolished in 1848, but whipping (with a rattan whip) was still allowed until 1866. The death penalty was never abolished.

1807, as shown on the drawing of the landraad in Semarang (see Figure 4). The cruelty of the punishments applied in the drawing is significant. People are hanged and mutilated. Two years later, in 1809, the resident of Semarang and Demak reported that the cutting off hands and feet was still common in the landraad of Semarang.[12] After this, Daendels prohibited torture and mutilating punishments, although according to Dutch observers the chief penghulu of Semarang was so powerful that he managed to maintain the practice of cutting of hands and feet.[13] Upon his arrival on Java, Raffles found that mutilating punishments were still carried out and he issued a prohibition against it. According to historians Mildred Archer and John Bastin, the drawing played a part in this.[14] However, the drawing was from 1807, before the abolishment of mutilating punishments by Daendels. In any case, Raffles was clearly displeased with the punishments applied and in his *History of Java* recalled that "the system acted upon was at once barbarous and revolting" and it happened "under the sanction of native law."[15]

From 1819 onwards, in practice the pluralistic courts would impose typical Dutch-colonial punishments, and most convicts could count on forced chain labour and being flogged with a rattan cane, punishments that already existed from VOC times. In 1835, the chains and ankle cuffs that had linked the chain gangs (*kettinggangers*) were replaced by an "iron collar," because—according to the decree—a test had shown that these appeared to be "far less disadvantageous to the health of the convicts."[16] In 1828, the Dutch-colonial punishments were officially introduced as the

[12] Daendels, *Staat der Nederlandsch Oostindische Bezittingen*. Appendix "Organique Stukken Batavia." Buitenzorg, April 4, 1809. No.28

[13] Ball, *Indonesian legal history*, 99.

[14] Archer and Bastin, *The Raffles drawings in the India Office Library London*, 32-336. "The drawing must have had special significance for Raffles as evidence of the type of capital punishment inflicted before the arrival in Java of the British, and more specifically before Lord Minto issued his proclamation on 11 September 1811 abolishing torture and mutilation."

[15] Raffles, *The History of Java*, Volume 1,321.

[16] S 1835, no.42. Chaingangers were convicts who were chained and had to perform forced labour. They wore feet chains that affixed several prisoners to each other. In 1835, the feet chains were replaced by neck collars: "*...uitslag mededeelende der genomen proef, om de kettingen en voetbeugels van honderd, te Ambarawa aanwezige kettinggangers, door ijzeren halsbanden te doen vervangen, waaruit blijkt, dat deze halsbanden veel minder nadeelig zijn voor de gezondheid der veroordeelden, dan de tot nu toe in gebruik zijnde kettingen en voetbeugels.*'

only punishments to be imposed.[17] At the same time, however, the Java War had influenced ideas about the application of Islamic laws and the possible dangers of abolishing certain punishments. Governor General Johannes van den Bosch wrote to Merkus about this issue in 1830. Merkus had by then become commissioner of the princely lands and was designing a regulation for these semi-independent sultanates in central Java, right after the Java War. In his letter, Van den Bosch blamed the abolition of the Islamic punishments "of the Quran" for the spread and intensification of the Java war. He urged Merkus to allow the implementation of Islamic punishments again and referred to the British who had allowed *sati* (widow burning) in Malabar.[18] In the princely lands, the punishment of cutting off hands would therefore not be abolished until 1847. Yet, for the rest of Java the ban on mutilation remained.

Altogether, the Dutch reduced the problem of implementing Javanese criminal laws to a debate on the application of Islamic corporal punishments. This was a very limited understanding of the actual judicial conflicts, since Diponegoro had certainly—regarding criminal law—not protested the abolition of mutilating punishments exclusively. He had foremost opposed the diminished control of the Islamic clerics and the sultan over the law courts in criminal cases. This protest was of no avail, though, and for the rest of the nineteenth century, the debate about Javanese-Islamic law would not increase much in value, as we saw in chapter 3. Instead, due to Dutch disparagement of Islamic punishments, the penghulu was marginalized into a stereotypical figure who was indifferent to his advisory role in the landraad and always advised to cut off hands.

A Stereotype Debunked

In 1864, a colonial journal published an article in which the marginalized role of the penghulu in criminal cases was called "a mockery of the Islamic commandment." The author of this article blamed this on the prohibition of mutilating punishments, because Daendels had, by doing this, "destroyed" a "holy *adat* derived from the Quran." The author described how in every theft case the penghulu offered advice according to the "religious or other

[17] S 1828, no.16 and 62.
[18] Peter Carey, *The Power of Prophecy*, 706.

laws and customs of this island" and always advised cutting off a hand.[19] The article is representative of how nineteenth-century Dutch colonials discussed issues regarding the penghulu in the landraad. There emerged a stereotypical image of the penghulu as an old official who hardly spoke Arabic, fell asleep during court sessions, and always recommended *potong tangan*, or cutting off a hand. But why would the penghulu advise *potong tangan* in every single criminal case? Is this even true?

To answer these questions we return to the archival materials. In the colonial law journals, landraad criminal verdicts were sometimes published, although the exact advice of the penghulu remains unclear—it only says, "taken into consideration, the advice of the penghulu"—which shows that Dutch jurists were barely interested in what the penghulu might have argued in court. However, it is possible to compare the advice of the penghulu in the procedural documents of the landraad cases from Tangerang and Pekalongan, in western Java, preserved in the archives. We can only look at these landraden, because it is only there that the advice from the jaksa and penghulu was noted separately, in contrast to the Semarang landraad, where they provided advice together until 1848. Most cases originate from between 1820 and 1842, although some are as late as 1890.

An analysis of thirty theft cases debunks the stereotype of the penghulu. It shows that the penghulu did not advise cutting off hands in every case. In the twenty-five cases from before 1842, the penghulu recommended *potong tangan* six times (see Figure 12). Besides, it was certainly not always the case that the penghulu recommended a harsher punishment than the jaksa or the law court members.

On 16 January 1826, for example, there was a difference of opinion between the penghulu and the jaksa of the landraad in the West Quarters of the environs of Batavia (Tangerang). The penghulu recommended a relatively mild punishment of no more than thirty rattan strokes for the farmer Oetan Bappa Leha, who had stolen food to feed his family, who had not eaten for five days. However, the jaksa pleaded for three years of chain labour. Due to a positive statement of the *mandoor* (overseer), Oetan Bappa Leha was sentenced to a punishment milder than the jaksa's recommendation, although the verdict was still harsh: thirty

[19] "Eene bespotting van den adat," 198-201.

rattan strokes, to be executed at the bazar of Tangerang, and chain labour for one year. He also had to return the stolen rice.[20]

Theft cases	**1826–42**	**1863–85**
Mutilating punishment	6	4
Other (milder) punishment	19	1[21]

Fig.12 Overview of the advice provided by the penghulus of the landraden in the Ommelanden and the landraad of Pekalongan in thirty theft cases (two from Pekalongan).

Other cases show a similar pattern. On Monday, 15 October 1827, Jaliman was put on trial, accused of burglary in the house of Ipa Bappa Iskal, who lived in the village Panggang. Jaliman was suspected, together with three other vagabonds, of stealing a box containing two pairs of golden earrings, six pairs of buttons, two *kebayas*, one black and one blue blanket, and a piece of white cloth. His comrades had not been caught yet, but Jaliman was arrested with one of the stolen items in his pocket. He declared that he had been forced by the others to join in the burglary. The penghulu took into consideration that the accused was only nineteen and, according to Javanese laws—the verdicts does specify which—he recommended a punishment of fewer than twenty strokes with a rattan cane. However, the jaksa had a higher punishment in mind and advised two years of forced labour in chains. The Javanese members and the Dutch assistant resident decided on a final verdict of forty strokes with a rattan cane and one year of chain labour.[22]

A case from 1834 shows that the penghulu was certainly not always the one who recommend severe punishment. The name of the accused was Boender, who originated from the kampong Cipete in the Ommelanden and was—judging from his appearance—twenty-five years old. He was accused of a rather remarkable theft, robbing a house and stealing a *kebaya* from someone who was sleeping under this same "*baatje*". The jaksa presented pincers as an item of proof, and the prisoner

[20] ANRI, GS Tangerang, no.27.I. Criminal case Oetang Bappa Leha. West Quarters of the Ommelanden of Batavia, January 16, 1826.
[21] ANRI, IZ, no.121. Criminal case Tarban and Wardjo. Pekalongan, July 18, 1863. Advice by penghulu Mohamed Idrio: "tatjir" (*tazir*).
[22] ANRI, GS Tangerang, no.189.2. Landraad case Jaliman. Western Quarters Ommelanden of Batavia, October 15, 1827.

confessed everything. Thereafter, the penghulu recommended, in accordance with "native laws," a punishment of twenty rattan strokes and three months' imprisonment. However, the jaksa pleaded for twenty rattan strokes and no less than four years of chain labour. The landraad took a middle course and sentenced the defendant to twenty-five rattan strokes followed by two years of chain labour.[23]

Most striking however, is the following: in none of the cases I found was the advice of the penghulu followed: even when the penghulu's advice did not involve any mutilating punishments, the landraad would usually apply the punishment requested by the prosecutor, the jaksa. Sometimes the judges would decide somewhere in between the demands of the jaksa and the advice of the penghulu, but even when the punishment was not mutilation, the penghulu's advice was quite often ignored.

Also, the passive attitude of which the penghulu was often accused by Dutch officials and jurists is not apparent from the early nineteenth-century case files. During a session of the landraad of Tangerang, on 9 November 1831, when several "felons" who had been wandering around Tangerang were arrested, the penghulu took a critical view of the legal evidence presented. In the first session, the man Sarida was suspected of having been an accomplice in a burglary. His fellow suspects had been convicted already, but he had been absconding for a while. He denied this accusation and declared that he had simply been away working as a coolie. No proof could be presented that he was an accomplice to the burglary, but, the court argued, he could be found guilty of wandering and vagabondage with aggravating circumstances. The penghulu, however, stated that according to the "native laws" a certain case could only be decided on the judge's discretion. The jaksa advised banishing the suspect for four years to labour at the public works. The jaksa's advice was followed by the landraad, then presided over by Assistant Resident Bik. In this case, however, the Supreme Court intervened and acquitted the suspect.[24]

On the same day, the penghulu was convinced of the innocence of the wandering man Tjenteng, who was suspected of attempted theft.

[23] ANRI GS Tangerang 27/III. Landraad case Boender. December 10, 1834. Landraad held in Mr. Cornelis in the South Quarters Ommelanden of Batavia.
[24] ANRI GS Tanggerang, no.28/I. Landraad case Sarida. November 9, 1831. Landraad held in the South Quarters of the Ommelanden of Batavia.

However, the jaksa demanded thirty rattan strokes and four years of chain labour. Tjenteng had been convicted for theft before, and had been punished with a "corporal correction" (rattan strokes), and he had been imprisoned before, as well, although at that time his guilt had not been proven. This time, the jaksa accused him of theft. The penghulu saw no evidence and concluded that "despite being highly suspect," there was not enough evidence against the prisoner. However, the members of the landraad saw enough reasons to declare the suspect guilty after all, since the prisoner had been hiding and had given a false alibi. His earlier misdeeds also played a part in the court's deliberation, although only one of these had been proven, and the village chief had provided a negative statement on Tjenteng's behaviour. The president and members decided that Tjenteng was above all a "bad and dangerous subject" and he was convicted of thirty rattan strokes and three years of chain labour outside of Java and Madura.[25]

Altogether, the stereotype of an indifferent penghulu recommending mutilation in every criminal case was at best exaggerated. However, there is a development through time. The advice given by the penghulu in the cases from 1820 until 1842 is very diverse and relatively mild. The penghulu advised acquittal, flogging, imprisonment, banishment, and a few times cutting off the right hand, or leaving the decision to the judge. Later on, this changed. The cases from 1863 until 1890 (of which there are very few, so this has to be taken with some precaution) show that by that time the penghulu advising in theft cases, in which he considered the accused guilty, invariably recommended cutting off the right hand (see Figure 12). Another change compared to the first half of the nineteenth century is that in the case files from the second half of the nineteenth century, the advice is written down in Arabic instead of Dutch or Malay. Instead of *potong tangan* or *het afhakken van den regterhand* the advice would be *"hadd"* (*hudud*). In one case the penghulu advised "*tacir"* (*ta'zir*).[26]

[25] ANRI GS Tanggerang, no.28/I. Landraad case Tjenteng. November 9, 1831. Landraad held in the South Quarters of the Ommelanden of Batavia.

[26] The Dutch misused the term Hadd (*hudud*) by using it as a reference to exclusively mutilating punishments. *Hudud* in reality are certain offenses (such as adultery, drinking alcohol, theft and highway robbery) for which the punishments are decided by the Quran and the Sunna. Regarding other offenses the application of *ta'zir*, discretionary punishments, is possible. By applying *ta'zir* the judge held the right to evaluate a case based

Contemporary research done by the colonial jurist Grobbee, who wrote a dissertation on the penghulu in 1884, confirms the results from the archival sources for the second half of the nineteenth century. He mentioned *qicac* (revenge law), *radjam* (stoning), *hudud*, and *ta'zir* as punishments recommended by penghulus.[27] In the analysis of the court cases, it is important to consider the possibility that translations were made more carefully or in a different way during the first half of the nineteenth century. Later, the Arabic terms were possibly better known among the Dutch. We do not know if the penghulu in the courtroom changed from saying *potong tangan* to *hudud*, or if the registrars were simply getting used to these Arabic terms. However, even with these translation issues in mind, it is clear that the variety of punishments recommended by the penghulu diminished.

5.2 Origins of a Stereotype, 1819–72

The landraad cases studied for this dissertation, although not sufficiently answering all our questions, do provide us with information about a more complex reality than the negative stereotype of the penghulu had offered thus far. However, there are still questions to be asked. Why did the landraad ignore the penghulus in cases in which they did not recommend mutilation? Why did the advice of the penghulu change over time? And finally, why would penghulus remain seated in the landraad if the judges never listened to them?

There are several possible reasons why the landraad did not listen to the advice of the penghulu in criminal cases. In chapter 4, we discussed how the Supreme Court was very influential through the revision system and how they were neither knowledgeable nor interested in applying Javanese laws and thereby ignored article 121 of the Provisional

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on the social, moral and legal unique features of the situation in which the case had taken place. For a discussion on how modern state formation (in the different context of Iran) diminished the possibilities for the application of *ta'zir*, see: Hallaq, *An Introduction to Islamic Law*, 155-156.

[27] Grobbee, *De Panghoeloe Als Adviseur in Strafzaken*, 39. Unfortunately, Grobbee's claim is not based on archival research in court cases though. He also does not refer to his informants or sources for this claim. *"De panghoeloe mocht vrijelijk adviseeren tot qicac (wraakrecht, doodstraf), radjam (steeniging), hadd (bepaalde straffen), tadzier (arbitraire correctie), tot afkapping van handen en voeten of geeseling, maar de rechter stoorde zich aan dat advies niet, en gaf zich zelfden de moeite om een considerans in het vonnis aan dit advies te wijden."*

Regulation and article 75 of the Colonial Constitution. Behind this were two deeper patterns apparent across all layers of the Dutch colonial government and its legal system. First, criminal law was important for maintaining peace and order in Java, causing the landraden to design and impose colonial regulations, which were preferred over Javanese-Islamic laws. Second, the Dutch became convinced of the idea that the penghulus themselves—and the Javanese in general—were not particularly knowledgeable about Islamic law. We will now discuss these two patterns.

Order and Peace

The presidents of the landraden were, until 1869, colonial administrators who showed a strong preference for Dutch police regulations even when the advice of the penghulu did not call for mutilating punishments. The local colonial regulations were of major importance in this respect, particularly regarding the police law. A "daily police register of cases handled by the resident of Batavia" clearly shows that the focus in this was on Dutch-colonial laws. In the case of a *kebaya* stolen from a post office on 28 October 1834, the column "penalized according to the following laws" refers to the "Instructions for the Chief Baljuw and General Regulation." The prosecutor was the assistant resident, and further investigations were carried out by the chief jaksa.[28]

In fact, the colonial officials could shop in every regulation and code that suited them best in the particular case they were presiding, as the Dutch jurist Pinto pointed out in 1848: "In cases of crime and punishment, each judge merely applies justice according to a law code selected by his own disposal or conscience. Is there anything more pathetic?"[29] In chapter 7, we will discuss more thoroughly how the punishment of vagabondage was handled completely according to special European regulations, and how the exercise of colonial control through the landraad was conducted.

It is important to note, though, that this situation was not due only or simply to the unwillingness of the landraad presidents. For them, it was

[28] ANRI GS Tanggerang, 27/III. Daily Police Register, handled by the resident of Batavia (*Dagelijkse rol van zaken verhandeld bij den Resident van Batavia*). Batavia, October 28, 1834.

[29] De Pinto and Van der Linden, "Overzigt over de nieuwe wetgeving voor NI." "*Met andere woorden ieder crimineel regter spreekt er regt, wat misdaad en straf betreft, meerendeels naar een wetboek, in elke zaak hem door eigen lust of geweten voorgeschreven! Is er iets treurigers denkbaar?"*

complicated to apply Islamic-Javanese laws and customs, and to take the advice of the penghulu into account, since it was nowhere explicitly stated in the colonial regulations when and how which laws and regulations were to be followed. In 1849, an anonymous jurist complained that the 1819 regulation's provision to follow the local laws had created serious uncertainty. It was clear that no cruel or mutilating punishments could be applied. However, even if the landraden followed the Quran in criminal cases in which mutilation was not prescribed, according to the author there still existed the "biggest inequality" in punishments: "Would it be possible—by following the Quran—to declare a Muslim innocent of any crime or offense, who had murdered a Christian or a Heathen?"[30] Furthermore, many Muslims on Java lived according to locally oriented laws alongside their own religious laws. Finally, Java was also home to Buddhists and "all kinds of" non-Muslim foreign Orientals such as the Chinese:

> In Java alone, one can find Sundanese, actual Javanese, and Madurese … most of them are Islamic. All of them are … devoted to their own ancestral customs and institutions, which differ for each of them. When one also considers that there are also Buddhists residing in Java, and all sorts of foreign Orientals such as Chinese, Arabs, Moors, etc., one has to come to the conclusion that is has been impossible, in criminal cases, to take into account the laws and customs of all these different tribes.[31]

[30] "Nalezing," 287-304. *"Zou men volgens den koran verklaren, dat de Islamiet, die een Christen of Heiden om het leven had gebragt, zich noch aan een misdrijf, noch aan overtreding had schuldig gemaakt?"*

[31] "Nalezing," 287-304. *"…op Java alleen vindt men Sundanezen, eigenlijke Javanen, en Madurezen (…) zij belijden meest allen den Islam. Allen zijn (…) gehecht aan hunne eigene voorvaderlijke gewoonten en instellingen, welke bij elk hunner verschillen. Neemt nu hierbij in aanmerking, dat er zich ook nog eenige Budhisten op Java bevinden, en allerlei slag van oostersche vreemdelingen, als Chinezen, Arabieren, Mooren enz. dan zal men tot de overtuiging moeten komen, dat het (…) niet doenlijk was de wetten en gewoonten van alle deze verschillende volksstammen, bij de beoordeling van strafzaken, te volgen."*

Consequently, the Dutch chairmen of the lower courts, such as the landraden, in many cases had great difficulty in determining which rules to apply.

Although civil law practices are generally beyond the scope of this research, I will now discuss a civil case decided on by a landraad to illustrate the dilemma from the perspective of the landraden presidents. In 1832, the landraad and the Council of Justice in Semarang disagreed on the proper procedure in a civil case between "the Moor" Mohamat Aina Jenal and the "Moor woman" Maidin Tartjar Maidin Sap. The disagreement originated from the Council of Justice's application of Dutch laws that stated that a married woman was not allowed to start a legal case without assistance from her husband. Because of this, the Council of Justice had annulled the case altogether. However, according to Islamic laws, a married woman could file a lawsuit. Thus, the Council of Justice had overruled the Islamic legislation on this. The landraad, to the contrary, believed it was "inexpedient" to force a "to them completely unknown legal principle" to the "Natives" that would result in a complete "turnover of their religious customs." The president of the landraad consulted the Supreme Court, writing that he wished to prevent the "unknowledgeable native" from becoming the victim of a difference in opinion between judges. Unfortunately, the response of the Supreme Court got lost in the archives, but the letter written by the landraad president provides us with one example of the dilemmas that colonial judges encountered regarding the application of Islamic law.[32]

In cases of criminal law, however, in the early nineteenth century merely European law would be applied. The chairmen—Dutch administrative officials without legal training—therefore used the Dutch *Handbook of Law* by J. van der Linden as a guide.[33] Moreover, of paramount importance to most landraad presidents was the case law of the Supreme Court: "Therefore, quite soon, the case law of the reviewing judge—the Supreme Court—which regarding criminal law was based on the general principles of law, also for the Native, became the actual guideline for the law courts, with regard to all those issues for which no

[32] ANRI, GS Samarang, no.4059. Letter from the landraad to the resident. Semarang, February 27, 1832.
[33] Ball, *Legal history*, 186.

formal regulations were explicitly provided."[34] And, as discussed in chapter 4, the Supreme Court actively opposed following the advice of the penghulus. By pushing for uniformity throughout Java and beyond, the Supreme Court actively disregarded article 121 of the 1819 Provisional Regulations and article 75 of the Colonial Constitution of 1854, further causing the increasing replacement of Javanese legal cultures by European laws as applied by the pluralistic courts.

Fig.13 Chief Penghulu Pati Hadji Ibrahim, Bandung. [KITLV no. 15498].

[34] "Nalezing," 287-304. "*Zoo werd dan al spoedig de jurisprudentie van den regter in revisie, inzonderheid van het Hoog-Geregtshof, op algemeen erkende beginselen van het regt gegrond, met betrekking tot het strafregt in Nederlandsch-Indie, ook voor den Inlander, de eigenlijke rigtsnoer der regtbanken, ten aanzien van alle die materiën, waaromtrent niet bij wettelijke verordeningen uitdrukkelijk was voorzien."*

Dutch perceptions of Islam

The second reason that the penghulus' advice was not listened to—even when they advised non-mutilation or even mild punishments—has to do with a more deeply rooted idea and prejudice of the Dutch regarding both Islam and the Javanese. The Dutch were thoroughly unimpressed by the Javanese' knowledge of Islamic law. They often even argued that the Javanese could not even understand their own religion and that Javanese Islam was altered by all sorts of superstition. They even mocked penghulus who could not read Arabic.

During a debate in Dutch Parliament in 1851, H. Stolte recalled his experiences with a penghulu during the 1830s when he was working as the secretary of Pekalongan. At that time, he had been presiding over the landraad regularly and he was surprised that the penghulu would always advise *potong tangan* while holding the Quran, always opened to the same page. He had therefore given the penghulu some texts in Malay, written in Arabic script, and had asked him what these texts were about. It turned out that the chief penghulu could not read the Arabic script. "He was only familiar with the Javanese script." Stolte considered this dangerous: "When I am confronted with such a clerical class, I observe much danger. I prefer dealing with men who are knowledgeable." It is hard to decide whether Stolte's words are reliable. He was recalling this event after almost twenty years and might have exaggerated somewhat, in a political debate about Christian education. Interestingly, however, is the fact that he expected the penghulu to know the Arabic script. The penghulu were expected by the Dutch to be mainly knowledgeable of the Quran. Their knowledge of Javanese legal traditions, partly influenced by Islam, however, was not acknowledged.[35]

Nineteenth-century Dutch scholars who specialized in Islamic law contributed to this persistent stereotype, since they often emphasized the Javanese' poor understanding of their own laws, although many had never exchanged even a word with a penghulu. In reality, there were many Islamic texts circulating in the Javanese and Malay languages. Besides, the

[35] "Handelingen Tweede Kamer", December 6, 1851, 444. www.statengeneraaldigitaal.nl (last accessed: August 8, 2014) H. Stolte: "*Hij was eeniglijk te huis in het Javaansche schrift. (… "Wanneer ik nu zoodanig priesterdom tegenover mij heb, dan zie ik er veel gevaar in. Ik heb veel liever met mannen te doen, die op de hoogte zijn van zaken en die er wat van af weten dan die beneden die hoogte zijn."*

penghulus were often well-educated men, who quite often studied Islam for years, as we will further discuss below. Nonetheless, the translations of Meursinge and Keyzer from the 1840s and 1850s circulated within the scholarly world and although they had little influence on the codification committees (as argued in chapter 3), they *were* the professors of the future colonial officials who studied in Delft and Leiden. Colonial officials, therefore, were taught that, first, there existed a universal kind of Islamic law and, second, that the Javanese did not understand this law and therefore diverged from it. Moreover, well into the nineteenth century, students at the School for Colonial Officials used the Javanese translation of Ibn Hajar al-Haytami's *Tuḥfat al-Muḥtāj* (*Kitab Toehpah*), edited by Keyzer, to learn the Javanese language. One of the students referred to it as the "Corpus Juris Javanum." Thus, an Arabic text, although well-known in Java, became *the* Javanese law in the eyes of a Dutch student.[36]

Most likely, the students were also influenced by Keyzer's negative impression of the Javanese penghulus: "Little praise is usually awarded these Javanese priests; almost everyone complains about their ignorance; yes, one even states they do not have knowledge of their own laws at all." [37] Here, Keyzer did not identify his sources or the "one" who decried their ignorance. In any case, words like these maintained the negative stereotype of the penghulus among the Dutch who would become, for example, presidents of the landraden, and among the future jurists of the circuit courts and the colonial Supreme Court. It influenced their ideas about the law in Java and possibly even influenced the ways they worked with penghulus, their stance towards the pluralistic courts, and how they presided court sessions.

In the colonial law journals read by jurists in Java, Javanese-Islamic criminal law was hardly ever discussed seriously either. In 1872, for example, in an approving comment on the absence of Islamic law in the recently introduced colonial criminal code, the prominent jurist W.A.P.F.L.

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[36] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. September 24, 1873, no.7/1713. Request Roorda.; NL-HaNA, 2.10.02 MvK 1850-1900, Vb. September 24, 1873, no.2.Publisher Brill agrees on a reprint of the Kitab Toehpak.;Veth, P.J. "Levensbericht T. Roorda." In *Jaarboek* (1874): 17-58.

[37] Keyzer, "De codificatie van het inlandsch regt op Java," 45-56. *"Weinig lof wordt gewoonlijk aan die javaansche priesters toegekend; bijna een ieder klaagt over hunne onwetendheid en onkunde, ja zelfs gaat men zoover, dat men hun kennis van hun eigen regt geheel en al ontzegt."*

Winckel referred to an article in a colonial law journal that mentioned the advice of a penghulu in a criminal case. If we look at this article, it turns out to be a brief account of a legal "curiosity" (*rariteit*) in the light-hearted section called "Mengelwerk," a miscellany of short stories. The full text of the article reads:

> Recently, a Chinese walked past one of the numerous guard gates [*gardoehuisjes*] in Java. When he had passed, he was followed by two Natives, who were fulfilling their watch duty. One of them hit him [the Chinese] with a *patjol* [Javanese agricultural equipment], causing him to faint. He regained consciousness quickly, though, and called for help, upon which his attackers started running. Being accused and prosecuted for this crime, the culprits declared during the preliminary investigations that they had wanted to rob the Chinese because they suffered poverty. During the court session, however, the main suspect declared that he had delivered the blow, because the Chinese had refused to step out of his way and had bothered him by carrying a piece of pork meat!! And what was the advice of the priest after the investigation had ended? Acquittal of the accused, because the one who had been hit was just a Chinese.[38]

Thus, even a prominent jurist like Winckel relied on this short, superficial article when formulating his opinions on Islamic law, and he concluded

[38] "Mengelwerk", 176. "*Onlangs kwam een Chinees een der menigvuldige gardoehuisjes op Java voorbij. Toen hij gepasseerd was, werd hij achter opgeloopen door twee Inlanders, die met de gardoe-wacht belast waren. Een hunner bracht hem een slag met een patjol toe, zoodat hij bewusteloos neerzonk. Hij kwam echter spoedig weder bij en roep om hulp, waarop zijne aanvallers het op een loopen zetten. Ter zake aangeklaagd en vervolgd, verklaarden de misdadigers bij het voorloopig onderzoek, dat zij den Chinees hadden willen berooven, omdat zij armoede leden. Ter teregtzitting evenwel beweerde de hoofdbeklaagde, hij die den slag had toegebragt, dat hij het gedaan had, omdat de chinees niet voor hem uit den weg had willen gaan en het hem geërgerd had, dat deze een stuk varkensvleesch bij zich droeg!! En wat was het advies van den priester na afloop van het onderzoek? Vrijspraak van de beklaagden, omdat de geslagene maar een chinees was."*

regarding Islamic law in general: "The infidel does not exist for that kind of law, other than to make his warfare to become a holy duty: the Mussulman who beats to death a Chinese, for example, is not punishable."[39]

Altogether, there were several reasons for the ritualization of the penghulu. First, European laws became more codified and there was no room reserved for the Islamic-local laws. Regardless of what the penghulu might advise, his advice would not be considered. Second, the review by the Supreme Court urged the landraden to impose all sentences according to one uniform system. Regional differences and local customs were not supposed to influence the punishment. As said before, in every area, the advice of the penghulu might therefore differ. This was incompatible with the aims of the Supreme Court. Third, the Dutch regarded the Islamic texts, written in Arabic and originating from the Middle East, as the "true" Islamic law. There was little faith in the capacities of the penghulus, and even when they did not advise mutilation, their advice was discounted.

The position of the penghulu as an advisor led to a system in which the judge did not have to be knowledgeable about Islamic law, because the penghulu was present in the courtroom for advice. However, such advice was seldom followed, as judges showed a strong preference for European laws even when the penghulu's advice did not call for mutilation. Official criminal law policy to the contrary and the presence of the penghulu as an advisor notwithstanding, criminal law practice by the colonial courts moved decisively away from local and religious laws.

5.3 Professional Developments

As shown by the criminal cases collected for this study, it seems that the penghulus began advising cutting off hands in all theft cases only during the second half of the nineteenth century. Still, the question remains why the penghulus changed their advice? The most straightforward answer to this question may be that over time the penghulus simply settled into their ritualized role in the landraad, knowing their advice would not be taken into account anyway. Instead of formulating nuanced legal advice, they reduced their advice to a short phrase: *potong tangan*, or "*hadd*" *(hudud)*.

[39] Winckel, "Het ontwerp-strafwetboek voor inlanders en daarmee gelijkgestelden", 4. *"De ongeloovige bestaat voor dat recht niet, dan om zijn beoorloging tot heiligen plicht te maken: de Muzelman b.v. die een Chinees dood slaat, is niet strafbaar."*

A second explanation might have to do with changes to Islamic practice in Java in the later nineteenth century due to changes in Islam worldwide and changes in the role of the penghulu as a result of colonial intervention. Regarding the latter, it is important to consider the place of religion and sharia in nineteenth-century Javanese society.

Javanese Islam and the Penghulus

Historian Merle Ricklefs has defined early nineteenth-century religious life in Java as a "mystic synthesis" with three characteristics: a strong Islamic identity, the five pillars of Islam, and acceptance of "local spiritual powers" such as pagan gods. For example, the Javanese poem *Serat Centhini* (1815) mentions the goddess of the South Sea but also says that Sufis should live according to sharia.[40] Halfway through the nineteenth century a gradual change took place in Javanese Islam though. A small elite group of *putihan* ("white ones") disapproved of local spiritual elements of mystic synthesis and turned to a more "pure Islam." Often they were followers of puritan Sufi Islamic movements, like that inspired by the eleventh-century Sufi teacher Al-Ghazali, and aimed to separate law from mysticism. Moreover, new printing techniques suitable for Arabic script increased the circulation of Islamic texts. Due to these developments, Islamic schools increasingly became part of a single network of Islamic scholars who were in contact with each other in Java and met in Mecca and Singapore. Simultaneously, though, local prints and Javanese tariqats continued to compete. The *putihan* were also not a coherent group; orthodoxy was found in both Sufi tariqats and in more scientific or modern-oriented Islamic leaders. Also, there still existed several non-*putihan* local Islamic interpretations.[41] It is hard to draw conclusions from this regarding the consequences for colonial legal practices, but the global Islamic changes might have possibly influenced the legal advice provided by certain penghulus who followed the reformist Islamic trajectories.

Notwithstanding global changes in Islam, colonial state formation in Java itself caused a greater divergence between penghulus, who fell under the regent and worked for the colonial government, and *kyais*, the independent religious teachers. When, during the early nineteenth century,

[40] Ricklefs, *Polarising Javanese Society.* 5-7.
[41] Laffan *The makings of Indonesian Islam*, 50-54, 61, 64.

Javanese rulers lost most of their power to the colonial state, they also lost their power over the *kyai*. Officially, the regents took control over all religious issues, but in practice they controlled only Islamic clerics in service of the government: the penghulus. Partially because the priyayi were hardly capable anymore of exercising influence over the *kyai*, several competing tariqats came into existence and mystic sects were established. In 1882, there were 244 *perdikans* (tax-free religious villages). The early nineteenth-century colonial Great Post Road (*Jalan Raya Pos*, or *Grote Postweg*) had also contributed to this lively Islamic culture, creating faster connections between *pesantren* and *pondoks*.[42] There was a growing gap between the penghulus and the independent *kyais*, who deplored the fact the penghulus were working for, and in the case of the landraad-penghulu even paid by, the non-Muslim colonial government.

At the beginning of the nineteenth century in Java, the division between the priyayi and *kyai* was not yet this apparent. Several *kyais* originated from penghulu families. Ahmad Rifa'i of Kalisalak (1786–1875), for example, was son of the chief penghulu of Kendal and became a *Shafi'i* scholar who went to Mecca at the end of the 1820s. He wrote "reworkings" of *Shafi'i* texts himself and established an Islamic school in 1839.[43] Also, in Indramayu, Haji Patih Mas Muhammad Salih was a priyayi official seated in the landraad who functioned simultaneously as religious teacher. He instructed, among others, the Regent Raden Tumenggung Soerianataningrat of Lebak.[44] The penghulu position was (informally) hereditary, but younger sons could take up positions either in the priyayi office or as independent *kyai*.

Over time, the division between the penghulu and *kyai* became more definite. Especially in the Priangan, where penghulus were involved in imposing the colonial Priangan system. In this area, the two groups had cooperated during the eighteenth century, when the chief penghulu, originating from the priyayi class, led the lower-class Islamic landowners, the *jalma bumi*. Marriages were conducted between members of penghulu and *jalma bumi* families. However, due to colonial state intervention, cooperation between the two groups decreased. Daendels gave the

[42] Laffan, *The makings of Indonesian Islam,* 40-48.
[43] Laffan, *The makings of Indonesian Islam,* 47.
[44] Laffan, *The makings of Indonesian Islam,* 165.

penghulu major responsibilities, and benefits, in the Priangan system.[45] The *jalma bumi*, on the other hand, had no interest in coffee cultivation, they themselves grew wet rice, and were therefore operating independently from the colonial state. Over time, many became *kyais*. The gulf between the *jalma bumi* and the penghulu increased even more after 1870, when the *jalma bumi* had more opportunities to buy land, grew richer, went on the haj more often, and started *pesantren* after returning. This contrasts with the fate of the chief penghulus, who after the abolition of the Priangan system in that year, largely lost their worldly power and—although financially compensated by the colonial government—became governments officials paid by the colonial state.[46] The *kyais* looked down on the penghulu who worked for the colonial system.[47]

Due to the dynamics of the Priangan system, the division between penghulu and *kyai* was particularly sharp there, but also in the rest of Java there existed a clear division between them. There, the intervention of the colonial state had furthered this division by, for example, protecting the tax-free *perdikans*, which made some *kyais* influential and rich landowners.[48] After 1882, when the religious courts were brought under the surveillance of the colonial government, the division between *priyayi* penghulus and *kyais* further increased.[49] *Kyais* even started to compete with the penghulu-led religious courts by offering their own marriage and divorce services locally.[50]

Thus, the differences between the penghulu and the *kyais* increased over the nineteenth century. Where Carey observes the alliance of the Java

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[45] Breman, *Koloniaal profijt van onvrije arbeid*, 237 and 304. The penghulus were responsible for the population censuses, which were important for the coffee cultivation of the Priangan system, and in return they got the right to obtain higher taxes and rice from the farmers. The Penghulus could read and write, and were for this reason selected for the task. Due to the tax raises the Penghulu became rich land owners and rice traders. They would become closely involved with the priangan system, because they also supervised the irrigation and the agrarian calendar.

[46] Breman, *Koloniaal profijt van onvrije arbeid*, 308.

[47] Breman, *Koloniaal profijt van onvrije arbeid*, 308; Van Huis, *Islamic courts and women's divorce rights in Indonesia*. 119-124.

[48] Laffan, *The makings of Indonesian Islam*, 46-47.

[49] Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 38-39. In practice, the Landraden would take over cases from the religious courts when a conflict emerged. Thus, for example, the religious courts were responsible for inheritance cases, but if the division of the heritage lead to a conflict, then the Landraad would take over. It was a considerable intervention by the colonial courts.

[50] Van Huis *Islamic courts and women's divorce rights in Indonesia*, 119-124

War as a kind of proto-nationalism because of the first cooperation between the worldly royals and the Islamic clerics,[51] as described in the former chapter, Laffan on the contrary sees this alliance as the end of an era. He argues that Diponegoro, descendent of a *kyai* himself, was the last prince in Java who would cooperate with the *kyais* that would fall under the *putihan*.[52] Yet, at the end of the nineteenth century the division would not be entirely complete in practice. In the travel report of the Regent Adipati Ario Tjondro Adhi Negoro V in 1877, he described how the *kyai* of the big *pesantren* in Madiun (Regency Ponorogo) was the father of the current regent of Ponorogo. One of his brothers was a penghulu and would later become a *kyai*.[53] Thus the hostility towards penghulus differed per *kyai*, as is also shown by another example. The influential *pesantren* leader Muhammad Talha of Kalisupa was the son of the chief penghulu of Cianjur, studied locally and in Mecca, and established a *pesantren*. During the 1880s, he gave advice to penghulus on legal issues.[54]

In general, however, the introduction of the penghulu as a government official—both in the Priangan system and as a legal advisor at the landraad—had changed the relation between the penghulu and the *kyai*. Albeit important for understanding the position of the penghulu in Java, the increasing kyai class and growing connections with the Arab world does not seem to have influenced the advice provided by the penghulus in the landraad, though. Rather, the penghulus seem to have settled on the issue of the ignored Islamic legal advice and their ritualised rol of advisors who always advised to cut off hands. The question is why they agreed on this ritualised role?

The "Priyayization" of the Penghulu

The incorporation of the penghulus into the colonial legal system changed the relationship not only between the penghulu and the *kyai*, but also between the penghulu and the regent. New penghulus were appointed by the governor general, but the regent had a strong say in the choice. For

[51] Carey, "Revolutionary Europe and the Destruction of Java's Old Order," 188.
[52] Laffan, *The makings of Indonesian Islam*, 46-47.
[53] Purwa Lelana [pseud. R.A.A. Tjondronegoro V]. , *The Travels of Radèn Mas Arjo Poerwolelono*, 203.
[54] Laffan, *The makings of Indonesian Islam*, 153-154. According to Snouck Hurgronje who met him in August 1889.

example, in 1848 a new chief penghulu of Madura was selected based on the recommendation of the local regent, who declared him to be "an enlightened native priest and of good behaviour."[55] In practice, often regents basically selected new penghulus, who thus became more dependent of them. The regent could even appoint relatives to the position of penghulu.[56] The historian Hisyam therefore states, "Usually the loyalty of many penghulu[s] to the bupati [regent] was greater than that they owed the people." He frames the professional development of the penghulu as a process of "priyayization" in which the penghulu became part of the priyayi class.[57]

In 1897, Snouck Hurgronje observed that candidates for the position of penghulu were often people from lower ranks or "less talented" members of priyayi families.[58] He also warned that the religious courts were often corrupt, both problems resulting from the colonial government's underpayment of the penghulus.[59] The solution he proposed, however, was not to restore the independence of the penghulu profession from the colonial government, but rather to intensify colonial supervision over the penghulus. Snouck Hurgronje thought that the Netherlands Indies lacked a controlling higher Islamic class and in fact, he started to fulfil this role himself. He urged the colonial administration to interfere more in the process of appointing new penghulus, and from then on their knowledge of Arabic was tested by the colonial Advisor on Native Affairs—a position first held by himself and thereafter by some of his former students.[60]

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[55] ANRI, AS Bt. March 31, 1848, no.9. Letter assistant resident to the governer general. Bangkallang, March 3, 1848. Then, Madura was still ruled by a *rijksbestuurder* instead of a regent.

[56] Hisyam, *Caught between Three Fires*, 44.

[57] Hisyam, *Caught between Three Fires*, 69.

[58] ANRI Grote Bundel Bt. no.555. Bt December 28, 1897, no.38. "De intrekking der betrekkingen van adjunct hoofdpenghoeloe en adjunct penghoeloe, 1893-1897." Advice C. Snouck Hurgronje. September 28, 1897.

[59] Yahaya, *Courting Jurisdictions*, 100.

[60] Hisyam, *Caught between Three Fires*, 44-45. In 1884, Grobbee had also proposed to start examinations of penghulu candidates. Grobbee, *De Panghoeloe als adviseur in strafzaken*, 11. *"Een examen afgenomen door kundige Inlandsche rechtsgeleerden, te kiezen uit gezaghebbende priesters en hoofden, voorgezeten door een deskundig Europeaan, komt ons voor een noodzakelijk vereischte te zijn. Dat examen zou dan moeten loopen over 1. de Arabische taal, zonder welke studie van het Moslimsche Recht onmogelijk is; 2. het Moslimsch recht volgens een gezaghebbend Imam van de Sjafiitische secte; 3. costumierrecht."*

Hisyam observes all this as the completion of the process of the priyayization of the penghulus.[61]

Snouck Hurgronje not only intervened with the appointment of the penghulus, but also with the kind of Islamic law they applied, as described in chapter 3. He disapproved of an Islam that was too political, and thus of the various mystical orders that relied on charismatic leaders. Whereas other colonials observed the increasing influence and networks from Mecca with suspicion, the Advisors for Native Affairs in the period from 1906 until 1919 generally thought it to be a positive sign that Islam in the archipelago was modernizing. According to Laffan, in practice this led to an alteration of the legal traditions followed: "The Office of Native Affairs was giving official sanction to a more rigid form of Islamic practice. This is evident in its oversight of the religious courts and its decisions."[62] When, for example, a penghulu was appointed, the Office for Native Affairs preferred candidates who had studied international *Shafi'i* texts: "They thought that they would guide a movement of Indonesians into the orthodox public sphere and away from the otherworldly personal control of mystical teachers."[63] In 1903, Snouck Hurgronje further decided that the penghulus should be obliged to take an oath of office before being appointed to a religious court. Even though this went against Muslim tradition, in which judges do not take oaths of office. Snouck Hurgronje wrote that he was aware that this diverged from the Islamic tradition, but since the colonial government both appointed and could dismiss penghulus, it had to exercise greater control over them.[64]

The priyayization of the penghulu resulted in a class of these so-called Islamic priests who were not that powerful anymore. In 1895, Snouck Hurgronje argued that few aspired to the position of penghulu due to the condescending approach of European officials:

> When recruiting suitable candidates for professions such as the penghulu, the situation which concerns me most is that the most suitable persons—

[61] Hisyam, *Caught between Three Fires*, 67.
[62] Laffan, *The makings of Indonesian Islam*, 201-202.
[63] Laffan, *The makings of Indonesian Islam*, 207-208.
[64] Halim, "Contestation of the oath procedure," 24-25. The oath itself should have an Islamic character.

> regarding intelligence and character—are not willing to be considered, because they do not want to be exposed to all the coarseness resulting from the presence of many European officials. Among the latter, there are relatively few who realize (1) that Natives, although this might not always show it, are just as sensitive to insults or coarseness as we are, (2) that hidden behind the modest appearance of many Native legal experts there is intelligence and civilization, which might differ in nature to that of the European officials, but is in essence not inferior to it.[65]

Not much would change regarding the negative stereotype of the penghulus among the Dutch. A newspaper article written by a Dutch jurist in 1918 reflected the enduring stereotype of penghulus. It described penghulus who always slept through court cases or looked indifferent, and who, when asked for advice, would use "one or another Arabic phrase for an Islamic punishment." Their advice sounded "as a hollow, unknown sound which therefore immediately got lost."[66] In 1941, Landraadvoorzitter Wormser wrote in his memoirs, "I have met few penghulu, who did not advise *potong tangan*—the cutting off hands—for every crime. A punishment which the landraad was never allowed to execute, sometimes to my own regret."[67]

As argued before, the ritualised penghulu who always advised to cut-off hands seems to have been a self-fulfilling prophecy, meeting the

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[65] Gobee, *Ambtelijke adviezen van C. Snouck Hurgronje 1889-1936*, Part 1, 138. Advice Snouck Hurgronje. Batavia, December 29, 1895. *"bij het zoeken naar geschikte candidaten voor ambten als dat van panghoeloe levert mij toch deze omstandigheid steeds het meeste bezwaar op, dat de door intellect en karakter daarvoor aangewezen personen niet in aanmerking willen komen wijl zij ongezind zijn, zich aan al de ruwheden bloot te stellen, die zij de functionarissen van wege vele Europeesche ambtenaren zien ten deel vallen. Onder deze laatsten zijn er betrekkelijk weinigen, die plegen te bedenken, 1 dat Inlanders, al blijkt het niet altijd naar buiten, voor beleediging of grofheid even gevoelig zijn als wij, 2 dat onder het onbeduidende voorkomen van menig Inlandsch wetgeleerde een intellect en eene beschaving schuilen, die wel in vorm van die der Europesche ambtenaren verschillen maar in wezen niet lager staan."*

[66] Jurist [pseud.], "De Landraden op Java en Madoera", 488-490.

[67] Wormser, *Drie En Dertig Jaren Op Java*, 35.

prejudices the Dutch already had about Islamic law. Yet, there were also colonial officials, athough few, who presented a more positive picture of the penghulus and communicated more directly with them. Former Adviser on Native Affairs G.F. Pijper described the penghulus as well-educated men who had quite often studied Islam for years and half of whose books were about Islamic law. He acknowledged the centuries-old profession of the Javanese penghulus, referring to a seventeenth-century source on the "chief priest" of Banten, and their various responsibilities in the religious administration. He emphasized that all penhulu he knew mastered the Arabic language next to their mother tongue (being Javanese, Sundanese or Madurese), and a number of them also knew Dutch. They were trained at *pesantren* and had often continued their studies in Mecca. Pijper described sessions of the religious courts and his conversations with penghulus.[68] He recalled how in 1930, for example, the landraad penghulu in Tuban provided daily religious education to Arab and Javanese students.[69] The experiences of Pijper has been confirmed by the historian Hisyam.[70]

This leads us to wonder why the penghulus, well-educated men, would agree to advise a court of justice that never took their advice into account? A 1901 article in *De Controleur* described how the penghulus were aware of their own symbolic role in court: "Who knows this himself very well, and—when he is a quite a little gentleman [*deftig heertje*]—sometimes even smiles about his own advice."[71] The answer might have to do with the little number of well-paid professional options for well-to-do Javanese. The penghulu-landraad was a not unfavourable paid position within the colonial government. Besides, a penghulu-landraad combined his advisory role with other positions such as being the president of the religious court and administrator of the mosque, which remained a respectable position from the perspective of most Javanese.[72]

Among the Dutch, despite the prevailing negative stereotype of the penghulus, there was no longer much discussion about the position of the

[68] Pijper, *Studiën over de geschiedenis van de Islam,* 63-96.
[69] Pijper, *Studiën over de geschiedenis van de Islam,* 81.
[70] See for example the two life stories of the penghulus Mas Hadji Ichsan and K.H.R. Mohammad Adnan: Hisyam, *Caught between three fires*, 261-289.
[71] "W. in het Sociaal Weekblad en Abbas in de Controleur," 683.
[72] Hisyam, *Caught between Three Fires*, 66.

penghulu as an advisor during criminal cases. It was argued that the penghulu were needed in the landraad for oath taking. Besides, the idea that "eastern people" were different was quite strong. When in 1893, Snouck Hurgronje wanted to test new penghulus on their actual knowledge of Islamic law and the Arabic language, the Supreme Court responded that Islamic laws were not used. Yet, they thought the penghulus still to be important for their advice about religious and societal notions.[73] The *Indische Gids* wrote something similar in 1901: even though punishments were laid down in the Native Criminal Code, being informed about the notion of the degree of guilt of the "Eastern" people was still important because these were considered very different from Western notions. "To point out this difference is the duty of the Mahommedan priest, whose advise shall not be taken literally, but the law court should follow its spirit."[74] The handbook written by the jurist Van Davelaar mentioned another purpose of the advice of the penghulu, which he called a "historical remnant," but which he considered sometimes useful after all, because the penghulu "was not bribed, since he was not voting over the verdict."[75]

Above all, the possible abolition of the penghulu's advisory role was a sensitive topic. The "Islamic priests" were still seen as powerful and a potential threat to colonial rule. All negative changes to their position were avoided. The discussion about the religious courts shows how careful the colonial government was in matters concerning the penghulus. At first, there was some thought of dismantling the religious courts altogether and making the landraden responsible for civil cases.[76] However, Karel

[73] 2.10.02 MvK, 1850-1900. MR, no.91. Letter by C. Snouck Hurgronje to the Director of Justice. Weltevreden, March 19, 1893.; 2.10.02 MvK, 1850-1900. MR, no.91. Advice Second Chamber of the Supreme Court. Batavia, September 13, 1893. The president of the Supreme Court was M. C. Piepers, see Chapter 9.

[74] "W. in het Sociaal Weekblad en Abbas in de Controleur," 684. *"Om op dit onderscheid te wijzen, is de taak van de Mahomedaanschen priester: wiens advise zoo niet letterlijk dan toch in de geest er van door de rechtbank zal moeten opgevolgd worden."*

[75] Van Davelaar, *Het strafproces op Java en Madoera*, 40. *"...wij kunnen den hoofdpanghoeloe, als adviseur in het strafrecht, niet anders plaatsen dan als een historisch overblijfsel uit vroeger tijden. Vroeger zelf rechter, heeft men hem bijzitter gelaten, om niet te radicaal en te stuitend te veranderen. Dit alles neemt echter niet weg, dat de panghoeloe toevallig somtijds met vrucht kan worden geraadpleegd, namelijk omtrent het al of niet schuldig zijn van den beklaagde, omdat hij de Indische toestanden bij uitnemendheid kent en, daar hij niet medestemt, ook niet wordt omgekocht."*

[76] Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 40-42. In 1922, a committee was establisged to revise the organisation of the religious courts (*priesterraen).*

Frederik Holle, Advisor on Native Affairs (1871-1896), among others, wrote in 1876 that this would not be advisable. According to Holle, history had shown that it would be dangerous to affect the class of the penghulu, not only because it would interfere in the religious life of the Javanese, but also because administering cases at the religious courts was a considerable part of the penghulus' income. "We Dutch know from our history how dangerous it is for a ruler to corrode both the religious conviction and the wallet of the people."[77]

Out of fear to not offend the Islamic officials the colonial government sought their advice during court cases. However, doing so the government offended them even more by asking their advice but not taking this advice into consideration at all.

5.5 Conclusion: The Ritualization of Islamic Legal Advice

During the nineteenth century, in the pluralistic courts, the penghulu became part of a ritual in which he advised punishing convicts by cutting off their hands, and this advice was ignored by the court members. The positioning of the Dutch regarding the penghulu led to a farce that damaged the prestige of the penghulu. Although penghulus were considered more suitable as advisors than jaksas, their legal advice was hardly heeded and considered of little importance for criminal legal practice in the pluralistic courts. Dutch judges engaged in no real debate about or real engagement with the substance of Islamic law. Yet, the penghulus were still needed for legitimizing the colonial law courts. A curious situation arose in which the colonial government theoretically applied Javanese-Islamic legal traditions and treated the Islamic legal advisors with respect while the opposite was true. The Javanese legal traditions and institutions were marginalized and Islamic legal advice especially was ritualized and even ridiculed. The penghulus combined their position at the pluralistic courts with presiding over the religious courts and other religious responsibilities, thereby safeguarding their own position,

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Their proposal was accepted in 1931 and introduced in 1937, the most impactfull reform being that all cases related to property, were transferred to the landen. The advice to improve the education and salary of the religious court members, was never executed. Finally, a Islamic supreme court was established in Surakarta in 1937.

[77] ANRI Coll. K.F. Holle, Box 7. Letter Holle the Director of Civil Service. March 7, 1876. *"Wij Nederlanders weten uit onze geschiedenis hoe gevaarlijk het is én het godsdienstig gevoel én de beurs van een volk als overheerscher aan te tasten."*

although their tightening connections to the priyayi and colonial government led to a divide between them and the *kyai*. Eventually, the ritualization of the role of the Javanese penghulus weakened their position as experts of Islamic law and threatened their position as legitimate representatives of the Javanese defendants.

6 — Ambitious Intermediaries: The Jaksas

Deprived of their legal advisory role after 1848 in the pluralistic courts, the jaksas retained their other responsibilities, most importantly that of public prosecutor in the landraad. They were indispensable intermediaries between the priyayi and Dutch officials, from the preliminary investigations of a criminal case to the court session in the courtroom. This chapter analyses the jaksa's shifting official responsibilities within the colonial legal system during the nineteenth century by focussing on family ties, income, career paths, power relations and their influence in resolving legal cases. By investigating who the jaksas were outside and inside the courtroom, I will explain their position and interests in the colonial legal system, their influence on criminal law practices and—despite their continued importance as intermediaries—their eventual faded glory.

6.1 Intermediaries in the Courtroom

At first sight, the most obvious intermediaries in the pluralistic courts were the registrars (*griffiers*), often Indo-Europeans raised in Java who were valued for their knowledge of local languages. In memoirs of landraad judges, the Indo-European registrars, in particular the experienced ones, were lauded for diligently assisting the judges and relentlessly working through thick paper piles and dossiers.[1] Yet, I did not find much on other aspects of their role in or influence on criminal law practice, and it seems that they were preoccupied with shaping the growing bureaucracy. After 1869, the registrars were also often junior judicial officials who had to gain experience before working as landraad judges. Altogether, the registrars constituted an indispensable workforce, but were very much part of the colonial bureaucracy and not essential brokers such as the jaksas were.

Jaksas were formally part of the priyayi class, but in practice they were positioned between the Dutch and Javanese officials, and functioned as intermediaries between the two branches of the dual-rule system. Especially before 1898, when there was no formal police apparatus led by separate European police officials, the priyayi (formally led by the Dutch resident)

[1] See for example: Wormser, *Schetsen uit de Indische rechtszaal*, 2-3.

were responsible for all police activities. The jaksas were the official link between the (police activities exerted by the) priyayi and the resident. During pluralistic court sessions, the jaksas functioned both as public prosecutors and as translators. No other Javanese officials cooperated this closely with Dutch officials.

Intermediaries were essential for a proper functioning of the dual system. They provided European officials within the dual system the necessary information from the priyayi world, and vice versa, while simultaneously protecting their own interests. As the historian Daniel Richter has written on intermediaries of a different period and place: "As simultaneous members of two or more interacting networks (kin groups, political factions, communities, or other formal or informal coalitions), brokers provide nodes of communication ... their intermediate position, one step removed from final responsibility in decision making, occasionally allows brokers to promise more than they can deliver. The resulting manoeuvring room allows skilful mediators to promote the aims of one group while protecting the interests of another—and thus to become nearly indispensable to all sides."[2]

Consequently, a general feature of intermediaries is the existence of a thin line between trust and distrust. The jaksa was both trusted and distrusted by the colonial government. Over time, among the Dutch a stereotyped image occurred of the jaksas as being sly and vain, and real career hunters. Yet they were clearly indispensable for a proper execution of colonial criminal law.

The Jaksa in the Courtroom

In the Provisional Regulation of 1819, the chief jaksa had been officially differentiated from other jaksas. Whereas an ordinary jaksa was responsible for one district, the chief jaksa was based at the main offices of the residency and was also responsible for the prison and the interrogation of suspects. The jaksa received via the regent and the resident—who gave the orders to start investigations—the report of the preliminary investigations conducted by the wedonos. The jaksa interrogated the suspect using this report, and conducted extra investigations if needed. Twice a week the chief jaksa met with the resident (or assistant resident), who thereafter decided whether criminal

[2] Richter, "Cultural brokers and Intercultural Politics," 41.

cases should be send to court. In landraad cases, the chief jaksa gathered information from the investigations by the wedono (or, in Batavia, the *demang*), called and interrogated witnesses and produced the indictment (*acte van beschuldiging*). At the end of the nineteenth century, the jaksa increasingly became an official who performed his duties inside an office, whereas the wedono and his police *mandoors* carried out the police investigations. The increased number of landraad sessions and the bureaucratization of the colonial state were partly due to this. During landraad sessions, however, the duties of the jaksa did not change.

Partly preserved notes of a landraad session held on 27 December 1890 in Tangerang show how the jaksa read aloud the indictment and interrogated several witnesses during the session. If witnesses lived far away, their prepared statements were presented by the jaksa.[3] In this theft case, though, the witnesses were present in the courtroom. The witness accounts were compared, and the suspect was asked to respond as well. The first witness was the victim—a full cousin of the accused—who had woken up on a Monday morning noticing that a burglary had been committed through the eastern wall of his house. He reported this to the police *mandoor*, who thereafter visited the house to investigate the evidence. When he and his assistants (*bodes*) started investigating around house, he met someone who had seen the accused sitting at the dike of a canal (*sloot*) carrying three baskets and various cloths, which he had thrown into the water once he noticed someone approaching. The victim and the police *mandoor* both declared in court that they had found these objects in the water. The accused responded by declaring that he knew nothing at all about the case. Subsequently, however, the witnesses started to contradict each other. Some declared having seen the suspect sitting alone by the water, whereas others said that the suspect was accompanied by someone else. Eventually, the jaksa decided to stop the interrogations and he requested an acquittal for the accused. The penghulu also advised to acquit the suspect. The landraad members decided to acquittal.[4]

During the court session, the jaksa served not only as the public prosecutor but also as the translator during interrogations of suspects and witnesses. In the circuit courts, at first, the chief jaksa officially was only an

[3] Heicop ten Ham, *Berechting van misdrijven*, 153.; IR 1848, art. 249.
[4] ANRI, GS Tanggerang, no.88/2. Notes of witness interrogations during a Landraad session in Tangerang. December 27, 1890.

advisor, but after some budget cuts in 1826, in practice the chief jaksa also acted as the prosecutor as he did in the landraden.[5] During the nineteenth century adjunct jaksas and adjunct chief jaksas were installed because of the increasing workload. Thus, in colonial Java the jaksa was a multifunctional official who served as a public prosecutor, prison guard, translator, and, until 1848, advisor.

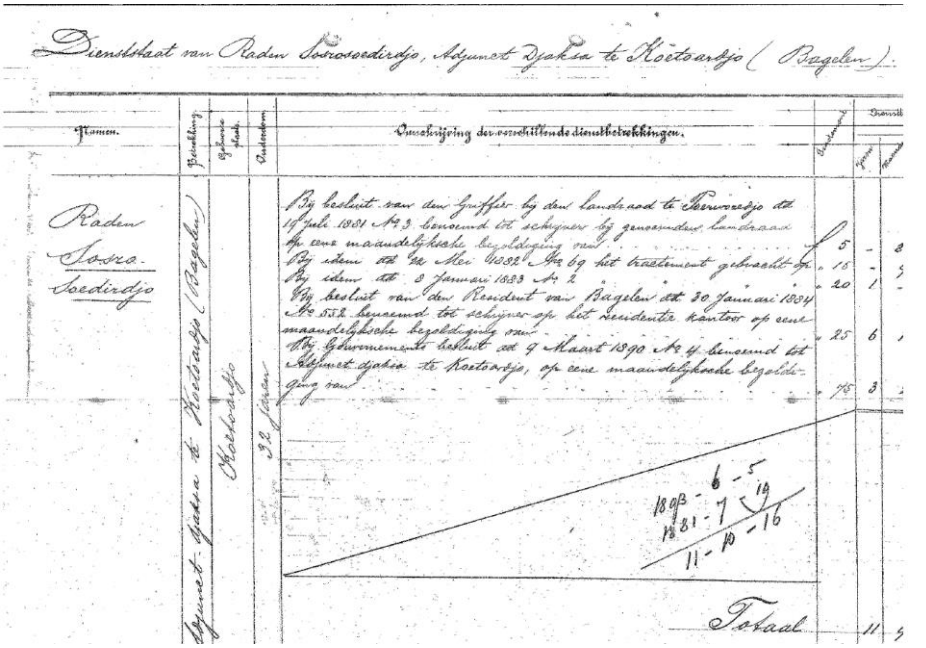
When appointing a jaksa four criteria were of importance: experience with the police system, knowledge of "country and people," dedication to the civil service, and family background. There was an official appointment procedure to select the most suitable candidates. The regent recommended potential candidates to the assistant resident and resident. Then, the resident presented the candidates to the governor general in a letter that included candidates' résumés (*dienststaat*) and a genealogy (*geslachtslijst*). The governor general appointed the new jaksa formally.[6] The appointment procedure was similar for other civil servant positions, although from 1867 onwards the regent was in charge of positions below the rank of wedono. Interestingly, an exception was made for the adjunct jaksas, who ranked below a wedono, but whose appointment still had to be ratified by the governor general.[7] In the 1850s, the colonial government it emphasized that regents should always be asked for their advice. Not all residents were motivated to do so and preferred to select chief jaksas and jaksas by themselves. In 1880, a report was sent to the residents to urge them also to always ask for advice from the Dutch district administrators (*controleurs*) as well because of the partiality of the regents.[8]

[5] Driessen, *Schets der werkzaamheden,* 175–177.; S 1826, no.57. The separate combined office of the registrar and prosecutor at the circuit courts was abolished. The registrar of the landraad had to fulfill this position, but Driessen thought that the chief jaksa did this in practice.

[6] As shown by this sample of jaksa appointment files from the second half of the nineteenth century: ANRI, AS, Bt. February 3, 1851, no. 10. Mas Sosro Redjo, aksa Purwodadi; ANRI, AS, Bt. January 10, 1863, no. 25. Ngabehi Kerto Widjoyo, jaksa Malang..; ANRI, AS, Bt. April 24, 1871 no. 20. Radhen Wangsajoeda, jaksa Cicalengka.; ANRI, AS, Bt. January 11, 1904, no.3. Raden Mas Mangkoesoebroto, adjunct jaksa Banjarnegara.

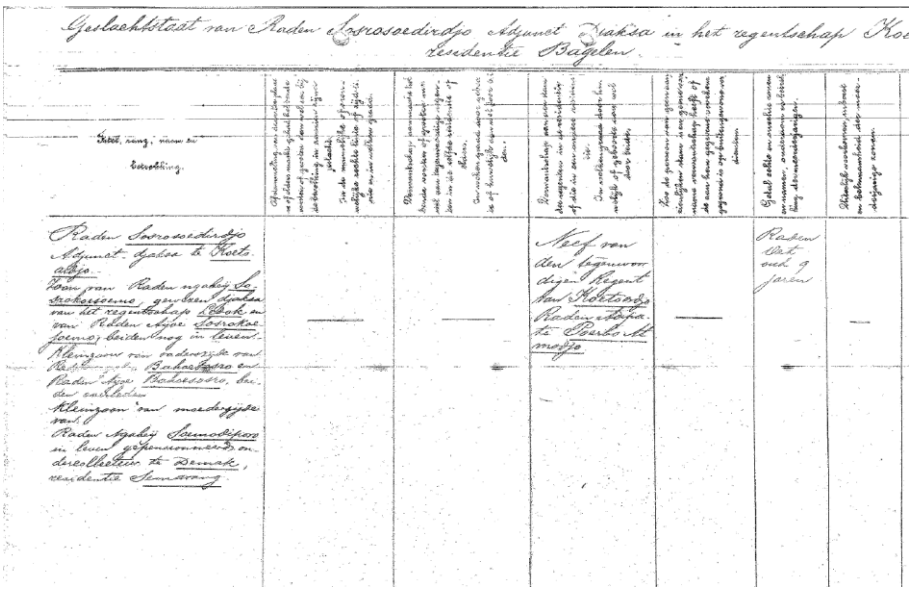
[7] S 1867, no.168.

[8] Bijblad no.73, no.1031 and no.3626.


Dienststaat van Raden Sosrosoedirdjo, Adjunct Djaksa te Koetoardjo (Bagelen).

Namen.	Bestelling	Gehuwde staat	Geslachten	Omschrijving der verschillende dienstbetrekkingen.	Gemiddeld	Gemiddeld
					Jaren	Maanden
Raden Sosro-Soedirdjo	Adjunct-Djaksa te Koetoardjo (Bagelen)	Koetoardjo	32 Jaren	By besluit van den Gouverneur by den Landraad te Purworedjo dtt 19 Juli 1881 No 9 benoemd tot schrijver by genoemden Landraad op eene maandelijksche bezoldiging van . . . . . f 5 - 0 By idem dtt 22 Mei 1882 No 69 het traktement gebracht op . " 15 - 0 By idem dtt 2 Januari 1883 No 2 . . . . . " 20 1 - Bij besluit van den Resident van Bagelen dtt 30 Januari 1894 No 552 benoemd tot schrijver op het Residentie kantoor op eene maandelijksche bezoldiging van . . . . . " 25 6 - Bij Gouvernements besluit dtt 9 Maart 1896 No 4 benoemd tot Adjunct djaksa te Koetoardjo, op eene maandelijksche bezoldiging van . . . . . " 75 3 -		
				1881 - 7 - 19 11 - 10 - 16 Totaal		11 5

Fig.14 Resume applicant for the position of adjunct chief jaksa of Purworejo.
[ANRI AS Bt. June 9, 1893, no. 36].


Geslachtstaat van Raden Sosrosoedirdjo Adjunct Djaksa in het regentschap Koe
Residentie Bagelen.

Titel, rang, naam en bestelling.	Afstamming van zijne vader- en moederzijde, met opgave van de geslachten, waarin de afstammelingen zijn verdeeld.	Benaming van de geslachten, waarin de afstammelingen zijn verdeeld.	Benaming van de regeerende familie, waartoe de afstammelingen behooren.	Is de persoon van genoemde afstamming in den regeerenden stand verheven, wanneer, waarheen en op welke wijze?	Geldt zulks ook voor zijne vrouw en kinderen?	Bijzonderheden, betrekkelijk de familie, waartoe hij behoort.
Raden Sosrosoedirdjo Adjunct djaksa te Koetoardjo Zoon van Raden ngabei Sosrokoesoemo, gewezen djaksa van het regentschap Keboemen en van Raden Adjeng Sosrokoe Soemo, beiden nog in leven. Kleinzoon van voormalig Raden Tommenggoeng Bahaudoro en Raden Adjeng Radjasoero, beiden overleden. Kleinzoon van medegenoemde Raden ngabei Soemodipoero in leven gepensionneerd en directeur der Cultures te Bernak, residentie Semarang.	—	—	Neef van den tegenwoordigen Regent van Koetoardjo Raden adipati Tjondro Negoro te Poerbo Negoro	—	Raden Dat oud 9 jaren	—

Fig.15 Geneology applicant for the position of adjunct chief jaksa of Purworejo.
[ANRI AS Bt. June 9, 1893, no. 36].

It is evident that the jaksas were part of the priyayi class, but what their exact place was within the hierarchy of the civil administration only becomes clear after comparing the monthly income of the different ranks in the *pangreh praja* (see appendix 2, table 6). This reveals that the chief jaksa earned the same salary compared as the wedono, whereas a jaksa was at the same income level as the assistant district chief (assistant wedono). However, a comparison of the costumes of the Javanese officials shows that even though their salary was equal, the status of the chief jaksa surpassed that of the wedono, while the costumes of the jaksas were decorated more exuberantly than that of the assistant wedono.[9] Furthermore, provisions in 1909 allowed high Javanese officials—regents, patihs, tax collectors (*ondercollecteurs*), wedonos, and chief jaksas—to wear a white European costume. Interestingly, an exception was made for landraad sessions, when the officials were obliged to wear their "traditional" costumes.[10]

The situation was different in Batavia, where a traditional elite was lacking. There, the chief jaksa was the highest non-European official. Regent Achmad Djajadiningrat described in his memoirs how during the 1880s—when he himself was still a child, so the story is based on family stories—the former chief jaksa of Batavia, Mas Pennah, was appointed as the new patih of Banten. The father of Djajadiningrat—a wedono at that time—became acquainted with the new patih, but he was not popular among other priyayi, including the regent, due to his Western ways and rudely direct communication skills:

> He was dressed in a short sarong partly covering a European trousers and he was wearing shoes. Also, he was behaving completely like a European. He entered the *pendopo* [porch] without any restraint, handed over his business card to the guard, and requested him to present it to the regent. The guard returned the card to him, declaring that he would only be welcomed by the regent if he wore a full Javanese costume, so in *kaen* [cloth], and in bare feet. However, Pennah immediately responded by saying that he was not

[9] Bijblad no.2308. "Bepalingen omtrent de kostumes van Inlandsche hoofden en ambtenaren."
[10] Bijblad no.6973 "Aanvulling der bepalingen omtrent de kostumes van Indische hoofden en amtenaren."

> Javanese but Batavian. Pennah was a man of strong character, who was able to present and defend his ideas well, both orally and in writing. He therefore soon got the reputation among the European chiefs of being a good official. He was living religiously with his family, although he disapproved of the orthodoxy of Islam.[11]

Also, when jaksas did feel completely Javanese, as was usually the case outside of Batavia, and they originated from Javanese priyayi circles, they were of the utmost importance to the colonial government because it was hard to find out what was really going on in the region without their loyalty. However, for the exact same reason, they were also distrusted, because they could easily choose the "other side" or aim for their own interests.

Distrust

In 1837, in the East Java region of Probolinggo, after years of ongoing turmoil, Chief Jaksa Niti Sastro was unmasked as the mastermind behind the violent *ketjoepartijen* or robberies and burglaries by gangs which up to then had taken place regularly. The people of Probolinggo were on the point to revolt because of the unsafe situation in the region. The mystery was solved only with the help of the outsider chief Widjoyo, *ronggo* (assistant regent) of Kraksaän, and Niti Sastro was sentenced to death. According to the testimony of a spy, Matjan Koening, Assistant Resident Overhand of Probolinggo had begged "with tears in his eyes" this outsider chief—a priyayi from another region—to help him solve the case.[12] The case of Jaksa

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[11] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 38. "*Hij droeg een Europeesche pantalon waarover een korte sarong en hij had schoenen aan. Voorts gedroeg hij zich volkomen als een Europeaan, hij stapte vrijmoedig de pendopo binne, gaf zijn naamkaartje aan den daar wachtdoenden oppasser met het verzoek dat aan den Regent te overhandigen. De oppasser kwam echter met het naamkaartje bij hem terug met de mededeeling, dat hij alleen in compleet Javaansch costuum, dus in kaen en op bloote voeten door den Regent zou worden ontvangen. Doch Pennah zeide onmiddelijk daarop, dat hij geen Javaan was doch Bataviaan. Pennah was een man van karakter, die zijn denkbeelden zowel in woord als in geschrift, goed en gemotiveerd wist voor te brengen en te verdedigen. Vandaar dat hij bij zijn Europeesche chefs spoedig de naam kreeg van een goed ambtenaar. Hij leefde met zijn gezin godsdienstig, doch veroordeelde het vormelijke van den Islam"*

[12] NL-HaNA, 2.10.01 MvK 1814-1849, Vb. March 5, 1841, no.2/88. Investigation reports by supeme court member Visscher. Batavia, June 6, 1840 and July 25, 1840.; Fasseur, *Indischgasten*, 60-66.

Niti Sastro shocked and even frightened the Dutch colonial administrators, because they had trusted him for eighteen years and he had been known as a capable and trustworthy Javanese prosecutor.

The father of Niti Sastro, Poestro Dyoyo, explained in an emotional letter to the governor general what had led his son to become the leader of a gang of robbers and murderers. Niti Sastro had already been trained to break the law at the beginning of his career by the previous jaksa, and he committed "his first crime in agreement with the jaksa. Seduced by the good result and encouraged by his master, who was most likely in need of a capable accomplice, the unthinking young man continued as he had been taught. And, afraid of being discovered, he committed more serious misdeeds to hide the first crime."[13]

Despite the his father's plea to get his son pardoned, Niti Sastro was hanged. As the Supreme Court stated in their advice concerning the pardon request, it was unlikely that Regent Notto Negoro had no knowledge about the case at all. Eventually it turned out that many priyayi in Probolinggo had been part of the conspiracy. The regent was dismissed and banned by political (extra-judicial) means. Niti Sastro's influence is even more apparent from the fact that even after his death, rivalries among the priyayi continued. On the advice of Resident Overhand, the outsider Chief Widjoyo, who had revealed the conspiracy, was appointed as the new regent and named Kyai Temenggung Wirio Widyojo, even though he was not from a prominent family. After the arrival of the new resident, D. G. Van Teijlingen, he was accused of extortion (*knevelarij*) by other priyayi. The new resident fell for these accusations, which turned out to be largely false and made up by family members and priyayi allies of the late Niti Sastro.[14]

Yet, it was not this widespread conspiracy of the local Javanese elite that would be remembered for long. The betrayal of Jaksa Niti Sastro was the biggest shock to the Dutch. A newspaper article in 1868, three decades later, described how Niti Sastro—"Of anyone, Niti Sastro! Niti Sastro—meaning the 'wise law scholar,' or so much as 'teacher of all virtues'"—had

[13] ANRI, AS Bt. May 6, 1837, no.47. Letter from Poesjro Dyoyo to the Governor General. Surabaya, February 13, 1837 [translated by Hoogeveen, Surabaya]. *".. en in overeenstemming met den Jaxa, zijn eerste misdaad, door den goeden uitslag verleid en door zijnen meester wien welligt een bekwaam handlanger noodig was, aangeprikkeld, holde de onbedachtzame jongeling, op des weg der onderrigd voort, en, bevreesd voor de ontdekking zijner eerste misdaad, stapelde hij gruwelen of gruwelen, om de eerste te bemantelen."*

[14] Fasseur, *Indischgasten*, 60-66.

been the robber chief who decided whether "the good inhabitants would [keep] the head on their body or the *barangbarang* [possessions] in their own use." The article concluded with the approving remark that Niti Sastro had been condemned to death and hanged "neatly."[15] References to the case of Niti Sastro also appeared in a handbook for future judges in the Dutch East Indies, printed a century later, in 1938.[16]

The Niti Sastro case was even part of the discussions on how to reform the colonial legal system. In 1845, when the new Court Regulations were discussed, the position of the jaksa was part of a debate between Van der Vinne and Scholten van Oud-Haarlem. Although their ideologies and alleged solutions were completely different, as we have seen, they agreed on one point: the power of the jaksa should be defined carefully, because the jaksa was, as Van der Vinne wrote, "a powerful and influential person ... who greatly surpasses his fellow countrymen in knowledge, talent and slyness." Scholten van Oud-Haarlem responded that he was well aware of character of the jaksa. In his position as a Supreme Court judge he had supervised over three thousand court cases. The "notorious court case" of Niti Sastro especially had made him realize that the position of the jaksa should be determined very carefully.[17] Later in this chapter and in chapter 9, we will discuss in greater detail the consequences of this debate for the position of the jaksa with regard to the Public Prosecution Service.

The distrust of the jaksas in general was of course caused by more than just the sense of betrayal due to Niti Sastro. And although there were many examples of jaksas who remained loyal to the Dutch administration for their whole career, negative examples such as that one dominated the thoughts of the Dutch. In part 4, below, we will see how in several instances chief jaksas actually warned the Dutch of priyayi intrigues in different regions. In both the Djojodingingrat affair and the Brotodiningrat conspiracy, cases described in chapter 8, it was a jaksa who was the whistle blower and informed the Dutch. Nonetheless, throughout the remainder of the nineteenth and into the early twentieth century, the reputation of the

[15] "Kroniek voor Oost-Java," *Java-Bode*, January 18, 1868, 6. "…*de goede ingezetenen de kop op den romp of de barangbarang in eigen gebruik*."
[16] Idema, *Handboek Landraad-strafproces*, 78.
[17] Van der Vinne cited in: Driessen, *Schets der werkzaamheden*, 192. *"een magtig en invloedrijk persoon (...) die door kennis, talenten en sluwheid zijne landgenooten verre overtrof."*

jaksa persisted as a smart but vain and sly career hunter who benefited maximally from his rather notable position.

Thus, an important part of the distrust of jaksas was the fear that they would conspire with the administrative priyayi against the resident or judge. Therefore, it was preferable if jaksas originated from different regions or families than those of the regent or other high priyayi. Such involved relationships were also considered a risk inside the pluralistic courtroom. In 1831, the members of the landraad of Grisee were replaced because they were brothers of Chief Jaksa Rekso Dirdjo.[18] The risk was mainly due to the fact that, as translators in the pluralistic courts, jaksas could distort witness accounts during the court session in order to get the suspect convicted. To prevent this, Judge W. Boekhoudt alternately appointed the jaksa, penghulu, or a court member as translator during court sessions, but this was certainly not common practice among all landraad judges.[19] The practice of allowing the jaksas such combined duties was not abolished, although Dutch judges were urged to learn the local languages to make their translation services unnecessary. The Judge Sibenius Trip emphasized the need to learn Javanese. He became a circuit court judge in 1859 and years later he described how one of the Javanese members, a patih, had told him that the jaksa was willing to pay twenty-five guilders to be the translator during a court session. "This shows that if I had used a translator and had not mastered the language myself," wrote Sibenius Trip, "then the jaksa would have had free rein and neither the penghulu nor the members would have informed me if the jaksa had made false translations!"[20]

Even newspaper articles generally painted a picture of the jaksas as a valuable Javanese official who nonetheless could not completely be trusted because of their sly character combined with an ongoing ambition to be promoted to a high position. Moreover, jaksas were quite often also described as very vain. In 1864, a European official showed his disapproval of the rather arrogant attitude of a chief jaksa in the *Java-Bode* and concluded his critique with the following words: "One of his traits, probably

[18] ANRI, GS Surabaya, no.1446. Decision made by the governer general on October 25, 1831.
[19] Boekhoudt, "Een afscheidsgroet aan mijn jongere collega's," 334.
[20] Sibenius Trip, "Herinneringen uit de Inlandsche Rechtspraak," 2. *"...hieruit blijkt dat wanneer ik een tolk had gebruikt en zelf de taal niet machtig was geweest, de djaksa vrij spel zoude hebben gehad en noch de penghoeloe noch de leden mij zouden hebben ingelicht, indien de djaksa verkeerd vertaalde!"*

the only positive one, is that he is dressed very fine, all provided by the French tailors."[21] Many jaksas were relatively well appreciated, but they would always remain non-Europeans, as this citation from another newspaper article shows: "The jaksa, although many of them distinguish themselves due to great diligence and suitability, they all still share in the main flaws of their people: harshness, dishonesty, superficiality, and orthodoxy."[22]

Jaksa Ambitions

It is clear that the jaksas were important for the Dutch branch of the colonial administration, but why would a Javanese priyayi consider becoming a jaksa? The Niti Sastro case shows that in the most negative case this was pursuing one's own interest at the expense of the people. However, in most cases it was simply seen as a good career step within the priyayi ranks. In contrast to other priyayi positions, the jaksas had better options.

First, the activities exercised by the jaksas were visible to the Dutch resident, because he cooperated with them directly. Loyalty and being successful in solving criminal cases could lead to a considerable increase in status and income. For ambitious priyayi from a lower rank, this path was easier to take than the mainly (unofficial) hereditary positions of the higher administrative ranks within the *pangreh praja*. The characterization of the jaksa as a career hunter is therefore hardly surprising. For an official of the *pangreh praja,* it was an advantage to originate from a noble family, but eventually other factors were also important, such as character, experience, loyalty to the colonial administration, and at the same time the ability to be either part of or oppose to the local priyayi families. Each residency had its own dynamics and Javanese officials were supposed to understand local affairs. Second, working as a jaksa could also be a way to become a beneficiary of the regent and even to marry into his family, for example. It also happened that jaksas from lower-ranked families sought the position of adjunct jaksa as a means of advancement.

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[21] "Ingezonden stukken", *Java-Bode*, June 15, 1864, no.48, 6. *"Tot zijne eigenschappen, welligt de eenigste deugd, behoort ook: zich fraai kunnen kleeden, daar de Fransche kleermakers hem (..) daarvan goed voorzien."*

[22] "Eenige opmerkingen omtrent de Inlandsche regtspleging op Java," *Oostpost, Soerabayasche Courant.* December 19, 1860. *"Die jaksas hoe vele onder hen zich door grooten ijver en geschiktheid onderscheiden, deelen toch allen min of meer in de gebreken hun volk: hardvochtigheid, onopregtheid, oppervlakkigheid en vormelijkheid."*

The chief jaksa was a in particularly influential official at the residency level during the nineteenth century. In 1850, for example, the jurist R. W. J. C. Bake, requested in the name of his client—the Buginese woman Mak Daun—whether a case concerning the inheritance of Achmat Tumbong, could be adjudicated at the religious court of Surabaya instead of the religious court of Gresik. The reason for this was that the chief jaksa of Gresik was one of the heirs and "due to his rank and prominence" could influence the case.[23]

It is important to realize the enormous difference between the position of an adjunct jaksa and a chief jaksa. A chief jaksa earned six times the salary of an adjunct. While a regent was probably not at all impressed by an adjunct jaksa, the chief jaksa was someone with considerable power and influence in the region. Besides, whereas regents simply regarded adjunct jaksas as just another lesser official, for the average inhabitant of Batavia even an adjunct jaksa was someone to look up, as demonstrated by the following quote from the feuilleton *Hikajat Raden Adjeng Badaroesmi* (1901–03) written by Johannus Everardus Theupeiory, a Moluccan medical doctor from a non-noble family:[24] "using a coquettish tone of voice, Mira asked Amin the purpose of his visit. She could not have dreamt of being honored with a visit from an adjunct public prosecutor."[25] Mira earned her living with sewing and Amin an adjunct jaksa investigating a murder case.

Thus, it is important not only to distinguish the different ranks of jaksas, but also to realize the importance of family ties in the jaksas' and chief jaksas' influence. In a priyayi conspiracy case known as the Dojodiningrat affair (see part 4, below) a European public prosecutor described the local jaksa in unflattering terms, "crawling for the Regent and his brothers" in his attempt to gain the trust of the higher priyayi. The chief

[23] ANRI, GS Surabaya, no.1487. Turned down request by the governer general, on the advice of the attorney general. Buitenzorg, April 4, 1851. *"…daar het hier een onchristen boedel geldt, zulks door den priesterraad te Grissee bewerksteldigd zoude moeten worden, waartegen suppliant echter bezwaren vindt, daar een der benoemde erfgenamen, Rekso Winotto (hoofddjaksa van den Landraad Grissee) door zijn rang en gezag zoodanigen invloed, te dier plaatse uitoefent, dat genoemde Priesterraad in het slaan van zijn vonnis waarschijnlijk denzelven zoude ondervinden."*

[24] The feuilleton Hikajat Raden Adjeng Badaroesmi was published in the newspaper Bendera Wolanda from 1901 until 1903.

[25] Theupeiory, Johan. *Hikajat Raden Adjeng Badaroesmi*, 138. *"… met een bevallige stem vraagt Mira Amin naar de bedoeling van zijn bezoek. Ze had niet kunnen dromen dat ze vereerd zou worden met een bezoek van een adjunct officier van justitie."*

jaksa, however, refused to sign the false investigation report. Yet, despite his loyalty to the resident, he had troubles convincing the resident because he was not part of the regent's family. The public prosecutor described him as "honest, but not strong enough to oppose the majority of the committee, which had even won over the Resident."[26] Scheltema wrote of one of the wedonos that he was a "diligent servant of the Regent (...) aiming to be rewarded with the marriage he has longed for so long, to take the wind out of the sails of the chief jaksa (...) in whose positon he wished to be." The position of chief jaksa could be a good career step for a wedono, but because this wedono was not directly related to the regent, his chances for promotion were limited.[27]

In this case it is clear that formal positions were partly important, but a wedono well acquainted with a strong regent probably had more power than a wedono unrelated to the regent's family. Some chief jaksas were also more powerful than others. The Dutch did take this family prominence into consideration, as Heicop ten Ham's judicial handbook of 1888 shows. He explained that the jaksa was usually present during the landraad deliberations on the verdict, which were held behind closed doors. However, if he was an "influential person" it was tempting to not invite him to take part the discussions among the court members.[28]

Unfortunately for the jaksas, their monthly income was not sufficient for a life-style appropriate to their rank. Therefore, they received a part of the fines paid by people convicted of minor crimes, even though this practice clearly did not improve their impartiality.[29] Jaksas also enlarged their capital through their priyayi network. In 1864, a European official wrote a letter to the colonial newspaper *Java-Bode* to ask how it was possible that the chief jaksa of Buitenzorg, who earned the same monthly salary as he did (150 guilders), was ten times richer than he was. According to the author, the jaksa owned five houses, many rice fields and cattle,

[26] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. April 16, 1859, no.52. "*Eerlijk, maar niet sterk genoeg tegenover de groote meerderheid van de commissie welke zelfs den Resident voor zich weten te winnen."*

[27] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. April 16, 1859, no.52. "*Kruipend voor den regent en zijne broeders"* (..) *"Ijverig dienaar van de Regent ... met uitzigt om beloond te worden door het huwelijk waarop hij lang had gehoopt, om den loef af te steken aan den Hoofddjaksa (..) in wiens plaats hij wenschte te zitten."*

[28] Heicop ten Ham, *Berechting van misdrijven,* 159.

[29] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163–174.

horses, two carriages, a gamelan, and diamonds, gold, and silver—altogether equal to 40.000 guilders. Two of the horses were presents from other Javanese officials. Also, this chief jaksa turned out to be ambitious: "He is sometimes joking that he will be a Regent once, because on all Thursday nights he is sending his fervent prayers, in order to once obtain this desired prominence."[30]

Rarely though did a chief jaksa without prominent family ties become regent. For example, in 1900 the sons of the retired regent of Probolinggo were determined to be unsuitable for the position; the first was "an insignificant personality" and the second "sickly." Therefore, Raden Mas Ario Abdoelmoekni, chief jaksa of Besuki, was appointed as the new regent. However, this probably would have never happened if Abdoelmoekni had not been his predecessor's nephew.[31]

Although the colonial government was reluctant to appoint too many priyayi from one family in one residency, this often happened. In 1866, for example, the author of a letter in the newspaper *De Locomotief* worried about the succession of a jaksa because he feared that one of the sons or sons-in-law of the regent of Demak would get the job: "Will once again one of the sons or sons-in-law of the pangeran [regent] of Demak be favoured, at the expense of other native officials, who are already waiting for a promotion for many years? Just as happened when Raden Mas Trengono was appointed as assistant tax collector (*ondercollecteur)* of Kudus, and he, a previously unemployed person, was immediately provided with a position of 150 guilders per month." The writer expressed his hope that the government would not decide to introduce on purpose a "family government," because almost all local officials were already related to the regent.[32]

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[30] "Ingezonden stukken," *Java-Bode*, June 15, 1864, no.48, 6. *"Hij zit soms te mallen, dat hij eenmaal regent zal worden, want alle donderdag-nachten malem-djumakat, zendt hij zijne vurige gebeden op, om eenmaal die gewenschte waardigheid te kunnen deelachtig worden."*

[31] NL-HaNA, 2.10.02 MvK 1850-1900, MR 1900, no.729. "*…een onbeduidende persoonlijkheid (…)ziekelijk."*

[32] "Wie zal de bevoorregte zijn," *De Locomotief*, May 18, 1866, no.40, 4. *"...zal men nu weder een der zonen of schoonzonen van den Pangerang van Demak over het paard tillen, ten koste van andere Inlandsche ambtenaren, die vele jaren op eene verhooging wachten, even als dat gebeurd is door de benoeming van Raden Mas Trengono tot onder-kollekteur van Koedoes, waardoor hij, een ambtloos persooon, dadelijk eene betrekking aanvaardde van 150 gulden 's maands."*

The career paths of jaksas confirm that jaksas often originated from noble families, but not from the regent's immediate family. They were, for example, sons of a patih or wedono. There were also jaksas who did not hold the high noble title *raden* but rather the lower priyayi title *mas*. For many a young priyayi, a position as jaksa was a good career step before becoming a wedono, *demang*, or patih. There were also jaksas whose families were not part of the *pangreh praja* at all, but who nonetheless held the position of jaksa. For a son of a "non-government person" (*particulier*) it was possible to become, for example, a coffee assistant (*mantri koffie*) in the district warehouse, one of the lowest ranks within the *pangreh praja*. The position of *mantri* could lead to a position as adjunct jaksa, which might be the highest position they would ever reach. However, for men of lesser birth, being a good jaksa, trusted by either the Javanese regent or the European resident and preferably by both, could lead to the respectable position of chief jaksa. One of these ambitious jaksas was Mas Somodirdjo, who held a position as jaksa of Demak. In 1866, he was appointed chief jaksa of Kediri not because he was of high birth, but because he was well-known for his talent and loyalty.[33]

Tjondro Adhi Negoro V described in his travel report how the son of a concubine of a prince in Surakarta had moved to Kediri to become a jaksa there and so increase his career opportunities: "He was consciously striving to move to another area so that he would not become the subject of mockery of his brothers, children of a legal wife who all now held the rank of prince in the Princely Land of Surakarta. If he is lucky, later he could even become a Regent somewhere in the government lands, a position invested with more power and wealth compared to that of most princes."[34]

Once reached the position of chief jaksa, it was hard for newcomers to establish their power and gain trust of the most influential local priyayi family. Talented officials who were unable to become part of the regent's inner circle were confronted with a glass ceiling and almost never reached the higher ranks of the *pangreh praja*. The Dutch colonial government faced

[33] "Wie zal de bevoorregte zijn," *De Locomotief*, May 18, 1866, no.40, 4.

[34] Purwa Lelana [pseud. R.A.A. Tjondronegoro V], *The Travels of Radèn Mas Arjo Poerwolelono*, 195. *"Hij legde het er bewust op aan om naar een ander gebied te vertrekken, zodat het niet zover zou komen dat hij een voorwerp van spot zou worden van zijn broers, kinderen van een wettige vrouw en nu allemaal met de rang van prins in het vorstendom Surakarta. Als hij geluk heeft kan hij later zelfs regent worden in de gouvernementslanden, een functie die meer macht en welstand meebrengt dan die van de meeste prinsen."*

difficulties with the limited career perspectives of loyal chief jaksas. In 1860, for example, the regent of Kutarjo had been fired because of thoughtless decisions and "favouring hajis and penghulus". When considering candidates to fill the vacant position of regent, the chief jaksa of Poeworedjo, Radhen Ngabehi Santo di Poero was considered the best candidate available due to his skill and diligence. However, this was "impossible" because Santo di Poero was "not of high birth" and he did not come from the region. Another priyayi was selected to succeed the regent, but the governor general wrote his minister of colonial affairs: "In the meantime, it is difficult for this dedicated native official—who has consistently exercised his hard work in the most scrupulous way—to be overshadowed by younger and less capable priyayi." Therefore, Chief Jaksa Santo di Poero was granted an extra personal reimbursement of fifty guilders per month.[35]

6.2 Jaksas under Discussion

Because of the importance of the jaksas for colonial rule, and because of the combination of trust and distrust, they were subject of colonial debate during the entire nineteenth century. We will now discuss the three most important topics around which this debate evolved: the responsibilities of the jaksa during a pluralistic court case, his relation to the Public Prosecution Service, and his education.

Responsibilities during a Court Case

Criticism concerning the diverse job description of the jaksa within the pluralistic courtroom certainly were part of the discussion about the colonial law system, with the dependent position of the jaksa within the colonial civil service coming in for particular criticism. The combination of prosecutor and translator was problematic. This went against the Native Regulations, which stated that someone who was not allowed to be a witness in a court case was not allowed to provide translations during the trial. This excluded the jaksa from being a translator.[36] Yet, for the rest of the colonial era, the position of

[35] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. September 15, 1860, no.19. *"Intusschen is het hard voor dien Inlandsche dienstelijken ambtenaar die steeds zijne moeijelijke betrekking op de meest naauwgezette wijze heeft waargenomen, om zich te zien voorbijstreven door jongere en minder bekwame hoofden."*

[36] Gaijmans, *De Landraden op Java,* 65.

the jaksa would not change radically. In practice, the jaksa continued to fulfil the position of translator until well into the twentieth century.

A suspect or witness would first be interrogated by the jaksa during the investigation and again during the court session. This caused the interrogation in court to become more of a "class room exercise" than an exercise in "finding the truth," as Heicop ten Ham stated in his handbook on Dutch colonial criminal law in 1888. [37] A text in a colonial picture book of 1876, next to a drawing of the landraad of Pati (see Figure 4) even depicted the jaksa as the real actor (*akteur)*of the landraad:

> Does one see, standing to the left side of the president, the serious and neat native? Essentially, he is the big actor in this play; he is the translator of the Public Prosecution Service; he is the "Jaksa." He is the public prosecutor; he brings in the witnesses; he presents the evidence that proves the guilt of the accused. But he does much more. It often happens that the president does not entirely master the language of the witnesses and the suspect. Then, the Jaksa is also the translator. Everyone will understand that this does not provide for a great warrant of justice nor impartiality of the translation.[38]

The description mentions how court sessions were even rehearsed beforehand.[39] In 1869, the private lawyer Charles Jean François Mirandolle

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[37] Heicop ten Ham, *Berechting van misdrijven,* 157. "*overhooren van een les."*

[38] Tekst next to drawing of the Landraad of Pati, by Jeronimus. In: Deeleman, *De Indische Archipel,* book has no page numbers. *"Ziet gij, aan de linkerzijde van den president dien ernstigen en deftigen inlander staan? Dat is eigenlijk de groote akteur van het drama; dat is de tolk van het openbaar ministerie; dat is de "djaksa." Hij is de publieke aanklager; hij brengt de getuigen voor; hij voert de bewijzen aan voor de schuld van den beklaagde. Maar hij doet veel meer. Dikwijls gebeurt het, dat de voorzitter de taal der getuigen en van den beklaagde niet geheel magtig is. Dan is de djaksa tevens de tolk. Dat dit echter voor de juistheid en onpartijdigheid der vertolking geen groote waarborg kan geven, begrijpt iedereen."*

[39] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Policie-rol," 14-24.; Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163-174. "*Vele Djaksa's hebben dan ook de gewoonte bij eene eenigszins gewichtige zaak des daags te voren eene generale repetitie met al de getuigen te houden, om verzekerd te zijn dat allen hunne rol*

recorded in a colonial journal how "to be certain that all of them [the witnesses] would remember their lines and that the indictment of the court session would be similar to the preliminary instructions. Such an official [the jaksa] could not be completely impartial." According to Mirandolle, this was not done out of malice; rather "in this he [the jaksa] sees the proof that he has investigated the cases meticulously and precisely, and the opposite could possibly give reasons to doubt his qualities."[40]

Despite the criticism of the multiple responsibilities of the jaksas in the courtroom, this would not change until the end of the colonial era. Yet, the influence of the jaksa did diminish at the end of the nineteenth century due to Dutch doubts about whether the jaksas were—or should be—part of the colonial Public Prosecution Service.

Fig.16 Jaksa of Bandung with his wife and two [possibly enslaved] servants, 1870-80.

[Collectie Stichting Nationaal Museum van Wereldculturen. Coll.nr. TM-60002263].

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goed hebben ingestudeerd en het proces-verbaal der terechtzitting zooveel mogelijk conform zal zijn aan dan van hunne voorloopige instructie."

[40] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163-174. *"...om verzekerd te zijn dat allen hunne rol goed hebben ingestudeerd en het proces-verbaal der terechtzitting zooveel mogelijk conform zal zijn aan dan van hunne voorloopige instructie. Geheel onpartijdig, kan zulk een man, zonder dat nog aan eenig boos opzet te denken valt, niet zijn." (...) "..hij ziet daarin het bewijs hoe zorgvuldig en nauwgezet de zaken door hem worden onderzocht, en het tegenovergestelde zoude al licht aan zijne bekwaamheid kunnen doen twijfelen."*

Public Prosecution Service

During the nineteenth century, the Public Prosecution Service in the Netherlands was subject to debate. Even though the idea of the *trias politica*—the separation of legislative, judicial, and executive powers—had become widely accepted in the Netherlands, as we will discuss in part 3, there were still attempts to curtail the influence of the judiciary. Therefore, during the French period in 1811, the French system was introduced in the Netherlands. The president of the Court of Cassation in Paris was simultaneously the minister of justice and in this capacity presided over the Public Prosecution Service, which represented the government in criminal cases.

In 1814, this arrangement remained much the same, except that the president of the Supreme Court became the Minister of Justice. The Public Prosecution Service, however, remained the representative of the government in criminal cases, although it was not finally determined whether the it should be part of the executive or the judicial branch. In Belgium, it eventually developed more as part of the judicial power, whereas in the Netherlands it would become part of the executive power, under the ministry of justice. Thus, the year 1811 was a defining moment when the position of the Dutch public prosecutors changed from being subject to judicial authority, to becoming part of the administrative government.[41] In practice, the public prosecutors were led by the attorney general of the high council and the minister could not intervene in their activities directly, but only via the attorney general.[42]

In the Netherlands Indies, There was no department of justice until 1870,[43] and the attorney general was the head of the European public prosecutors, though not the jaksas, who received their orders directly from the resident, in the case of the chief jaksa, or the regent, in the case of the other jaksas. This meant that the resident was not only the landraad judge, but also the head of the police and supervisor of the prosecutor. Also, after

[41] Bosch, "Het Openbaar Ministerie in de periode van 1811–1838," Ch.1, paragraph 5.4 and 8.
[42] Pieterman, *Plaats van de rechter*, 114 and 145. After 1860, the main subject of discussions regarding the Public Prosectution Service was the principle of opportunity (*opportuniteitsbeginsel*). See: Pieterman, *Plaats van de rechter*, 179-206.
[43] Briët, *Het Hooggerechtshof van Nederland-Indië*, 319. Due to the absence of a department of justice until 1870, the Supreme Court acted as a department of justice *"avant la lettre"*.

the introduction of the judicial landraad presidents—to be discussed in part 3—the resident and regent remained the direct supervisor of the jaksas.

In 1842, Scholten van Oud-Haarlem included a section in the draft legislations of the Court Regulations and Native Regulations that stated that the jaksas had to become part of the Public Prosecution Service. He aimed at equalizing the position of the jaksas with the prosecutors in the Netherlands, by urging (to start with) more communication about the jaksas between the resident and the attorney general. However, J. C. Baud pressed for the maintenance of the status quo, in which criminal cases were processed within the residency as much as possible.[44] The section was also criticized by Van der Vinne, who feared for the prestige and power of the resident and expected disorder, unrest, and intrigues. He pointed out that the "smart, talented and sly" jaksas should be monitored very carefully. Scholten van Oud-Haarlem responded that he was aware of the "character" of the jaksa, because as Supreme Court member he had reviewed over three thousand court cases. The criminal case of Chief Jaksa Niti Sastro in particular, as described before, had made him realize that the position of the jaksa should be determined very carefully. He argued exactly this to be his reason for making them part of the Public Prosecution Service.[45]

Whichers did not share Scholten van Oud-Haarlem's view on the matter, though, and the jaksas remained subject to the residents and regents.[46] However, Whichers did emphasize the importance of good jaksas and he provided them with a higher salary to make them less prone to corruption: "Many jaksas are too meagrely paid, and the consequence of this is not only that it is often hard to find suitable men willing to take on this important position, but also that they, so underpaid, are often not very diligent and are also vulnerable to falling for the seduction of bribery."[47]

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[44] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.71. Remarks by Minister of Colonial Affairs J.C. Baud on the draft (of the Native Regulations) by the committee Scholten-Oud Haarlem. May 28, 1841.; NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.71. Response by Scholten Oud-Haarlem to the remarks they received (in particular by Baud) on the draft (of the Native Regulations).

[45] Immink, *De Regterlijke Organisatie van Nederlandsch-Indie,* 131-136.

[46] Immink, *De Regterlijke Organisatie van Nederlandsch-Indie,* 131-136.

[47] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. August 12, 1850, no.17. Report written by Whichers. "Rapport van jonkheer Mr. H.L. Whichers omtrent eenige door den Raad van State geopperde bedenkingen enz. opzigtelijk de nieuwe wetgeving van Ned. Indie," January 1, 1850. *"Vele Djaksa's zijn veel te karig bezoldigd, en dit brengt te weeg, niet slechts dat het dikwijls moeielijk is geschikte personen te vinden die deze gewigtige betrekking op zich willen*

Remarkably, at the end of the nineteenth century, most liberal jurists still preferred the situation in which the jaksa remained under the resident rather than the attorney general. Although as defenders of the *trias politica* they fought fiercely for the introduction of independent landraad judges (to be discussed in part 3), they were not so principled regarding the position of the jaksa. Generally, they agreed on a close supervision of the jaksas by the resident.

In 1885, the jurist Abendanon proved an exception when he suggested during a meeting of the Indies' Jurists Association to subordinate the jaksas to the attorney general and to be supervised by the European public prosecutor of the Council of Justice; the only person to vote for this plan was Abendanon himself. There were somewhat more votes (6 out of 17) for a proposal to subordinate the jaksa to the resident only and not to the regent, but eventually there the only majority vote was for improved career prospects and a corresponding raise in salary within the jaksa ranks. Most jurists expected much from better-educated jaksas.[48]

During the meeting, a few jurists even pleaded for the introduction of "European jaksas," European prosecutors who would replace the Javanese jaksas in the pluralistic courts. This proposal was repudiated though, as an idea from other-worldly colonial jurists. Indirectly affirming the importance of the jaksas, administrative official Van der Kemp commented cynically: "Ah, well, of course! If one would have such attributes [European prosecutors], then, administering justice over the Natives, by scholars unfamiliar with the people, will not be that hard."[49] Altogether, the position of the jaksas would not change and not become part of the Public Prosecution Service. Eventually, they would even lose the responsibility of drafting indictments because they were thought incapable of doing so due to their lack of education.

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nemen, maar ook dat zij, die zoo uitermate slecht betaald worden, niet zelden weinig ijver aan den dag leggen, en aan de verzoeking blootstaan om voor de verleiding der omkooping te bezwijken."

[48] Driessen, *Schets der werkzaamheden,* 242-253.

[49] Van der Kemp, "De rechterlijke macht in haar streven naar onafhankelijkheid," 445-481. *"O, zeker! Als men over dergelijke hulpmiddelen beschikt, wordt het rechtspreken over den inlander door met het volk onbekende geleerden nog zoo moeielijk niet."*

Education

From 1901 until 1903, the newspaper *Bendera Wolanda* published the feuilleton *Hikajat Raden Adjeng Badaroesmi* by Johannus Everardus Theupeiory, a Moluccan from a non-noble family. In the novel, the main character, Chief Jaksa Raden Mas Ario Sosro Deksono, was a real opportunist who used his noble background to gain money and power. His family had lost its peerage several years before, but the man had done everything to regain it: "Wealth, fame, honour. During his entire life, these were the only things that the chief public prosecutor could think of. With iron will, step by step, the man rose up. He held almost all prestigious positions that were possible for people of low rank to reach."[50] When he finally reached the high position of chief jaksa, he left his wife for a woman from a better family: "My position forces me to leave you." However, the novel ends with the beautiful daughter of the chief jaksa falling in love with a *dokter djawa* (Javanese doctor) from a non-noble family, instead of her cousin, Adjunct Jaksa Mas Amin. Formally, *dokters djawas* held a similar rank as *mantris*, despite their education. Author Theupeiory came from the Moluccas and was one of the non-noble men who worked hard for a career as a *dokter djawa* and even went to university in the Netherlands, while seeing high priyayi reaching the highest positions far more easily. The feuilleton is a critique of this and the story is therefore an accusation of priyayi who built their careers on their birthright.[51]

The novel depicts the tensions occurring around 1900 between a new educated (non-noble) elite and the traditional priyayi. For most of the nineteenth century, priyayi were trained by the Javanese apprenticeship (*magang*) system. Young priyayi were appointed as unpaid apprentices—*magangs*—and worked for experienced Javanese priyayi, learning everything they were supposed to know for a future career within the *pangreh praja*.[52] However, over the course of the nineteenth century the colonial legal system became increasingly based on European procedures. In the Colonial Report of 1865, Attorney General T. H. der Kinderen had

[50] Theupeiory, *Hikajat Raden Adjeng Badaroesmi*, 84. *"Rijkdom, roem, eer, in heel zijn leven spookten alleen die zaken door de gedachten van de hoofdofficier van justitie. Met ijzeren wilskracht kwam de man stapje voor stapje hogerop en bereed zowat alle paradepaarden die mensen van lage rang konden bemachtigen."*

[51] Theupeiory, *Hikajat Raden Adjeng Badaroesmi*, 81.

[52] Sutherland, *The Making of a Bureaucratic Elite*, 16-17, 33 and 67.

recommended establishing a school for jaksas: "In Batavia, there is a highly-praised initiative to raise Native doctors (so-called *dokters djawa*). When observing the current malfunctioning preliminary investigations, it is hard to suppress the wish, that there should be established a good school to raise native public prosecutors as well."[53]

Until the end of the nineteenth century, however, no effort was made to provide official training for the jaksas. Instead of educating the jaksas in the new standards of the legal system, it was decided not to give them any formal training. The only government-sponsored education to train priyayi for their career in the colonial civil service, with its growing modern bureaucracy, were the priyayi school (*hoofdscholen)* established in 1878 in Magelang, Bandung and Probolinggo.[54] A special jaksa training, however, was not agreed upon. One explanation for this was that Javanese people were considered incapable of completely understanding European judicial procedures, but the reluctance to training jaksas was also born out of distrust. After all, there *was* a school for Javanese doctors, so apparently the Dutch already trained Javanese for an academic profession. In fact, a jaksa school was mainly not agreed upon out of fear of creating a class of Javanese who were better educated than the traditional priyayi. The former Inspector for Native Education F. S. A. de Clercq was frightened of producing jaksas with too much confidence. He argued that the jaksas were often inferior to the regents by birth and rank, but would then surpass them in specialized knowledge. Moreover, it would be hard to immediately appoint these jaksas, and they then might be forced or tempted to work as private lawyers (*procureurs*), which the Dutch wanted to prevent at all costs, as we will see in part 3.[55] Colonial jurist H. L. E. de Waal wrote in 1880 that he also did not believe the Javanese capable of working independently, but he argued that

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[53] KV 1865, Attachment G "Verslag omtrent de werking der nieuwe wetgeving in Nederlandsch Indie gedurende het jaar 1864", 56-60. "*Er bestaat op Batavia een hooggeroemde gelegenheid tot het vormen van inlandsche geneeskundigen (zo zogenoemde doctors-djawa); wanneer men de gebrekkige voorloopige onderzoekingen ziet, valt het moeijelijk den wensch te onderdrukken, dat er ook in Nederlands Indie een goede school mogt bestaan tot het vormen van inlandsche officieren van justitie."*

[54] Sutherland, *Pangreh Pradja*, 87. Until that moment, the only government-sponsored educational institutions for the local population (elite) were teacher schools and dokter djawa (medical personnel) schools.

[55] Driessen, *Schets der werkzaamheden*, 256. *"…een klasse van meer ontwikkelde Inlanders [zou ontstaan] die door geboorte en ambt inferieur aan de hoofden, dezen in speciale kennis zou overtreffen."*

the jaksas already showed that they were capable of exercising "outstanding services" when being incorporated in "a formal hierarchy with strict control and responsibility."[56]

Under the influence of ethical thinking, however, this reluctance towards educating Javanese would change. In 1893, two courses in law were introduced at the priyayi school (*hoofdenschool*) of Magelang, "introduction to law" and "constitutional and administrative law of the Netherlands Indies." The teacher of these two courses, P. L. A. Collard, translated the colonial legal regulations into Malay.[57] In 1900, the name of all three priyayi schools changed into Opleidingsschool voor Inlandse Ambtenaren (*OSVIA*, or school for native officials) and in 1911 the *magang* system was abolished.[58] The arrival of the OSVIA did cause some of the problems De Clercq had warned about, because now there were relatively unexperienced trained graduates competing with officials with many years of practical experience but without any formal training. When in 1910 Mohammed Achmad was appointed as chief jaksa right after passing his upper level exams (*groot ambtenaarsexamen*), criticism was widespread. The *Java-Bode* disapproved of the decision and wrote that normally only commendable jaksas could be promoted to the "important position" of chief jaksa after twenty years of service.[59]

In 1916 graduates from the OSVIAs united themselves in the Oud Osvianen Bond (club for former students of the OSVIA; OOB). Both the president Mohamed Tajib as the vice-president Soetardjo Kartohadikoesoemo, were jaksas. Goal of the OOB was to increase the quality of the Pangreh Praja. It was a protective organization to represent the educated priyayi. According to many civil servants who had only passed their Lower Level Exams (*klein ambtenaarsexamen*) the OOB was an old boys network.[60]

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[56] De Waal, *De invloed der kolonisatie op het inlandsch recht*, 5-6. "..*eene ambtelijke hierarchie met strenge wederzijdsche controle en verantwoordelijkheid*."
[57] Driessen, *Schets der werkzaamheden*, 254-262.
[58] Sutherland, *The Making of a bureaucratic elite*, 16-17, 33 and 67.
[59] NL-HaNA, 2.10.36.04 MvK 1901-1953, MR 1910, no.825.; Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 274-275. Raden Mohammed Achmad was of high birth, from an elite priyayi family, and the nephew of Achmad Djajadiningrat and Husein Djajadiningrat, see Epilogue.
[60] Sutherland, *The Making of a bureaucratic elite*, 54 and 74.

At that time, however, most newly educated priyayi would not prefer a jaksa career anymore. When in 1909 finally a special law school; the *Opleidingsschool voor Inlandsche Rechtskundigen* (*OVIR*, or school for native jurists) in Batavia was opened, this came too late for the jaksa professions. By that time, they were already deprived of their key responsibility of drafting indictments. They had become less important officials than they had been during the nineteenth century. In chapter 9, we will discuss this process more thoroughly and argue how not only the colonial government, but also Dutch jurists were essential to this process of depriving the jaksas of their main responsibilities in the pluralistic courts.

Instead of training new jaksas, the OVIR merely prepared students for careers as secretaries, and, from the 1920s, Indonesian landraad judges.[61] The OVIR was more expensive than the OSVIA and the education was in Dutch and Western-oriented. According to legal historian A.W.H. Massier, it was "without doubt, the most exclusive elite school for natives at the beginning of the twentieth century".[62] Priyayi and some talented non-noble youngsters were sent to the law school. Since the strict admission requirements required ability in the Dutch language, only a privileged group of Javanese could enter, because Dutch pre-education was necessary. Part of the education was dedicated to obtaining 'proper Dutch manners'.[63] Subsequently, a number of OVIR graduates went to the Netherlands to study law.[64] After graduating, they did not chose to be jaksas, but they preferred the position of landraad judge. Or they chose, quite often against the will of their traditional priyayi parents, for careers as a private lawyer. These were attractive positions never before open to non-Europeans. In 1924, Besar Martokoesoemo was the first Indonesian lawyer to establish a law firm, in Tegal.

[61] Massier, *Van recht naar hukum*, 67-72. The first Indonesian landraad president was appointed in 1925. See Epilogue.
[62] Massier, *Van recht naar hukum*, 73. *"zonder twijfel de meest exclusieve, elitaire opleiding voor inlanders van het begin van de twintigste eeuw."*
[63] Massier, *Van recht naar hukum*, 74.
[64] Massier, *Van recht naar hukum*, 105.

Fig.17 Ex-students of the Law School together in Leiden, 1922. [KITLV no. 4534].

From left to right; seated on the floor: Sartono, Singgih, Boediarto; second row: Zainal Abidin, Isksk Tjokrohadisoerjo, Gondokoesoemo, Had, Achmad, Moekiman; third row: Iwa Koesoema Soematri, Koesnoen, Soedibjo Dwidjosewojo, Notosoebagio, Soewono, Oerip Kartodirdjo, Soebroto, Alimoedin; fourth row: Soejoedi, Soetikno, Soesanto Tirtoprodjo, Gatot, Koesoemah Atmadja, Soedirman, Sastromoeljono.

Naturally, all traditional priyayi of the *pangreh praja* faced the consequences of the rise of this new modern elite. However, for the jaksas these consequences were directly visible in court, where they were no longer the most influential and most educated local actors. The jurist H. A. Idema concluded in 1938, "For the increasingly diminishing part the jaksa takes in the criminal investigations, a legal training is unnecessary. Law is part of the general training of native administrative officials. A specialized jaksa corps has never been accomplished."[65]

[65] Idema, *Landraad-strafprocesrecht*, 78. *"Door de acte van verwijzing heeft de jurist-Voorzitter afdoende controle op de juridische eischen aan het vooronderzoek te stellen, voor het steeds slinkende deel van den DJaksa aan de criminalistische opsporing is rechtsstudie niet noodig, het recht vindt als onderdeel zijn plaats in de algemeene opleiding der algemeene inlandsche bestuursambtenaren, tot specialisatie van een apart Djaksakorps is het nooit gekomen."*

Educated landraad judges and jurists were the future Indonesian judges who would call the jaksas, justifiably, uneducated. After decolonization, these jurists were seen as modern and educated. The jaksas on the other hand, were seen as a part of the priyayi class who had collaborated with the Dutch during colonial times.[66] Although Indonesian judges also had been part of the colonial state system, and often also of the priyayi class, they were above all reformers by being the first take up positions previously reserved for the colonizers. Whereas the jaksas went to the OSVIA, the judges were educated in a Western-oriented style that was not necessarily associated with their priyayi background. Moreover, they were better prepared for the modern circumstances of the legal system after decolonization.

6.3 Conclusion: Faded Glory

The jaksas were the ultimate intermediaries of the dual-rule system in nineteenth-century colonial Java. Often, they were not part of the dominant local priyayi family, which enhanced their in-between role. Most Dutch officials agreed on the importance of a skilful and loyal jaksa for the maintenance of colonial rule, but for such crucial men, they were treated quite indifferently. They were not trained for their profession even as the legal system grew increasingly bureaucratized, and there was little conscious communication about whether and how a jaksa had to be rewarded for his role as important intermediary. The jaksas had plenty of practical knowledge relevant to the colonial judicial practices, but there was little interest in this knowledge from the side of the Dutch. Discussions did take place about how to train the jaksas and institutionalize their training, but eventually many Dutch held on to a deep conviction that there was a definite limit to what Javanese people were capable of doing and learning, as well as to their trustworthiness. The jaksas were not only distrusted but also underestimated in their potential talents and capabilities.

All this not only damaged the jaksas' careers, and their profession in general, but it also inhibited change in the colonial legal system. By blaming malfunctioning legal practice and procedures to the incompetence of the Jaksas, the organisation of colonial justice remained unchallenged. Eventually this would prove detrimental to the quality of the legal system. A

[66] Lev, *Legal evolution and political authority in Indonesia*, 75-76.

professional training for local colonial officials would only take off in the early twentieth century, but the jaksas would never completely lose their reputation of being sly and poorly trained. Most landraad judges, though, knew very well that they would hardly be able to function without the jaksas.

Just like the penghulus, the jaksas were once incorporated in the colonial legal system by the Dutch to legitimize colonial pluralistic law, but due to measures born of distrust and ignorance, their position was in the courtroom was eventually marginalized. Yet, as shown above, the penghulus and the jaksas themselves continuously incorporated the pluralistic courts, to a certain extent, as useful spaces within their own sphere of influence to—as the penghulus—obtain positions outside of the courtroom or—as the jaksas—to use their rank as a stepping stone in climbing the priyayi career ladder.

Fig.18 Landraad session in Meester Cornelis (Tangerang), circa 1910. [KITLV no.114085].

PART III — ROOM TO MANOEUVRE

The pluralistic courts were not only part of the effort to secure the legitimacy of the colonial state in its earliest stages, they were also an active part of the mechanism to maintain colonial power. Although the colonial state initially legitimized law, as discussed above, through including jaksas and penghulus in court, soon the exercise of colonial law was mainly found in the collaboration of the Dutch resident and Javanese priyayi, functioning as collegiate judges—with an equal vote—in the pluralistic courts.

The coming chapters scrutinize the dynamics between the Javanese priyayi and the colonial Dutch judges. What did the Javanese and Dutch judges of the pluralistic courts discuss behind closed doors when deciding their verdicts, and what do these deliberations tell us about the workings of dual rule in colonial Java? First, I discuss the period until 1869, when the residents were presiding the landraden and the cultivation system was central to the colonial state's aims. Thereafter, I turn to the period after 1869 when jurists replaced the residents as landraad presidents, to find out what changed in the dynamics between Javanese and Dutch judges, and between priyayi and residents, with the arrival of the judicial presidents in the pluralistic courts.

Zooming in on the priyayi-Dutch dynamics in the nineteenth-century colonial courtrooms and on the moment of change to jurist-led landraden in 1869, provides a new window to the debate on the supposed "strength" or "weakness" of the colonial state in Java. Historian Marieke Bloembergen researched the police in the Dutch East Indies during the early twentieth century and she describes how a lack of knowledge on the side of the

colonial administration increased the vulnerability of the colonial state. Bloembergen imputes this lack of knowledge to fragmented power structures, language difficulties and the relations between the Javanese and European officials.[1] The historian Onghokham was also concerned with the fragile character of dual rule, but he stated that during the nineteenth century the colonial state was rather strong by applying its dual rule tactics successfully, at the expense of the population at large. For example, it was certainly not the case that the people simply accepted the oppression of the cultivation system, but the oppression both by the priyayi and by the Dutch was so effective that the Javanese were simply caught in a stranglehold.[2] Indonesianist Henk Scholte Nordholt has even designated the situation in colonial Java as a "state of violence", although he explains this by the weakness of the colonial state. Power and violence were linked together, he argues, because the colonial government was not capable of maintaining order in a different manner than through allowing violence by criminal gangs "in cooperation with and protected by local officials".[3]

The claim of a "state of violence" was countered by historian Cees Fasseur, who did not find proof in the colonial archives of regular violence under the cultivation system, although he suggested that the Dutch might not have noticed disturbances due to their lack of knowledge of what was going on in the Javanese "mysterious and secretative world of complainants and victims, of indigenous powerbrokers and their allies, of competing families and their helpers, of profiteers and their dupes." Fasseur also argued that Schulte Nordholt underestimated the positive influence of the introduction of an impartial judiciary, at least after 1914 when the police magistracy was abolished: "that was fostered by a corps of highly trained Dutch officials even though they functioned within a colonial setting and framework"[4] Historian Jan Breman disagreed with Fasseur's reasoning, by stating that there is proof of violent acts in the archives. His research on the coffee plantations of the governmental Priangan system shows that, for example,

[1] Bloembergen, *De Geschiedenis Van De Politie*, 361.
[2] Onghokham, *The residency of Madiun*, 214.; Ongehokham, "Social Change in Madiun", 638. Athough Onghokham refers in particular to peasants' revolts by a small group of landowning farmers, because they were obliged to pay taxes.
[3] Schulte Nordholt, *A Geneology of Violence*, 11.; Schulte Nordholt, "De jago in de schaduw," 664.
[4] Fasseur, "Violence and Dutch rule in mid-19th century Java," 10-11.

village chiefs were whipped when not meeting the requirements, or not following orders, given by priyayi or Dutch officials.[5]

I aim at contributing to this ongoing debate on the character of the colonial state in two ways. First of all, rather than focussing on the strong, weak or violent character of the colonial state, I am interested in the courtrooms as a more contested and conflicted space within the state, mirroring the broader dual rule dynamics in Java. I seek answers in the character and daily practice of dual rule and the central role of the criminal investigations and the landraad sessions within this system. The landraden were rooms where manoeuvring was possible and where the regional precarious balance between the priyayi and Dutch branches of power was strengthened, undermined, maintained or redefined—depending on the context of the case and the interests of the judges involved. Also, the consequences of the limited supervision over courts, and the absence of private attorneys to defend local suspects, leads to questions about the manoeuvring space for the judges and officials of the pluralistic courts. The absence of local legal professionals in the nineteenth century is important, and different from for example British India, where an educated local elite came up during the 1840s and 1850s, taking up positions within the colonial legal system.[6]

The second debate the coming chapters touch upon is the impact of liberalism, in particular liberal jurists, on the space to manoeuvre in the colonial courts. Fasseur rather uncritically described colonial jurists as the ones who introduced enlightened ideas about law to the colony. This argument is repeated by other historians, but never critically assessed.[7] We see indeed that from 1860 until the end of the nineteenth century, liberal jurists got things done, foremost of all the introduction of trained jurists as landraad presidents in 1869. Liberal Dutch lawyers and judges in Java depicted themselves as "bearers of civilization", but the question is, what exactly did change after 1869? How exactly did the liberal colonial jurists

[5] Breman, *Koloniaal profijt van onvrije arbeid*, 336-337.

[6] Although the history of legal professionals is also for the British Empire not extensively researched: Sharafi, "A New History of Colonial Lawyering," 1061.

[7] This in contrast to the extensive debate regarding colonial liberalism in the British Empire, as mentioned before in Chapter 1. See for example: Lake, "Equality and Exclusion."; Mehta, "Liberal Strategies of Exclusion".; Metcalf, Ideologies of the Raj, 28-65.; Pitts, A turn to empire.

think they were bringing the rule of law to Java? Did they actually do this in practice? Which form of colonial liberalism did these jurists represent?[8]

Van den Doel researched the Dutch branch of the colonial administration in Java and he describes how liberal thinking was often combined with "paternalistic acting".[9] Bloembergen has argued, how, over the course of the nineteenth and early twentieth centuries, most officials and jurists supported the segregated legal system either from a conservative, a liberal, or an ethical perspective. Or—and this was often the case—from a pragmatic policy perspective that never chose between the ideal of unification or dualism.[10] A debate about the character and implications of colonial liberalism in the Netherlands Indies is lacking though, in contrast to the rich literature on this subject for the context of the British Empire as already addressed in Chapter 1. In the coming chapters, I will use the actor-focussed approach to demonstrate that both Dutch and Javanese administrative officials found space to manoeuvre within the colonial criminal law system, at the expense of the Javanese suspects, and that colonial jurists safeguarded their own sphere of influence and further confirmed colonial rule by breaking with liberal legal traditions they had advocated at first.

[8] For an overview of the development of liberalism in the Netherlands: Stuurman, *Wacht op onze daden.* Liberalism in itself is already a problematic concept. Conflicts of generations changed political liberalism over time so that for example social liberals at the end of the nineteenth century couldn't identify themselves with the radical liberals of a generation before. Besides, even at one moment in time liberalism was not one coherent ideology. The liberal economic ideas on free trade were interesting for entrepreneurs, but reforms such as an extension of suffrage were much less attractive to them. Therefore, there was a gap between political liberals—who were mainly intellectuals and officials—and people who identified themselves with economic liberalism.

[9] Van den Doel, *De Stille Macht,* 103.

[10] Bloembergen, *Koloniale vertoning,* 58.

7 — Behind Closed Doors

Dynamics between the Dutch president and the Javanese priyayi, who together decided over the verdict in the landraden and circuit courts, are central to this chapter. I shed light on the decision-making process, held behind closed doors, in criminal cases and I investigate how the resident and priyayi cooperated in maintaining "peace and order" by assessing the issues of police magistracy, vagrancy, and the cultivation system. In this chapter, I discuss the situation up to 1869, when the resident was the president of the landraad. I argue that the ultimate purpose of the legal system was primarily the enforcement of colonial control, before and during the cultivation system. In this the Supreme Court and private attorneys had only limited influence, as I will show by investigating the practices of review, mercy and (the lack of) private attorneys.

7.1 Javanese and Dutch Judges before 1869

After their return to Java in 1819, the Dutch gave Javanese members of the landraden and circuit courts a greater role again than they had had under Raffles (see Chapter 2). They regained their right to vote and the verdict of the pluralistic courts was allowed to go against the advice of the jaksas and penghulus. This had not been the case under Raffles, when, if the opinions of the jaksa and penghulu differed from that of the resident, the case had to be sent to the governor general for a final decision. Altogether, during the British period, the decision-making process in the landraad had been much more with the resident, whereas the emphasis after 1819 was on cooperation between the Javanese priyayi as judges, including the regent, and the Dutch resident in his role as landraad president. This fit into the dual-rule policy of the Dutch. In the circuit courts, the Javanese judges were also from the priyayi class, but in this court the president was a Dutch jurist without any administrative tasks in the region. Initially, the number of Javanese members in this court was not fixed, but it was decided in 1848 that the number of appointed members should be at least four and that the members of the circuit courts would ideally be different people than those in the landraden.

When it comes to the landraden, we have to realise that, often, the Javanese members and the resident had shared interests: the maintenance of

quiet and order in the region. Since 1820, the regents were responsible for the supervision of the police, and the resident was the formal head of the police.[1] Until 1897, a colonial police force did not exist, because—according to the dual system—daily police functions were in the hands of the priyayi. While the resident was in charge of the police and the attorney general was formally responsible for the police force, daily maintenance of peace and order was in the hands of Javanese officials[2] who maintained their own networks of spies by which they solved cases. There existed an entire world of which the Dutch knew hardly anything, since in practice they left police affairs almost completely to the priyayi.

The priyayi networks were also a world in which priyayi and village chiefs applied "unofficial" ways to maintain order. This was a world in which, for example, the *jago* exercised his influence. The jago was, during the nineteenth century, a kind of criminal, who was protected by the village chief in order to make him leave the village alone and protect it from other robbers. Consequently, he could rob other villages uninterruptedly while being protected by a village chief of another village.[3]

As a consequence of the responsibilities on police affairs, if influential priyayi themselves had no interest in bringing a case to the landraad, this most likely did not happen. However, if the resident and priyayi held the same interests, as was often the case, and collaborated successfully, they could quickly secure a culprit's conviction. After all, they were also collegiate judges at the landraad. In 1828, for example, in Baviaan (residency Surabaya) one Kyai Pana distributed magic letters (*toverbriefjes*, *jimat*). He sold the letters and buried them in front of houses at night, which was illegal according to colonial regulations. Assistant Resident J. C. Duncki had given orders to start a preliminary investigation executed by priyayi who

[1] S 1820, no.22. "Reglement op de verpligtingen, titels en rangen der Regenten op het eiland Java," art.6. *"De Regent zal in zijn regentschap voor eene goede politie zorgen, naarvolgens de bevelen, welke de Resident hem dienaangaande geeft; de mindere hoofden moeten, in zaken van de politie, zijne voorschriften volgen."*

[2] Bloembergen, *Geschiedenis van de politie in Nederlands-Indië,* 18, 38. Bloembergen enriched the historiography on colonial state rule by researching the information networks of the modern police force in the Indies and the effect of the police force on society. She also pays attention to the origins of the modern colonial police force which can be traced back to 1897 when the organization of the police was reformed. Much is still unknown, however, about the period before the establishment of a colonial police force.

[3] Onghokham, "The Jago in Colonial Java," 327-343.; Schulte Nordholt, "De Jago in de schaduw," 664-675.

had arrested the *kyai*. Thereafter, Duncki requested the resident's approval to refer the case to the landraad. After three weeks, the resident replied that the *kyai* could be prosecuted by the landraad. Then, the assistant resident could continue with the investigation and, together with the regent—as together they were respectively the president and member of the landraad —condemn the *kyai*.[4]

In Batavia and the Ommelanden, dual government was not as firmly established as in the rest of Java. There was no regent and instead each district was led by a *demang*. There did exist a separate colonial police force, whose members dressed in a short blue skirt with a green collar and a white linen undervest, and a sabre on a black belt with a copper plate, with "police" inscribed on it.[5] Letters in Malay or Dutch were sent between the assistant resident and the jaksa and vice versa, and between the *demang* and the jaksa. In 1856, for example, two female witnesses were sent to the landraad of Tangerang by a *demang* at the request of the jaksa.[6]

When in 1824 the landraden in Batavia were installed, there were doubts among the Dutch about the local headmen in Batavia who would become the majority of voting members in this court. Merkus wrote in his proposal that he did not expect any problems in Semarang and Surabaya, but that he was concerned about Batavia: "For a long time and especially during English rule, it has been a truly disadvantage to the proper order and police that the authority and reputation of the Native headmen have been decreased." However, he viewed the landraden as a way to restore their prestige…, "even though the lesser prestige of the Batavian chiefs or commandants might offer any difficulty in their appointment as assessors, on

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[4] ANRI GS Surabaya, no.1486. Request to prosecute. Assistant resident to resident of Surabaya, March 10, 1828; Approval to prosecute. Resident to assistant resident, April 2, 1828.

[5] S1819, no.37, art.17. *"...groene kraag en een witte linnen borstrok, een sabel aan een zwarte band met een koperen plaat.";* Bloembergen, *De geschiedenis van de politie in Nederlands-Indië,* 40-44. In Semarang and Surabaya, there was also a small colonial police force. Furthermore, in the countryside there were local paramilitary forces in service of the colonial government, such as the *prajurits* and the *djajeng-sekar*.

[6] ANRI GS Tangerang, no.183.2. *"Kepada Jaksa die Tangerang. Tjiekande den 12 April 1856. Dengan inie soerat saya kassie bertaoe diesieni saya soeda trima Jaksa poenja soerat tertoelies tangal 8e inie boelan no.9 terseboet ada minta 2 orang prampoean satie bernama Amienah bienie darie Liendiet den Samissah bienie darie Naroen, kerana harie Senen hendak Landraad? Maka darie pada ietoe njang bersama sama dengan inie soerat saya ada kieriem 2 orang prampoeannya sebegiemana njang soeda ada terseboet di atas soepaya Jaksa trima nyang sadoemikian ietoe adanya. Demang district Tjiekande Oedieksejelier (?) W Bangzu (?)*

the other hand, the act of trust given to them by this appointment shall strengthen them to regain their lacking prestige and therefore over time restore a shortcoming which currently exists in the organisation of the interior administration of Batavia." [7] Thereafter, the landraden were introduced, including local members with a right to vote, although they were called "assessors" instead of "members," as in the rest of Java. The assessors were the commandants, or division heads, of the various districts in Batavia. They were often not Javanese, but of another ethnicity or of mixed descent.

In any case, in all landraden and circuit courts in Java the verdict was decided by ballot. Even though Dutch judges were often depicted by Dutch administrators and journalists as if they were single judges, in fact they were dependent on the votes of the local law court members. This required at least a partial adaptation to Javanese legal traditions. However, it is hard to find information about these deliberations and discussions, since they were held behind closed doors. Moreover, the residents tended to pretend as if they controlled the deliberations and were in full control, so they wrote little about these proceedings.

It is slightly easier to find out more about the deliberations of the circuit court judges and the Javanese members of these courts though, because the archives contain letters of complaint from residents on the deliberations in the circuit courts. For example, in 1847, former Assistant Resident G.L. Baud wrote a letter to his cousin, Governor General J.C. Baud. He recalled from his experience as a resident that the circuit court judges were not always capable of dealing with the Javanese members in court. "When I governed the Residency Semarang in 1838, a remarkable verdict was announced by the Circuit Court," he recalled. A group of murderers had been convicted to just a few months of chain labour, which was considered a minor punishment. The remarkably mild verdict was the

[7] ANRI AS, R. Januari 27, 1824, no.14. Explanation Merkus of art. 2 & 3 of his "Voorstel Landraden naar de steden. Conceptreglement voor de administratie der civiele en criminele justitie onder den inlander binnen de steden Batavia, Semarang en Sourabaya alsmede onder de Chinezen en vreemden behoorende tot de Indische bevolking in het algemeen," undated. *"Sedert lang en vooral onder het Engelsche bestuur, is ten werkelijke nadeele van de goede orde en policie, het gezag en het aanzien van de Inlandsche hoofden verminderd."*; "*Dan, zoo het minder aanzien der Batavische hoofden of kommandanten eenige zwarigheid mogt aanbieden in hunne benoeming tot assessoren, moet van eene andere kant het blijk van vertrouwen dat hen door zulk een benoeming wordt gegeven sterken om het hen ontbrekende aanzien terug te geven en daardoor een gebrek, hetwelk thans in de inrigtingen van het inwendig bestuur te Batavia bestaat, met den tijd te verhelpen."*

talk of the town. After questioning the Dutch judge, B. G. Rinia van Nauta, he confessed that during the considerations in the courtroom, the Javanese members had stated that, according to Javanese laws, someone was only guilty of murder if he committed the murder himself. However, Rinia van Nauta had insisted quite directly that, according to European laws, all five persons suspected of the murder were equally guilty. The Javanese members had responded with "*bagaimana toean Raad sembaring poenje soeka*" ("as you wish, Sir"). The Dutch judge had not understood the indirect disapproval expressed in this phrase and assumed the Javanese members would follow the European perspective, so the voting started. The formal procedure prescribed two voting rounds, one for deciding on the guilt of the accused, the second to determine the punishment.[8] During the first round, the Javanese members agreed on the guilt of all five suspects. In the second round of voting, however, they voted for minor punishments for all suspects rather than the usual capital punishment imposed for murder. This indirect protest by the Javanese members against European laws and procedure—and against the rough manner of the Dutch judge—shows their influence in colonial criminal cases. According to G. L. Baud, this was no exception: "Circuit Court Judges Berg, Bols, and others have exercised the position of [circuit court] judge in a way that is beneath all dignity; they have announced verdicts of which I would have been ashamed."[9]

Interestingly enough, another archive preserves a letter by Rinia van Nauta, the judge in question.[10] It turns out he had experienced problems more often with both the Javanese members and the penghulu. In the letter, he requests the legislative committee Scholten van Oud-Haarlem (see Chapter 3) to ban the penghulus and Javanese members from court sessions. In particular, he wrote of his conflict with the *ondercollecteur* (local tax-collector) of Demak, Raden Ingebeij Soema Dirdjo. During a case in which a

[8] S 1819, no.20. "Reglement op de administratie der politie en de krimineele en civiele regtsvordering onder den Inlander in Nederlandsch-Indië," art.118.

[9] NL-HaNA, 2.21.007.58 Collectie 058 J.C. Baud, no.638. Letter G.L. Baud to J.C. Baud, September 11, 1847. The salutation is *"Uwer excellenc geh. dienaar & neef*". The subject of the letter is in response to the new colonial law codes that decided that the circuit courts would remain to be chaired by judges, whereas the landraden would remain to be chaired by the residents. "..*de ommegaande regters mr. Berg, mr. Bols, en anderen, hebben het ambt van regter waargenomen op eene wijze, die beneden alle waardigheid is, zij hebben vonnissen geveld over welke ik mij zou geschaamd hebben."*

[10] Rinia van Nauta had been part of the second committee Scholten Oud Haarlem for a few months.

local man named Pak Toebin was accused of murder, the Javanese members had decided to acquit, against the will of Rinia van Nauta: "Strengthened by the advice of the penghulu, and due to his higher rank, he [Raden Ingebeij Soema Dirdjo] has influenced the other assessors with his bombastic stubbornness and imposed his opinion, regardless of anything I brought to the table." In his letter, the judge gave four more examples of court cases in which the Javanese members had decided otherwise than he had wished. The murder suspects Wono di Lago and Soemo Yoedo were acquitted, just as Prawiro Dewerio, who was suspected of forging bank notes. Although he would have preferred that the penghulu and Javanese members be prohibited from court sessions altogether, for now he proposed to replace Raden Ingebeij Soema Dirdjo. The request from the troubled circuit court judge was not granted. Both the penghulu and the Javanese members continued to advise during circuit court sessions, and the Javanese members' right to vote continued to be guaranteed.[11]

The criticism of the circuit court judges who were overruled by Javanese members, and were therefore blamed for being incapable of convincing the Javanese members, can still be found in sources from the later nineteenth century. The *Java-Bode* of 14 October 1872 reported that in Sukabumi "a haji" was acquitted after having been accused of murdering his father. The Javanese members of the circuit court decided on this verdict against the will of the president because the murder had been religious in character. The circuit court judge in question immediately felt the urge to reassure the governor general. He emphasized that the acquittal had been the result of a shared conviction among the court members that the murderer Moein had not been fully sane when he took his father's life. "Taking into consideration article 41 of the Court Regulations," he wrote, "I am not allowed to reveal the views expressed within the council chamber on this case, but I consider it harmless to assure here that, to my conviction, the

[11] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.76. "Ingekomen brief bij de Indische commissie van 1837 inzake een suggestie van een rechter te Samarang om zowel de panghoeloe's—hoofden van de moskee—als de assessoren bij rechtszittingen te weten." Semarang, May 28, 1838. *"Door het praeadvies van den Panghoeloe gesterkt en door zijnen meerderen rang, heeft hij met eigendunkelijke onverzettelijkheid op de andere assessoren geïnfluenceerd en dit zijn gevoelen, wat ik ook in het midden heb mogen brengen, door gedreven."* In this period, *ondercollecteurs* were not yet mentioned in the almanac, so I have not been able to find out whether Raden Ingebeij Soema Dirdjo was replaced indeed, as Rinia van Nauta proposed.

Native members of the law court, after an open examination of this case, have voted in line with their duty and views, without being led at all by any sickly ideas from the religion they practice."[12]

It is likely that discussions and disagreements took place regularly though, and in both the circuit courts and the landraden. In 1830, the draft regulation of the Merkus committee included a rule that if there was a tie vote, the lightest punishment mentioned had to be imposed. This rule had been copied from the regulations of the Moluccas and was considered necessary "since experience has shown, that many landraden found itself in this unfavourable situation."[13] Gaijmans also mentioned in his handbook that it happened that a president's verdict "implied in veiled terms" that he did not agree with the decision made by the majority of the council. In these cases, the Javanese members had apparently opposed him.[14] Yet, it seems that the residents in the landraden were better at convincing the Javanese court members to vote for the verdict they preferred. Their criticism of the circuit court judges—who unlike the residents were less successful in securing the vote of the Javanese judges, or who consciously did not want to do this—highlights that the compromising stance of the circuit court judges was not seen as preferable by the colonial administrators.

In any case, Dutch administrators *and* jurists were usually not very impressed by the opinions and thoughts of the Javanese members. The committee of Scholten van Oud-Haarlem considered the Javanese members of the landraden and circuit courts more as sworn men "judging according to their inner beliefs" than as judges, because they did not have adequate knowledge of the law.[15] However, the Javanese members nonetheless

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[12] NL-HaNA, 2.10.02 MvK 1850-1900, MR 1872, no.887. Letter from Circuit Court judge Gaijmans to the director of justice. "*..met het oog op artikel 41 R.O. is het mij niet gegund, de gevoelens in de raadkamer over deze zaak geuit, te openbaren, doch ik acht mij onbezwaard, hier de verzekering af te leggen, dat, naar mijn overtuiging, ook de inlandsche leden der Regtbank, na een gemoedelijke onderzoek der zaak, hunne stemmen in de raadkamer hebben uitgebragt, overeenkomstig pligt en gevoelen en dat zij hierbij niet in het minst geleid zijn geworden door ziekelijke begrippen omtrent de godsdienst welke zij belijden."*

[13] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.73. Explanatory note, 1830. (See Chapter 4.2) *"naardien ervaring heeft geleerd, dat meenige Landraad zich in de ongelegenheid bevonden heeft."*

[14] Gaijmans, *De Landraden op Java,* 2. "*liet doorschemeren."* By doing this, article 41 of the Court Regulations was ignored, which stated that the deliberations in the deliberations room (*raadkamer)* had to remain secret.

[15] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.73. Explanatory note, undated (draft regulations committee Scholten Oud Haarlem). "Nota van Toelichting bij ontwerp van

retained their positions in the pluralistic law courts for the entire colonial period. More important, they retained their right to vote as well, which allowed them—more than the penghulu—to continue exercising their influence over criminal law verdicts. On the other hand, within the landraden they always had to consider the views of the resident, who presided over the landraad (until 1869). The priyayi were dependent on him outside the courtroom—he could give them a better position or dismiss them—and consequently they preferred to agree with him.

7.2 Dutch Residents as Presidents

Until 1869 the resident was not only the highest colonial official in a region, but also the president of the landraad. If he was absent, something that happened regularly, the assistant resident acted in his stead, and if he was not available, the secretary (*secretaris)* of the residency assumed the role.[16] The landraad president took the lead during the lawsuit, interrogated suspects and witnesses, and handed down the judgment.

That the landraad president was at the centre of each court session was considered an important expression of colonial rule. When in 1829, for example, the news reached Batavia that the resident of Surabaya had decided to leave the presidency of the landraad to the regent, Batavia condemned the move as a very "illegal course of action" against which strict measures had to be taken.[17] Commotion also ensued when an Indo-European official—European by law but with a Javanese mother—was listed for the office of judge in 1847. He held a doctorate in law from Leiden University and had returned to Java. Although considered qualified and suitable to work as a judge, according to Governor General Rochussen he would be unable to exercise enough authority over the population and priyayi, and was therefore ineligible for a government position. To this came protest from other colonial officials though—many of whom had Indonesian blood themselves or who had Indo-European children by their Javanese concubine. Therefore, it was decided that anyone who had passed the colonial exams, despite his "illegitimate birth," held the right to apply for the certificate necessary for

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het reglement op de administratie der policie mitsgaders op de burgerlijke regtspleging en strafvordering voor de inlanders en daarmede gelijkgestelde personen in Nederlandsch Indië, Kommissie ingesteld bij besluit van 15-8–1839/102." "*..op innige overtuiging regtdoende."*

[16] Gaijmans, *De Landraden op Java,* 8. Article 93 of the Court Regulations.

[17] ANRI, AS, R. May 29, 1829, no.27. "*..illegale handelswijze.*"

government positions (*radikaal*) and was allowed to work as a judge in the Netherlands Indies.[18]

Thus, being the most visible representatives of colonial rule, residents and assistant residents wore several hats. They were not only responsible for proper administration in their region, but they also led the police and presided over the landraden. This intermingling of the judicial and administrative spheres, caused by this, was a thorn in the side of some, as we will discuss in the next chapter. But, how dependent was the legal system in practice until 1869? We will now investigate this by looking at three much discussed topics during the nineteenth century: the police magistracy, the issue of vagrancy, and the cultivation system.

Police Magistracy

In 1823, the attorney general in Batavia rapped the resident of Besuki over the knuckles for assuming too boldly in a letter that the permission to seek the death penalty would be granted. The attorney general wrote back to make clear that the "lower official" had to leave this to the governor general. However, he added that this was obviously not the case regarding "immediate and legitimate judgments, which are often of much importance to the peace and safety in society."[19] With these "immediate and legitimate" judgments he referred to the police magistracy, in Dutch usually called *politierol* (police register). The resident (or in his absence, the assistant resident) was not only an administrative official and landraad president, but also the police magistrate (see appendix 2, Table 4).

As such, the resident had the right to impose punishments on the Javanese population for small misdeeds. He handed down his judgments from the front porch of his house. In these cases, no evidence had to be presented, the case was not sent to the Supreme Court for review, and the convict had no right of appeal. The suspect could be sentenced to flogging with a rattan cane, a maximum of eight days' imprisonment, the pillory, or labour at the public works.[20] Through the police magistracy, non-European

[18] Fasseur, *De Indologen*, 117–118.; Stoler, *Along the Archival Grain*, 57-72. Stoler presents this protest and debate to point out that nineteenth-century states were not only following 'rational Enlightened' ways of thinking, but were also "states of sentiment."

[19] ANRI, AS, R. June 17, 1823, no.18. Letter attorney general to the supreme court. Batavia, May 27, 1823. "*..prompt en regtige executies, die dikwerf van veel belang voor de maatschappelijke rust en veiligheid wezen kan."*

[20] Consten, "Geweld in dienst," 143-149.

subjects were sentenced for all sorts of petty offences, but also, for example, for wandering around or impudent behaviour.[21] For example, at the end of the 1820s, a woman in Semarang was convicted for pledging a golden strap. The private prosecutor was a European man named Waterloo. There were no witnesses. The woman was sentenced by the resident to be whipped twenty times with a rattan cane.[22]

Regarding the police magistracy, there were two police regulations to follow: those of Batavia of 1828 and the police regulations of Surabaya of 1829.[23] This latter were made applicable to the rest over Java, except Batavia, in 1851,[24] but residents were also allowed to draft their own local regulations, giving them not only the right to fulfil administrative and judicial positions, but also legislative ones. Moreover, they were not even obligated to refer to the formal regulations when imposing a punishment as police magistrate.

The police magistrate was a continuation of the magistracy implemented under the British. After 1816, in the cities the duties of the magistrate were transferred to the residents, whereas outside of the cities these were already being performed by the residents during Raffles' administration. The system did not exist in the Netherlands itself. It was also contrary to the principles of the dual system in Java. After all, in case of the police magistracy, the resident exercised direct administrative power exercise without the consultation or cooperation of the Javanese priyayi court members. They only held the right to decide over landraad cases but were excluded from police magistracy cases. This system did not change until 1914, when the police magistracy was abolished.[25]

The *politierol*, police magistracy, had wide support among colonial administrative officials. Persons known for their efforts to improve the treatment of the Javanese could be simultaneously fierce proponents of police magistracy. In 1849, Eduard Douwes Dekker (a.k.a. Multatuli), as the Resident of Menado at the time, wrote a letter in favour of flogging with a rattan cane, a punishment imposed by the resident in his position as police

[21] Bloembergen, *De geschiedenis van de politie*, 38.
[22] Arsip karesidenan Semarang, 1800-1880, no.863.
[23] S 1828, no.63. "Reglement op het bestuur der policie onder den Inlander, in de staf en voorsteden van Batavia."; S 1829, no.8. "Policie reglement voor de staf en voorsteden van Soerabaija."
[24] S 1851, no.26.
[25] Bloembergen, *De geschiedenis van de politie in Nederlands-Indië*, 38.

magistrate. In the same letter, though, he opposed other types of flogging and branding, which he described as "barbaric punishments." He therefore observed it as a "rejoicing sign of current times" that flogging with a whip and branding had been abolished one year before. He even envisioned a future in which the death penalty was absent and "leniency was preached always and everywhere." However, on the possible abolition of flogging with a rattan cane, he said nothing. He even proposed increasing the maximum beyond twenty strokes, which had been imposed in 1848. According to Douwes Dekker, the difference with other corporal punishments was that the rattan strokes were not endured in public, and therefore were "a fatherly chastisement" of the "naughty native."[26]

Jurists who generally sought more supervision over the legal system also spoke out in favour of the police magistracy. In 1842, Merkus expressed his doubts on Scholten van Oud-Haarlem's proposal to abolish the police magistracy.[27] And, even though the Supreme Court regularly doubted the functioning of the lower law courts, they were not in favour of an abolishment of the police magistrate. This despite the fact that they were not in the position of influencing the police magistrate's verdicts since these were not subject to their review.[28] Scholten van Oud-Haarlem, however, adopted an uncompromising position in this case and refused to include the police magistracy in a legislative regulation "when observed from the side of human compassion" and because it "shall and will give ongoing arbitrariness and major condemnable and even, in my view, dangerous abuses." However, since he was opposed by an important part of the colonial elite, the police magistracy endured.[29]

It was only during the 1860s, when a group of liberal jurists began to agitate about colonial legal issues, that the police magistracy became a target of significant criticism. According to the Indies' *Weekly Journal of Law*, these jurists' unofficial mouthpiece, the police magistracy was not

[26] Van 't Veer, "E. Douwes Dekker over het Indisch strafrecht," 30.

[27] Already in the 1820s, Merkus was a proponent of the police magistracy but critical of the residents as landraad presidents. Merkus had in the mean time become Governor General and took after the mid-1830s a more conservative turn in general and worked in favor of the cultivation system. See Fasseur, Kultuurstelsel, 38, 48.

[28] Tjiook Liem, *Rechtspositie der Chinezen*, 91-92. At that time, the Supreme Court was presided by H.J. Hoogeveen.

[29] Immink, *De regterlijke organisatie*, 16–19. *"..van den kant der menschelijkheid beschouwd." (...) "..bij voortduring kan en zal geven groote willekeur en grove laakbare en zelfs in mijne oogen, gevaarlijke misbruiken."*

mentioned in the Court Regulations "as if one if ashamed to include it...!" They disapproved strongly of the severe punishments imposed by the residents. "For those who do not want to believe this and who have strong nerves," one writer recommended, "please visit a Residency office on a *politierol* day![30] In fact, the word *politierol* had already been mentioned in 1847 in article 84 of the Court Regulations, although not explicitly defined, and the term can also be found in the procedural Native Regulations.[31] This regulation reveals that there were barely any procedural requirements to a police magistracy case. The resident gave his judgement "with knowledge of the events," but without any obligation to refer to regulations or laws.[32] The verdict—"a punishment proportional to the nature of the offence"—was executed immediately.[33]

It is not surprising that this situation gave free reign to all kinds of abuses of power. In fact, the resident could punish any non-European without offering any proof or having the obligation to explain his decisions. The case lists were sent to Batavia, but these gave such little information that this cannot count as real supervision. Moreover, it provided a loophole for the resident to decide cases by police magistracy that formally belonged to the jurisdiction of the landraad or even the circuit court. If a resident presumed a case would end up as an acquittal after review by the Supreme Court, police magistracy made it possible to impose a punishment anyway. According to Attorney General Allard Josua (A.J.) Swart in 1856, the only solution to this problem was a law code in which police laws would be included and defined, but he considered the police magistracy, despite its being a "source of many abuses," a "powerful means to maintain order."[34]

It was only in 1866 that rattan strokes were abolished, and in 1872—in conjunction with the promulgation of the Native Criminal Code—a general police law regulation (*politiestrafreglement*) was introduced. From

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[30] "Regtspleging onder de inlanders op Java en Madura volgens de op 1 mei 1848 ingevoerde wetgeving." *Indisch Weekblad van het Regt*, 1. *"...alsof men zich schaamde het in de Regterlijke Organisatie op te nemen! (...) Wie het niet geloven wil en voldoend sterke zenuwen heeft, begeve zich op een politie-roldag in de nabijheid der Residentie-kantoren!"*

[31] RO, art.84. *"Van de regtspleging voor den Resident in zaken, welke op de policie-rol worden afgedaan."*

[32] IR, art.370. *"naar bevind van zaken."*

[33] IR, art.371. *"een aan het feit geëvenredigde straf."*

[34] KV 1856. Attachment "Verslag van den procureur-generaal bij het Hooggerechtshof van NI over de werking der in 1848 ingevoerde nieuwe wetgeving voor Nederlandsch Indië." "*..krachtig middel der orde.."*

that moment, theoretically, arbitrary verdicts by the residents were no longer allowed due to a more regulated procedure.[35] Nonetheless, police magistracy executed by residents would survive until 1914.[36]

The Landraad and Vagrancy

Police magistracy was the most efficient and unchecked means of control in the hands of the (assistant) resident, because it was not subject to review by the Supreme Court. However, the position of the resident as the president of the landraad was important as well, particularly because the landraad could impose more severe punishments. The police magistrate could not punish notorious troublemakers for a longer period nor be banned from the region. Therefore, habitual offenders would often end up before the landraad for a series of petty crimes.

On 19 November 1834, Kodja Spring was adjudicated by the landraad in the Batavian suburb of Meester Cornelis for stealing a chicken. The suspect had previously been caught for stealing a head scarf, for which he had been punished "conventionally" by the police magistrate with fifteen rattan lashes. Thereafter, at his own request, he had been appointed to work as a coolie on a gravel prau earning seven guilders to prevent him from falling into poverty again and stealing again. Sometime later, he was dismissed at his own request and returned to his village to live with his brother. There, he stole a chicken. This was a minor crime, but during the landraad session the jaksa argued "that it comes through clearly that he is a chap making a living by stealing instead of working." He argued for twenty-five lashes and three years of chain labour in Java. The penghulu advised more lenient sentence of one month imprisonment. The landraad members decided to impose twenty-five rattan lashes and two years of chain labour due to repeated theft.[37]

Another way to sentence subjects who were known for being "troublesome" was to charge them with vagrancy. In 1825 a special ordinance was produced regarding this subject. The direct cause for drafting

[35] S 1872, no.111. "Algemeen poltiestrafreglement voor de Inlanders in Nederlandsch-Indië."; Sibenius Trip, *Het politie-regt op Java en Madura.*
[36] S 1914, no.317.
[37] ANRI, GS Tanggerang, no. 27/III. Landraad criminal case Kodja Spring. Meester Cornelis, November 19, 1834. "*..dat ten duidelijkste doorstraalt, hij een sujet is, welke door diefstal die middelen zoekt te verwerven, welke hij door geoorloofd arbeid kan erlangen."*

the ordinance had been a trial during which a man named Ratal was tried. On 11 January 1825 at the landraad of Buitenzorg, the roughly forty-year old man Ratal was found guilty of vagabondage. The president was the resident of Buitenzorg, J.G. van Angelbeek; the members were the regent, Raden Adipatti Wiera Natta, the *demang* of Parong, Raden Aria Soeta diWangsa, and Kanduruan Soera Nangalla (*kanduran* being an honorific). The secretary was J.H. Cornets de Groot. One month earlier, the landowner of the private land Dramaga had written the resident to complain about Ratal's "irregulated and impudent behaviour, and the continuous wandering around." The jaksa investigated and concluded that although Ratal owned a house in the village Cilubang, he was always wandering around the bazars and could be found regularly in the opium dens. He had no permanent job and would visit his home twice a month at most, leaving it up to his family members to work in his rice fields and take care of his wife and children. He had been tried a few times before—at the circuit court, because he had fired a gun in the direction of a priyayi in Comas, and at the landraad for theft; but he was acquitted both times for lack of proof. He was known as a "bad and dangerous person." The prisoner was asked if he understood the accusation and if he wished to oppose it. The clerk recorded his response as follows: "I do go out once in a while, but usually only to sell fruit." The *mandoor* of the kampong where the suspect owned a house was called as a witness and declared that Ratal was often away from home for a long time without anyone knowing where he went, and that he was a "dedicated visitor" of the opium dens. Ratal responded, "I never visit the opium dens." The other three witnesses—villagers—confirmed Ratal's bad reputation. The advice of the jaksa and penghulu was written down very concisely. They considered the accused guilty of vagrancy and recommended adjudicating him according to the existing regulations. Dated 6 February 1795 and 25 March 1806, these ordinances confirmed that all persons without proof of residence could be arrested and had to perform chain labour in Batavia. Accordingly, Ratal was sentenced to six years of banishment outside of the residency of Buitenzorg, to a place to be decided by the governor general. More than two months later, however, on 18 March 1825 the verdict was reversed by the Supreme Court for lack of evidence.[38]

[38] ANRI AS R. August 23, 1825, no.18. Landraad criminal case Ratal. Buitenzorg, January 11, 1825. *"Ongeregeld en losbandig gedrag, en het aanhoudend rondzwerven."; "Ik ga*

It was not the first time that such a verdict had been turned down in review and the resident wondered how he had to deal with the vagrants. Then, the Supreme Court did something remarkable: they advised the resident of Buitenzorg to apply a political (extra-judicial) measure, and using this—circumventing the law courts—to ban Ratal from the residency.[39] When Attorney General P. H. Esser got hold of this, he flew into a rage and concluded that the Supreme Court "has erred". The application of a political measure after an acquittal by a law court was the violation of a "sacred principle" of law, according to Esser. As he wrote to Governor General Van der Capellen,

> Any political measure is essentially or seemingly arbitrary. All arbitrariness is essentially or seemingly violent; and the significant glory of Your Excellency's government will be in having avoided at all times the essence or even the semblance of violence as much as possible. Therefore, it has been the sacred principle of the High Government to never apply a political measure in order to seek there what could have been found at the judicial power.

Esser had no problem with the introduction of a criminal law against vagrancy, which was similar to a law already in force in the Netherlands, but he viewed the use of forced labour as a political means a "frightening and violent legislation."[40]

After this principled reasoning by Esser, the Supreme Court defended itself by writing that in the case of Ratal they had seen no other

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weleens uit, doch dan ga ik gewoonlijk vruchten verkopen."; "ijverig bezoeker"; "Ik ga nimmer in de amphioen kitten."

[39] ANRI AS R. August 23, 1825, no.18. Supreme Court to Resident J.G. van Angelbeek. Batavia, March 18, 1825.

[40] ANRI AS R. August 23, 1825, no.18. Attorney General Esser to Governor General Van der Capellen. Batavia, March 29, 1825. *"..heeft gedwaald" (..) "heilig beginzel" (...)* "*Elke politieke maatregel is wezenlijk of schijnbaar willekeurig. Alle willekeur is wezenlijk of schijnbaar geweld; en de groote roem van Uwe Excellenties regeering zal daar in bestaan van zoo veel mogelijk het wezenlijke of den schijn zelfs van geweld te hebben vermeeden. Daarom is steeds als een heilig beginzel door de Hooge Regeering vastgehouden om nimmer door een politieke maatregel te zoeken, dat bij justitie te vinden was (..) schrikbarende en geweldige wetgeving."*

option due to the lack of legislation. However, they concurred with Esser that there should be a judicial option to condemn vagrants. They trumpeted the possibilities of the law in the Netherlands, and referred to the Dutch Society for Beneficence, established by Johannes van den Bosch.[41] Their solution was to obligate vagrants in Java to work for "some" wage, after a criminal conviction by the landraad had sentenced them to do so.[42] In response, Esser emphasized that in those cases, vagrancy should be proven by a police report, the accused should have the right to refute the accusation, they should get a reduction of sentence for good behaviour, and the attorney general should prepare a yearly report to the governor general on this matter. A few months later, the regulation was introduced. The landraden could "put [vagrants] to work for a certain wage" for a maximum of ten years. The "misdeed of vagabondage" had to be proven by official reports from police officials, witnesses, and written statements from landowners. The suspect had the chance to refute the accusations by means of evidences.[43]

The vagrancy ordinance of 1825 was gratefully received by the colonial officials. Later that same year, for example, Assistant Resident A.J. Bik of the Ommelanden of Batavia was bothered by the man Aliep, who had been wandering around "here and there in the public bazar" for over five years, and who did not meet his obligations to his village chief. Aliep was sentenced for vagrancy and had to work on the public works for two years in a place to be decided by the governor general. The verdict was formally executed by the assistant resident at the local bazar.[44]

After the introduction of the ordinance, it became easier for landraden to sentence someone for vagrancy, but the Javanese judges had to agree on the sentence. If they disagreed, the assistant resident could circumvent this, as shown by another example that Esser disapproved of. Esser had received a complaint from someone named Ningan, reporting an action taken by the assistant resident of Meester Cornelis. On 5 February 1825, the landraad of Meester Cornelis acquitted the man Anan of cattle theft. The president of the landraad wanted to convict Anan, but the Javanese members decided otherwise. Directly after his acquittal, the police arrested

[41] Schrauwers, "The Benevolent Colonies of Johannes van den Bosch," 298-328.
[42] ANRI AS R. August 23, 1825, no.18. Supreme Court to Governor General Van der Capellen. Batavia, July 1, 1825.
[43] S 1825, no.34. Bepalingen tot wering van vagebondage, rondzwerving en lediggang.
[44] ANRI, GS Tangerang, no.161.5. Landraad criminal case Aliep. Batavia, December 5, 1825.

him and, employing a political means from an old ordinance (*plakaat*), sent to Onrust Island to work as a day labourer for three months. Thus, the local court members were circumvented, much to Esser's objection: "Due to the appearance of a violation of societal freedom, that should be protected by the judiciary, the law courts will lose their trustworthiness and esteem. And the members of the law courts have good reason to be offended by such a measure and to feel aggrieved in their respectability."[45]

Not much would change soon. When Johannes van den Bosch became governor general of the Netherlands Indies in 1828, he introduced his ideas about the establishment of special plantations where vagrants had to work. It is indicative of his rule that he reinstated the political element in the vagrancy ordinance. His ordinance of 1833 made it possible to circumvent the convictions of the Javanese court members and the review of the Supreme Court. He decided that persons whose vagrancy could not be proved in court could still be sent to these plantations.[46] This pleased the resident of Besuki, who wrote in his residency reports of 1836 and 1837: "The application of the publication of his Excellency Sir Commissioner General of the 23rd of July 1833 has had a beneficial effect, the robberies are not as numerous anymore and are limited to the remote *desas*."[47]

Cultivation System and Criminal Law

Van den Bosch's vagrancy regulation leads us to consider the extent to which criminal law was used with regard to the cultivation system introduced by him in 1830. Did the cultivation system—based on the VOC

[45] ANRI AS R. August 23, 1825, no.18. Attorney General Esser to Governor General Van der Capellen. Batavia, March 3, 1825. *"Hierdoor wordt de schijn geboren van schennis der maatschappelijke vrijheid die door de justitie gewaarborgd wordt, de Regtbanken verliezen hun vertrouwen en achting en de Leden van de Rechtbanken hebben reden om zich door zulk een maatregel in hunne achtbaarheid gekrenkt en beledigd te rekenen."*

[46] S 1833, no.46, art.1. *"Alle personen, die door rondzwerving, lediggang en slecht gedrag, zich als schadelijke voorwerpen hebben doen kennen, doch aan welke geen bepaald misdrijf, geregtelijk, kan worden bewezen, zullen op het eiland Java, of buiten hetzelve, worden vereenigd in een of meer Etablissementen van Landbouw, waarvan de plaats en de inrigting nadere zullen worden bepaald."* Article 3 proclaimed that they would be living together with their wives and children as much as possible.

[47] ANRI, GS Besuki, no.26 and no.27. Algemene Verslagen van 1836 en 1837. "*De toepassing der publicatie van zijne Excellentie den Heer kommissaris Generaal den 23e julij 1833 heeft eene heilzame uitwerking de roofpartijen zijn niet zoo talrijk meer en bepalen zich meestal tot de afgelegen dessa's."*

Priangan system still in use in the nineteenth century[48]—change the dynamics and relations within the landraad?

In 1835, Van den Bosch was accused of using the vagrancy ordinance not only against vagrants, but also against local people protesting against the government, for instance, by complaining about the compulsory cultivation services (*cultuurdiensten*). For this, they could be banned without trial. The accusation came from the pen of Merkus, who gave an example in a pamphlet directed against the cultivation system published anonymously in 1835. On 31 July 1834, a group of people from various districts had come to Pasuruan (East Java) to protest in front of the regent's courtyard against the amount of sugar crops they had to grow. Their protest was ignored, and within three days the group grew to approximately 2500 to 3000 people. The commotion grew and they demanded that not be required to plant any more sugar that year: "Among the various groups rebellious exclamations occurred; others were dancing (*tandak*); and still others were shouting, throwing their head scarfs in the air; no other options were left than either sending in the military, or succumbing to the demand of planting no more sugar that year." According to Merkus, the resident "wisely" decided to succumb to the demand and thereafter everyone returned to their homes. However, this turned out to have been a false promise, because the resident arrested the leaders of the protest. According to Merkus, it was clear that the complainants were neither criminals nor a danger to the government, and the complaints probably were more than justified. According to him, an independent investigation into the "grounds for the complaints and reproaches of the people" should have been conducted. However, Van den Bosch did not deem investigations necessary and had decided to apply his Vagrancy Ordinance of 1833 to the captured protest leaders. Consequently, the resident "being the cause, accuser, and prosecutor" could, after having done the investigations himself, ask Van den Bosch to impose a political measure, thereby circumventing court. Formally, the investigations had to be carried out by the landraad, but according to Merkus, the Javanese members were "subordinate officials" with little say.[49]

[48] Breman, *Koloniaal profijt van onvrije arbeid*, 205.

[49] [Merkus], *Blik op het bestuur*, 100–103.; Breman, *Koloniaal profijt van onvrije arbeid*, 216. *"Onder verscheidene troepen begonnen zich reeds oproerkreten te verheffen; anderen dansten (tandak); en wederom anderen schreeuwden, en wierpen hun hoofddoeken in de hoogte; zoodat er niets anders overschoot, dan de gereed zijnde militaire magt te doen*

Merkus had previously attempted to decrease the administration's influence on the justice system, but generally he had taken a compromising stance, for example when debating with administrative official Van der Vinne as discussed in part 1 and 2. Yet the tone of the pamphlet was, for Merkus, unprecedentedly harsh and a direct assault on the cultivation system. It is questionable, however, that there is a direct relationship between the cultivation system and the use of criminal law to exercise power. For example, it is doubtful that there was much difference in practice between the vagrancy ordinances of 1825 and 1833. The residency report of Kedu from 1827—when the first ordinance was still in force—shows that this ordinance even then considered a political measure. Kedu had only been brought under colonial rule in 1813 and was situated close to the princely lands, so the residency had been fully engaged in the Java War. In 1827, the residency was unsafe there were many robberies in the occupied districts of Probolinggo and Minoreh. In his annual report, the resident mentioned that he had made use of the vagrancy ordinance of 23 August 1825, the promulgation of which enabled him to ban all "roaming and damaging persons making use of the disorder" by "political measure." In 1830, forty vagrants were banned from the residency using the same measures.[50]

Thus, the vagrancy ordinance of 1833 was probably a confirmation of something that already took place in practice, and between 1830 and 1870 no other criminal law reforms were introduced to further increase the power of the residents and the priyayi. Such were not needed to sustain colonial rule or impose the cultivation system, because there were already plenty of available tools. As described in part 1, as early as the 1820s there had been extensive interventions in the law courts and the power of the residents had increased considerably. The police magistracy was in his hands, his presidency of the landraad had been affirmed, he could promulgate local ordinances at all times, and there was ample opportunity to diverge from Javanese laws and customs: the criminal legal system already helped the Dutch exercise the sort of power they deemed necessary to maintain colonial

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aanrukken, of aan hunnen eisch, om in dat jaar geene suiker meer te planten, toe te geven." (…) "*de gegrondheid der bezwaren en grieven van de bevolking"* (…) "*als oorzaak, aanklager en vervolger."*

[50] ANRI, GS Kedu, no.2. Algemene Verslagen van 1827–1833. "*..alle rondzwervende en schadelijke sujetten welke van de confusie gebruik maakte*."

rule. Thus, the uncontrolled power exercise was inherent to colonial rule in general and not so much to the cultivation system in particular.

It is nonetheless likely that the exercise of power abuses increased during the cultivation system, because even down to the village level there were local chiefs and officials who profited from it and had an interest in the oppression of the Javanese.[51] The cultivation system was built on the principle of dual rule, by making the priyayi responsible for the supply of crops to the colonial government and preserving the Javanese hierarchy and society as much as possible. However, like the Priangan system on which it was modelled, the cultivation system would change Javanese society in several ways. Land rights changed profoundly, because the cultivation system increased village rights to rice fields, whose crops were intended for the colonial government, and thereby decreased individual rights to land. Also, due to reparcelling, owners of large estates lost parts of their land which diminished class differences. In villages incorporated into the cultivation system, each villager became a worker in service of the colonial government. They were obliged to grow crops for which they received a "planting wage" (*plantloon*), but only for the harvested products. In the event of crop failure, they received no compensation. Often, they also had to pay interest for the fields (*landrente)* on which they grew crops for the government. Besides, the villagers also had to perform unpaid services (*herendiensten*) for their Javanese priyayi chiefs, such as building fortresses and maintaining infrastructure. Also, all kinds of taxes were introduced, including for opium, bazar, and buffalos.[52]

While most Javanese felt the burden of the cultivation system, there were lucrative benefits for Javanese chiefs. Village chiefs (*lurahs*) were made responsible for collecting the harvest and handing it over to the colonial government, for which they received eight percent of the total amount of landrent collected (*collecteloon)*. They also received a percentage of the profit made on the crops (*cultuurprocenten)*. They did not receive a salary, nor were they appointed by the colonial government, so they were not part of the priyayi class. However, the colonial government could dismiss them. The priyayi also had personal interests in high results from the cultivation system, because they obtained *cultuurprocenten*, which were

[51] Onghokham, *The residency of Madiun: priyayi and peasant*, 150.
[52] Fasseur, *Kultuurstelsel*, 13-14, 21-22

sometimes—and in some districts—even higher than the salaries they received from the colonial government. In 1832, regents in active service were again allowed to own land (*ambtelijk landbezit*), and they could receive the *landrent* for lands used for the cultivation system.[53] After 1841, the advantages for an intensification of the cultivation system became even bigger for the priyayi when it was decided that they would only receive the full amount of *cultuurprocenten* over the *increase* in yields compared to the year before.[54] European officials also received *cultuurprocenten*. Thus, altogether, all branches of the colonial and village administration favoured making the Javanese grow and harvest as many crops as possible.

Within the landraad, Javanese members and the Dutch president often had the same interests, although they also had their own agendas. While the Javanese and Dutch judges debated certain things in the landraden, regarding the cultivation system they often shared an interest in maintaining peace and order. If the Javanese members raised objections anyway, the Dutch always had the option of the exercising political means. Attempts in this period by jurists and critics to improve the independence of the justice system foundered, usually due to arguments about the importance of the cultivation system, as will be shown in the next chapter.

The profitability of the cultivation system easily led to extortion and abuses of power, and crossing the line between what was and was not allowed proved tempting for many. It is evident that while the cultivation system was in place, officials were protected from prosecution for abuses of power. Therefore, one aspect in criminal law often associated with the cultivation system was extortion by colonial officials (*knevelarij)*. Knevelarij existed before the introduction of the cultivation system, but now it became a point of heated discussion. On the one hand, it was to the disadvantage of the Dutch if priyayi engaged in extortion, because it could lead to unrest among the population and so decrease the profits from the cultivation system. Therefore, legislation to curtail extortion was deemed necessary. On the other hand, it was to the advantage of the colonial administration, and the cultivation system, if the priyayi had the freedom to oppress the population by forcing them to grow more or otherwise repress resistance. The need to simultaneously curb and protect the priyayi made the prosecution of

[53] Fasseur, *Kultuurstelsel*, 28, 34, 32. It was especially this regulation which led to abuses.
[54] Fasseur, *Kultuurstelsel*, 29. The penghulus did not have a special position within the cultivation system, in the way they had in the Priangan System. See Chapter 5.3.

extortion a sensitive issue. In 1841, for example, the colonial government restricted those residents who—in their position as head of the police—regularly accused lower-ranked priyayi at the circuit court of extortion. From then on, extortion cases could not be sent to a circuit court with the governor general's approval.[55] In part 4, we will elaborate on the issue of extortion and the protection and prosecution of priyayi to obtain better insight into the workings and limits to dual rule in this period.

7.3 Supervision of Pluralistic Courts

Both residents and priyayi had many opportunities to exercise their authority without much interference from judicial power. There were only few judges in Java and they were part of a small circle of high officials in the cities. This leads to the question of how the landraden *were* supervised? Through an analysis of review, pardoning and private attorneys, the next sections examine the supervision of the pluralistic courts.

Review

In the previous chapter, we saw that the Supreme Court was not well informed about local laws. But did they exercise control over the lower law courts—and thus over the actions of the priyayi and residents—through the system of review? It is clear that the most important supervision over the criminal justice as administered by colonial officials was the review by the Supreme Court.[56] This system had its limitations though. Firstly, the Supreme Court could not carry out new investigations, but solely decided over the bnprocedures followed. Secondly, it was an onerous responsibility to go through all the criminal case files. The number of reviewed cases increased hugely during the first half of the nineteenth century. In 1820, the Supreme Court still assessed 731 criminal cases. In 1830, this had been doubled and in 1847 the criminal cases to be checked had been increased up to 3850.[57] Thirdly, the Supreme Court were not very informed on the law practices in Java, in particular not during the early nineteenth century. Since

[55] IB, June 24, 1841, no.2. In Bijblad, no.1181. See Chapter 10.2.2.
[56] For an overview of the system of review (*revisie)* from colonial to postcolonial times, see: Termorshuizen-Arts, "Revisie en Herziening." The Indonesian supreme court (*Makkamah Agung*) still has bigger responsibilities and more powers than the Dutch High Council. The MA leads in the correct explanation and application of the laws, and still circulates instructions to lower courts, as they did during the colonial era.
[57] "Statistiek," *RNI,* 228–132.

there were only three—later four—circuit court judges in Java, the Supreme Court members themselves often did not have experience on the ground. All other cases were administered by the residents at the landraden. Yet, the revision system could certainly prevent irregularities. As we have seen already, for example, Attorney General Esser performed critical assessments of the procedural documents during the first half of the nineteenth century. Also, in cases of severe punishments for relatively small crimes, the courts could intervene.

Still, the system of review was only effective in a limited way and it was even possible to circumvent it altogether. In the first place, review was only for punishments above a certain degree of severity.[58] Consequently, it happened that by intentionally handing down more lenient judgments, the landraden kept criminal verdicts away from the review by the Supreme Court. In 1846, this loophole was closed, and from then on, all criminal cases had to be sent to the Supreme Court for review.[59] However, even after that, cases were still administered clandestinely under police regulations by the resident (who was also the police magistrate), on which no review was done. And, in 1872 it was even decided that review of criminal verdicts would only take place at the request of the jaksa or the convict.[60]

It was well-known that in reviewing cases, the Supreme Court mainly checked whether the right procedures had been followed. There are numerous examples of critics who mentioned that consequently the landraden dealt creatively in drawing up case files. It was even possible that the landraad only drew up the *procès verbal* after the verdict had been given, as the private lawyer C. J. F. Mirandolle wrote disapprovingly: "Then, with little good will, the statements of the witnesses will exactly match the considerations made in the verdict, and the higher judge can only be full of admiration for the correct conclusions made by the judge derived from statements that are so fully in compliance with the verdict."[61]

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[58] Provision Regulations 1819, art.127 and art. 128. Above thiry rotan strokes, longer than three months of chaingang and and imprisonment.

[59] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.27. Explanatory note draft regulations RO (undated, approximately 1845); RO 1847, art. 97 and art. 106.

[60] S 1872, no.130 and 131. Because the work load for the Supreme Court had become sky high since 1846.

[61] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163–174. *"met een weinig goeden wil zullen dan de verklaringen der getuigen treffend passen bij de overwegingen van het vonnis, en de hoogere rechter zal alleen kunnen bewonderen de juiste*

It is hard to prove that landraden wilfully falsified procedural documents, as Mirandolle implied. And if they did, it is impossible to decide whether the practice was widespread. However, the regional archive of Tangerang reveals that in at least one case the case files were indeed deliberately falsified. In 1888, the landraad of Tangerang was presided over by Assistant Resident H. de Kock. On 20 December of that year, the farmer Sana-at bapa Sairoen, a man presumed to be thirty-two years old, inhabitant of the village Munjul, appeared before the landraad. He was accused of having harvested trees in the gardens of fellow villagers without permission. The witnesses stated that the suspect had not asked them for permission to harvest the trees, but the statement of the first witness came across as a bit odd. He told of standing next to the accused when the latter started harvesting the trees in his garden, but instead of preventing him from doing this, he had gone off to the police *mandoor* to report the conflict: "When the *mandoor* arrived at my house, the trees had already been harvested." Since this story was not very plausible, the second and third witnesses—who gave similar statements—were asked if the *mandoor* had perhaps told them to declare that the accused had not asked for permission. The third witness gave in. He withdrew his earlier statement and declared that the accused had indeed requested him to relinquish the trees, but that the *mandoor* of his kampong had convinced him to declare otherwise. After this confession, the *mandoor* seemed to be more suspect than the accused, who was acquitted.[62] The most fascinating aspect of the file—as it proves the falsification of the documents—is that different coloured pencils were used to cross out the witness accounts and replacing them with other statements, such as "Witness interrogated again, declares to have agreed on the harvesting of his *nanka* trees by the accused, without knowing that the accused had not received the permission requested from the land owner."[63] Thus, the highly dubious role of the *mandoor* was completely erased from the file and the entire case was presented as a misunderstanding. In this way, the innocent suspect was acquitted and simultaneously the *mandoor* was protected. The most viable

gevolgtrekkingen door den rechter afgeleid uit verklaringen, die zoo volkomen met de overwegingen van het vonnis overeenstemmen."

[62] ANRI, GS Tangerang, no.243B. Landraad criminal case Sana-at bapa Sairoen. Tangerang, December 20, 1888. *"Toen de mandoer ten mijnens kwam, ware de boomen reeds geveld*."

[63] ANRI, GS Tangerang, no.243B. Landraad criminal case Sana-at bapa Sairoen. Tangerang, December 20, 1888.

explanation is that the procedural documents had been forged before being sent to the Supreme Court for revision, in order to avoid criticism for not having prosecuted the *mandoor*.

Mercy

Mercy was another way in which the residents' judicial activities were controlled. This only took place after "justice had its course," so it was not a legal instrument and not bound to certain preconditions. The governor general could intervene if he suspected something had gone wrong during a court case.

There was variation among the Governors General dealt with grants of mercy in different ways.[64] Governor General Van der Capellen critically assessed the dossiers and sometimes even asked for a second opinion from the Supreme Court if he had doubts about the quality of a case's proceedings. In March 1823, he assigned the Supreme Court to contact the circuit court judge of the Semarang department and "remind him emphatically of his responsibilities and urge him to a precise and attentive administration of legal cases." If he could not fulfil his position up to standard, he would be dismissed from "his highly essential and important position of circuit court judge."[65] The Supreme Court judges provided advice to the governor general for each request for mercy. In this case, the correspondence in the dossier shows that they were much more lenient, and it was the governor general who made the most fuss about it.

The entire discussion had started one month before, when the Javanese man Soeto Soyo, who had been sentenced to death for murdering the Javanese man Sidie, appealed to the governor general for mercy. Although several witnesses had recognised him as the assassin, he wrote that he was innocent. Attorney General Esser also had doubts about the convict's guilt, but he followed the advice of the circuit court, who declared that there were no mitigating circumstances. In this case, Governor General Van der

[64] I collected 29 mercy request files in ANRI (AS) from the period 1819-1848. A systematic and large-scale approach was unfortunately not possible, since the index does not mention the location (Java or other island) and ethnicity of the convict who requested the governor general for mercy.

[65] AS, R. June 17, 1823, no.4. Letter Governor General Van der Capellen to the Supreme Court. Batavia, May 6, 1823. "*..nadrukkelijk zijne verpligting onder het oog te brengen en aan te manen tot eene naauwkeurigen en oplettende behandeling van zaken."* (…) "*..zijn hoogst kiesche en belangrijke betrekking van ommegaande regter*."

Capellen was much more critical of the court case proceedings and he did not want to approve the request for mercy without further consideration. Therefore he asked the attorney general to provide a new recommendation about a reduction of sentence on the grounds of "inadequate information, noticed by the high judicial officials themselves."[66] The attorney general agreed that the circuit court judge might have made mistakes, and he proposed that the governor general to set aside the "cold rules of justice" and decide for himself on a mitigation of the punishment.[67] He wrote that too many questions had been left unanswered after reading the procedural documents:

> Why then was this murder committed? Out of revenge? Out of envy? Out of insanity? Due to drunkenness? By mistake? Or for what other reason? The government asks this, the court and I must ask it and we cannot find a complete answer anywhere in the process.
>
> Has the convict been on the run for a long time? Did he show fear? Where and how was he arrested? Was he quiet and calm inside his house or was he captured like a fearful fugitive? The government asks this, the court and I must ask it, and we cannot find a complete answer anywhere in the process...
>
> The witnesses explicitly recognise the prisoner and the *klewang* used to commit the murder, but what is the basis of their knowledge? Did they know the prisoner that well? Were they able to see him and his *klewang* so precisely that there is no possibility of making a mistake during a dark night? These questions also have not been investigated during the questioning.[68]

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[66] ANRI, AS, R. June 17, 1823, no.4. Letter Governor General Van der Capellen to the Supreme Court. Batavia, May 6, 1823. "*..gebrekkige informatie, door deszelfs hooge justitieele ambtenaren opgemerkt*."

[67] ANRI, AS, R. June 17, 1823, no.4. Letter Attorney General Esser to the Supreme Court. Batavia, May 10, 1823. "*de koude regelen van het regt."*

[68] ANRI, AS, R. June 17, 1823, no.4. Letter Attorney General Esser to the Supreme Court. Batavia, May 10, 1823. "*Waarom toch is die moord gepleegd? Uit wraak? Uit nijd? Uit*

Thereafter, the Supreme Court informed the governor general that it had not gone unnoticed that irregularities had occurred in almost all cases administered by the circuit court of the Semarang Department. Yet, they disapproved of the attorney general's writing down such accusations when there were at the same time no grounds to annul the verdict. They recommended that the governor general should "from great caution" change the penalty from death to the punishment next to death—still a severe punishment for someone whose trial had most likely been conducted very badly. Yet, the governor general followed this advice and the man was banned to Banyuwangi.[69]

Governor General Rochussen also assessed death punishment files critically and granted mercy when he had any doubts. The Madurese men Pa Sasoedin, Salek, and Pa Sadalier were saved from the colonial gallows for this reason on 23 April 1846. Although the assistant resident, the circuit court judge, the attorney general and the Supreme Court recommended turning down the request, Rochussen disagreed with them: "When considering the verdict and reading the procedural documents closely and meticulously, I cannot find sufficient proof of guilt. All witnesses are related to the victim by consanguinity, marriage or employment," he wrote with some alarm, and he decided unilaterally to grant mercy.[70]

Legal Representatives

Both review and mercy were ways of overseeing the administration of justice from Batavia, which was far from the courtrooms concerned. Without

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zinneloosheid? In dronkenschap? Bij vergissing? Of om welke andere reden? Het gouvernement vraagt dit, het hof en ik moeten het vragen en nergens vinden wij in het proces een volledig antwoord. Was de gecondemneerde duurzaam voortvlugtig? Heeft hij zich beangst getoond? Waar en hoe is hij gearresteerd? Bevond hij zich stil en rustig in zijn huis of is hij als een angstig vlugteling achterhaald? Het gouvernement vraagt dit, het hof en ik kunnen het nog vragen en nergens vinden wij in het proces een antwoord. ... De getuigen herkennen stellig de gevangene en den klewang, waarmede hij den moord heeft bedreven, maar waar is hunne reden van wetenschap? Kenden zij den gevangene zoo nauuwkeurig? Hadden zij hem en zijn klewang zoo naauwkeurig bezien dat er in eene donkeren nacht geene mogelijkheid bestond om zich te kunnen vergissen? Ook deze vragen zijn bij de instructie zonder onderzoek gebleven."

[69] ANRI, AS, R. June 17, 1823, no.4. Letter from Supreme Court to the Governer General Van der Capellen. Batavia, June 10, 1823. "*..uit groote voorzichtigheid..."*

[70] ANRI, AS, Bt. April 23, 1846, no.3. Resolution Governor General Rochussen. Batavia, April 23, 1846. "*Bij resumptie van het besluit den proccesale stukken nader en bedaard lezende, kan ik maar niet vinden dat de schuld bewezen is. De getuigen zijn alle of in door bloedverwantschap, huwelijk of dienst aan den verslagene verbonden."*

doubt, it would have been much better for the Javanese suspects to have had legal protection during the court session in the courtroom itself, but this was almost never the case. Formally, private attorneys were allowed in the pluralistic courts for most of the nineteenth century, but local suspects could almost never use their assistance.

During Raffles' rule, Javanese attorneys (*vakeels*, or native lawyers) had been kept out of the landraden altogether: "That class of people not being allowed to exist, who, as deriving from litigation their sole subsistence, may fairly and without invidiousness, be considered as having some interest in increasing the business of the courts."[71] Legal representatives were allowed at the landraad in 1819, prohibited five years later, but accepted again in 1832.[72] Most residents were not in favour of accepting attorneys in the landraden over which they presided though. In 1832, the assistant resident of Semarang wrote the governor general that there was much dissatisfaction with the proceedings at the Council of Justice and that the hiring of a private lawyer "has left many careless people penniless."[73] The arguments of the assistant resident, however, seems to have been contradictory. He argued that almost no one could afford the cost of an attorney; but at the same time he was afraid that the attorneys would "swiftly take a grip on most cases":

> The native[74] judge—from whom cannot be expected more than common sense when deciding over cases, and to whom the case should be presented in the simplest way—is currently confronted by legal representatives ... [Who] by presenting shams and so-called powerful judicial sayings ... embezzle the simplest case in such a way, that the judge, even with

[71] Raffles, *History of Java.* Appendix D. "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java," art.135.

[72] Heicop ten Ham, *Berechting van misdrijven door Landraden*, 26.; S 1824, no.64.; S 1828, no.64.; S 1832, no.36.

[73] ANRI, GS Semarang, no.4059. Letter Assistant Resident H.M. Le Roux of Semarang to the Supreme Court. Semarang, November 12, 1832. The letter was written in direct response to the decision to allow suspects at the Landraden to be assisted by a legal representative. *"menig onvoorzichtigen aan den bedelaarsstaf heeft gebracht."*

[74] *Inlandsche*; this term was also used for the European judges in the pluralistic courts, it remains unclear to whom the author refers exactly, the Javanese or the Dutch judges.

> the best intentions, will not be able to save himself from the conflicting [illegible] derivations from judicial writings from former and later centuries, from the most contradictory ideas and arbitrary interpretations and from all the various attack and defence mechanisms which the current jurisprudence has at hand.[75]

At the end of the letter, the truth came out. The assistant resident had been presiding over landraad sessions regularly and he mainly feared a loss of face if the lawyers pointed out to him the judicial mistakes he made. He suggested that attorneys, when appealing, would accuse the landraad presidents of irregularities before a higher court. This would be inconvenient for his reputation as president of the landraad, and it would certainly harm his status as assistant resident:

> What will be the consequence of all this? That the law court compiled of Javanese and Chinese and presided over by a European official—who due to his numerous other responsibilities is often unable to focus his full attention on this particular task—will undoubtedly lose all its dignity. And the same attorneys who had appeared before their bar will attempt to assess them in a possibly harsh manner before a higher judge.[76]

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[75] ANRI, GS Semarang, no.4059. Letter Assistant Resident H.M. Le Roux of Semarang to the Supreme Court. Semarang, November 12, 1832. *"De Inlandsche regter, van wie men niet meer kan vorderen als zoo veel gezond verstand, om een geschil naar de inspraak van zijn geweten te kunnen beslissen en aan wien dit geschil dus op de mogelijkst eenvoudige wijze moet worden voorgedragen, ziet zich thans geplaatst tegenover zaak gelastigden voor welke de arena reeds zijn geopend of die ten minste door de practizijn zoo verre zijn gebragt om door schijngronden en zoogenoemde regtsgeleerde magtspreuken ... het eenvoudigste geschilpunt zoodanig te verduisteren, dat de Regter, zelfs met den besten wil, zich niet zal kunnen redden uit een conflict van ... onverstaanbare ... afschriften uit regtsgeleerde schrijven den vroegen en late eeuwen, van de tegenstrijdigste gevoelens en willekeurigste interpretatie en van al die veezijdigen aanvals en verdedigingsmiddelen welke de hedendaagsche regtgeleerdheid aan de hand heeft."*

[76] ANRI, GS Semarang, no.4059. Letter Assistant Resident H.M. Le Roux of Semarang to the Supreme Court. Semarang, November 12, 1832. "*Wat zal van al dit het gevolg zijn? Dat de regtbank zamengesteld uit Javanen en Chinezen en gepresideerd door een Europese*

In practice, the assistant resident will not often have faced an attorney in the courtroom. In none of the landraad cases analysed for this dissertation does a private lawyer appear, despite the fact that they were allowed in the landraden. A letter in the archives of Semarang does show that Chinese litigants did hire lawyers. On 7 September 1828, the Chinese trader Tan Hain was attacked on a street in the Chinese kampong of Semarang when returning from a visit to the Chinese temple. The culprit was a Chinese man named Tjia Yingkong, who wounded the victim with an iron weapon. On 18 September 1828, he was convicted by the landraad to thirty rattan strokes and six months of imprisonment. Sometime after, however, the governor general granted him mercy and he was released. In response, the victim's legal representative, W. v te B Scheffer, protested this decision because his client thereby "was in no way whatsoever compensated for the affront and abuses suffered." He requested that the resident impose a punishment after all; the resident's response, if there was one, was not found in the archives.[77]

The *Indies' Weekly Journal of Law* shows that Arabs in Batavia also hired lawyers when appearing before the landraad. On 22 December 1862, for example, Sech Abdul Rachman bin Mohamad Baharmoes was accused of fraudulent bankruptcy. The law journals only printed the verdict, and the exact contributions of the lawyer, L. J. A. Tollens, are therefore not clear.[78] In 1848, Mak Daun, a Buginese woman residing in Surabaya, hired the Dutch lawyer R. W. J. C. Bake, who asked whether an inheritance case could be handled by the religious court of Surabaya instead of the religious court of Gresik, since one of the heirs was the chief jaksa of Gresik, who would exercise outsize influence over that particular religious court.[79] In

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ambtenaar die door zijne overige veelvuldige ambtsbezigheden dikwijls in de onmogelijkheid gesteld op dien zijnen functien al zijne aandacht te vestigen, dat die regtbank, zeg ik, onvermijdelijk, hare waardigheid zal verliezen en gepoogd zal worden, om door dezelfde practizijns, welke zij voor hare balie ziet verschijnen, voor den Hoogen Regter op eene wellicht niet zeer kuische wijze te worden beoordeeld."

[89] Arsip Karesidenan Semarang, 1800–1880, no.899. Letter Scheffer to the governer general. March 11, 1829; Verdict Landraad criminal case Tjia Yingkong. September 18, 1828. "*..in gene deelen enige voldoening heeft verkregen van de ondergaande hoon en mishandelingen."*

[90] "De Landraad der stad en voorsteden van Batavia regtsprekende in strafzaken," *Indisch Weekblad van het Recht*, 3. "*bedriegelijke bankbreuk."*

[79] ANRI, GS Surabaya, no.1487. Rejection by the governor general of a request for mercy, on advice of the attorney general. Buitenzorg, April 4, 1851. See Chapter 6.1.3 for more on the position of the chief jaksa in this case.

civil cases before the Council of Justice, the Chinese and Arabs were also regularly assisted by Dutch lawyers. For the lawyers, it was easier to earn money in the Netherlands Indies than in the Netherlands, and attorneys who started their own law firm in Java were likely to return to the Netherlands being well-off.[80]

Although attorneys were obligated to offer free legal aid to people who qualified for this, this was only the case in courts to which fixed attorneys were appointed.[81] Since this system was not in place at landraden and circuit courts, hardly any lawyers performed their services at these courts.[82] According to Gaijmans' handbook of 1874, Javanese suspects were "rarely or never" assisted by a lawyer.[83] With significant consequences, there were no Indonesian, Arab, or Chinese attorneys in Java during the nineteenth century. Hiring a Dutch attorney was simply to expensive for most local suspects.

However, it was not an obligation for a legal representative to have followed judicial training, and from approximately 1880 onwards in newspapers there are reports on "native legal representatives", soon described as into *procureur-bamboe* or *pokrol-bamboe*—literally, bamboo-lawyers.[84] These were people who had legal knowledge, for example, because they had worked as a clerk or jaksa. They earned their money by assisting suspects in landraad cases. At the end of the nineteenth century the

[80] Henssen, *Twee eeuwen advocatuur in Nederland*, 36, 43. In the Netherlands there was until 1875 a system of double legal aid, with *procureurs* (responsible for the procedural tasks; attorneys at law who were bound to work in one region due to the regional legal differences in the Netherlands) and *advocaten* (responsible for the defense; attorneys-at-law not bound to one region). In the Netherlands Indies there was singular legal aid and this lead to quicker procedures.

[81] Immink, *De regterlijke organisatie*, 429.; RO 1847, art.190. *"De advocaten en procureurs, daartoe door de regterlijke collegian, voor welke zij hunne bediening uitoefenen, aangewezen, zijn verpligt om gratis hunnen bijstand te verleenen aan hen, die vergunning hebben bekomen om kosteloos te procederen. Zij zijn mede gehouden om zich gratis te laten belasten met de verdediging in strafzaken, wanneer hun dit door den regter wordt opgedragen. Zij kunne zich aan die verpligtingen niet onttrekken, dan om redenen, door den president van het betrokkene collegie goedgekeurd."*

[82] Heicop ten Ham, *Berechting van misdrijven door Landraden*, 119. *"..dat prokureurs bij de Landraden gewoonlijk niet voorkomen."* In 1942, Jonkers notes that suspects of a crime imposed by the death penalty, were always defended by an attorney. The IR in 1915 does not include this right yet: Hirsch, *Het Inlandsch Reglement*, 132.

[83] Gaijmans, *De Landraden op Java*, 75.

[84] See for example: "De Inlandse Zaakwaarnemerij", *Bataviaasch Handelsblad*, January 27, 1891.; Lev, *Legal evolution and political authority in Indonesia*: 143-159.; Lev, "Origins of the Indonesian advocacy," 134-169.

complaints among the Europeans about the *pokrol bambu* increased, and this points at a probable increase in the number of *pokrol bambus*, as we will discuss in the epilogue. In the period before 1869 discussed in this chapter, however, there were as yet no active Javanese attorneys, and Javanese suspects were not given the option of being assisted by a European defence lawyer for free.

7.4 Conclusion: Dual Control

The colonial pluralistic courts relied heavily on the priyayi for preliminary investigations and the apprehension of suspects. As landraad presidents, the residents were juggling between meeting the requirements of the Supreme Court and cooperating with the priyayi to impose the cultivation system and simultaneously control the Javanese population. This, and the minimal involvement of attorneys caused tensions to appear more on a political level within the landraad than on content-based legal issues. In any case, it is certain that there were plenty of options for both Dutch and Javanese officials to maintain an iron grip on the Javanese people within the colonial legal system. Through the system of dual rule, the Javanese were held in a double stranglehold.

On the other hand, it was also the dual system that led to a very precarious colonial state, since the Dutch relied on the priyayi and their action in police and justice matters. They themselves were unable to find out who was responsible for many crimes because they lacked the regional information networks to do so. Consequently, the priyayi held a strong position on a regional level. We will investigate the enduring importance of family-networks and patronage of priyayi families, and the limits to dual rule, in part 4. But first, in the next two chapters, we will take a closer look at whether and how the dynamics changed between the local members and the Dutch landraad president, when in 1869 a jurist replaced the resident as president of the landraad.

8 — Cutting the Ponytails

In 1861, an author in a colonial journal remarked that "the time has passed when the residents, like pashas with three ponytails, could do whatever they chose to do."[1] This description of the residents in Java as pashas with three ponytails was not unjustified, as shown in the former chapter, certainly regarding their involvement in criminal law practices. In addition to his administrative and (limited) legislative rights, the resident also represented the judicial power in the landraad, a situation that at the same time had become unthinkable in the Netherlands but was defended for a long time as acceptable regarding the colonial legal adjudication over the Javanese population and "those equal to them." This continued until it was decided in 1869 that administrative officials would be gradually relieved of their judicial position as president of the landraad. In practice, this meant that the judicially trained and independent landraad president would (very gradually) enter the residencies. In this chapter, I research the shift from the residents to judicial landraad presidents, to understand what the consequences of this reform were for dual rule in colonial Java. Was this indeed the end of the resident as a pasha with three ponytails?

8.1 Landraad Presidents under Discussion

Despite all the remarks made by the Supreme Court on residents' ignorance of judicial affairs and the criticism that they were not be very conscientious in following the rules, residents continued to fulfil the position of landraad president for a long time. It was only from 1869 onwards that they were gradually replaced by judges. The debate was influences by both developments in the Netherlands and the colony.

Independence of Judges in the Netherlands

The idea of the separation of powers had been circulating in the Netherlands since the end of the eighteenth century. Patriots who had been in France returned with these ideas, and the developments in the United States were

[1] "Hoe het tegenwoordig op Banda toegaat," 239-243. *"De tijden zijn voorbij, dat de Residenten, als pacha's met drie paardenstaarten, alles konden doen wat zij verkozen*."

also followed. However, there were various ideas about the theory of the separation of powers, some of them even contradictory, which did not facilitate the implementation of the system. The followers of Rousseau, for example, emphasized the subjugation of the administrative and judicial powers to the legislative power, which would increase the influence of the citizens. Others were proponents of the separation of powers because it would provide protection of the rights of citizens against this same legislative power. In this, they followed Locke. The aristocracy, among others, referenced Montesquieu, who considered the separation of powers as a possible protection of their position.[2]

Eventually in the Netherlands, the separation of powers would be enforced mainly to prevent the administrative power from gaining too much influence over the judiciary. In France, it had been the other way around. There, in the past, judges had regularly intervened in administrative affairs and the aim of the separation of powers was to curb judicial power.[3] In the Netherlands it would take many constitutional reforms to crystallize the principle of the separation of powers, and even after the Complete Constitution Reform (*Algehele Grondwetsherziening*) of 1848, the extent to which there would be a separation of the powers was not clearly described. Although the separation of powers in general would be increasingly strengthened in each new constitution, the principle was still not completely clarified in 1848. As a result, the division of powers was shaped through practice, mainly during the years after 1848.[4]

Thus, the so-called separation of the powers in the Netherlands was a lengthy process that developed over the course of the nineteenth century. It is important to note, however, that the struggle in the Netherlands focused mainly on the balance between legislative and administrative powers, and the position of the king in this constellation. The independence of the judiciary, on the other hand, was clear quite soon. Already in the Constitution of 1814 was "the judicial function ... specifically allocated to the judicial institutions." The Constitution of 1815, the Revision of the

[2] Oosterhagen, *Macht en Scheiding,* 124–125.
[3] Oosterhagen, *Macht en Scheiding,* 124–125.
[4] Oosterhagen, *Macht en Scheiding,* 337.

Constitution of 1840, and the Complete Revision of the Constitution of 1848 left no doubt as to the independence of the judiciary.[5]

Therefore, the question remains, how was it possible that in the Netherlands Indies, the independence of the landraad presidents was not guaranteed until well into the nineteenth century. Apart from the colonial circumstances, which we will discuss in this chapter, a first explanation for this is that even in the Netherlands itself, practice did not follow theory completely. In 1815, for example, regulations stated clearly that the High Court (*Hoge Raad*) held the *privilegium fori* in cases of office crimes (*ambtsmisdrijven*) committed by ministers or other officials. Willem I, however, essentially ignored this, as described by legal historian Maarten Oosterhagen: "In practice Willem I observed himself and behaved as the centre of the state. [He] fired those who opposed him."[6] Dutch conservatives, represented in the king and aristocracy, were not at all interested in a fully independent judiciary. They were convinced that the maintenance of order and the general interest should be a priority, and if necessary the power holders should be able to influence this. Liberals, however, considered the independence of the judiciary above the interests of the maintenance of order. It was only in 1848 that the upper middle class, with its liberal judicial convictions, held enough power to organise a more independent judiciary in the Netherlands. Even then, the legal system would remain a battleground, in particular regarding the aristocracy's influence on the provincial courts.[7]

Dependence of Judges in Colonial Java

In the Netherlands Indies, criticism of the landraad presidents was not limited to remarks made by the Supreme Court. Already at the start of the nineteenth century, proposals had been made for improvement. As discussed in chapter 2, the Asian Charter of 1803 proposed that local administrative officials should no longer preside over the Javanese courts. This call was not heeded at the time. Raffles was the first to make a start with a separation of the powers by appointing independent judges at the circuit courts. However, he retained the residents in the position of president at the landraad. To

[5] Oosterhagen, *Macht en Scheiding,* 180. "*De rechtsprekende functie (..) uitdrukkelijk toebedeeld aan de rechterlijke organen."*

[6] Oosterhagen, *Macht en Scheiding,* 222. *"In de praktijk voelde en gedroeg Willem I zich als het centrum van de staat ... [Hij] ontsloeg wie hem tegensprak."*

[7] Pieterman, *De plaats van de rechter in Nederland,* 79-81.

increase transparency at least somewhat, the people were given the opportunity to file petitions at the landraad.[8] After the return of the Dutch, the judicial presidents of the circuit courts were retained, although an exception to this was made during the period directly after the Java War, when the residencies of Banyumas, Bagelen, Madiun, Kediri, and the sub-residency Pacitan were annexed to the government lands of Java. In these new residencies, it was decided for political reasons to establish *groote landraden* (big landraden); a kind of merger of the landraad and circuit court presided over by the residents, because "the authority of the residents in these recently annexed regions, by a separation of the administrative and judicial powers and the involvement of judicial officials, would be weakened" and, moreover, that "the interference of the circuit court judges, being less compatible with the institutions and understandings of these peoples, had to be excluded." In 1848, the circuit courts were introduced in these residencies after all.[9]

The second committee of Scholten van Oud-Haarlem pleaded already in 1839 to install separate presidents at the landraden, to foster the independence of the judicial system. Besides, they feared for the immunity of the resident, since their verdicts were annulled or revised every now and then by the Supreme Court. Moreover, in veiled language the committee pointed out the danger of corruption. A resident could, for example, be approached by a regent with a request to turn a blind eye when a lower chief—"often relatives of the regents by blood or marriage"—were guilty of extortion. The committee imagined that it would be hard for a resident in

[8] Raffles, *History of Java.* Appendix D. "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java," art.134. *"As it is most essential that access to justice and redress be rendered as easy and free as possible to the injured, the Residents are ordered to receive at all times, and to pay the utmost attention, to every petititon that may be presented to him. ... he shall cause a box to be placed at the door of the Court, into which petitions may be dropped; of this he shall himself keep the key, and on going into Court open it with his own hand, and have the contents read to him. He shall, at the same time, in the open space before the Court, invite the giving in to him and complaints from persons who may consider themselves as aggrieved."* The landraad was called the Resident's court during the British interlude.

[9] Gaijmans, *De Landraden op Java,* 6. *"het gezag der Residenten in die pas ingelijfde gewesten, door eene scheiding van Administratieve en Rechterlijke macht en de inmenging van Rechterlijke Ambtenaren, zoude worden verzwakt (..)"de bemoeienissen der Omgaande Rechters, als minder vereenigbaar met de instellingen en begrippen des volks, moesten worden uitgesloten."*

such as situation to still prosecute such a person before the landraad. If, however, it became possible for him to say that this was not within his power, and if he could refer the case to an independent judge, the chances of local chiefs being punished for their illegitimate behaviour would improve, argued the committee.[10]

State Secretary J. C. Baud was not a proponent of separate landraad presidents though. From his perspective, an independent legal system was not very important. In response to the committee proposal, he wrote "that, if the influence of the resident on the judgments of the ... landraad were in conflict with the theory of the independence of the judicial power, that influence certainly did not oppose the convictions of the Javanese." Moreover, according to Baud, the power of the government had "to be broken as little as possible." Baud argued that it was exactly the concentration of all power in the hands of one person in a residency that had established the authority convincingly. This colonial authority was needed to demand "a before unknown effort in the interest of the cultivation [system]." The separation of the powers through the introduction of a separate landraad judge would deprive the resident of an important "instrument" of authority. In short, everything had to remain as it was, in particular to ensure that the colonial government continued to reap the benefits of the cultivation system:

> Java [is] in a state of transition from the Asian to the European ways of government … For as long as that transition has not made any progress and, foremost, for as long as the government obtains its most prominent income from the workings of the Asian institutions, it would certainly be unjust, and foolish and careless, to declare war on these institutions and thereby shut that source of rich and necessary income, solely out of love for the European theories and ways.[11]

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[10] Committee Scholten Oud-Haarlem cited in: Immink, *De Regtelijke Organisatie*, 4-7. *"dat, moge al de invloed van den Resident op de beslissingen van den ... Landraad in strijd zijn met de theorie der onafhankelijkheid van de regterlijke magt, die invloed zeker niet aandruischte tegen de begrippen der Javanen."*

[11] J.C. Baud cited in: Immink, *Regterlijke organisatie*, 9. "*..eene te voren ongekende inspanning van krachten te vorderen in het belang der cultures."(...) "Java [bevindt zich] in den staat van overgang van de asiatische tot de europesche vormen van bestuur... . Zoolang*

The ideal of an independent legal system was hereby declared inapplicable to colonial circumstances. The legislation of 1848 would not alter the position of the resident as landraad president in any way.

Had it been up to some conservative officials, even the circuit courts would have been presided over by a resident. For example, as described in chapter 6, Resident G. L. Baud complained in a letter to his cousin J. C. Baud, about the dispute between the Javanese members and the European judge of a circuit court. He believed this dispute would have never happened if the resident had presided over the circuit court: "Therefore I ask, would such a scandal have taken place if the resident had presided? Certainly, not." He proposed to let the resident preside in the circuit courts, in particular because they would be more capable of dealing with the local chiefs and detecting false witness accounts given by locals. In his letter, Baud gave two examples of landraad cases in which he had discovered that witnesses had given false testimony. He had discovered this by ordering the witnesses to be interrogated again after the court session had ended. In the first example, one witness in a civil case turned out to be the son of the defendant, even though he had declared himself to be unrelated to the litigant. In the second example, the witnesses in a criminal case had been bribed by a village chief to falsely accuse an innocent man, whereas in reality the village chief himself was the guilty party. Baud argued that these were not exceptional examples, and according to him the only solution would be to allow the resident to preside over the circuit courts, because they were better acquainted with the "nature, actions, and motivations of the chiefs and the people." Moreover, it would be easier for them to investigate the cases themselves in the residency, which could be handled quickly. Finally, the resident was in a better position to exercise influence over the Javanese court members. Baud wrote that he had mentioned all this already in 1841 to Merkus, who had been unwilling to believe that the judicial system was in such a bad state.[12]

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die overgang geene grootere vordering had gemaakt en vooral zoolang het Gouvernement zijne voornaamde inkomsten bleef tegemoet zien uit de werking der asiatische instellingen, het even onbillijk, als dwaas en onvoorzichtig zoude zijn om aan die instellingen den oorlog te verklaren en alzoo die bron van rijk en onontbeerlijke inkomsten te doen opdroogen, blootelijk ter liefde van europesche theorien en vormen."

[12] NL-HaNA, 2.21.007.58, 058 J.C. Baud, no.638. Letter G.L. Baud to J.C. Baud, September 11, 1847. "*Nu vraag ik, zou zoodanig schandaal begaan zijn wanneer de Resident had*

In general, Baud did not see the purpose of professional judges in criminal cases anyhow, "because I cannot understand how one needs an extensive knowledge of law to be able to judge whether someone is guilty of robbery, murder, or other crimes."[13] When G. L. Baud became the new Minister for Colonial Affairs, he took the opportunity, in a report of 24 May 1849, to propose again—this time to Whichers—replacing the circuit court judges by the resident. However, Whichers disagreed, because the circuit judges' judicial knowledge "provides a safeguard of proper justice." Moreover, the circuit court judges acquired knowledge of local circumstances through the circuit court cases, and this served as a preparation for their later careers at the Supreme Court. When Whichers' response reached The Hague, G. L. Baud had already resigned and the new minister, Charles Ferdinan Pahud, who was not as reactionary as his predecessor, endorsed Whichers.[14]

Yet, in the meantime, J. C. Baud had decided that all judicial officials in service could apply for administrative posts. The purpose of this was to include judicial officials as much as possible within the colonial civil service. In particular, during the cultivation system era, the position of administrative official was more attractive due to the cultivation percentages. If a judicial official wanted to be considered for an administrative position in the future, it was best to not be too critical of the administration, or as historian Cees Fasseur concluded, "More than anything, he wanted to prevent the development, in the Indies, of an independent judicial service consisting of professional judges who, with their verdicts, would be a threat to the omnipotence of the governor general."[15]

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voorgezeten? Voorzeker Neen. (..)…inborst, handelingen en drijfveren van Hoofden en bevolking."

[13] NL-HaNA, 2.21.007.58, 058 J.C. Baud, no.638. Letter G.L. Baud to J.C. Baud, September 11, 1847. "*..want ik kan niet inzien, dat men eene uitgebreide regtskennis noodig heeft om te beoordeelen of iemand als dan niet aan roof, moord of anderen misdaden schuldig is."*

[14] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. July 4, 1850, no.9. Letter from Minister of Colonial Affairs Pahud in response to Whichers. "*..een waarborg oplevert voor eene goede berechting."*

[15] Fasseur, *De Indologen*, 117–118. *"Voor alles wilde hij voorkomen dat in Indië een onafhankelijke rechterlijke macht zou ontstaan van professionele rechters, die met haar uitspraken een gevaar zouden vormen voor de almacht van de gouverneur-generaal."*

8.2 Towards Change

A new period started with the Dutch constitution of 1848, when the parliament acquired greater control over the colonial budget and colonial affairs.[16] Yet, the 1850s were not years of great change in either the Netherlands or the Netherlands Indies. This was certainly the case for the legal system. As described before, the colonial law codes of 1848 reflected discussions dominated by merely conformist views during the 1830s and 1840s. Also, there was not a pressing need for the introduction of independent landraad judges in the 1850s, although the reliance of law on administrative power was mentioned at times as a serious problem. In an evaluation of the workings of the legislation of 1848 attached to the Colonial Report of 1856, Attorney General Allard Josua Swart wrote that "when assessing the workings of the new legislation among the natives in Java and Madura, it should not be forgotten that this is almost completely entrusted to administrative officials and native chiefs, and that, imperfect though such a [system of] justice may be from a judicial viewpoint, apart from the political perspective, this cannot be changed radically without considerable expense."[17] Thus, although the problem was acknowledged, the solution—the introduction of independent landraad judges—was seen as an excessive financial burden. During the 1860s, the liberal course was resumed by the second government of Johan Thorbecke. And then, despite the reluctance of the 1850s, a debate on possible liberal reforms in the field of colonial law got underway.[18]

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[16] Until 1848 colonial affairs were decided by the king, and parliament had not much say in it. Only in 1848, with the introduction of the revised Dutch constitution, parliament gained some control over colonial affairs.

[17] KV, 1856. Attachment "Verslag van den procureur-generaal bij het Hooggerechtshof van NI over de werking der in 1848 ingevoerde nieuwe wetgeving voor Nederlandsch Indië." "*Bij de beoordeeling der werking van de nieuwe wetgeving op Java en Madura onder den inlander behoort niet uit het oog verloren te worden, dat dezelve bijna geheel is toevertrouwd aan administratieve ambtenaren en inlandsche hoofden, en dat, hoe gebrekkig zoodanige regtspraak uit een juridisch oogpunt ook zij, hierin, daargelaten nog het politieke oogpunt, geene radicale verandering kan worden gebragt zonder zeer aanmerkelijke uitgaven."*

[18] After 1848, liberal ideas and their representatives from the Netherlands slowly gained renewed importance in the colony. Although many liberal reforms were held off for decades—reluctance generally dominated the discussions—it was clear that eventually change would be inevitable. This was heralded by the introduction of the auditing principle (*comptabiliteitsbeginsel*) implemented in 1864, by which the minister of colonies had to submit the colonial budget to the Dutch parliament, whose control of colonial affairs was increased considerably. Furthermore, the public press became more influential, raising questions and criticizing regional politics in the colony on a more regular basis. Also, law in

Cutting the Ponytails

The calls for criminal law reforms got louder during the 1860s. In 1866, this led to the abolition of flogging with the rattan, and pressure to replace the landraad presidents with independent jurists increased. The new Attorney General Rappard wrote in 1860: "Also native justice would improve considerably if regionally the presidency of the native courts [pluralistic courts] were entrusted to a judicial official." His concerns about the legal system were based on the case files he had assessed in revision. Their poor quality concerned him to such an extent that he felt obliged to submit a proposal on how to improve the legal system. Therefore, in 1862 he asked that residents, circuit court judges, and a private lawyer share their experiences with him.[19] Their letters show that their viewpoints differed according to the author's profession.

The residents who responded to Rappard, did not mention any problems regarding criminal law practice, but emphasized the difficulties with civil law cases on a regional level. In 1855, the Chinese had been elevated to the same judicial position as the Europeans, with the consequence that both Chinese and Javanese—in cases in which one of the litigants was of Chinese descent—had to travel long distances to one of the three Councils of Justice in Java, in addition to which they had to pay for an attorney. Therefore, voices were raised to give the landraden the right to administer justice in minor civil cases between Europeans and Chinese. The resident of Rembang thought that in that scenario the landraad president—he himself—ought to be assisted by a "judicially well trained clerk." The resident of Surabaya went a step further by proposing the appointment of a judicial official subordinate to the resident, but who could substitute as president during the resident's absence. Regarding criminal law, none of the residents mentioned any problems, but it seems that—due to complaints about the administration of civil justice—there was some willingness to accept the appointment of judicial officials in the residencies.[20]

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the Dutch East Indies was vividly propagated by lawyers as a medium to civilize the Javanese people.

[19] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Proposal Rappard. Batavia, April 4, 1864. "*Ook de inlandsche retspleging zoude er zeer bij winnen, indien plaatselijk aan een regtsgeleerd ambtenaar het voorzitterschap der inlandsche regtbanken wierd opgedragen*."

[20] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letters from the residents: Resident of Kedu, G.M. van de Graaff. Magelang, March 11, 1863.; Resident O.

The circuit court judges who wrote to Rappard also mentioned the newly introduced equal status of the Chinese regarding civil law, but above all they observed problems in the field of criminal law as executed by the landraden. They noted the most pressing problems in the police investigations carried out by the priyayi. Circuit Court Judge J. Sibenius Trip of the third division in Java blamed the poor state of police affairs to the fact that European officials often delegated the supervision of police investigations to Javanese officials due to a lack of time: "Although much can be expected from the native personnel regarding the investigations of crimes, they usually lack insight and need intensive guidance in many cases."[21] Nor did Circuit Court Judge W. Diemont of the first division express much confidence in the Javanese officials: "The native is not devoid of good qualities," he acknowledged, "but above all he prefers ease; he is largely thoughtless and indifferent, he is very envious and revengeful; the loyalty to his chiefs is excessive and borders on fear. Little or no care has been taken for his intellectual and moral development. The financial compensation for the chiefs, with the exception of the regent, is too little to cover their expenses."[22] Thus, altogether, the character of the Javanese, his lack of education, and a low salary were seen as the causes of poor preliminary investigations in criminal cases. However, the solution that circuit court judges offered in their letters was not to solve any of these issues, but instead to appoint European judicial officials to supervise the investigations carried out by Javanese officials.

The criticism of police investigations expressed by the circuit court judges was based on the files of preliminary investigations they used in the circuit courts, which were compiled by the wedono (or in Batavia, the *demang*) and jaksa and signed by the resident. The circuit court judges received files that did not meet the regulations. Judge Sibenius Trip gave some examples. First, sometimes the procès-verbal was drawn up long after the inspection or autopsy. Second, he received police magistracy' case

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van Rees of Surabaya. March 4, 1863.; Resident Tijzelaar of Rembang. Rembang, March 24, 1863.

[21] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter from circuit court judge J. Sibenius Trip to attorney general Rappard. Rembang, November 24, 1862. "*Van het inlandsch personeel is, wel is waar bij de opsporing van misdrijven veel te verwachten doch het ontbreekt haar veelal aan doorzigt en behoort in vele zaken behoorlijk geleid te worden.*"

[22] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter of circuit court judge W. Diemont to attorney general Rappard. Batavia, 27 december 1862.

overviews (*politierollen*)—in cases of recidivism—on which cases had been handled that should have been referred to the landraad. Moreover, both circuit court judges mentioned that they had dealt with cases in which they had been forced to acquit the primary suspect for lack of proof, although he could have been convicted if his fellow suspects had been summoned as witnesses.[23] This point was not only a criticism of how Javanese police officials worked, but a careful and rather indirect criticism of the resident.

Private attorney C. J. F. Mirandolle felt less constrained in expressing his views and denounced the resident directly: "The major mistake that has been made at the introduction of the judicial organisation is that one has entrusted the instruments of justice to the administrative officials, whose nurture and course of life make them entirely unsuitable for administering justice." On the separation of administrative and judicial power, he wrote: "There is no greater favour than this to offer to Java." In his letter, he refuted the much-heard argument that "the Oriental" in nature would prefer a unification of the powers. According to Mirandolle, even if this was true, this was not an argument to allow injustice to exist. The dependent judge was in contradiction with the principles of justice, so this had to be changed anyway.[24]

Whereas the circuit court judges mainly identified the lack of time and knowledge among residents, Mirandolle emphasized the fact that residents would always put their political interests first, and this was especially detrimental to criminal law: "For all these officials, the written law and the formalities of justice—which they largely ignore and absolutely

[23] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter of circuit court judge J. Sibenius Trip to attorney general Rappard. Rembang, November 24, 1862. *"De inlander is niet ontbloot van goede eigenschappen doch rust is hem boven alles lief; onnadenkend en onverschillig is hij in groote mate, hij is zeer jaloersch en waarkzuchtig; de eerbied, welke hij heeft voor zijne hoofden is overdreven en grenst aan vrees. Weinig of geen zorg wordt er gedragen voor zijne verstandelijke en zedelijke ontwikkeling. De bezoldiging der hoofden, de regent uitgezonderd, is te gering dan dat zij daarvan kunnen bestaan."*

[24] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter from Mirandolle to Attorney General Rappard. *"De grote fout, die bij de invoering der Regterlijke Organisatie begaan is, is dat men atributen van regtspraak aan administratieve ambtenaren heeft opgedragen, wier opvoeding en levensloop hen voor die regtspraak geheel ongeschikt maken. (..) geen grooter weldaad kan in dit opzigt aan Java bewezen worden*." Charles Jean François Mirandolle (1827–84) was born in Paramaribo. He was a lawyer and owned a law firm in Semarang from 1853 until 1864. He returned rich to the Netherlands and became a member of parliament. He rejected the request to become minister for colonial affairs several times. www.parlement.com (last accessed: 28-7-2016)

do not understand—are in the background, whereas the maintenance of rule, order, peace, and wealth are in the forefront, and they are convinced that they are fulfilling their duty when sacrificing justice in order to reach a—from their perspective—much more important aim." Mirandolle claimed to have hundreds of examples "that are so telling, that they have the appearance of being illegal." According to him, residents only had two aims when administering criminal justice. Their main goal was to get the suspect declared guilty during a landraad session. Therefore, he maintained, they often neglected to investigate whether the accused was actually guilty at all. Second, the confession of the accused was considered the most important proof. To obtain a confession "often moral, and sometimes personal torture" was applied. This could include flogging, sleep deprivation, or the torture of relatives. Moreover, bribing and punishing witnesses was not uncommon.[25]

In the years following, Mirandolle repeated his claims in newspapers and journals, publishing pressing articles that demanded reform. He argued that it was unworthy of a civilized country to refrain from a separation of powers. He also emphasized that residents even united all three powers in themselves, because they were also entitled to promulgate local ordinances and regulations. Mirandolle blamed J. C. Baud for having given preference to the interests of the cultivation system over an independent judicial system. He condemned this as a "false principle" and he condemned police magistracy as a telling manifestation of this policy, with the most direct negative consequences: "At once, one will notice that the same resident who, through his legislative power, has issued local rules, and as head of the police shall watch over the obedience to those rules, as well as to other police regulations, now also acts as a judge to impose punishments on natives, who—according to him—are guilty of violating the rules. It is almost impossible to bring together more guarantees of judicial bias."[26]

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[25] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter from Mirandolle to Attorney General Rappard. *"Bij al die ambtenaren, staan de geschreven wet en de formaliteiten der regtspraak, die grootendeels ignoreren, en volstrekt niet begrijpen op den achtergrond, maar handhaving van het gezag, orde, rust en voorspoed in hun gewest op den voorgrond en zij gelooven slecht hun pligt te doen, indien zij het regt opofferen om een in hun oog veel gewigtiger doel te bereiken. (...)die zoo sterk sprekend zijn, dat zij den schijn van charges hebben. (...)..dikwerf morele wel eens persoonlijke pijniging.."*

[26] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Policie-rol," 14-24. "*Al dadelijk merkt men op dat dezelfde Resident die, krachtens de hem gegeven wetgevende macht, de plaatselijke keuren heeft vastgesteld, en als hoofd der policie moet waken tegen de overtreding van die keuren, zoowel als van andere policie-reglementen, nu ook als rechter*

Mirandolle also called for action by Governor General—and jurist—Pieter Mijer, and he referred to an article written in 1839 by Mijer (when he was a member of the codification committee) in which he had argued for the importance of "an impartial judicial administration based on proper laws,"[27] thereby being less reluctant regarding reforms to criminal justice than in his later days.[28] Mirandolle was also to the point on the existing fear that reform would undermine the authority of the resident: "The fear, that the unity of power will be ruptured if the resident loses his judicial position is hollow. The prestige of this chief official will not be reduced if he stops being the source of poor verdicts."[29]

More private attorneys would raise their voices. In 1863 attorney J. van Gennep and notary J. R. Kleijn established the Indisch Weekblad van het Recht (*Indies' Weekly Journal of Law*). There was already a judicial journal, but its editorial board was unable to fulfil one of the aims of the *Weekly Journal of Law* "due to the articles of incorporation and the direct relationship of the editors to the government."[30] This new aim was the denunciation of abuse: "A constantly open opportunity to report facts and existing abuses will be a forceful instrument, not only to repel but also to prevent arbitrariness."[31] In the first editions of the journal, articles were devoted to the rattan punishment and why it had to be abolished, the police magistracy, and the subject of the resident as landraad president.

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optreedt om de straf op te leggen aan den inlanders, die zich volgens hem aan overtreding heeft schuldig gemaakt. Het is bijna onmogelijk meer waarborgen voor eene partijdige rechtspraak bijeen te brengen."

[27] Mijer, "Bijdrage tot de geschiedenis der codificatie." "*goede wetten en eene daarop berustende onpartijdige rechtsbedeeling*"

[28] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163–174.

[29] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Policie-rol," 14-24. *"De vrees dat de eenheid van gezag zou verbroken worden, indien men den Resident zijne rechterlijke functien ontnam, is ijdel. Het prestige van dien hoofambtenaar zal niet verminderen indien hij ophoudt de bron van slechte vonnissen te zijn."*

[30] [Editors]. *Indisch Weekblad van het Recht* 3, 1. On the difference between the two journals the editorial board wrote: "that the Weekly represents the liberal constitutional principle of free debate (/speech) and progress, whereas the Journal seems to merely represents the autos epha, the conservative or authority principle." (*dat het Weekblad meer het liberale constitutionele beginsel van vrije discussie en vooruitgang vertegenwoordigt, terwijl het Tijdschrift meer het autòs ephâ, het conservatief of autoriteits-beginsel, schijnt voor te staan.)*

[31] [Editors]. *Indisch Weekblad van het Recht* 1, 1-3. "*..door zijne akte van constitutie en de ambtelijke betrekking doorgaans door zijn redactieleden bekleed*." (…) *"Een steeds openstaande gelegenheid tot mededeeling van feiten en van bestaande misbruiken zal een krachtig middel zijn, niet slechts tot keering maar tot voorkoming van willekeur."*

In the meantime, Attorney General Rappard had collected all advice on the matter and in 1864, he formulated a concrete proposal. As mentioned above, the advice had differed per profession, but everyone seemed to offer some room for the introduction of professional jurists. Although Rappard acknowledged the problems with police magistracy and "the incredibly arbitrary way in which cases are handled there," he was nonetheless opposed to the idea of abolishing the police magistracy altogether. This would be impossible, in his opinion, as long as the cultivation system was not bound by stricter rules:

> If one takes away the power of the administrative officials to impose punishments by police magistracy (*politierol*), all societal constructions of the natives would fall apart. Only when the cultivation services and the obligations of the native population towards the chiefs (…) are arranged legally—for which it is my earnest desire that the government will proceed to act soon—can we think of introducing proper justice in police cases.[32]

Thus, there was no abolition of the police magistracy; but Rappard did propose two other reforms. First, European judicial officials had to be appointed as landraad presidents, assisted by a clerk (preferably with judicial training). Second, these landraad presidents should also administer justice in small cases—and in certain civil cases with Chinese of equal standing with Europeans—where Europeans were involved. These cases would no longer be heard at the Councils of Justice.

What followed was wrangling between the various administrative bodies on the proposed reforms. In all responses, any criticism on the

[32] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Proposal Rappard. Batavia, April 4, 1864. "*..de ongelooflijk willekeurige wijze waarop de zaken daar worden afgedaan..*" *(..)* "*Er is nog nagenoeg geene verpligting van den inlander wettelijk geregeld, ontnam men den administratieven ambtenaar de bevoegdheid om naar willekeur op de politierol straffen op te legen, dan zouden voor den inlander alle maatschappelijke banden los zijn gelaten. Eerst dan wanneer de heeren- en kultuurdiensten, de verpligtingen der inlandsche bevolking jegens de hoofden en die der mindere beambten op wettige wijze zullen zijn geregeld en straffen op overtredingen zullen zijn bedreigd, waartoe ik vurig wensch dat de Reering spoedig moge overgaan, is aan eene behoorlijke regtspraak in politiezaken te denken.*"

resident was formulated in very carefully. All letters stressed that the poor quality of the justice system was due to a malfeasance of the jaksas and police officials. The residents' lack of time was another cause mentioned. In the end, Rappard's proposal was not turned down because it was unneeded—Governer General L. A. J. W. baron Sloet van de Beele strongly supported it—but because the Council of the Indies objected to its feasibility. They preferred that a Department of Justice be established first, so that the director of that department could implement the reform. Finally, Minister of Colonial Affairs N. Trakranen rejected Rappard's proposal because it would be impossible to find enough jurists on such as short notice.[33]

As the proposal bogged down in interminable discussions, the new Attorney General Der Kinderen decided to bring Rappard's initial proposal to the table again. After summarizing the problem, he proposed two concrete solutions. First, he pleaded for a gradual introduction of the judicial landraad president, to make sure that there would be time to find enough jurists. Second, he proposed abolishing the circuit courts, which would release eight jurists to be available for the position of landraad judge. The new Minister for Colonial Affairs Engelbertus de Waal dealt with the dossier efficiently. He left out all minor recommendations and complaints and only focussed on the main issue; the separation of the administrative and judicial powers was a fact. In 1869 the formal decision to appoint judicial landraad judges was taken, and the first five judges were appointed in 1871.[34]

Around 1870, several issues that had been debated for years were suddenly resolved with the establishment of the department of justice and the introduction of the Native Criminal Code. These were years of change, although delay and doubt continued to exist. The question was raised, for example, what had to be done first? The code or the judges? Eventually, it all happened more or less simultaneously. After 1873, the gradual separation

[33] 49 jurists were needed to provide a judge for all landraden. It has been taken into account that the circuit courts would be abolished, so that the five circuit court judges would also be transferred to a landraad. Traktanen thought this number to be impossible, and the time of issue would also not suit because of the introduction of the auditing principle law.

[34] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. December 30, 1868, no.1a and 1b. Letter Minister for Colonial Affairs De Waal to the king. Batavia, December 30, 1868.; S1869, no.47.

of the administrative and judicial powers was also expanded outside of Java.[35]

In practice, however, the arrival of jurists in the residencies would be gradual. In 1888 (—the year of the case of the falsified procedural documents discussed in chapter 7), the landraad of Tangerang was still presided over by the assistant resident. In 1879, in Java fifty landraden were presided over by thirty-one judicial officials. At that time, there were still thirty-eight landraden headed by the resident. A start was made with the abolishment of the circuit court in East Java, where all landraden were presided over by professional judges.[36] Only in 1901 were all landraden in Java presided over by judicial officials. Then, all circuit courts were abolished.

Confident Jurists and Administrative Suspicions

After the introduction of the independent landraad president, all of a sudden, there were more jurists in Java, especially in the countryside and smaller cities. We will now return to the residency level and take a closer look at the consequences of reform for regional dynamics. What did the residents think of their dismissal from the position of landraad president, and how did they respond to the judicial landraad presidents entering their domains?

From the perspective of at least some jurists, the changing situation in the residency did not run smoothly. The jurist A.J. Immink, appointed landraad president in Surabaya in 1876, was very unhappy with the way he was treated by the resident. The two got into a conflict over who was authorized to order the assistant clerk of the landraad to act as a clerk at the circuit court. According to the official regulations, the resident would provide for a clerk when the circuit court held sessions in the residency, but Immink argued that in such cases the resident should have sent one of his own officials and not the clerk of the landraad, who worked for Immink. Thereupon, the resident filed a complaint to the government and Immink was transferred "without being heard" to Semarang, a city "feared for its unhealthy climate," as he wrote a few years later. The conflict may have been somewhat trivial and Immink was known for his irascible personality,

[35] S 1873, no.157.
[36] De Waal, *De invloed der kolonisatie op het inlandsche recht,* 104.

but his forced transfer shows that the resident could still exercise his influence on the functioning of the legal administration in his residency.[37]

Immink collected more examples of fellow landraad judges who had been in conflict with the administrative authorities. He argued that the colonial civil service was "far from content finding a kind of obstructer next to them, to whom the native could turn for protection against injustice and arbitrariness." The residents were not able to openly oppose the reforms, but they did not hesitate "to display their resentment towards the judicial landraad presidents." In 1880, Immink published a pamphlet entitled *Something on the Current Dependency of the Netherlands Indies' Judicial Officials* in which he discussed a few examples to show that the administrative officials were opposing the new judicial landraad presidents. The landraad president of Kediri M.C. Piepers had been transferred after a conflict on the seating arrangements at an official gathering at the *pendopo* of the regent of Kediri. To his "perplexity" the seat of the landraad president was not been right next to Resident J.H. Hagen, but one seat away. Seated next to the resident had been the secretary, "an official of a lower rank." After a fierce correspondence between Piepers and the resident, the landraad judge was transferred to Tuban. According to Immink, this case was especially harmful because it was important to communicate to the Javanese chiefs "which rank within official Javanese society was given to the—almost entirely newly established—independent law court."[38] In other words, this conflict could have meant a degradation of the status of the landraad.

Even more fierce was the conflict of landraad judge J. de Haas, with the assistant resident of Semarang, F.W.H. van Straaten in 1876. The assistant resident of Semarang had decided to preside over a court case when

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[37] Immink, *Iets over de tegenwoordige afhankelijkheid van de Nederlandsch-Indische rechterlijke ambtenaren*.; Fasseur, "Immink, Adrianus Johannes (1838–1914)." URL:http://resources.huygens.knaw.nl/bwn1880-2000/lemmata/bwn4/immink [12-11-2013] *"..weinig gemakkelijk en lichtgeraakt heer."*

[38] Immink, *Iets over de tegenwoordige afhankelijkheid*, 14. "*..ver van aangenaam was in den rechtsgeleerde Landraads-voorzitter eene soort van dwarskijker naast zich te hebben, bij wien de inlander bescherming zou kunnen zoeken tegen onrecht en willekeur."* (…) *"..zich het genoegen gunnen om op de nieuwe rechtsgeleerde LandraadspResidenten hun wrevel over den nieuwen toestand te verhalen." (...) "…welke rang aan de als onafhankelijk college zoo goed als nieuw opgerichte rechtbank in de officieele javaansche maatschappij moest worden toegekend."* The names of the landraad judge and the resident are not mentioned in the article by Immink. He uses their initials. Thefore, the full names are derived from the almanac of 1877 and 1878.

De Haas had fallen ill. Although De Haas wanted to continue presiding over the landraad sessions until his deputy arrived, in two opium cases the assistant resident decided he would himself preside instead. The assistant resident even wrote to the Javanese judges and advisors that they were not allowed to act in landraad sessions presided by the landraad president. This dispute became the talk of town and on the first day of the court session, a crowd gathered in front of the landraad. The chief jaksa, Javanese members, and the Chinese officer were present, but then the assistant resident ordered a messenger to announce that the landraad judge had to leave the room, because Van Straaten was to replace him. He also ordered the chief jaksa not to carry out his functions. This put the chief jaksa in a difficult position, since he was formally working on behalf of the assistant resident, as discussed in part 2, but within the courtroom he was closely cooperating with the landraad judge. This violation of the official regulations caused such a dilemma for the chief jaksa that he pretended to faint in court, causing the session to be cancelled. The other jaksas were nowhere to be found and the court session could not proceed. Of this incident, Immink wrote "whether the illness of the chief jaksa was truly severe has not been proven. It is certain though, that he and those in a similar position, had found themselves in a difficult position. … A sudden ailment was certainly a useful instrument to escape from this difficulty."[39]

Former Resident C. Bosscher checked the examples given by Immink and confirmed that all of this had indeed taken place. However, he emphasized that it was important that the administrative and judicial officials respect and understand each other's functions and interests. According to him, all Dutch people were already imbued with the importance of an independent judiciary: "The understanding among the Dutch, that a judge should be independent, is in their blood."[40] Therefore, he strongly disapproved of the behaviour of Assistant Resident V. S. However, at the

[39] Immink, *Iets over de tegenwoordige afhankelijkheid*, 19. *"Of de ziekte van den hoofdJaksa werkelijk van zoo ernstigen aard was, is niet gebleken. Zeker is het dat hij en degenen die met hem in hetzelfde geval verkeerden, voor een moeielijk alternatief geplaatst waren. (..) Eene plotseling opgekomen ongesteldheid was zeker wel een geschikt middel om aan die moeielijkheid te ontkomen."* The names of the landraad judge and the assistant resident are not mentioned in the article by Immink. He uses their initials. Thefore, the full names are derived from the almanacs of 1875 and 1876.

[40] Bosscher, "(reactie op) Iets over de tegenwoordige afhankelijkheid," 1041. *"Het begrip, dat de rechter onafhankelijk behoort te zijn, zit den Nederlander, in het bloed."*

same time, he added nuance to the other examples. According to Bosscher, the colonial jurists were inclined to behave in a disrespectful manner towards civil service officials, which he blamed on the youth of the judicial officials, who often reached the position of landraad judge at an early stage in their career and "without having much experience and knowledge of the Native." He argued this to have its origins in the "harmful haste" with which the introduction of the judicial landraad presidents had taken place under Minister Fransen van de Putte. Therefore, Bosscher considered it necessary that judicial officials remain impeachable, and he agreed that the colonial government should "also be vigilant about misbehaviour by judges, similarly to misbehaviour by others." He emphasized that "it is the duty of the government, to uphold the prestige of the administrative authorities, and protect them against harm, since every encroachment on administrative power will immediately lead to negative consequences for the respect, awe, and obedience that the native population especially should show to the authorities more than to anyone else."[41]

There were also jurists who partly agreed with the standpoint of the civil administration. In an article written at the end of his career, for example, the jurist W. Boekhoudt emphasized that the relationship between the landraad president and the resident was important, because they were mutually dependent. After all, the landraad president had to cooperate with several Javanese officials who were all subject to the resident. Boekhoudt explained how he had cooperated closely with the assistant resident, by preparing explanatory notes on how to conduct preliminary investigations. The assistant resident presented these notes during the monthly meeting (*kumpulan*) with the priyayi; hereby Boekhoudt made use of the resident's power. According to him, the young landraad presidents suffered from "overconfidence" and they needed to have more respect for the residents, "men of a more ripened age, who are rich in what they [the young jurists] are

[41] Bosscher, "(reactie op) Iets over de tegenwoordige afhankelijkheid," 1054. *"..evenzeer te waken tegen misdragingen van personen, met rechterlijke functien bekleed, als tegen die door anderen begaan."* (…) *"het de plicht is der Regeering, om het prestige van de bestuurvoerende autoriteiten omhoog te houden, en haar tegen elke krenking te bewaren, aangezien iedere inbreuk op het administratief gezag onmiddellijk een ongunstigen indruk te weeg brengt op den eerbied, het ontzag en de gehoorzaamheid, die vooral de inlandsche bevolking aan dat gezag meer dan aan elk ander moet bewijzen."*

still poor of themselves, in knowledge of country and people. They could be greatly useful to them as well."[42]

It was ensured that the judicial landraad presidents would not disturb the relations with the Javanese members. In 1876, jurists Godefroy and Diephuis, judge and secretary at the landraad of Bondowoso (Besuki), were reprimanded by the government for not attending a ceremony marking the end of Ramadan at the regent's house. Godefroy had also condescended to the regent. According to the governor general, the two men had been reprimanded also because judicial officials were obliged to uphold the prestige of the native chiefs towards the people. Moreover, the precarious balance of dual rule had to be protected. One way to do this was by attending "formal occasions," by paying visits, and by a "suitable homage" towards the chiefs "not only [by] administrative officials, but also the others—and in particular judicial officials. … Their contributions to a closer attachment of the bonds of goodwill that should connect the [colonial] authorities ... to the native chiefs and the people ... was, not without reason, observed as one of the tightest basic principles of Dutch rule in these regions."[43]

That the jurists suffered from too much confidence was also the criticism expressed by the administrative official P.H. Van der Kemp. In 1885, he put his annoyance with the civil administration succinctly. The aim of an independent judicial branch was out of place in a society such as the Netherlands Indies, he argued. Moreover, some dependency would always be unavoidable: "Judicial power, just like any other power, is enclosed by the state, and this enclosure leads automatically to dependency. To complain that one is not leading an independent life, is as if a head is crying that it always has to travel with the body." Also, according to Van der Kemp, the jurists were acting arrogantly and dismissively. Altogether, they had disturbed the way things had been going smoothly for years. They also followed the rules way too precisely. He gave the example of a landraad

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[42] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 332. "*..de schim van het Hoofd van het Plaaselijk Bestuur.." (…*) *"mannen van rijperen leeftijd, die rijk zijn in datgene waarin zij zelven nog zoo arm zijn, in kennis van dat land en volk, en daarom voor hen ook van zooveel nut kunnen wezen."*

[43] NL-HaNA, 2.10.02 MvK 1850-1900, MR 1876, no.745. "*plechtige gelegenheden*"; "*gepast eerbetoon*"; *"…dat niet alleen de besturende ambtenaren, maar ook de overige en vooral de regterlijke ambtenaren ... hunne bijdragen tot hechtere aanknoping van den band van welwillendheid, die de gezagvoerenden ... aan de inlandsche hoofden en aan de bevolking behoort te verbinden. … en die niet zonder reden als een der hechtste grondslagen van het Nederlandsch gezag in deze gewesten wordt aangemerkt."*

judge who thought that the office of the assistant resident had to be open until three in the afternoon, as prescribed in the regulations. If the office closed earlier because all the work was finished, the landraad judge would send an assignment just as the office was closing. Finally, Van der Kemp argued that the jurists' bookish view of the world was not appropriate in a colonial situation. He denounced the beliefs of jurists such as Immink and Piepers—both of whom served first as landraad judge and thereafter as a member of the Supreme Court—neither of whom accorded much value to a knowledge of local languages, but instead emphasized the importance of following the law codes closely.[44]

Most examples mentioned by both sides might seem trivial, but in the hierarchy of the colonial administration, issues like seating arrangements and rankings did matter. And therefore there was an often tacit power struggle between the residents and the landraad judges. In the case of the seating arrangements of P. for example, right after the judge's transfer, it was formally decided that from then on the landraad judge would sit right next to the resident at formal occasions.[45] Thus, the landraad judge's standpoint had been followed, but he himself was nonetheless transferred against his will.[46]

That the landraad judge could be dismissed by the government was an encroachment of his "independent" position. Thus, according to Immink, judges in the Netherlands Indies were still "legally fully dependent" and no measures had been taken to alter this. According to article 94 of the 1854 Colonial Constitution, the Supreme Court members were unimpeachable, but this did not apply to other judicial officials.[47] Therefore, Immink stated in his pamphlet that it would be an "inestimable blessing" if all judicial officials were appointed for life or, somewhat less far-reaching, if judicial officials could not be transferred without hearing the Supreme Court and the official himself.[48]

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[44] Van der Kemp, "De rechterlijke macht in haar streven naar onafhankelijkheid en in haren afkeer van het BB," 445-481. *"De rechterlijke macht wordt, evenals iedere andere macht, omsloten door den staatsband, en die omsluiting brengt vanzelf mede afhankelijkheid. Zich te beklagen, dat men geen zelfstandig leven leidt, ware alsof het hoofd weende, dat het altijd met het ligchaam op reis moest."*

[45] Bijblad, no.3330.; NL-HaNA, 2.10.02 MvK 1850-1900, IB May 5, 1878, no.2.

[46] Immink, *Iets over de Tegenwoordige Afhankelijkheid*, 8.

[47] Immink. *Iets over de Tegenwoordige Afhankelijkheid*, 3-5.

[48] Imink, *Iets over de Tegenwoordige Afhankelijkheid*, 31-32. "*onwaardeerbare zegen."*

Over the years, the tug of war between the administrative officials and the landraad judges continued—issues discussed were mainly the difference in remuneration and the heavy workload—but the intensity of the conflicts declined. In 1918, an author in a colonial journal, who used the pseudonym Jurist, looked back at the reforms of 1869 and concluded that although the resident had experienced the reforms as a "blow to the prestige of the Civil Administration," the commotion was ultimately unnecessary, for "a decrease in the prestige of the governing men has not happened and the people have benefited from it."[49]

8.3 Conclusion: Newcomers to the Courtroom

The call for independent, judicial, landraad presidents was reiterated during the entire nineteenth century and finally accomplished after 1869. The reform was possible only at that moment, due to the increased power of liberal jurists, who targeted the cultivation system for being the cause of there being no separation of powers in the colony. After much debate and doubt, the judicial landraad president was introduced in Java, although the jurists were impeachable by the government and the police magistracy would remain in the hands of the resident until 1914. The jaksas would also continue working under the guidance of the local administration. When the resident was no longer acting as landraad president, this was not entirely the end of his three ponytails—of his administrative, legislative and judicial powers.

[49] Jurist [pseud.], "De Landraden op Java en Madoera", 488-490. *"..klap aan het prestige van het BB." (...) "Gelijk het met zoovele zaken gaat, ging het ook hier; van een verlaging van het prestige van de bestuursmannen is niet gebleken en de justiciabelen zijn daarbij wel gevaren."*

9 — A Rule of Lawyers

The introduction of the judicial landraad presidents in Java, leads to wondering what exactly changed in the practices of criminal justice after 1869. This chapter will address this question by first focussing on the experiences of the landraad judges with their new professional environment. Subsequently, I will determine how the jurists improved criminal law practice, by discussing the subjects of legal evidence and pre-trial detention. Although the jurists aimed at bringing the rule of law to Java, and introduced improvements, I finally argue that the colonial reality proved them to be less activist and progressive in their actions, than assumed so far in the historiography. I show this by looking at the positions of the jaksa, private attorneys and Javanese court members, and the convictions and actions of the jurists regarding these local actors in the pluralistic courts.

9.1 Entering the Colonial Courts

During the 1870s and 1880s, the arrival of the judicial landraad presidents was initially accompanied by a greater interest in the practice of the pluralistic courts among jurists in general. In the 1880s, several dissertations and handbooks focussing on the landraden and writing on criminal law procedure, the jaksas, and the penghulus were published.[1] As noted before, jurists would continue to criticise the residents' intervention in criminal law practice. Both Piepers and Immink would become Supreme Court judges, and as spokesmen of the jurists they continued expressing their criticism of the colonial civil service.

Piepers wrote in 1884 that there were still many deficiencies in the practice of criminal law in Java and he again pointed towards the civil service. He wrote a pamphlet with a title that immediately reflected the moral of the story: "Power against Law: The Prosecution of Justice in the Netherlands Indies." The biggest problem, he observed, was the police magistracy, which was still under the authority of the resident. According to Piepers, administrative officials were too inclined to abuse their powers and

[1] See for example: Grobbee, *De panghoeloe als adviseur in strafzaken* (1884); Gaijmans, *De Landraden op Java en Madura rechtsprekende in Zaken van Misdrijf* (1874).

they had too many instruments at hand to actually act on it. He gave examples of residents who had deployed convicts as gardeners, of administrative officials who had imprisoned persons arbitrarily, who had received all kinds of gifts from Javanese chiefs and Chinese, and who did not follow the instructions of the Supreme Court. "The longstanding situation of injustice and arbitrariness," he wrote, "has merely blunted notions of justice and morality among many administrative officials." Piepers emphasized the importance of the fact that "there is also a rule of law in the Indies."[2]

During the 1880s, the Indies Organisation for Jurists (*Indische Juristenvereeniging*) was established, in which possible reforms of the colonial legal system were discussed. In practice, however, most jurists did not display significant combativeness, except when it came to the protection of their own position regarding the aforementioned topics of remuneration and protection against impeachment. After only a few years, the organisation stopped actively meeting.[3] Through judicial journals such as the *Weekly Journal of Law* and the *Indies Journal of Law*, jurists would still share information in the form of verdicts and articles. Quite soon though, the *Weekly Journal* would lose most of its liberal fighting spirit. The emphasis in both journals was on reports in which the application of certain articles of the colonial law codes was discussed in great detail. There was also little interest in Javanese law, culture, or customs. It was only one of the columns in the *Weekly Journal*—"Miscellany" (*Mengelwerk*) —in which examples of

[2] Piepers, *Macht tegen recht,* 132, 153. *"de sedert zoo lang voortdurende toestand van onrecht en willekeur heeft bij vele besturende ambtenaren de begrippen van recht en moraliteit ten deze zoo goed als verstompt..."* (…) "*..ook in Indie de staat een rechtstaat is*."; "Het atavisme der O.I. Compagnie en van het kultuurstelsel," 401-437. According to this anonymous review of Piepers' book (written by someone who identified himself as a politician) lawyers tended to be impatient, especially "honest, indulgent and just" lawyers like Piepers. Politicians, on the other hand, understood that reforms took time: "To us, it is unquestionable that the morals of the people will not immediately improve with better institutions. …That the governmental and economic development of an old society, the atavism—the sporadic appearance of the old, inherited disease—will only disappear after a number of generations. And, that also in the Indies eventually an internalized, civilized rule of law will appear. (*dat niet terstond het gehalte der menschen verbetert met de betere inrichtingen en dat vooral in de staatkundige en economische ontwikkeling van eene oude samenleving, het atavisme, dat is de sporadische verschijning der oude, overerfelijke ziektestof, eerst na opvolgende geslachten kan verdwijnen. En dat ook Indie een innerlijk beschaafden rechtstaat zal worde is voor ons niet twijfelachtig*)."

[3] The Indies Organisation for Jurists (Indische Juristenvereeniging) was re-established in 1913.

criminal cases were often described to show the nature and customs of the "natives," The aim of the column was the dissemination of knowledge, but it remained vague on how to proceed in these often complicated cases in which local customs, traditions, and Islamic legal traditions all played a role. The journals also had little room for sharing practical experiences among jurists, something that former landraad judge Boekhoudt regretted in 1916, when he wrote "the *Indies Journal of Law* includes little to nothing on the internal, the more intimate life of the judiciary."[4]

The jurists' writings in the journals were, in the eyes of the administrative officials, merely theoretical discussions, often time-consuming and irrelevant for colonial practice. An exception to this was the journal *Law and Adat* (*Wet en Adat*), which was published from 1897 to 1899 and paid more attention to the interpretation of cultural and local customs regarding legal practices. This journal was established by the jurist I. A. Nederburgh, who emphasized that—whereas the existing journals merely collected verdicts—*Law and Adat* would request input from administrative officials, notaries, prison directors, doctors, linguists, and clerics. Concerning criminal law, he intended to pay attention to old notions of criminal law in the archipelago, the current formal criminal law, criminal anthropology and sociology, police, and statistics.[5] However, despite these broad ambitions, the journal ceased publication after two years, according to Nederburgh because there were not enough people submitting articles. It is possible that Nederburgh's quite direct and cynical responses to submitted pieces were not very helpful in sustaining the journal, either.

It is important to note, that the tensions between Supreme Court and landraad judges were not a thing of the past once the independent judicial presidents arrived. The administrative officials had always been annoyed by all the rebukes and notes circulated by the Supreme Court. However, the Supreme Court did not stop doing this when the landraad presidents were judicially trained. Moreover, the Councils of Justice, which had taken over the review functions of the Supreme Court from 1901 onwards, still focused on the formal irregularities in legal procedures. The landraad judge M. J. A. Oostwoud Wijdenes asserted in his memoirs that once he had been obligated

[4] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 322. *"...bevat het Indisch Tijdschrift van het Recht met betrekking tot het interne, het meer intieme leven van de rechterlijke macht weinig of niets..."*
[5] Nederburgh, "Ter inleiding," 1-4.

to repeat an entire court session because one word in the Dutch translation of an oath taken by a witness in Javanese was incorrect, which meant the oath was technically invalid and the entire court case had to be annulled.[6] In 1915, Boekhoudt wrote that many young jurists refused to attend the yearly meeting of the *Indische Juristenvereniging*, which had been re-established in 1913, because they did not want to sit at the same table with those men who were constantly nagging them with all kinds of reproaches on the work they had done.[7] Thus, the annoyance of the non-judicial landraad presidents regarding the meddlesome Supreme Court consisting of older men inclined to follow the letter of the law, turned out to be partly an intergenerational conflict, and one that was inherited by the judicial landraad presidents.

Another question to be asked is whether justice as administered by the landraad became more independent from the administration. It is extremely difficult to provide a satisfactory answer to this question, because the judicial archives have not been preserved. Moreover, the residency archives include hardly any judicial information from the period after 1869. In the residency archive of Tangerang, only one case was found from the period after the introduction of a judicial president, something that only happened in 1891 for this particular landraad. This is a criminal case from 1893 in which the assistant resident, who had supervised the preliminary investigations, wanted to prosecute a suspect for attempting to bribe a policeman. However, the president of the landraad, J.L.T. Rhemrev,[8] decided that the case did not meet the "criteria of any crime or any offence" and the suspect was freed.[9] This case shows that the judicial president did function independently. However, it is not unthinkable that there must have been situations where it would be hard for the landraad judge to position themselves completely independent of the resident. He was, particularly in the more remote residencies, the only judicial official among several officials of the civil administration. This issue of isolation meant little contact with other jurists and made the Landraad judges susceptible to influence from the administrative sphere regarding local and regional issues.

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[6] UL, H1206, M.J.A.Oostwoud Wijdenes. "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 30.

[7] "Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 317-318.

[8] In the early twentieth century J.L.T. Rhemrev would write a report about the abuses at the plantations of Sumatra (Deli).

[9] ANRI, GS Tangerang, no.172.2. "*..criteria van eenig ander misdrijf of eenige andere overtrading."*

It is also questionable whether the training the jurists received in the Netherlands prepared them properly to the work environment they encountered in Java. In 1919, H. van Wageningen advised making the training in Leiden more practical, suggesting that "perhaps one could shift from the emphasis on state and *adat* law, towards the drawing up of indictments, the editing of verdicts, and the drawing of conclusions from preliminary evidence."[10] It seems that jurists did not acquire much directly applicable knowledge in Leiden:

> …One can be confident of having learned a multitude of important things about the Indies in Leiden. He has come far in both volumes of Kleintjes, he is capable of comparing the press regulations of Surinam and Curacao, he has studied the acclaimed Wilken until his hands turned green, the diseases of the Dayaks, and the secrets of the three limestone chains: he knows them, and he is also supposed to know the Shafi'i school like the back of his hand.[11]

However, his knowledge of languages was inadequate and he also did not know the criminal codes of the Netherlands Indies, although Van Wageningen was not very worried about this, because this could be learned by doing. "But these are details," he wrote, "since everyone in Hollands knows that Malay, as spoken in practice, is a language that one learns from

[10] Van Wageningen, "Opleiding tot Landraadsvoorzitter," 267. *"...zou misschien ten koste van het vele staats- en adatrecht, meer nadruk kunnen worden gelegd op het opstellen van acten van verwijzing, het redigeeren van vonnissen en het trekken van conclusies uit het voorloopig bewijsmateriaal."*

[11] Van Wageningen, "Opleiding tot Landraadsvoorzitter," 267. *"... men kan tegenwoordig gerust zeggen, dat men hem in Leiden een menigte belangrijke dingen over Indie heeft geleerd. Hij is ver in de beide deelen van Kleintjes, hij is in staat, een vergelijking te trekken tusschen de drukpersbepalingen in Suriname en in Curacao, hij heeft den nooit volprezen Wilken bestudeerd, totdat zijn handen er groen van werden, de ziekten der Dajaks en de geheimen der drie kalksteenketens: hij kent ze, en ook de Sjafiitische leer behoort hij als zijn zak te kennen."* Kleintjes wrote a handbook on constitutional law, the book by Wilken had green pages and the secrets of the three limestone chains refers to geographical knowledge of Java.

his cabin boy [*hutjongen*], whereas the knowledge of the Native Regulations will come with the years.[12]

Due their limited knowledge of local languages, landraad judges were, like the resident, depending on translators. During a gathering of the *Indische Genootschap* in 1900, D. Mounier recalled an anecdote about "a trained landraad judge who neither understood nor mastered the [Malay] language. [He] used Dutch expressions and made the jaksa translate them literally. This much to the amusement of the entire landraad and the accused."[13] When a new landraad judge arrived in the colony, they often first started working at the registry of the Supreme Court or a Council of Justice. After one year, they were appointed as landraad president. However, the work at the registry was not a very relevant preparation for the position of landraad judge. Van Wageningen acknowledged that it would have been better if the new judicial officials received a year's training from experienced landraad judges, but these simply lacked the time to provide such a training. Overall, he did not consider the system to be problematic, because it never caused any major mistakes, and because during the early twentieth century, young landraad judges were, for their first position, always appointed to busy landraden where two judges presided sessions, and consequently they worked alongside a more experienced judge.[14] That it was not easy for a new Dutch landraad judge to suddenly arrive in a completely new environment and work as a judge is evident from letters written by Cornelis "Kees" Star Nauta Carsten, a young jurist who arrived in Batavia in 1918, together with his wife Maria "Miek" Jacoba Kroeff.[15] Kees and Miek stayed in Batavia for two years, where Kees worked at the Supreme Court as

[12] Van Wageningen, "Opleiding tot Landraadsvoorzitter," 264. *"...maar dit zijn kleinigheden, daar toch iedereen in Holland weet, dat Maleisch, zooals het gesproken wordt, een taal is die men van zijn hutjongen leert, terwijl de kennis van het Inlandsch reglement met de jaren komt."*

[13] Mounier, "Iets over de Landraadvoorzitters op Java en Madoera," 154. *"Voor het geval van Maleisch was ik daarvan getuige als griffier van eenen Landraad in den oosthoek, toen een rechtsgeleerd Landraad-voorzitter, die zelfs die taal niet verstond of eenigszins verstaanbaar sprak, Hollandsche zegswijzen, niet gangbaar in het maleisch, bezigde en door den djaksa aan beklaagden deed overbrengen tot groot vermaak van den geheelen Landraad en de beklaagden."*

[14] Van Wageningen, "Opleiding tot Landraadsvoorzitter," 267.

[15] Cornelis (Kees) Star Nauta Carsten was born on September 14, 1890, in Sappermeer. He married Maria (Miek) Jacoba Kroeff on August 23, 1917. They arrived in the Netherlands Indies in 1918. In the 1920s, Star Nauta Carsten was appointed to research the communist protests.

a substitute secretary. Born in Sappermeer, Kees, and Miek as well, had a hard time adjusting, as shown from letters to Kees's parents. Miek wrote, "The format of the household here is ridiculous. The Van Dijk family for example, has no less than eight servants. I think we will have to start with three."[16] She was not only surprised by the high number of servants. She also complained that it had been hard to find a proper hotel "until we finally ended up in a filthy pension where we then just stayed, for God's sake." Kees was not very satisfied, either. Due to the tropical climate, his judicial gown was "unbearable"[17] and he was bored. The library was good, but "Batavia is an extended provincial town," he wrote. "The people here do not have much intellectual need. Not even the most developed ones, such as those of the judicial power. With the exception of some of the Supreme Court members, most of them are obedient followers of what is decided by Dutch case law."[18] Finally, he also had to act prudently regarding the "animosity" between two Supreme Court members.[19]

Apart from their three servants (a housekeeper, a cook and a *babu*), Kees and Miek had no contact with the local population. They went out for dinner with other former "Hebeanens," members of a student club of which Kees had been a member.[20] In 1920, Kees was appointed as vice landraad judge in Blitar, East Java. There, he presided over landraad court sessions. He started with the final preparations of the cases for the day at six o'clock in the morning, and the court was in session from eight until noon. After the lunch break he continued working until four to edit the case files of that morning and prepare cases for the next day. Kees had problems understanding the local languages—"nearly monotonous word sequences ... enunciated without any hand gestures"—and he was also puzzled by fact that

[16] Indisch Familiearchief, 8 Familie Hueting. Letter Miek to her parents-in-law. Weltevreden, May 2, 1918. *"Bespottelijk zoo'n hofhouding als de menschen er hier op na houden, hier bv bij Van Dijk zijn liefst 8 bedienden. Ik denk dat wij met 3 zullen moeten beginnen."*

[17] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Weltevreden, May 12, 1918. "*ondragelijk"*

[18] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Batavia, July 21, 1918. *"Batavia is een uitgebreide provinciestad. Veel geestelijke behoefte hebben de menschen hier niet. Zelfs niet de meest ontwikkelden, zooals bijv. de rechterlijke macht. Behalve eenige leden van het Hof hier, zijn het meest trouwe volgelingen van wat de Nederl. Jurisprudentie uitmaakt."*

[19] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Batavia, August 31, 1918.

[20] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Weltevreden, September 20, 1918.

the accused and witnesses rarely expressed any emotion: "the suspect and witnesses sit like statues. ... He has the same facial expression when being convicted as when being acquitted."[21] Moreover, he thought the Javanese tended to lie rather often.

The position of landraad judge was clearly not Kees's calling, and he soon decided to continue his career at the European law courts in Java. Yet, there certainly were men who felt at ease working at the landraad and who even considered it to be their vocation. Boekhoudt was one of these. In his farewell article in 1915, he explained how a landraad judge should act based on his own experience. He disagreed with colleagues who said that criminal cases were always the same boring theft cases. To the contrary, "a more fulfilling profession than that of landraad president is hard to imagine." A landraad president had to take an active role and should not take for granted whatever the priyayi put forward as evidence. "One should not investigate by following the preliminary investigations files literally, but, in a somewhat complicated criminal case, one should draft one's own scheme, make one's own plan ... of how the police gradually found the evidence to solve the case, because then, immediately, one will find weak spots in previously constructed [falsified] evidence against the suspect."[22] Thus, the landraad president had to assess whether the police had done a decent job. Only when the landraad president conducted his own investigations would he "not become the victim of an unreliable police, of the limited abilities of silly folks' to express themselves, of litigants in a conflict, or of cunning attorneys [*zaakwaarnemers;* probably referring to the local *pokrol bambu*]."[23]

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[21] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Blitar, April 7, 1920. "*..haast toonloze woordenreeksen ... gesproken zonder gebaren)* "*Beklaagde en getuigen zitten als een standbeeld... . Hij zet hetzelfde gezocht als je hem veroordeelt en als je hem vrijspreekt."*

[22] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 333-334. "*Schooner werkkring dan die van den Landraadvoorzitter laat zich haast niet denken." (...) "Men moet niet onderzoeken met den vinger bij de stukken van het voorloopig onderzoek, doch vorme zich bij eene eenigszins ingewikkelde stafzaak een geheel eigen schema, een eigen werkplan (...) hoe de politie geleidelijk de middelen heeft gevonden om de zaak zoogenaamd tot klaarheid te brengen, want daardoor valt al dadelijk licht op zwakke punten in het voorshands tegen den beklaagde gecontrueerd bewijs."*

[23] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 333-334. *"..wordt [hij] dan niet licht meer dupe van eene onbetrouwbare politie of van het gebrekkig voorstellings- of uitdrukkingsvermogen van domme lieden, de partijen van het geding, dan wel van geslepen zaakwaarnemers."*

Also, after 1869, the landraad was still the only public space in Java where direct collaboration and decision-making took place among European and Javanese officials. This often lead to more mutual contact, even in the private sphere, in the otherwise largely segregated society. J. de Loos-Haaxman, the art historian wife of a landraad judge, provides us with a picture of this. She and her husband arrived in the Netherlands Indies during the early twentieth century. In her memoirs, she described how their world at first was fairly European. Her husband was secretary at the Council of Justice in Padang (Sumatra) and he had as yet no Indonesian or Chinese colleagues. After a year, her husband became president of the landraad in Tulungagung, in Java. There, they lived next to the mother of the regent, but de Loos-Haaxman writes that she was unable to come into contact with her. She could hear the gamelan play, but had never visited the house. The actual contacts with the local administration were through the landraad: "The contact with the local administration was ceaseless." For the men, the working environment formed a common denominator: "During the evening visits, the conversation topics among the men were not too hard to find, since they knew each other from the landraad."[24] De Loos-Haaxman herself encountered more problems in her contact with Javanese women: "The views in the countryside were not broad, her daily routine, her daily work so completely different from mine. And I knew so little of the *desa*, of the indigenous life. My Malay was abominable, and the Dutch of my guest not fluent." Therefore, the ladies were often bound to conversations about the children, often their only common denominator.[25]

On balance, how one approached and carried out one's presidency of the landraad was to a significant degree determined by the personality and interests of the jurist. But the stance of the judicially-trained landraad judges in general was a combination of paternalism, a sense of distance, and even distrust regarding the priyayi, combined with daily interactions with the priyayi.

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[24] De Loos-Haaxman, *Dagwerk in Indië,* 20. De Loos-Haaxman wrote her memoires at a high age in 1972. "*In Toeloen Agoeng en Trenggalek was door de Landraad de aanraking met het inheemse binnenlandse bestuur onafgebroken."* (…) "*Bij de avondbezoeken was het gesprek onder de mannen niet moeilijk. Zij kenden elkaar minstens van de Landraad."*

[25] De Loos-Haaxman, *Dagwerk in Indië,* 25. *"De gezichtskring in het binnenland was niet groot, haar dagverdeling, haar belangstelling, haar werk van elke dag geheel anders dan de mijne. En ik wist zo heel weinig van de dessa, van het inheemse leven af. En mijn maleis was miserabel, het hollands van mijn gast niet vlot."*

9.2 Colonial Jurists and Reforms

Despite the numerous challenges when working as a landraad judge, and their lack of interest in local legal traditions, the jurists did strive for certain reforms in favour of the Javanese population. First, the judicial landraad presidents were more critical of legal evidence presented in court than their predecessors, the residents. As a result, the number of acquittals increased. Second, they also advocated better legal safeguards to decrease the lengthy periods of pre-trial detention. Suspects were often in pre-trial detention for months—even years—sometimes without even knowing what they were accused of. This improved somewhat, though not entirely, thanks to new regulations initiated by liberal jurists at the end of the nineteenth century. We will now take a closer look at these two issues.

Not-Enough-Evidence Courts

In 1848, it was decided to follow Dutch procedures regarding legal evidence in the pluralistic courts. At that time, reform committee president Whichers defended this on the grounds that this had been the practice before 1848: "Although the natives have their own principles regarding oral evidence and the value of witness accounts, it has not been shown that, before the introduction of the new legislation, these principles were applied in practice."[26] Moreover, Whichers argued that the Javanese evidence system was based entirely on the judges' "inner conviction," obtained after oral debates during court sessions during which suspects and witnesses were interrogated and confronted with each other's statements.[27] The Dutch legal system, in contrast, accepted a combination of a (broader) range of evidence, such as witness accounts, written documents, confessions, and clues. An account by one person was not enough to serve as legal evidence. One the other hand, one confession of a suspect "accompanied with a certain and precise description of the circumstances" served as a full proof of guilt in the

[26] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. July 4, 1850, no.9. Letter Minister for Colonial Affairs Pahud (after reading a report written by Whichers), in response to a complaint by J.C. Baud on some of the elements of the new Indies' law codes (complaint written on September 8, 1849). *"hoezeer de inlanders hunne eigene begrippen hebben omtrent het getuigenbewijs en de waarde van getuigenissen, het hem echter niet gebleken is, dat, vóór de invoering der nieuwe wetgeving, de begrippen in de praktijk werden opgevolgd."*

[27] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. August 12, 1850, no.17. Report written by Whichers. "Rapport van jonkheer Mr. H.L. Whichers omtrent eenige door den Raad van State geopperde bedenkingen enz. opzigtelijk de nieuwe wetgeving van Ned. Indie," January 1, 1850. "*innerlijke overtuiging."*

Dutch system. Consequently, the Dutch procedure of evidence included the presentation of pieces of evidence during court sessions; chickens and cows were brought inside the courtroom and displayed in front of the court members. And a suspect's confession was seen as very important. [28]

In the 1870s, when the administrative and judicial officials were challenging each other, administrative official A.J.W. Van Delden attempted to prove the inadequacies of the judicial officials by referring to a (Chinese-Javanese) theatre performance (*komedie stamboel*) in which the landraad had been mocked.[29] Piepers countered this by arguing that these performances antedated the introduction of the jurists, and that the plays were merely mocking the Dutch system of legal evidence in general, and particularly the emphasis on the confessions of the accused. In this particular Komedie Stamboel performance, a clearly guilty thief was acquitted because he denied guilt.[30] In any case, during the decades after this incident, performances in which the landraad was mocked continued. In 1890, the Peranakan Malay-language newspaper *Bintang Barat* reported that in East Java the performance of a Wayang Wong play had been prohibited by the resident because it parodied a court session of the landraad and was therefore considered insulting.[31]

During the second half of the nineteenth century, the colonial press reported disapprovingly about the frequent failure of finding *ketrangan* (evidence) and by the end of the nineteenth century the landraden, were even called *koerang-terang raden* ("not-enough-evidence courts").[32] That this was not an exaggeration is clear from an article written by Secretary W. L. M. van der Linden in 1910, who reported that in between January and March, in forty-eight of seventy criminal cases at the landraad of Sumenap ended with acquittals.[33]

Van der Linden blamed the so-called *toekang ketrangan* (*tukang katrangan*; information man) for this. He designated these characters as the

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[28] IR 1848, art.285-297.; Gaijmans, *De Landraden op Java*, 86-99. "*..vergezeld van eene bepaalde en nauwkeurige opgave van omstandigheden."*

[29] Van Delden, *Blik op Indische staatsbestuur*, 67.

[30] Piepers, "Een protest van mr. M.C. Piepers," 1-3.

[31] *Bintang Barat*, October 16, 1890. *"Pepereksaännja betoel seperti Landraad hinga pesakitannja poen di tiroe seperti betoel. Soedah tentoe banjak orang jang datang nonton, hinga dari itoe policie soedah larang tiada bolee lagi maen wajang wong, kerna lelakon begitoe roepa ada hinakan pada pengadilan."*

[32] See for example: "Koerang-Trang Raden," *Soerabaijasch handelsblad*, February 15, 1897.

[33] Van der Linden, "Getuigenbewijs in criminele zaken," 259.

"whips of the village" (*geesel der desa*) and said they had become influential for two reasons. First, the landraad consisted of "active members of the native administration." The ongoing lack of a separation of powers on the part of Javanese court members at the landraden had serious consequences. According to Van der Linden, the Javanese members could attempt to prevent defendants from being acquitted. "It happens regularly that they are behaving as an interested party, as plaintiffs, and in fact they are—due to the amalgamation of police and justice."[34] Second, Javanese policemen had an incredibly big workload and were pressured to solve all cases. During his early days at the landraad, in 1898, Van der Linden had been surprised by the major successes obtained by the Javanese police: "from reading the ... procès-verbal of the preliminary investigation, I got the impression that the native police had a particular talent for their duty, that they were all born Sherlock Holmes. ... I was stunned by the strong unanimity of the witness accounts." Soon, of course, it turned out this could impossibly be correct, and that many cases were based on false witness accounts and manufactured evidence. Since the European resident had a strong influence on the careers of Javanese officials, they put great pressure on them to introduce evidence as quickly as possible, "under the threat of a stagnation in promotion, demotion, suspension or dismissal."[35] European officials, in their turn, were also pressured from higher up to lead successful police investigations in order to maintain peace and order, and to preserve the superiority of the colonial government, the highest possible purpose. To find evidence, Javanese officials would first use their own private spies (*mata-mata)*. However, this was expensive, because they had to pay them themselves. Van der Linden personally knew a jaksa who had been a wedono, and back then he often spent as much as 260 of his monthly remuneration of 300 guilders paying his spies. The solution for this was found in the *toekang ketrangan,* a shady character, who got paid to "prepare" offenders, witnesses, and pieces

[34] Van der Linden, "Getuigenbewijs in criminele zaken," 267. *"waardoor het meermalen voorkomt dat zij zich als partij, als belanghebbenden bij de poging tot veroordeling gedragen, wat zij door de vermenging van politie en justitie in één hand, in werkelijkheid, steeds zijn."*

[35] Van der Linden, "Getuigenbewijs in criminele zaken," 262-263. *"…kreeg ik aanstonds bij het lezen dier (..) processenverbaal van het voorlopige onderzoek den indruk dat de Inlandsche politie een bijzonder flair had voor hare taak, dat het allen geboren Sherlock Holmessen waren (..) stond ik versteld van de roerende eenstemmigheid der getuigenverklaringen." (…) "..onder bedreiging van stilstand in promotie, achteruitstelling, schorsing of ontslag*."

of evidence. This was clearly less expensive than hiring spies to do actual investigations. Suspects were found among people who were causing trouble anyway or who were disliked by the *lurah*, and witnesses were paid for their false statements.[36]

On a positive note, the high number of acquittals might also point towards an improvement in the judicial presidents' assessment of evidence at the landraden. The high number of acquittals was, on the one hand, a disturbing sign of unreliable preliminary investigations; but on the other hand, it was also a sign of a serious treatment of criminal cases by the landraad presidents. Therefore, Boekhoudt thought it unfair that newspapers wrote disdainfully about verdicts in criminal cases as pronounced by the landraden. He acknowledged the high number of acquittals, but he imputed this to the inexperience of the jurists that were sent to the Indies, and to the "flimsy preparation of criminal cases during the preliminary investigations" by the local police and priyayi. Boekhoudt also argued that in many instances, people who were actually innocent were acquitted and this, after all, should be considered a good thing: "Such verdicts—and these are high in number—should deliver honour to the landraad president whose leadership in the first place has to be thanked for this! Therefore, it is deplorable that the landraad court sessions attract such a small audience. It would certainly convince the press to express a greater appreciation for the utmost difficult work of the landraad president."[37]

Administrative official J. van Dissel disagreed. He wrote in 1913 that he feared that "due to the *koerang terang*, [the] natives will most certainly become overconfident," and he questioned the well-known expression that it was preferable to release one hundred guilty men than to jail one innocent one. According to him, it was impossible to discuss this with jurists, because they would simply respond by saying that he would not understand because he was "not judicially educated."[38]

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[36] Van der Linden, "Getuigenbewijs in criminele zaken," 263.

[37] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 351. "..*ondeugdelijke voorbereiding van de strafzaken gedurende het voorlopig onderzoek*." (…) *"Zulke uitspraken—en die zijn groot in aantal—strekken den Landraadvoorzitter, aan wiens leiding ze in de eerste plaats te danken zijn, tot eer! Daarom is het te betreuren, dat de Landraadszittingen zoo weinig publiek trekken. Gewis zoude dan ook de pers grootere waardeering toonen voor het inderdaad uiterst moeilijke werk van den Landraadvoorzitter."*

[38] Van Dissel, "Koerang Terang," 55. "…*inlanders door dat koerang terang beslist overmoedig worden."*

Pre-Trial Detention

Another issue that jurists attempted to change was the duration of pre-trial detention. As discussed in chapter 3, there was a separate procedural criminal code for 'Natives' with fewer legal guarantees; as a result suspects were often held in pre-trial detention for several months. As Van den Linden wrote, "it drove many women with their daughters into the arms of prostitution, and it brought the sons of the preventively imprisoned, often still boys, to theft and crime." From his own statistical analysis, he concluded that prisoners who were put in pre-trial detention and then released were often convicted for another crime within two years.[39]

In 1876, it was decided that pre-trial detention was only allowable on a "significant basis," but in practice such a basis was always found.[40] In 1882, the legal term for revision was set at a maximum of four weeks, but altogether the entire procedure—from preliminary investigation until revision—still took at least three to four months, according to the newspaper *De Locomotief*. The newspaper blamed the Javanese officials—the chief jaksa—who decided on pre-trial detention: "If he is, like so many native chiefs, an arch swindler (*aartsknoeier*), then each suspect would be sent to prison easily and kept there as long as possible, even if the evidence against him is marginal." The jaksas would be corrupt, because for example, Chinese suppliers of prisons had an interest in full prisons and would bribe them.[41] In 1885, it was decided that the landraad president had to mention in the "document of reference" (*acte van verwijzing*; the decision to refer a case to a certain law court) that the resident had called for preliminary custody. Also, suspects had to be informed of the contents of the indictment against them before the start of the court session.[42]

The changes in the regulations, however, did not significantly shorten the duration of the pre-trial detention, which, according to various jurists, remained a major problem. Generally, they blamed the Javanese officials for

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[39] Van der Linden, "Getuigenbewijs in criminele zaken," 259-260. *"..dat daardoor vele vrouwen met hare dochters in de armen der prostitutie geworpen waren, dat daardoor de zonen dier preventief gevangenen, knapen vaak nog, tot diefstal, tot misdaad waren gebracht."*

[40] Van der Kemp, "Waardeering van de grondwettige waarborgen tegen willekeurige inhechtenisneming in Indië," 24-27.; S 1876, no.25. "*gewichtige grond."*

[41] "Preventieve hechtenis in Indië," *De Locomotief*, May 19, 1884. *"..is hij, gelijk zoovele inlandsche hoofden, een aartsknoeier, dan wordt al spoedig iedere verdachte, hoe gering het bewijs tegen hem zij, naar de gevangenis gezonden en daar zoolang mogelijk gehouden."*

[42] S 1885, no.81.

this. In 1896, for example, a European man named Fransz, an employee of a "private land," was robbed. "The native police, working alongside the *demang*, was as usual under the impression that—in a case where a European was the victim—they had to immediately satisfy the needs of the higher-ranked, by instantly designating the alleged offenders. Even by despising the truth, by neglecting their duty. Yes, even by criminal means." Three suspected Javanese were placed in preliminary custody. The *demang* had convinced Fransz to provide him with goods identical to the stolen goods, and these were subsequently "found" in the house of the innocent accused. Eventually, Fransz had recanted his false statement. According to the newspaper, landraad president Oostwoud Wijdenes discovered the truth during a court session that lasted from eight in the morning until three in the afternoon. By then, however, the falsely accused had been in preliminary custody for over ten months: "Their family is impoverished, their income evaporated. That cries to heaven!"[43]

In 1898, it was finally decided (to the satisfaction of the landraad presidents) that the procedures had to be simplified. From then on, for example, if he was not authorized to administer a particular case the landraad president could send the files of the preliminary investigations directly to a higher judge without returning them to the resident, as was the practice formerly. Furthermore, the landraad president was authorized to release suspects from preliminary custody, and the indictment, previously drafted by the jaksa, was abolished. Subsequently, the document of reference drafted by the landraad president would be the formal indictment.[44] Even these reforms did not help much in practice, though. In 1908, the jurist C. Süthoff called pre-trial detention an "inevitable evil" in general, but he argued that in the Netherlands Indies it was applied too often and too long. He described how most criminal cases were minor theft cases: "Theft after sunset or before sunrise, of a coconut, a chicken or a worthless *baadje* at a fenced yard." Since suspects in even these cases were kept in pre-trial detention that could

[43] "Nederlandsch Oost Indie. Preventieve hechtenis in Indië," *Telegraaf* (reprinted from *Java Bode*), October 10, 1897. *"De inlandsche politie, met den demang aan het werk meende, zooals gewoonlijk naar het verlangen van hoogeren te handelen door, waar een Europeaan de benadeelde partij is, alles in het werk te moeten stellen om dadelijk de vermoedelijke daders te kunnen aanwijzen, al geschiedt dit ook met minachting voor de waarheid, met verzaking van plicht, ja door misdadige middelen. (...)"hun huisgezin is veramd, hun broodwinning verloopen. Dat schreit ten hemel!"*

[44] S 1898, no.66.

normally last for two or three months, and as much as six to twelve months, according to Süthoff these people were "done undeserved harm" Pre-trial detention was often much longer than the punishment imposed, and the judge had no flexibility, because there were minimum penalties. He therefore proposed to, just as in the Netherlands, make pre-trial detention facultative rather than imperative.[45] With an adjustment in the Native Regulations in 1912, pre-trial detention was indeed made facultative, but as late as in 1938, law professor Idema could write that the application of pre-trial detention remained standard procedure.[46]

Real changes *were* designed, in which, for example, the judge had to provide permission for a pre-trial detention, but these reforms were never introduced, because the revised Native Regulations of 1919 was never implemented. The new Native Regulations had been completely rewritten by a committee and even published when its promulgation was stopped due to protests raised by the resident of Surakarta, A. J. W. Hartloff, and other administrative officials, who argued that the new regulation was impossible to follow in the inner regions of Java. The Native Regulations promulgated in 1848,[47] would remain largely the same until it was eventually revised in 1926 and amended again in 1941 as the Revised Native Regulations (*Herziene Indisch Reglement*). In the end, however, procedures would always remain simpler compared to the European courts in the Netherlands Indies.[48]

9.3 The Rule of Lawyers

Even though Dutch judges in Java improved the legal position of the Javanese population somewhat by following the prescribed rules and procedures more closely, they also manoeuvred themselves into a more powerful position.[49] By doing this, they gave up their earlier reformative stance and at some point even disregarded the rule of law. A rule of lawyers emerged. First of all, the liberal jurists did little to nothing to change the

[45] Süthoff, "Eene opmerking over de regeling der preventieve hechtenis," 1. *"Diefstal na zonsondergang of voor zonsondergang van een klapper, van een kip, van een waardeloos baadje op een afgesloten erf."*
[46] Idema, *Leerboek van het landraad-strafprocesrecht*, 100.
[47] Several changes were made in the IR over the course of the nineteenth century. For the IR as it was in 1915 see: Hirsch, *Het Inlandsch Reglement,* 1915.
[48] Fasseur, "stumbling block," 46.
[49] Cribb, "Legal Pluralism and Criminal Law," 66.

ongoing lack of private attorneys in the native pluralistic courts. As discussed before, non-European suspects could be represented by a lawyer, but there were no Indonesian or Chinese lawyers during the nineteenth century because there was no system of higher education. At the end of the century, the so-called bambu attorneys, often former jaksas or clerks with practice-based legal knowledge, became active; but colonial judges disapproved of their activities and characterizing all of them as frauds (see also the Epilogue, below). Second, the colonial judges made themselves responsible for the indictment. The regulations that shortened the period of preliminary detention meant that—for the sake of efficiency—the landraad president took the indictment over from the jaksa. This was in direct opposition to the rule of law, since the landraad judges would from then on act simultaneously as both judge and prosecutor. Third, the colonial judges did not push for independent Javanese judges in the landraad; the Javanese court members were still priyayis. They were responsible for the police while at the same time they had a majority vote over the verdict in the landraad. Finally, this violation of the ideal of the separation of powers was hardly or not at all addressed by liberal colonial judges. We will now discuss the last two issues more thoroughly.

The Jaksa and the Indictment

It is important to realise that the decisions taken with regard to legal procedures were intended not to shorten the period of pre-trial detention. The reforms also had the consequence that the landraad presidents took over an important function of the jaksas, by replacing the jaksas in drawing up the indictments. In fact, this meant that the landraad president also started to fulfil the functions of the Public Prosecution Service, something that went against the earlier hard-won ideal of the separation of powers.

In 1884, jurist W. A. J. Van Davelaar wrote in a judicial handbook that it was impossible to give jaksas responsibilities comparable to those of European prosecutors. The Public Prosecution Service had to be independent, and the jaksas could not possibly meet this requirement. First, because they were often lower ranked than the Javanese members of the law court—if these were regent or patih—and they would therefore tend to follow their orders instead of acting independently. Second, the jaksas did not have the judicial knowledge necessary to be able to keep standing before

the European court president.[50] Thanks to these two criticisms, the position of the jaksa was increasingly stripped of its responsibilities over the course of the nineteenth century. Most tellingly, the jaksas were stripped of their responsibility for drafting indictments (*acte van beschuldiging*), which became the responsibility of the landraad judge.

A first step in this reform was that it was decided in 1885 that the document of reference would from then on be drafted by the landraad judge instead of the resident.[51] Until 1898, the division of labour was that the landraad judge would draft the document of reference whereas the jaksa drafted the indictment. The accusations made in the indictment had to be restricted to the boundaries set by the document of reference.[52] In practice, the landraad judge also checked the indictment written by the jaksa, because it was said the jaksas could not draft indictments on their own. According to the Native Regulations, the indictment had to include the facts that were seen as proven by the prosecutor and that were the basis of the accusation. Instead, the indictment quite often was more a summary of the statements given by the suspect and witnesses during interrogations, followed by the charge; thus the offence for which the defendant was being charged remained unclear, as was any determination, for example, of whether the crime had been committed was premeditated or not.[53] In 1898, indictments were completely taken away from the jaksa by abolishing the indictment altogether, and keeping the document of reference (drafted by the landraad judge) and formally introducing this document as the indictment.[54]

The road to these reforms was characterised by technical, judicial discussions, in which Piepers in particular took a very legalistic approach; the act of reference had to be correct, and would otherwise be declared illegitimate. He was opposed by Attorney General Gelder, who wanted to deal with this in a more lenient manner. Apart from this technical debate, all jurists generally agreed that the indictment had to be abolished and that the landraad judge had to continue writing the document of reference.[55] This

[50] Van Davelaar, *Het strafproces op Java en Madoera*, 39-40.
[51] S 1885, no.81.
[52] Heicop ten Ham, *Berechting van misdrijven door Landraden*, 82.
[53] Gaijmans, *De Landraden op Java*, 34-35.
[54] S 1898, no.66; Idema, *Leerboek van het landraad-strafprocesrecht*, 72.
[55] Idema, *Indische juristen Winckel, Piepers, Der Kinderen*, 195-203.

marginalised the role of the jaksa and the landraad judges essentially came to fulfil the positions of both judge and prosecutor.

The young landraad President Cornelis (Kees) Star Nauta Carsten noticed this and wrote about it to his father (himself a jurist) in 1920, not long after his first appointment to a landraad. He described how he received cases from the administrative government and decided whether they had been investigated sufficiently. If there was enough proof, he would immediately draft the indictment: "So, I am not only the president of a law court with two native members, but also at the same time more or less the Public Prosecution Service." He did not think very highly of the jaksa, of whom he wrote "there *is* a native with the title of 'native public prosecutor,' or jaksa, but his responsibility exists solely of interrogating the suspect, who has been brought to the capital of the residency, and is kept there in prison. Later, during the court session, he [the jaksa] is not much more than a translator."[56]

It is important to note that the role of the jaksa as translator was still undisputed. Kees described how he would shake hands with all law court members and officials—"impeccably dressed" and entering in order of importance. Thereafter, they sat down with the jaksa and penghulu at his left hand, and to his right the two landraad members. After the suspect was brought in and unchained, the president was supposed to start the interrogations: "However, since you can only speak Javanese fluently with a villager after a long time," wrote Kees, "the jaksa took over that task. If I want to ask a question, I first address the jaksa, with whom I speak sometimes in Malay, and at other moments in Dutch. I am already satisfied if I understand a little bit of the rapidly spoken answer of the accused."[57]

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[56] Indisch Familiearchief, 8 Familie Hueting. Letter from Cornelis Star Nauta Carsten to his father A.J. Carsten. Blitar, April 7, 1920. *"Ik ben dus niet alleen voorzitter van een rechtbank met twee inlandsche leden, maar tegelijk ook zoo'n beetje openbaar ministerie."* (..) *"Er is wel een inlander, die de titel van "inlandsche officier van justitie" draagt, d.i. dJaksa, maar diens taak is alleen om beklaagde die als verdachte naar de afdeelingshoofdplaats gestuurd worden in de "boei" (gevangenis) een verhoor af te nemen en later op de zitting is hij niet veel meer dan tolk."*

[57] Indisch Familiearchief, 8 Familie Hueting. Letter from Cornelis Star Nauta Carsten to his father A.J. Carsten. Blitar, April 7, 1920. *"Maar aangezien je eerst na lange tijd goed Javaansch te hebben vlot met een dessaman kunt spreken, neemt de djaksa die taak over. Moet er een vraag gesteld worden dan stel ik die aan de dJaksa, met wie ik dan eens in het Maleisch, dan eens in het Hollandsch converseer. Ik ben al heel blij als ik het vluggesproken antwoord van den beklaagde een beetje begrijp."*

The landraad judge still relied on the jaksas and were inclined to maintain a positive relationship with them. Wormser—who was generally not too generous with compliments towards the Javanese officials—gave a rather positive description of the jaksa:

> Then the Jaksa follows—he is dressed like the two Chiefs—with his friendly, keen eyes. ... The President—who had left a fair deal of the interrogation to the Jaksa and had only asked the usual questions of the suspect and the witnesses; after all, the case was crystal clear, an insignificant case in fact, and he was thinking of completely other issues—looked up from his documents. ... The Jaksa is a very friendly chap to get along with. For a native he is very cheerful, he likes to laugh, he is a friendly, supportive man. Truly not the dumbest of all Jaksas as well. He received his training at the School for Chiefs [*Hoofdenschool*], where he learned a good deal of Dutch. Thereafter, he had been working as a djoeroetoelis [*jurutulis;* clerk] for a couple of years, supervised by a competent chief jaksa at the residency capital. He has devoted his time well, has been very observant and has properly used his brain. This explains his knowledge of the Colonial Criminal Code and the Native Regulations.[58]

[58] Wormser, *Schetsen uit de Indische rechtzaal*, 2-8. *"Dan volgt de Djaksa,—gekleed als de twee hoofden—met z'n vriendelijke schrandere oogen. (...)De President—die de ondervraging voor een goed deel aan den djaksa had overgelaten en alleen de gebruikelijke vragen had gesteld uit gewoonte, aan beklaagde en getuigen; de zaak was immers glashelder, "n snertzaak feitelijk, en hij dacht aan heel andere dingen, kijkt op van z'n stukken. (...)De Djaksa is "n alleraardigste kerel om mee om te gaan. Hij is voor een inlander heel vroolijk, hij lacht wel graag, hij is een vriendelijke, behulpzame man. Waarlijk niet de domste van de djaksa's ook. Zijn opvoeding heeft hij gehad op de hoofdenschool, waar hij vrij aardig Hollandsch heeft geleerd. Daarna is hij eenige jaren als djoeroetoelis werkzaam geweest onder een bekwamen hoofd-djaksa van de hoofdplaats. Hij heeft zijn tijd goed besteed, zijn oogen flink de kost gegeven en zijn hersens behoorlijk gebruikt. Vandaar zijn kennis van het Wetboek van Strafrecht en het Inlandsch Reglement."*

Altogether, it is clear that the liberal jurists were not interested in advocating a more independent position for the Javanese prosecutors. The jaksas continued to be subordinated to the resident and regent, instead of the attorney general as was the practice in the Netherlands. Moreover, the landraad judges were now even fulfilling the position of prosecutor and judge. The aim was no longer rule of law—as it had been when striving for the independent landraad judges—but rather the establishment of a rule of lawyers, instead. Dutch jurists were so convinced of their moral superiority over the Javanese that they thought it defensible to unite several powers in their own position. This resulted partly from a desire for more influence than the residents; but it was also a paternalistic pursuit of better criminal justice for the Javanese. For a long time, it was deemed impossible that jaksas might be able to faithfully and sufficiently exercise the responsibilities of a public prosecutor, even if they had been educated in judicial procedures and drafting indictments.

After 1869, when the resident was no longer the landraad president and the regents left most court sessions to the lower priyayi, the struggle for power between regents and residents took place in other fields. One of the contested issues was about who could exercise control over the jaksa. The Native Regulations had established that the chief jaksa was subordinate to the resident and the jaksa was subordinate to the regent. The Brotodiningrat conspiracy of Madiun (described more fully in chapter 11, below) shows that this section in the regulations was not a dead letter. In this case, the chief jaksa had actively invoked article 56 of the Native Regulations, which stated that chief jaksas were subordinate to residents. By doing this, he was able to ignore the regent's orders and inform the resident about the criminal activities of local priyayi. However, according to article 57, the other jaksas and adjunct jaksas were subordinate to the regent. Finally, the regent of Madiun and the resident, Donner, even argued about who was in charge of the adjunct head jaksa, because this was not clear from the regulations:

> It was a thorn in his [the regent's] side, that it was explicitly stated in article 56 of the IR that the Chief Jaksa fell under the immediate orders of the Resident. When the Regent ... wanted to send the Adjunct Chief Jaksa to Ponorogo, I objected to this. During our next meeting, he [the regent] pointed out to me that

> according to article 57 the Jaksas were under his command and he therefore believed he held the right to give orders to an official ranked equal to a Jaksa. I simply responded that the Adjunct Chief Jaksa is a representative of the Chief Jaksa and therefore article 56 of the Native Regulations is in force.[59]

In spite of his efforts, the resident had to reluctantly acknowledge that the adjunct chief jaksa was entirely influenced by the regent. The chief jaksa on the other hand had—being loyal to the resident—turned into a pariah in the region. As Resident Donner related, "Everyone here knows that the Fiscaal [prosecutor] in Madiun has constantly been positioned as a pariah, already since the time of Resident Ravenswaay, who was hated by the regent, and whose loyal helper he was."[60]

Although it is beyond the scope of this research, it is interesting to note that after the introduction of the colonial policy of "empowerment" (*ontvoogding*) in 1918, the office of the jaksa was transferred to the regent's office making the regent more closely involved in judicial affairs. Wiranatakoesoemo was the first regent who would be "empowered" (*ontvoogd*) in 1919, in Cianjur. However, this reform was undone in 1929, when the regents lost all their rights to supervise the jaksas.[61] In 1931, the

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[59] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. October 26, 1900, no.23. Report Resident Donner. Madiun, March 20, 1900. *"Een doorn in zijn (de regent) oog was artikel 56 van het IR, waarin uitdrukkelijk verklaard wordt dat de Hoofddjaksa onder de onmiddellijke bevelen van den Resident staat. Toen de Regent op 27 October jl. de Adjunct-Hoofddjaksa naar Ponorogo wilde zenden, maakte ik daartegen bezwaar. Bij onze eerst daarop volgende ontmoeting op 28 October wees hij mij erop, dat in gevolge artikel 57 van het IR de Djkasa's onder den Regent stonden en hij dus wel het recht meende te hebben op den Adjunct HoofddJaksa als in rang gelijkstaande met een djaksa uit te zenden. Ik antwoordde hierop eenvoudig dat de Adjunct-Hoofddjaksa als representant van den HoofddJaksa mede in termen van artikel 56 van het Inlandsch Reglement viel."*

[60] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. October 26, 1900, no.23. Report Resident Donner. Madiun, March 20, 1900. *"Iedereen hier weet dat de Fiscaal te Madioen steeds de positie van een paria heeft ingenomen en wel sedert den tyd van den door den Regent van Madioen zoo gehaten Resident Ravenswaay, wiens trouwe helper hij was."*

[61] Van den Doel, *De Stille Macht*, 339, 402-405. In 1929, the empowerment (*ontvoogding*) was partly reversed. The residents were appointed again and the power of the assistant residents was increased. The assistant resident received the daily supervision of the *veldpolitie (*field police), whereas the regent remained to supervise the police. However, the assistant resident held the entire responsibility over the criminal investigations, so that the jaksas were now subjugated to the assistant resident, instead of the regent. This to the anger of Wiranatakoesoemo, who adressed this issue in the People's Council. After all, this was not

European branch of the civil service consolidated its more direct rule even more, with the decision that not only the chief jaksa, but all jaksas would be subordinate to the assistant resident.[62]

Javanese and Dutch Judges after 1869

Another point to discuss regarding the trained jurists after their arrival in the landraad courtrooms of Java is their stance towards the (in)dependence of the Javanese judges. The separation of the administrative and judicial powers had been advocated by jurists as an important reform, even though in fact, only one official had been replaced in an environment where no further separation of powers would take place. The colonial judges would not strive for independent Javanese judges in the landraad; the Javanese court members were still the priyayi members. After all, the landraad president was only one of the judges of the landraad. The other two were Javanese priyayi, who would remain in their administrative appointments and were involved in both the preliminary police investigations and the judicial administration. Moreover, the nomination of new Javanese court members to the landraad was still arranged by the resident and not by the landraad president.[63] It is therefore questionable whether a landraad president, often a young and inexperienced jurist, would be capable of clearing the decks and arranging an independent and less corrupt justice system in his region on his own. The number of jurists should not be overestimated as well; on 31 December 1905 there were still only 163 judicial officials in the entire archipelago.[64]

As discussed in part 1, the Asian Charter of 1803 had recommended the appointment of both independent Dutch and independent Javanese court members to the landraden. The advice had been of no avail. In 1869, with the introduction of the judicial landraad presidents, however, this was not even on the table. Remarkably enough, during the entire decision-making process in 1869, no one mentioned that the other members in the landraad, the Javanese judges, would still not meet the standards of what was then described as the ideal of a civilized nation; after all, the Javanese members—

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only an abolishment of the empowerment but led to an even more stripped role of the regent, since the jaksas before the empowerment always had been subjugated to the regent.

[62] Sutherland, *Pangreh Pradja*, 431.

[63] Piepers, *Macht tegen recht*, 355.

[64] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. December 17, 1906, no. 19.

with the right to vote on the verdict and in the position of judge—executed administrative functions along with their judicial ones, as the resident did. However, *their* ponytails were left uncut. Although the Javanese members were mentioned obliquely in the discussions, and any proposals to abolish the Javanese members altogether and introduce a European single judge were firmly opposed, no one suggested even once that the Javanese members should be independent. Mirandolle was the only one who wrote about the relations between the Javanese members and the European president. Interestingly enough, he was convinced that the Javanese members would actually regain their independence once judicial officials were presiding over the landraad instead of the resident, since they had a more complex and submissive relationship with the latter. They would not consider the resident as being a "*primus inter pares* to whom they could and should disclose their views" but as the "almighty representative of the Dutch Indies' Government, whose direct orders had to be obeyed and on whom their fate was entirely dependent."[65]

Even if the Javanese members were themselves the target or victim of a crime, and were consequently personally involved in a case as one of the parties, they were not necessarily replaced as court members during the court session. After the revolt in Cilegon (Banten) in 1888, for example, the circuit court consisted of local priyayi who came from the region and were related to the victims. The Patih Mas Pennah had been a target and had escaped because he had not been at home during the outburst of violence. Nonetheless, he was appointed leader of the preliminary investigations *and* he was seated in the circuit court as a voting member.[66] Other members of the circuit court had also had also been closely involved, and the cousin of one of the court members, Entol Goenadaja, the wedono of Cilegon (and father of Achmad Djajadiningrat, see epilogue), had been one of the victims (see Figure 18).[67]

There are indications that when the (assistant) resident was no longer presiding the landraad sessions, the regents stopped attending the court

[65] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163–174. "..*primus inter pares, aan wiens zij hun gevoelen mogen en moeten openbaren*) *"almachtigen vertegenwoordiger van het Nederlandsch Indisch Gouvernement, onder wiens directe bevelen zij staan en van wiens beschikking hun lot geheel afhankelijk is."*
[66] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 38.
[67] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 52.

sessions, too. In 1881, a circular stated that "the government has heard that currently the regents, albeit being members of a landraad, are rarely taking part [in court sessions]." The circular emphasized the importance of the regent's attending the landraad for at least one of the two or three sessions held each week.[68] Ten years later, a similar circular was issued, because the former one had "not, or barely, been followed sufficiently." Again, it was emphasized that the presence of the regent was desirable "partly because the justice administered will gain significance in the eyes of the Native." Then, a minimum of twice per month was set, because the obligations of the regent would not allow him to attend each week.[69] Eventually, it was stated in article 92 of the Court Regulations that the regent was a member of the landraad. Also appointed as members were patihs, wedonos, assistant wedonos, assistant administrators, assistant regent, and police assistant. During the early twentieth century, most active landraad members were lower-ranked or retired priyayi.[70]

The absence of the regent from the pluralistic courts demonstrates that the landraad was no longer the place where he could exercise his influence and cooperate with the resident. This might also prove that the judicial landraad presidents were less influenced by the Javanese members. However, some sources suggest otherwise. In 1882, for example, De Waal spoke out in favour of the single landraad judge, because the judicial officials exercised less control over the Javanese members than the resident: "As is known, the landraad is a council with voting members. When the Resident was presiding, this was merely a phrase given his influence over the chiefs. He was in fact a single judge." Now that the Javanese members were no longer dependent on the president, however, the regent could exercise an "inordinate influence" over the justice administration. According to De Waal, it was harder for the judicial landraad president to challenge the "usually incongruous opinions of the members" and convince them to vote along with him. Moreover, the Javanese members would simply represent the interests of their superiors, for example the regent, in the landraad.

[68] Bijblad, no.4037. "Circulaire aan de hoofden van gewestelijk bestuur op Java en Madoera," Batavia, April 9, 1881. "*Naar de regering vernomen heeft, nemen tegenwoordig de regenten, ook al zijn zij leden van een Landraad, daarin zeldzaam zitting"*

[69] Bijblad 4708. "Circulaire aan de hoofden van gewestelijk bestuur op Java en Madoera," Batavia, November 14, 1891. "*..mede omdat daardoor de rechtspraak in de oogen van den Inlander in beteekenis slechts zal kunnen winnen."*

[70] S 1913, no.678.; S 1905, no.478.

Altogether, and this seems to be supported by most sources examined, the regent had become less prone to attend landraad sessions, because the prestige and political importance of landraad sessions had decreased due to the absence of the resident. In important cases, however, he would still show up or make sure that his interests were represented by the attending priyayi.[71]

Although De Waal pleaded for single European landraad judges, he considered it important that Javanese members remain seated in the pluralistic courts as advisors. They might not have been well suited to act as judges, but De Waal considered their knowledge of local circumstances of great importance: "The native is not developed enough to be able to accurately decide over somewhat complicated cases, and his character and his awe for authority make him unsuitable for the independent position of impartial judge. On the other hand, his advice on the assessment of factual or local circumstances are of immeasurable value."[72]

Almost twenty years later, when advocates of adat law entered on the scene, I. A. Nederburgh wrote that the Javanese members were not knowledgeable enough anymore on adat law, because many priyayi had become too westernized: "I have more often pointed out, that one should not primarily, and certainly not exclusively, consult the Native officials in order to learn about adat. They live too little alongside the people, acquire too many European influences, and are therefore too often inclined to observe adat as inferior to European law, instead of being a good source of adat knowledge."[73] During a general meeting of the *Indische Genootschap* around the same time, Mounier proposed removing the Javanese members from the landraad. He presented a number of arguments that incongruously veered

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[71] De Waal, *De invloed der kolonisatie op het inlandsche recht*, 104. "*..meestal ongerijmde meeningen der leden..*" *(...*) *"Zooals bekend is, is de Landraad een college met stemhebbende leden. Toen de Resident voorzat was dit niet meer dan eene phrase, feitelijk was hij door zijnen invloed op de aan hun ondergeschikte hoofden alleensprekend rechter."*

[72] De Waal, *De invloed der kolonisatie op het inlandsche recht*, 105–106. *"De inlander is niet genoeg ontwikkeld om in eenigzins ingewikkelde zaken een juist oordeel te vellen, terwijl zijn karakter en zijn eerbied voor het gezag hem voor de onafhankelijke positie van onpartijdig rechter ongeschikt maken. Daarentegen zijn zijne adviezen voor de beoordeeling van feitelijke of locale omstandigheden van onschatbare waarde."*

[73] Nederburgh, "Reactie op een ingezonden stuk van R.H. Kleyn," 360-361. "*Ik heb reeds meer er op gewezen, dat men om de adat te leren kennen niet bij voorkeur en zeker niet uitsluitend te rade moet gaan met de Inlandsche ambtenaren. Zij leven te weinig met het volk mee, ondervinden te veel den Europeschen invloed en zijn daardoor dikwijls te veel geneigd om de adat te beschouwen als inferieur aan het Europeesch recht, dan dat zij een goede bron zijn voor de kennis der adat"*

between their being too dependent on the president and oldest member, and their being inclined of oppose the judicial president without good reason.[74] He suggested temporarily removing the Javanese members from the courtroom, but he was also in favour of a proposal of the regent of Demak, Raden Mas Adipatih Ario Adiningrad, who advocated for an Javanese judicial corps that would function independently from the administrative Javanese officials.[75] Parliamentarian C. Th. Van Deventer, a leader of the ethical policy movement, responded by saying that it would be a "major political mistake" and a "dangerous experiment" to remove the Javanese members from the pluralistic courts. He blamed the colonial government for having neglected to bring the Javanese to a more "developed" level, and he wanted action to be taken on this matter as soon as possible.[76] Jurist Maclaine Pont also did not want to exclude the Javanese members from the court sessions, mainly because of their knowledge of the land: "They [the local members] are also useful, because the presidents—among whom are very skilful officials—are, especially at the start of their career, sometimes burdened by their embellished erudition, which can quite get in their way, and then it is often the common sense of the Landraad members that prevents them from curious verdicts." He also pleaded to educate the Javanese aristocratic sons: "Because law is not that difficult, and it is perfectly possible to be studied by a well-developed Javanese." [77] Earlier than these gentlemen probably would have expected, there would be such an Indonesian corps of jurists, after the first law school was established in 1908. Yet, by this time, the Dutch jurists would not all be that enthusiastic anymore (see Epilogue, below).

In any case, the Javanese administrative officials continued to be appointed as law court members. In 1916, Boekhoudt emphasized the importance of the views and knowledge of the Javanese members in criminal cases: "Without the forceful cooperation of their side, it is impossible for a

[74] Mounier, "Iets over de Landraadvoorzitters op Java en Madoera", *Indisch Genootschap, algemene vergadering* (27-3-1900): 146.
[75] Mounier, "Iets over de Landraadvoorzitters op Java en Madoera", *Indisch Genootschap, algemene vergadering* (27-3-1900): 153.
[76] Response to proposal Mounier by C. Th. Van Deventer. *Indisch Genootschap, algemene vergadering* (27-3-1900): 161.
[77] Response to proposal Mounier by Maclaine Pont. *Indisch Genootschap, algemene vergadering* (27-3-1900): 162-163. "*Want zoo moeielijk is het recht niet of het is best te leeren door een goed ontwikkelden Javaan."*

young jurist to successfully bring a case to a good end."[78] The Javanese court members were needed to find out whether the accused was telling the truth. As prominent Javanese, they could also "force" him or her to speak the truth, simply by being in the courtroom . If the Dutch landraad judge actually listened to them and urged them to share their views, then they would also be more active in doing so: "Only then can the native judicial administration rightfully be designated as a so-called collegiate one. With acknowledgment, I hereby testify that I have learned a good deal from the Landraad members, and that the verdicts announced under my presidency have gained value due to their cooperation. They took notes during the court session, and subsequently sometimes brought to the table remarkable, extensively reasoned advice, shedding new light on the case."[79]

J. Sibenius Trip similarly emphasized that Javanese members had prevented him, as a circuit court judge (1859–65), from wrong verdicts, as he wrote in the *Indies' Weekly Journal of Law* in 1905. He describes how the sentence "*Bagaimana toewan poenja soeka*" ("As you wish, Sir") articulated by Javanese members who followed the views of the Dutch judge during the deliberations, had to be understand as a sign that the priyayi knew more about the case and that it was best to follow their advice. He gave the example of a case in which he had seen what seemed to be convincing evidence, but the Javanese members disagreed. Sibenius Trip had attempted to convince them and a "*Bagaimana toewan poenja soeka"* followed. At first, he concluded that the difference in views came from their different perceptions of evidence: "At night, when I was sitting in the *pendopo* with the Pangeran, I asked him: "Toean Pangeran, is it true that the Native members do not understand a thing of evidence based on clues [*aanwijzingen*]?'" The regent started laughing and assured him that if the members of the circuit court were persistent in their *kurang terang*, it was

[78]Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 333-334. *"Zonder krachtige medewerking van hunne zijde is het voor een jong rechterlijk ambtenaar onmogelijk eene zaak ot een goed einde te brengen."*

[79] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 333-334. *"Dan kan de Inlandsche rechtspraak pas met recht genoemd worden, zooals ze heet te zijn, eene collegiale. Met erkentelijkheid leg ik hier getuigenis af, dat ik van de Landraadsleden zeer veel heb geleerd, en dat de beslissingen, onder mijn voorzitterschap genomen, door hunne samenwerking aanmerkelijk in waarde hebben gewonnen. Met aanteekeningen vóór zich, door hen van het verhandelde ter terechtzitting gemaakt, brachten zij somwijlen merkwaardige breed gemotiveerde adviezen uit, waardoor een nieuw licht op de zaak werd geworpen."*

certain that they knew more. In this case, the wedono had falsified the evidence. Betraying another priyayi would not have been appropriate, but this was an indirect way of making something clear.[80]

In any case, the pluralistic law court continued to exist and clearly still represented dual colonial rule. In court, the European president wore a gown, while the Javanese members and officials wore a simplified version of their traditional costumes. This was still the case in the twentieth century when, on other occasions, both European and Javanese officials would wear a similar white costume. In 1920, the Association of Javanese Civil Servants requested that the government allow them to wear the white colonial costume they usually wore when on duty (*om in het wit te mogen verschijnen*) during landraad sessions. The request was turned down on the advice of the Supreme Court, which wrote to the director of justice: "The court finds that it is not advisable to allow the Javanese officials to appear in a court session dressed in white, especially not, because in that case some of the members of the Landraad would wear their official costume while other would wear white, which would harm the decorum."[81]

9.4 Conclusion: Liberal Rhetoric, Colonial Reality

The introduction of judicial landraad president positively changed certain aspects of criminal law practice regarding the Javanese population, but only to a certain extent. The number of acquittals by the landraden seems to have increased, pointing at a more critical assessment of legal evidence, and jurists also actively tried to shorten the period of pre-trial detentions. At the same time, however, jurists did not continue their pursuit of an entirely independent judiciary, and thereby actively contributed to an evolution towards a rule of lawyers rather than a rule of law in the pluralistic courtrooms. Colonial judges made themselves responsible for indictments,

[80] Sibenius Trip, "Herinneringen uit de Inlandsche Rechtspraak," 1. *"Des avonds, toen ik met den Pangeran in de pendopo zat, vroeg ik hem: Toean Pangeran, is het waar dat de Inlansche leden niets begrijpen van een bewijs op aanwijzingen?"*

[81] ANRI AS Bt. February 16, 1920, no.67. In 1909 it had been decided to allow Javanese officials to wear the white European costume except during court sessions of the Landraad during which the old (in 1870 modified and modernised with a black jacket) traditional costume had to be worn. (IB January 2, 1909, no.16). *"Het komt daarom den Hove voor dat het geene aanbeveling verdient den inlandschen bestuursambtenaren te verhunnen in het wit ter terechtzitting te verschijnen, te meer niet, omdat zoodoende enkele leden van den Landraad in ambtsgewaad, anderen in het wit aanwezig zouden zijn, hetgeen het decorum zou schaden."*

instead of the jaksa, and there was a severe lack of private attorneys in the pluralistic courts that they did not aim to improve. Moreover, colonial judges were not promoting the idea of having independent Javanese judges in the landraad; the Javanese members of the court were still drawn from the priyayi.

Historical and legal historical works have concluded that the liberal jurists during the second half of the nineteenth century sought a better legal position of the Javanese population. But we have to realise that although this might have been their intent, at least to some extent, the jurists strengthened their own position in the belief that they alone had the wisdom and knowledge to act as a sort of "strong father" over the population. In so doing, they left fundamental ideals about the rule of law behind. Consequently, liberal colonial judges increasingly adapted to the colonial values of their non-judicially trained predecessors, acting—and introducing reforms—antithetical to their initial ideals about the rule of law. So, while jurists in the Netherlands Indies increasingly criticized those features of the colonial state that went against the ideal of the rule of law, they were simultaneously essential to maintaining the unjust colonial state and giving legal grounds to the politics of difference.

PART IV — LIMITS TO DUAL RULE

Whereas Part 3 has clarified debates between Dutch officials and jurists, the dynamic between priyayi and Dutch officials (both administrative and judicial) still has questions left to answer. Questions that are relatively hard to research, because this was a largely closed and hidden world. The next two chapters seek to peer behind this closed world by wondering: What was kept outside of the courtroom, both by the Dutch and by the Javanese elites?

As earlier chapters have shown, the pluralistic courts were spaces where criminal justice was administered. But they were also sites where the regional elites shared only the information they wished to share, and where the resident was not always able to intervene and knew that the Javanese judges had better information networks. Chris Bayly speaks in this respect of "zones of ignorance," where colonial institutions meet but fail to obtain the information they need. The dual system itself caused the existence of a zone of ignorance between the Javanese and Dutch officials as well, which could lead to what Bayly calls "information panics," in which the colonials in a state of alarm started to collect a vast amount of information. This often reinforced stereotypical descriptions and could lead the colonial government to take extreme measures.[1]

The tensions between the Dutch and Javanese branches of the colonial administration become especially visible when looking more closely at cases in which priyayi themselves were suspected of criminal activities. These show the complexities of the relationship between colonial officials and local elites, and raise several questions. How should one prosecute a member of the Javanese elite? Were the regents to be treated as hereditary princes or as colonial officials? Was it even possible to

[1] Bayly, *Information and Empire*, 142, 164, 170.

prosecute them in colonial courts? And if so, which one, and according to which laws? Which mechanisms of self-regulation among the priyayi were still practiced during the colonial era, and how did they relate to the colonial criminal system? Finally, how should the colonial government prosecute someone on whose power it relied?

The idea of the older and younger brother, by which the Dutch resident treated the Javanese regent as a younger brother, had been confirmed in the colonial regulations of 1820. But, how did one exercise control over a "younger" brother, particularly one who was often much older, better informed about the region, and in possession of an extended family.[2] I will investigate this by closely analysing the workings of the privilegium fori, which gave the priyayi the right to be tried by European courts, but also led to many dilemmas on how the try the Javanese nobility at all. From the beginning, in the debate on the privilegium fori, two separate issues intertwined. First, the state protected the priyayi, on whose authority colonial dual rule was founded, by giving them the right to be tried by European courts. Second, the state had the colonial power to remove and ban the priyayi if necessary, by political means instead of criminal trials. Tracing the evolving debate on the privilegium fori shows that one colonial official would emphasize the importance of the former whereas another would evoke the interests of the latter. This complicates and confuses any analysis of the debate, because there was a lot of talking over one another's head.

We will nonetheless attempt to clarify the debate, since it explains much about the limits to dual rule. We will do this by analysing cases of priyayi suspected of extorting the Javanese population and cases of priyayi intrigues against the Dutch colonial government. These two issues, and the relation between Dutch colonial administrators and Javanese priyayi in general, has been the subject of two now famous nineteenth-century colonial novels. The novel *De Stille Kracht* (The Silent Power) by novelist Louis Couperus, as well as the well-known *Max Havelaar*, written by renegade Dutch colonial official Eduard Douwes Dekker, both have the relation between Dutch officials and Javanese priyayi as their central

[2] S 1820, no.22. "Reglement op de verpligtingen, titels en rangen der Regenten op het eiland Java," art.2. *"In zaken, welke het Inlandsche bestuur aangaan, zijn de Regenten de vertrouwde raadslieden van den Resident, die dezelve als zijn jongere broeders zal behandelen."*

concern.[3] They deal with certain types of conflicts that I will discuss in this part, although I aim at going beyond the colonial caricatures of the extorting priyayi—as described in the *Max Havelaar*—and the priyayi involved in webs of family intrigues and 'Eastern mysticism'—as described in *De Stille Kracht*. Also, although it is beyond doubt that Dutch officials themselves were guilty of extortion and abuse of power as well, this will not be the focus for now. I decided to only research the "priyayi cases" to obtain more understanding about the limits to dual rule; cases in which the dilemma of trusting and distrusting, intermediaries and colonial knowledge become apparent, and provides insights in the consequences of dual rule for the Javanese population.

The cases discussed in this and the next chapter not only provide some insights into specific cases involving the prosecution of priyayi—and the attempts to prevent these prosecutions; they also reveal how communication took place between the administrative officials and priyayi, and what could go wrong in this process. Historians have extensively analysed the Lebak issue, described in the *Max Havelaar*, but as Fasseur has argued, this case can only "be studied expediently and be understood in conjunction with other regents' intrigues [*Regentenperkara's*] from that time, something that has not been done sufficiently in the abundant Multatuli literature."[4] Research by Paul van 't Veer, most prominently, has revealed much about Eduard Douwes Dekker and his mission, and it provides fascinating insides in for example the role of the jaksa in Lebak and dynamics between priyayi and Dutch officials regarding extortion (on both sides). His work, however, has never been placed in a broader analysis of dual rule.[5] Altogether, this part is less about courtroom dynamics than it is about how to keep sensitive cases out of the courtroom in an effort to uphold the status of the priyayi—and the colonial state—and the impossibilities of this effort when the limits of dual rule were reached.

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[3] Multatuli [Eduard Douwes Dekker]. *Max Havelaar of de koffieveilingen der Nederlandsche Handel-Maatschappij*, 1860.; Couperus, *De Stille Kracht*, 1900.

[4] Fasseur, *Indischgasten*, 65. In a chapter titled "Een voorloper van Multatuli", Fasseur gives the example of a priyayi case in Probolinggo; a case linked to the case of the chief jaksa Nitisastro, discussed above in chapter 6. "…*alleen zinvol worden bestudeerd en begrepen in samenhang met andere Regentenperkara's uit die tijd, iets wat in de overvloedige Multatuli-literatuur nog te weinig is gedaan*." See also: Fasseur, "Violence and Dutch rule in mid-19th century Java," 10-11.

[5] Van 't Veer, *Het leven van Multatuli*.

10 — Protecting Priyayi

Succesful dual rule relied on the effective control of the priyayi over their regencies. As a consequence, the Dutch were hesitant in reprimanding and punishing the abuse of power by priyayi, since it could disturb the precariously balanced colonial state power, but this raised the question of what to do with aristocratic officials who committed serious crimes. In this chapter I investigate how the priyayi were protected from being tried at the pluralistic courts, by the privilegium fori. I ask the question how priyayi were prosecuted before and after the introduction of this privilegium, in conjunction with the Java War and the Cultivation System. Thereafter, the focus is on the 1860s when the distrust towards the priyayi was rising and they were accused of being extorters of the people. I investigate how the criticism eventually led to an extortion ordinance.

10.1 Before the Privilegium Fori of 1829: The Borwater Case

To comprehend the prosecution of priyayi before a privilegium fori was introduced, I will closely assess an extensive dossier from 1825. It was a case of the utmost gravity from the perspective of the colonial government: the attempted assassination of an assistant resident.

During the early evening of 16 October 1824, Assistant Resident Borwater of Rajekwesi (East Java) and his wife were sitting at the front porch of their house when they were attacked by a man with a knife. At the moment of the attack, they were chatting with the patih of Rajekwesi Raden Tjitro Prodjo, who was visiting them. Suddenly, an unknown Javanese man approached requesting medicine for his sick brother. Borwater thought it an odd request because the *kliwon* was responsible for supplying medicines, and he summoned the man, who ran towards him and stabbed him in the back below his left shoulder. Borwater defended himself and his wife with his chair and they both survived the assassination attempt. The culprit, Bowo Troena, was caught immediately by several servants of the patih, but died of his injuries the following night. Soon, however, suspicions were pointed towards the regent of Rajakwesi, Tumenggung Poerwo Negoro, who had been on bad terms with Borwater. A dilemma arose: how to prosecute the highest Javanese official of the region?

It was not the first conflict with priyayi in this region. Several Javanese priyayi from the Rembang residency, of which the Radjekwesi regency was part, had previously been suspected of *knevelarij* and abuses of power. They had been prosecuted, but the circuit court judge himself had written that he doubted the practicality of many Javanese priyayi from Rembang being prosecuted at his court.[1] The government agreed, and decided to dismiss two regents in the residency. The regents were succeeded by their sons. The resident also pressed for the dismissal of the regent of Rajekwesi, but this was not approved on. The government emphasized the importance of "proceeding with the utmost prudence when appointing or dismissing those officials." They also reiterated that regarding the succession of dismissed regents "the members of their families should never be bypassed".[2] The correspondence shows that the position of regents in Java was hereditary, and that both judicial and administrative colonial officials considered it unwise to prosecute too many Javanese priyayi.

The assassination attempt on the twenty-six-year-old Assistant Resident Borwater of Rajekwesi occurred a few months later. Archival documents show that interrogations into the crime were done by the patih of Rembang and—remarkably—by the penghulu of the landraad.[3] However, when the resident expressed his suspicions about the possible involvement of the regent, the investigations were transferred to a special European committee consisting of the circuit court judge of Surabaya, Willem Hendrik baron van Heerdt, a Council of Justice member from Semarang, Christiaan de Haan, and the assistant resident of Tuban, Steven Lodewijk George van Schuppen.[4] Within two months of the start of the committee's investigation, they submitted a thirty-five-page report and a few hundred pages of

[1] Van Deventer, "Geschiedkundig overzicht van het inlandsch bestuur," 201. Letter from the circuit court judge to the governor general. Rembang, June 26, 1823.

[2] Van Deventer, "Geschiedkundig overzicht van het inlandsch bestuur," 201. Resolution governor general. R. May 17, 1823, no.18. "*bij de aanstelling en afzetting van die ambtenaren, met de meeste omzigtigheid behoort te worden te werk gegaan, en in geen geval, dan om dringende en kenbare redenen, moet besloten worden, de leden hunner familiën voorbij te gaan."*

[3] Remarkably is here that the interrogations were done by the penghulu, and not by the jaksa or wedono . This might point at the regional differences in Java at the beginning of the nineteenth century, as discussed before in Chapter 2.

[4] It is not mentioned in the official regulations when and why a investigation committee exectuted criminal investigations. It is clear though, that this was a practice that occurred more often in cases where a European was the victim, as will become apparent in some of the cases discussed below.

attachments consisting of witness accounts, confrontations between witnesses, and autopsy reports. The committee concluded that the fifty-five-year-old regent of Rajekwesi, Tumenggung Poerwo Negoro, had commissioned the murder attempt. Investigating the case must have been complicated, because the committee was dependent on local witnesses and local experts whose relationships to either the regent or the adversaries of the regent were not entirely known to them.

Two witness accounts proved the involvement of Tumenggung Poerwo Negoro. Two men testified that they themselves had been asked by the regent to commit the murder, but that they had refused. The Javanese Sokodjo stated that one night, when he "was massaging (*pijit*) the limbs" of the regent, the regent had been complaining, because he had to "endure the most offensive voicings of dissatisfaction during each meeting with the assistant resident." Thereafter, the regent proposed asking the coolie Pa Gambrang whether he would dare to "put away" Borwater for 300 Spanish dollars. Pa Gambrang refused. Then, according to Sokodjo's statement, the regent argued that it was "just a human from the other side of the ocean." The regent also promised them that they would not have to do any more unpaid services (*herendiensten*). However, Pa Gambrang and Sokodjo had still refused. The two testified that a few days later Bowo Troeno—a *magang* of the regent—committed the attempted murder in the exact way that the regent had proposed to them.[5]

The regent himself denied that he knew Bowo Troeno, but the former jaksa of Bowarno, Mang-an-astro, testified that about six years before, he had imposed thirty rattan strokes on Bowo Troeno for theft, and he had kept him in custody after that on the order of the regent. On the same day, however, the regent released Bowo Troeno and he had returned to his house. Not long after this event, the jaksa ran into Bowo Troeno, who had told him that he was now working in for the regent as a *magang*. Besides, one and a half years before, the regent had told him that he had received a wooden *kris* cover from his *magang*, Bowo Troeno. There were other witnesses who said that they had known Bowo Troeno for years and that he

[5] ANRI, AS, R. May 17, 1825, no.18. Report by the special investigations committee, undated [approximately April 1825]. "…*de ledematen moest wrijven / pidjit." (..) "..telkens bij ontmoeting van den Assistant-Resident, hij de grievendste betuigingen van ontevredenheid moest ondervinden*)." (…) "*..slechts (..) een mensch van de overzijde van de zee." "..iemand van "t geslacht dat zich niet reinigt."*

worked for the regent. However, other *magangs* of the regent had claimed not to know Bowo Troeno, although they noted that they did not know all the regent's *magangs*. The committee concluded that the regent must have known who Bowo Troeno was, especially because Bowo Troeno had lately been suspected of the murder of his own brother-in-law.[6]

The committee found no sign that Bowo Troeno had been temporarily "deprived of his senses" or that he himself could have been motivated by hatred of the assistant resident. Moreover, several witnesses—among whom the son of the regent—had declared that Bowo Troeno had exclaimed on his death bed: "Ah, I only have been sent." One witness had even heard him saying, "I just have followed the order of my lord, *Guste Kulor*." And the term *Guste Kulor* could only refer to someone of the rank of regent. The regent himself opposed this by arguing that the reference was also used by people dying, to refer to God or Muhammad the Prophet. However, former penghulu Achmat Dono Rodjo declared that this was not true.[7]

An interesting aspect of this and similar cases discussed in the next chapter is that if a European was the target of a crime committed by, or on the order of, a Javanese priyayi, the European was held accountable for not being capable of handling his "younger brother" well. The committee report described how Borwater had tactlessly reprimanded the regent and other Javanese chiefs during a landraad session. According to the assistant resident, the regent had been "slow and negligent" in landraad cases, eventually functioning so poorly that he had decided to sideline him altogether and to communicate directly with the patih instead. The regent declared that he did not feel any hatred or resentment towards the assistant resident, but that the assistant resident had taken away his authority and that he had never visited him, except when summoned, for fear of being rejected. He had written a letter to Borwater to explain that he felt excluded from administration issues, and that the patih did not listen to him anymore and refused to perform the *sembah*, the formal greeting to a higher-ranked

[6] ANRI, AS, R. May 17, 1825, no.18. Report by the special investigations committee, undated [approximately April 1825].
[7] ANRI, AS, R. May 17, 1825, no.18. Report by the special investigations committee, undated [approximately April 1825] "*Ik heb immers alleen opgevolgd de last van mijnen opperHeer / Guste Kulor*."

person.[8] Thus, the twenty-six-year-old Borwater had sidelined the fifty-five-year-old regent by only communicating with the patih, who had not paid his respect to the regent; and two penghulus had given incriminating testimonies against the regent. Altogether, the assistant resident had clearly been mingling in priyayi affairs, and possibly intrigues, and this was not recommended among the Europeans in Java. By sidelining the regent he had upset a precarious balance. The principle of dual rule was marked by prudence and it required a constant effort to strike the right balance between non-interference—leaving the exercise of rule to the priyayi—and interference—to exert sufficient pre-eminence as colonial ruler. The precarious balance was easily disturbed in the landraad, and during criminal case procedures generally, because there it was impossible to avoid direct communication and actual collaboration had to take place.

The regent raised the possibility of a conspiracy against him organized by the Patih Tjitro Prodyo, who wanted to show him in a bad light. However, the committee did not suspect the patih because he had prevented Bowo Troeno from being beaten to death so that he could be interrogated before he died. Besides, the reputation of the regent was not very positive, *mantris* had already complained about him and he had been interested primarily in appointing his own family members. There were also some vague suspicions of intoxication and attempted assassinations of his enemies. Altogether, the committee concluded that the murder attempt had taken place on the orders of Regent Tumenggung Poerwo Negoro.

Attorney General Esser read the entire dossier and the attachments but was not convinced of the guilt of the regent. He dismissed the witness accounts of Pa Gambrang and Sokodjo as unreliable, especially because of the remarkable circumstances in which the statement of Sokodjo had taken place. At first, he had been unwilling to say anything either to the penghulu of the landraad during the interrogations or to the resident. The story went that he had sworn to God that he knew nothing about the case. When, a few days later, he was unable to move his legs anymore, he had explained this as a punishment of God, and told the truth after all during a fourth interrogation

[8] A discussion followed on whether the patih had indeed been obligated to perform the sembah and whether he had washed his feet in the presence of the Regent. The patih thought he had not been obligated to perform the sembah, because the Regent had adressed him with Kaka (older brother). The Penghulu Kyai Soeratman, however, stated that it had not been obligatory for the patih to perform the sembah.

by the committee.[9]

It was also quite implausible that the regent would have given his orders directly to Pa Gambrang during a massage, or that he had shared with him so much information about his troubles with the regent. Esser thought it likely that this was a conspiracy against the regent by a number of Javanese chiefs. Moreover, Borwater had been so suspicious of the regent that he had accused of at least negligence almost immediately. In his two statements during interrogations, Borwater declared that the regent had arrived within fifteen minutes, only partially dressed, and to his question of what had happened, Borwater had responded with the counter-question: "How will you be able to justify yourself regarding this?" The regent had responded: "Guards were at their positions, the *mantris* were present and the *patih* was with you, so the police have not been negligent." Thereafter, he had also acted well by sending his son to Rembang for help, providing Borwater with a weapon, guarding the house himself, and giving orders to start the police investigation. "Let the Regent be called for the Circuit Court," Esser concluded, "where he can defend himself for his equals, and will be convicted or acquitted by them."[10] He thought the circuit court was the competent judge, although no ruling regent had been adjudicated there before.[11] According to Esser, the first priority was to prevent a legal error: "the native should also from that side, getting to know and value the respectability of our institutions. Or shall the Dutch East Indies' Government act violently out of fear of a Judicial verdict? Certainly not. It is preferable to release twenty assassins than to adjudicate one innocent man on illegitimate grounds." In a letter to the governor general, Esser argued that he foresaw an acquittal when the criminal case was brought to court, and he did not think that a political measure was correct in this instance: "Would a removal by political disposition be a better option?" he asked rhetorically. "No, Your

[9] ANRI, AS, R. May 17, 1825, no.18. Letter from Attorney-General Esser to Governor General Van der Capellen. Batavia, April 30, 1825.

[10] ANRI, AS, R. May 17, 1825, no.18. Letter from Attorney-General Esser to Governor General Van der Capellen. Batavia, April 30, 1825. *`Hoe zult gij u hierop kunnen verantwoorden*?" (…) "*Wachts waren op hunne posten, de Mantries waren aanwezig en de Pattie was juist bij u, zoodat de policie niet nalatig is geweest." (...)* "*Laate dan de Regent voor de regtbank van ommegang geroepen worden, alwaar hij voor zijne gelijken zich kan verdedigen en door den zelven zal worden veroordeeld of vrijgesproken."*

[11] ANRI, AS, R. May 17, 1825, no.18. Letter from Attorney-General Esser to Governor General Van der Capellen. Batavia, April 30, 1825. Esser wondered about this in his letter. In the margins of the letter someone wrote: "Up to no, no regent." (*tot hiertoe nog geen Regent).*

Excellency! And this, because there is no sufficient grounds for conviction."[12]

The governor general partly concurred with the attorney general. There would not be a court session, because there was not enough evidence to prosecute the regent. The prosecution of priyayi might lead to an acquittal, and this would possibly lower Dutch prestige in the colony, so this was to be avoided in any case. Nor was official political measure applied, since the necessity for this was lacking. The regent was dismissed and he was no longer allowed to reside in the Rajekwesi Regency, so this was a sort of a political measure. His son Djoijo Negoro was appointed as his successor.[13]

Other sources show how lower-ranked priyayi were convicted by pluralistic courts, but often their status was taken into consideration. In 1825, for example, in Cirebon a wedono was convicted by the circuit courts and sentenced to twelve years' banishment in chains for extortion and abuse of power. Wiera Negara had taken rice fields belonging to the inhabitants of the village Kawali, and received the accompanying land rent of sixty guilders. He had also "completely looted" the wife and children of a deceased man who still owed him money. Also, he had taken the buffalos of seven men, and twenty-four people were farming his rice fields and peanut farms, and working in his oil mill, without pay. If the village chiefs were slow, he would put them in the "block." However, because of his "prominent family," no degrading punishment was imposed by the judge. A pardon request, submitted by the regent and some other chiefs, was turned down.[14]

In other cases, the governor general even decided to avoid a criminal trial altogether. In 1823, the resident of Japara had requested that several wedonos suspected of severe extortion be referred to a circuit court, organising its the court sessions in residencies different from the ones where the accused originated from. This, because seated in the landraad were members "who were most likely, directly or indirectly, related to the cases or

[12] ANRI, AS, R. May 17, 1825, no.18. Letter from Attorney-General Esser to Governor General Van der Capellen. Batavia, April 30, 1825. "*....de inlander moet ook van die zijde, het achtbare van onze instellingen leren kennen en waarderen. Of zoude het Nederlandsch Indsiche Gouvernement gewelddadig handelen om de vrees voor een Regterlijke uitspraak? Gewis Neen. Liever twintig sluipmoordenaars op vrije voeten dan een onschuldige op lossen grond onwettig behandeld." (...) "Ware dus eene verwijdering bij politieke dispositie niet beter? Neen Uwe Excellentie! En wel omdat er geen genoegzame overtuiging aanwezig is."*

[13] ANRI, AS, R. May 17, 1825, no.18.

[14] ANRI, AS, R. October 7, 1825, no.5. Advice of the attorney general regarding the pardon request of Wiera Negara, former wedono of Kawali.

persons." The government decided to appoint a committee, presided over by the prosecutor of the Council of Justice of Semarang, to investigate the case. Taking into consideration the number of influential suspects involved, the committee advised against bringing the case to a court of law. Instead, it recommended replacing or retiring the regent and dismissing several wedonos and village chiefs.[15]

10.2 Introduction of a Privilegium Fori

The murder attempt on Borwater, and in particular the suspicions about Tumenggung Poerwo Negoro, was a vexed issue to the colonial government, but it did not lead directly to changes in the regulations. Yet, in response to another case in 1829, in which the assistant resident of Grisee sued a regent for not paying his debts after an auction, it was decided to formalize the adjudication of priyayi. In reaction to this event, which was considered an insult to the regent and potentially damaging to his (and indirectly the colonial government's) prestige, the governor general asked for more information on the prosecution of Javanese nobles. All residents were asked to send information on the prosecution of Javanese nobles in civil cases to the Supreme Court. Almost all residents reported that they could find no such cases. Only in Surabaya did this appear to be quite common. The resident of Surabaya sent a table that displayed several civil cases in which nobles were sued for their debts. He also included an overview of no less than twelve criminal cases in which Javanese nobles—"highest elites and their relatives"—had been prosecuted by the landraad or circuit court from 1819 to 1828.[16]

What stands out immediately is the public character of the punishments. On 6 March 1826, a chief *mantri* in Sidayu named Raden Demang Soeno di Poero had been convicted of murder. His punishment was severe: he was whipped while being exposed under the gallows, and after this, he was branded and banned for twenty years. Second, the convicts were often close relatives of Javanese regents and sultans. The chief *mantri* mentioned was not a very high official, but he *was* a relative and brother-in-

[15] Van Deventer, "Geschiedkundig overzicht van het inlandsch bestuur," 205. "…*die waarschijnlijk, direct of indirect, tot de zaken of personen in betrekking stonden."*

[16] ANRI, R. March 24, 1829, no.19. Letter from vice-president of the Supreme Court G. Buijskes to Governor General Du Bus de Gisignies, who asked for information on the prosecution of Javanese nobles.

law of the regent of Sidayu. Another prosecuted priyayi, also a chief *mantri*, was a full cousin of the regent ("prince") of Pamekasan. He was hanged in 1820. A year before, in 1819, two cousins of the *Susuhunan* ("emperor") of Surakarta were whipped, chained, and banned.

The table includes notes on the verdict's impact on the population. The resident of Surabaya had not just compiled a list; he also asked the regents for comments on the trials. The regent of Surabaya commented on a case from 1826 in which his relative, Koeda Nawarsa—ruler of the island Kangean—had been dismissed and banned. The regent had never been informed of this verdict, and he noted that informing him would have been according to custom, and also appropriate given the rank and status of the convict. In the case of the chief *mantri* of Pamekasan, the consequences of a verdict handed down in 1820 were even more obvious. The regent reported that the verdict had brought so much shame and sadness to his family and other nobles that someone had suggested poisoning the convict to avoid the humiliation of a public hanging.[17]

Altogether, there were various reasons to reconsider the prosecution of Javanese nobles in the pluralistic courts: it could damage the relationship between the colonial administration and the nobles, and it could damage the prestige of the nobles among the Javanese. And even though the request of the governor general mainly addressed the issue of priyayi as litigants in civil cases, the prosecution of priyayi in criminal cases was reconsidered as well. On 24 March 1829, the Council of the Indies proposed establishing a so-called Big Landraad (*Grote Landraad*) for priyayi cases.

On 19 September 1829, the governor general issued a resolution saying that, from then on, local rulers and regents (*vorsten en regenten*) would be prosecuted by the judicial courts for Europeans, the councils of justice. Civil cases could be appealed to the Supreme Court, and in criminal cases court proceedings would be held behind closed doors. In all cases, a jaksa and a penghulu offered advice in order to keep the verdict in line with the Javanese customs and morals—"as far as somewhat possible regarding the principles of the General Law." The decision to administer priyayi cases at the European courts was to be temporary measure while a committee

[17] ANRI, GS Surabaya, no.1486. The in the AS mentioned overview by the resident of Surabaya has been preserved in the GS archive of Surabaya.

investigated how to organize special courts for the Javanese elite.[18] However, these special courts were never introduced, and it remained common practice for justice over priyayi to be administered by the European courts until the end of the colonial era. Remarkably, despite the overview of the resident of Surabaya, discussed above, which included mainly lower-ranked priyayi, the regulations of 1829 were only meant for ruling regents and kings, not their relatives. Even priyayi of quite a high rank, such as the wedonos, were still tried by the pluralistic courts.

10.3 Priyayi and the Java War

The privilegium fori was implemented in 1829, when the Java War was at its height, but there does not seem to have been a direct link between the events. Surely, the Dutch felt that a good relationship with the Javanese regents was essential to maintaining colonial domination. Chiefs accused of extortion could count on lenient treatment during the Java War, for example in Kedu, where the yearly reports of the resident from the years 1827 to 1833 mention how chiefs' criminal behaviour towards the people was tolerated as long as the chiefs remained loyal to the Dutch. In 1828, the resident of Kedu wrote that "in general, it is my principle that—for as long as the revolts continue—one should turn a blind eye to many actions done by native chiefs who are useful. Once peace is restored, one can safely handle the situations, without being afraid that the loss or the dissatisfaction of a brave chief will have consequences, which are worse than the evil that one aimed to fight by prosecuting him."[19]

The Dutch were prepared to go to great lengths to assemble loyal chiefs around them during the Java War. Sometimes, these chiefs were outright thugs who profited from the war to expand their power. A telling example Yoedo Negoro, who had been a *gunung* (a priyayi position) when Kedu was still subject to Javanese rulers, and he had been influential in

[18] S 1829, no.98.; ANRI, AS B. September 19, 1829, no.10. The committee would consist of three residents. Advice would be asked of the president of the Supreme Court, the president of the Councils of Justice and the judge of the Circuit Court of Batavia.

[19] ANRI GS Kedu, no.2. Algemeen Verslag 1828. "*Het is mijn principe over het algemeen dat men zoo lange de onlusten blijven heerschen zeer veel bij de Inlandsche hoofden die nuttig zijn, door de vingeren te zien. Is de rust eenmaal hersteld, dan kan men met gerustheid naar omstandigheden handelen, zonder bevreesd te zijn, dat het verlies of de ontevredenheid van een moedig Hoofd gevolgen kan na zich slepen, die erger zijn als het kwaad welk men door hem te vervolgen heeft willen tegengaan."*

Probolinggo in particular.[20] During the British era, after Kedu came under colonial authority, Yoedo Negoro (then called Raden Ingebeij Prawiro di Medjo) was appointed chief *demang* of Probolinggo. He retained this title when the Dutch returned, but in 1817 he was sentenced to death for ordering a murder. The influential Yoedo Negoro escaped from prison before the execution could be carried out and he disappeared. When the situation in Kedu was turning against the Dutch during the Java War, Yoedo Negoro suddenly appeared again and offered to restore the peace in the region. Resident Valck gratefully accepted this offer—with the approval of the governor general—and noted in his general report of 1827:

> This chief [Yoedo Negoro] had hardly accepted the authority over Probolinggo or the people would already defer to him; with help of military powers he expelled all mutineers from the district and when he thereafter—in collaboration with the Chief Demang Mangoon de Wirio—attacked the *pinembahan* [ruler] of Bagor and deprived him of his life, the district was fully cleared of mutineers, before the end of the year 1827. And the peace was restored, with the exception of some small poaches ... every now and then.[21]

In the report of 1828, the resident was still unabashedly enthusiastic about Yoedo Negoro, who had been promoted to regent of Probolinggo in the meantime, and elevated to the rank of *temenggung*. The resident did note, though, that there were some remarks to make on the regent's "behaviour in the moral sphere"; but he was nonetheless qualified as the "most brave, capable and feared chief." The years following, the enthusiasm in the resident's yearly reports gradually decreased. In the report of 1831, the new Resident Halewijn says only that Yoedo Negoro "can be useful and has a lot

[20] Probolinggo in Central Java, not to be confused with Probolinggo in East Java.

[21] ANRI GS Kedu, no.2. Algemeen Verslag 1827. *"Naauwelijks had dit hoofd het gezag in het Probolingosche aanvaard of al het volk onderwierp zich aan hem; met behulp van de militaire magt verdreef hij alle de muitelingen uit dat district en toen hij het daarop vergezeld van den Hoofd Demang Mangoon de Wirio den Pinembahan Bagor overvallen en hem van het leven beroofd had, was zijn district voor het einde van het jaar 1827 geheel van de muitelingen gezuiverd en de rust, met uitzondering van eenige kleine stroperijen die in het minoresche nu en dan gepleegd wierden, in de gehele Residentie weder hersteld."*

of power."[22] In 1832, the atmosphere had changed completely. Then, Yoedo Negoro was described as being "of an extorting and greedy character." It was still noted that he had a lot of power, but this time it seemed to have a negative connotation.[23]

What to do with loyal Javanese chiefs who extorted their own people was a major dilemma for the Dutch during the Java War, which is why Yoedo Negoro was protected for years, even though he was known for his illegal and continued to commit crimes while in office as regent. When complaints were made about this, the resident even announced an official pardon for all extortion committed before 1831. However, on 30 March 1833, Yoedoe Negoro went too far. The lower-ranked priyayi Merto Dipo and his son were murdered after filing complaints against the regent to Resident Valck. The Chinese Tankie testified in the case and was himself killed shortly after. The circuit court judge sentenced five Javanese to death, but it turned out that they were innocent and they were saved from the gallows just in time, when the three actual assassins were caught. They declared that they had committed the murders on the orders of Regent Yoedo Negoro. Then, Assistant Resident Tak started a secret investigation, allowing only the chief jaksa to be present during the interrogations. It appeared that some village chiefs had died under suspicious circumstances, even though the regent had listed them as having died from cholera.[24] The report of 1833 even mentions that Yoedo Negoro was planning a new revolt: "The discovery of a number of firearms, live cartridges, recently manufactured new pikes and buried treasures in one of the villages, serves as proof of the regent's bad intentions, which, if executed, could have been detrimental to the internal peace."[25]

Resident Hartmann feared that retiring the regent would be too much of a risk since he would be able to foment trouble again. Therefore, he requested a judicial adjudication and, in case of an acquittal, that the regent

[22] ANRI GS Kedu, no.2. Algemeen Verslag 1831.
[23] ANRI GS Kedu, no.2. Algemeen Verslag 1832. "*..van knevelachtigen en geldzuchtigen aard."*
[24] ANRI AS, R. February 4, 1834, no.1. Letter Resident Hartman to the governor general. Magelang, December 1, 1833.
[25] ANRI GS Kedu, no.2. Algemeen Verslag 1833. *"dat het vinden van een aantal vuurwapens en scherpe patronen en pas vervaardigde nieuwe pieken te zijnen, en van de door denzelve in een der dorpen begraven schatten ten bewijze strekken dat den Regent kwade oogmerken moet hebben gehad hetwelk ten uitvoer gebragt zijnde, voor de inwendige rust nadeelig had kunnen uitloopen."*

be removed from Java in any case. Hartmann received approval to arrest the regent. He summoned all Javanese chiefs to a meeting where he informed the regent and disarmed him. Yoedo Negoro responded emotionally, but Hartmann reported having heard second hand that Yoedo Negoro said "that the government had forgiven him so much, that he did not doubt this would happen again this time."[26] The idea that Javanese, and also the regent, were less developed and less civilized than the Dutch, led to an underestimation not only of their administrative capacities, but also of their ability to mislead the colonial administration and to pursue their own interests illegally.

Attorney General Spiering advised imposing a political measure, because Yoedo Negoro came from a respectable family and a dishonourable punishment might lead to a deterioration in relations between his family members and the Dutch administration; because it would be nearly impossible to prove the crimes in court; and because Yoede Negoro was a flight risk and an escape would have "serious consequences" for "peace in Java."[27] The government decided that due to his rank, exiling him to Timor for life by political measure was preferable to bringing him to trial. Even so, he received twenty-five guilders per month to cover his living expenses. The Probolinggo regency was merged with Magelang.[28]

The three Javanese who actually murdered Merto Dipo and his son were sentenced to death by the circuit court judge on 21 June 1834, but they were pardoned. They declared in their pardon request, that had they not obeyed the regent's order to commit the murder, he would have "certainly ordered them to be put down secretly."[29] The Supreme Court wrote in their advice that they did not believe that the lives of the three convicts had been in real danger, because they could have placed themselves "under the protection of the administration." Apparently, the Supreme Court was convinced that the Dutch administration could and would have protected Javanese men against an influential regent. They sought the motive of the

[26] ANRI AS, R. February 4, 1834, no.1. Letter Resident Hartman to the governor general. Magelang, December 1, 1833. "*..dat het Gouvernement hem reeds zoo veel vergeven had, hij echter niet twijfelde of hetzelve ook hem deze keer zou verschoonen."*

[27] ANRI AS, R. February 4, 1834, no.1. Advice by attorney general Spiering on the Yoedo Negoro case. Batavia, January 7, 1834.

[28] Van Deventer, "Verhaal van de knevelarij en het misbruik van gezag van den Regent van Probolinggo Joedo Negoro", 477.

[29] ANRI, AS, Bt. September 23, 1834, no.1. Pardon request Troeno Sonno, Sodronno and So Kromo. Magelang, July 19, 1834. "*..voorzeker heimelijk uit den weg zouden hebben doen ruimen."*

murder in the character of the Javanese, because the "average, foolish, and fearful Javanese, when he is ordered by a mighty headman to commit a crime, will merely carry out this assignment out of slavish subjection." This was thus a reason for granting a pardon. Moreover, they had spoken the truth after their arrest, thereby saving five innocent convicts from the gallows. The punishment was reduced to ten years of (unchained) forced labour in Padang. The Supreme Court also believed that banishing Yoedo Negoro would provide a clear signal to other Javanese chiefs that they should not abuse their people anymore "as instruments of their acts of revenge."[30] They did not mention—or perhaps did not even grasp—that the exile happened after a regime of terror of six years by a convicted murderer, consciously appointed by the colonial government itself.

The appointment of criminals as local chiefs when the current Javanese elite was no longer trusted was not something that happened only during the Java War. In 1819, for example, the bandit leader Sahab, an influential commoner, had been appointed as sub-district chief of Gunung Kencana (Lebak), a politically unstable region in Banten at the time.[31] After the Java War, Johannes van den Bosch argued that one of the causes of the war had been the colonial authorities' excessive punishment of chiefs accused of extortion: "One thought to win over the population by protecting them against their chiefs, by lashing out against the so-called extortion, and inspiring them with a spirit of independence towards their chiefs." In cases of the abuse of power by the Javanese chiefs, treating the Javanese headmen carefully was considered to be of the utmost importance. Due to the cultural differences, the regents should be handled with great care: "A fatherly reprimand, given with an appropriate weightiness, has more impact on their minds, than rigor; public affront, ranting and raving, is unbearable to them."[32]

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[30] ANRI, AS, Bt. September 23, 1834, no.1. Advice Supreme Court regarding pardon request Troeno Sonno, Sodronno and So Kromo. Batavia, August 20, 1834. "….*de gemeene, domme en vreesachtige Javaan, wanneer hij door zoodanig veel vermogend Hoofd tot eene misdaad wordt gelast grootendeels uit slaafsche onderwerping dien last uitvoert." (…*) "…*als werktuigen van hunne wraakoefeningen*."

[31] Ota, *Changes of Regime and Social dynamics in West Java,* 147.

[32] Van den Bosch, "Hoe men met de Javaan moet omgaan (I)", 53-56; S 1837, no.20. *"… men heeft geloofd de bevolking als het ware te kunnen winnen door die in bescherming te nemen tegen hare Hoofden, door het zoogenaamd knevelen van deze te keer te gaan en door aan haar een geest van onafhankelijkheid van hare Hoofden in te boezemen." (…)(Een vaderlijke*

Van den Bosch admitted that in the case of very serious criminal offences or misconduct by prestigious Javanese chiefs, the colonial administration should intervene. However, the legal system had to be bypassed. Instead, forced retirement or banishment to another island by a political measure was more appropriate. Even in the case of banishment, Van den Bosch emphasized the importance of maintaining the regents' inheritance rights and of appointing their sons as successors (or temporary surrogates if the son was yet not of age). Van den Bosch expected the regents to become more loyal to the colonial rulers if they increased their power and assured their family interests, privileges not offered by their former Javanese rulers.[33]

The basis of Van den Bosch's claim that the regents were punished more severely before the Java War is not clear. There are no known examples of regents being adjudicated in a court of law. In 1865, Van Deventer presented a list of cases in which regents were suspected of having committed a criminal offence. He had limited his research to the period before the Java War to prove that the colonial government had not become careful in handling the regent only after the war.[34] His argument is in accordance with the cases studied for this dissertation. Van den Bosch's recommendation on inheritance was not new, either. Also before the Java War, even in extreme cases that threatened high colonial officials, such as the murder attempt on Borwater, no prosecutions followed, only dismissal—and even then, only after several years had passed. Moreover, the dismissed regent suspected of ordering the assassination had been succeeded by his son.

It is clear though, that Van den Bosch clearly had little interest in interfering in priyayi affairs, since this could disturb the peace and disturb the cultivation system, which he had introduced. Therefore, the prosecution of lower priyayi in particular would continue to be a subject of debate.

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vermaning, met gepasten ernst gegeven, heeft op hun gemoed meer invloed, dan gestrengheid; openlijke krenking, schelden en razen, is hun onverdragelijk.

[33] Van den Bosch, "Hoe men met de Javaan moet omgaan (I)", 53-56; S 1837, no.20.

[34] Van Deventer, "Geschiedkundig overzicht van het inlandsch bestuur op Java 1819–1830," 193-215.

10.4 Cultivation System and Extortion

The colonial government and the Javanese priyayi had an ambivalent relationship. On the one hand, Javanese regents were seen as traditional elites whose power over the population was based on inheritance and regional traditions, even though the position of regent was not hereditary according to the Javanese traditions. On the other hand, the colonial government preferred to treat the Javanese regents as officials who derived their power from the colonial government and who were accountable to and controlled by the colonial power structures and rules. In the words of Van Hoëvell:

> On the one hand, the government desired to encourage and defend a system of rule through the native headmen—leaning on their influence and power over the people that they had received by birth or any other means—by confirming and increasing their power, their prestige, and their independence. On the other hand, one [the government] thought of the native headmen—the village chiefs excluded—as to be seen simply, and treated as, native civil servants, who derived all their authority from the Government that appointed them.[35]

Therefore, the punishment of Javanese chiefs, even of the lowest ranks—the village chiefs—was a sensitive issue. It was possible for a resident to rebuke a Javanese village chief without the interference of a criminal court using one of four different measures: a "confidential reprimand"; a public reprimand; the *paseban* arrest (in the courtyard of the regent or wedono)

[35] Van Hoëvell, "De Inlandsche hoofden en de bevolking op Java," 258-266. "*Aan den eenen kant verlangde de regering het stelsel, om door middel der inlandsche hoofden te regeren, om op hunnen invloed en het gezag dat zij door geboorte of op eenige andere wijze, over de bevolking weten te verkrijgen, te steunen en te leunen, om hunne magt, hunne aanzien, hunne zelfstandigheid te bevestigen en te verhoogen, met kracht voor te staan en te verdedigen. Aan den anderen kant meende men, dat de inlandsche hoofden, alleen het dessa-bestuur uitgezonderd, eenvoudig als inlandsche ambtenaren moesten beschouwd en behandeld worden, die al hun gezag aan "t Gouvernement ontleenen…"*

with a maximum sentence of one month; and dismissal, if necessary preceded by a suspension.[36]

The Dutch official introduced the *paseban* arrest in 1854, in response to a question by a resident who wondered if it was legitimate to impose a *paseban* arrest on low-ranking Javanese officials for "light offences concerning their duties." It was decided that this was allowed to punish those who did not perform their duties properly, as a complementary measure to both confidential and public reprimand. However, *paseban* arrests were not to be imposed by the police magistrate (resident), which concerned offences within the jurisdiction of a criminal court judge.[37] I have found no sources that prove the existence of the *paseban* arrest before 1854, but it is conceivable that it was executed among the priyayi themselves before it was formalized by the colonial administration.

The Javanese regents were expected to be loyal to the Dutch administration and to maintain peace and order in their regencies, but the Dutch were unaware whether they did this legally or illegally. Certainly, there was always some coercion of the people, but, as discussed before in Part 3, under the cultivation system especially the door was wide-open for extortion and abuses of power. This was the case not only for Javanese chiefs, but also for European officials, as is evident from a regulation of 6 November 1834 issued by J.C. Baud, which prohibited European officials from abusing Javanese people. Baud stated that European officials were guilty of "haphazard appropriation of Native persons, goods, and labour." Apparently there had been instances in which the Javanese people had to take care of the transportation of people and goods on the orders of European officials, but this was not allowed without formal permission by the high government. European officials were also inclined to make villages deliver household supplies such as poultry, firewood, and oil "indifferent to whether their payment was proportionate to the value of the goods delivered." From then on, this was all defined as "abuses of power."[38]

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[36] KV 1854, Chapter F "Regtswezen en politie", Paragraph 3 "Magt van den gouverneur-generaal in zaken van justitie en politie".

[37] Bijblad, no.137. "…*ligte overtredingen betreffende hunne dienspligten."*

[38] S 1834, no.52. "…*willekeurige beschikkingen over de Inlanders personen, goederen en arbeid"* (…) "*..onverschillig of de betaling al of niet evenredig zij aan de waarde van het geleverde."*

Extortion by Javanese headmen was also prohibited. In 1819, it was decided to adjudicate extortion cases at the circuit courts.[39] However, it was hard to define exactly what *knevelarij* was in the case of Javanese chiefs. Firstly, most Javanese officials (village chiefs and lower priyayi) were significantly underpaid and, therefore, had to rely on the cultivation percentages to maintain their lifestyles. Even then, their income was often inadequate, so "illicit activities" were common. In 1834, Baud admitted in an inspection tour report that illicit actions by district heads were tacitly admitted: "that it is a well-known, but in the current circumstances a tacitly allowed reality, that all indulge in illicit actions, to complement their earnings." The cultivation system increased the power of the village chiefs and priyayi, but without the financial means. The village chiefs were not paid at all, and the priyayi often received a relatively low salary with no reimbursement for police work or other expenses. Their (almost unlimited) power combined with a low salary was a ultimately a recipe for extorting Javanese commoners.[40]

It was also hard to define the difference between expressions of *adat* and abuses of power. Officially, one of the governor general's most important duties—as enshrined in the Colonial Constitution—was to protect the Javanese population from extortion.[41] Other Dutch civil servants were also urged to protect the Javanese population. When an assistant resident arrived in a new residency, he took an oath especially drafted to emphasize his responsibility to protect the Javanese population against abuses of power, extortion, and maltreatment. However, the explanatory memorandum attached to the Colonial Constitution mentioned that it was hard to define which actions of the local elites were based on old customs (*adat)* and which were actual abuses and injustices.[42]

Furthermore, most people caught for extortion were "little fish." A

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[39] S 1819, no.20, art.99. *"De landraden zullen kennis nemen van alle misdaden door Inlanders, Chinezen en andere personen behoorende tot de Indische volkeren, in de Residentie gepleegd, met uitzondering: ... 2. Van knevelarijen en misbruik van gezag door inlandsche ambtenaren gepleegd."*

[40] Cited in: Fasseur, *Kultuurstelsel*, 32. "..*dat het een bekende maar in de gegeven omstandigheden stilzwijgend geoorloofde daadzaak is, dat allen zich overgeven aan ongeoorloofde handelingen, om het ongenoegzame hunner inkomsten aan te vullen*."

[41] RR 1854, art.55-57.

[42] Kamerstuk Tweede Kamer, "Vaststelling van het Reglement op het beleid der regering van Nederlandsch-Indië. Memorie van toelichting," no. XXXVIII/3379, 379. www.statengeneraaldigitaal.nl (last accessed: 13-9-2017)

village chief was simply easier to dismiss than a high-ranked priyayi. Besides, often extortions and minor offences by local chiefs were condoned, except if the colonial government was disadvantaged, in cases of fraud, for example. In 1858, Soera Troena, the village chief of Karangan, was accused of embezzling 150 guilders of land rent, which he had received from the villagers but not handed over to the colonial administration. The assistant resident and resident did not believe his explanation that he had lost the money because he could not provide any proof or witnesses. The governor general approved the prosecution of the village chief at the landraad of Surabaya—presided over by the resident—and the village chief was convicted to three years of forced labour on Java. The conviction made by the landraad was confirmed by the Supreme Court in revision.[43]

In other cases—particularly when the colonial administration was not directly disadvantaged—the protection of the priyayi against prosecutions for extortion seems to have been more important than the protection of the Javanese people. From 1841 onwards, the governor general's formal approval to prosecute (*verlof tot vervolging*) was obligatory in extortion cases regarding lower priyayi and village chiefs.[44] This decision was intended to offer a more careful approach to the prosecution of priyayi and village chiefs. There had been indications that in some residencies village chiefs were punished with rattan strokes, so the same ordinance emphasized that rattan strokes, detention in the "block," forced labour, and (other) humiliating punishments were not to be imposed on local priyayi or village chiefs: "When ... [before 1841] the number of prosecutions—regarding land theft [*landdieverij*], extortion, and abuses of power—had increased considerably, the presumption arose ... that the Residents ... delegated the judicial adjudication to their subordinate officers, who often pronounced harsh verdicts, out of incorrect diligence and not being sufficiently familiar with the typical native institutions and customs."[45] In

[43] ANRI GS Surabaya, no.1436. Landraad case Soera Troena. Surabaya, June 28, 1858.
[44] IB, June 24, 1841, no.2. In Bijblad, no.1181.
[45] ANRI, AS B. January 26, 1863, no.26. Appendix written on 14 January 1863 (most likely by the Attorney General or the Council of the Indies) on the correct way of handling criminal prosecution of local nobles (*hoofden en grooten). "Toen (..) [before 1841] dat het aantal vervolgingen wegens landdieverij, knevelarij en misbruik van gezag opvallend was toegenomen, zoodat het vermoeden bestond dat de ... regterlijke vervolging door de Residenten ... werd overgelaten aan hunne ondergeschikten ambtenaren die uit verkeerden*

1850, control over the adjudication in extortion cases was further intensified. From then on, the recommendation of the director of cultivation had to be taken into account before a decision was made about whether to accuse a chief or not.[46] In 1857, the Council of Indies was added to the list of advisors in all criminal accusations regarding priyayi.[47] Much was done to prevent priyayi cases to end up in a court of law.

In 1847, the number of priyayi positions to whom the privilegium fori was applicable was extended substantially in article 4 of the new Court Regulations. Then, relatives of Javanese kings and regents as well as district chiefs and "other respectable Javanese chiefs" were included.[48] Before prosecution could take place (and not only in extortion cases), approval had to be given by the governor general. All these priyayi were sent to the Council of Justice. When a priyayi was adjudicated by the Council of Justice, the penghulu and two Javanese chiefs appointed by the resident were present as advisors.[49]

Baud had made a case for the expansion of the privilegium fori on the grounds that the headmen had to be protected because only they could

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ijver en niet genoegzaam bekend met de eigenaardigen inlandsche instellingen en gebruiken daardoor dikwijls met eene te groote stelligheid te werk gingen."

[46] ANRI, AS B. January 26, 1863, no.26. Appendix written on 14 January 1863 (most likely by the Attorney General or the Council of the Indies) on the correct way of handling criminal prosecution of local nobles (*hoofden en grooten).* Reference to IB, August 17, 1850, no.11. Director of Cultivation (*Cultures*) also had to be heard in his advice on the prosecution.

[47] ANRI, AS B. January 26, 1863, no.26. Appendix written on 14 January 1863 (most likely by the Attorney General or the Council of the Indies) on the correct way of handling criminal prosecution of local nobles (*hoofden en grooten).* Reference to IB, February 17, 1857, no.12. The Council of the Indies also had to be heard in case of a criminal accusation.

[48] RO, 1847, art. 4. *"Onverminderd de bestaande of later door den Gouverneur Generaal te geven voorschriften, betrekkelijk het vragen van verlof tot vervolging in regten van mindere Inlandsche hoofden, kunnen geene burgerlijke regtsvorderingen, noch vervolgingen tot straf, worden ingesteld tegen Vorsten, Regenten of andere Inlandsche grooten en derzelver nabestaanden, noch ook tegen districtshoofden en andere Inlandsche hoofden van aazien, zonder daartoe voorag, op Java en Madura van den Gouverneur Generaal, en in de bezittingen buiten Java en Madura van den hoogsten gezaghebber, verlof te hebben gekregen. In geval de laatstgemelde het verlof mogt weigeren, zal hij van zijn Besluit onmiddellijk kennis geven aan den Gouverneur Generaal, ten einde hetzelve bekrachtigd, of de gevraagd vergunning alsnog verleend worde. De teregtzittingen over zaken, waarin de genoemde personen, hetzij alleen, hetzij met anderen, betrokken zijn, worden met gesloten deuren gehouden."*

[49] RO, 1847, art.131 in relation to art.4. See for example: ANRI, B. June 29, 1856, no.1. Former wedono of Anjer, Mas Wangsa Pattie, was tried for the Council of Justice of Batavia. The Resident appointed the commander of the first district Mohamad Soeid Abdul Ganie and the Commander of the seventh district Moezanief Abdul Haliek as the two advisors.

rule over the population, and without their support, intensive colonial rule in Java was near impossible. He believed that, up to that point, too few priyayi had been protected by privilegium fori. Relatives of priyayi, district chiefs, and other Javanese leaders could still be prosecuted without approval from the governor general. Baud designated the limited privilegium fori as a danger to the authority of the Javanese chiefs over the population, because of "the special nature of the colonial government, and the support it receives from the good will and the loyalty of the native aristocracy." The public trial of a member of a prestigious Javanese family would be a humiliation to all members of that family.[50]

We have seen in the preceding chapter that Baud saw no virtue in an independent colonial judicial system, and he repeated this view again with regard to the privilegium fori: "An independent justice system, from which no one—regardless of rank—can escape, exceeds their notions."[51] The banishment of respectable Javanese nobles, on the other hand, did fit within their views: "They will not consider banishment, for example, by the governor general, of a member of their family to a distant location, as being scornful, when it is supported by good reasons."[52]

The committee drafting the new Court Regulations, agreed with Baud's arguments and in article 4 the privilegium fori was extended to "district chiefs and other Native prestigious chiefs." This was not a very precise description; who were all these other prestigious chiefs exactly? In their explanatory memorandum, the committee explained that they had kept the description in the article vague on purpose, so that it was still possible to make considerations on particular cases: "One can ... not be careful enough regarding the maintenance of the peace in the Indies." They explicitly mentioned that the privilegium fori was only meant for the "greats"

[50] Letter from J. C. Baud to the committee Scholten Oud-Haarlem, cited in: Eekhout, "Vraagpunten, mededeelingen en bemerkingen", 436. "..den bijzonderen aard van inlandsch bestuur en in den krachtigen steun dien hetzelve ontleent uit de goede gezindheid en de trouw der inheemsche aristocratie." For the firm belief of J.C. Baud in the utmost importance of protecting the priyayi, see also: Fasseur, *Kultuurstelsel*, 50-51.

[51] Letter from J. C. Baud to the committee Scholten Oud-Haarlem, cited in: Eekhout, "Vraagpunten, mededeelingen en bemerkingen", 436. "*Eene onafhankelijke justitie, aan welke niemand, hoe hoog van staat, zich kan onttrekken, gaat hunne begrippen te boven."*

[52] Letter from J. C. Baud to the committee Scholten Oud-Haarlem, cited in: Eekhout, "Vraagpunten, mededeelingen en bemerkingen", 436. *"Het verbannen bijvoorbeeld door den Gouverneur-Generaal van eenig lid van hun geslacht naar een verwijderd oord, achten zij niet hoonende, zoo de maatregel slechts op goede gronden steunt."*

(*grooten*) and not all chiefs, in order to exclude the village chiefs.[53] Yet, in practice there must have been a considerable increase in the number of people who could not be prosecuted without the governor general's approval and who went before the Council of Justice if adjudication was approved. In case of an adjudication, the court sessions were held behind closed doors. A member of Dutch Parliament, E. H. s' Jacob (1850-1866) recalled in 1867 how, during his time as a lawyer in Batavia, he had defended a wedono of Sumadang (Priangan) at the Council of Justice, "the privilegium fori for the chiefs." The Wedono was found guilty of extortion; eighty witnesses had been interrogated.[54]

In time, some decisions would be made over who fell under article 4. It was, for example, decided that the *prajurits* (armed troops of the regent) were not included.[55] In general, however, it was unclear who held the right to be adjudicated according to the privilegium fori. Baud's main purpose had been to prevent the prosecution of priyayi altogether, and not to get them adjudicated at the Council of Justice. Like Van den Bosch, he preferred priyayi to be dismissed or banished rather than brought to trial. Most Dutch high officials were not actually willing to structurally change the way extortion was punished. They were well aware of the fact that regents who were dismissed would be succeeded by a relative and that the extended family would probably continue to enrich itself. It was only when the dissatisfaction—despair or poverty—among the Javanese became urgent that the Dutch would intervene, often by simply transferring the regent to another residency.[56]

Even though a transfer was a rather light punishment, the forced transfer of a regent during the cultivation system era could lead to a considerable decrease in income for the regent involved. In the years 1858 to 1860, the five regents of the Priangan received 36 times more

[53] Report committee Scholten Oud Haarlem, cited in: Eekhout, "Eekhout, "Vraagpunten, mededeelingen en bemerkingen", 435. "*Men kan ... voor het behoud der rust in Indië niet te voorzigtig zijn."*

[54] Handelingen Tweede Kamer, "Wijziging der begrooting over het dienstjaar 1867." June 15, 1867, 1166. http://resourcessgd.kb.nl/SGD/18661867/PDF/SGD_18661867_0000159.pdf (Last accessed: 15-5-2015)

[55] Der Kinderen, "Behooren luitenants der pradjoerits en mantrie-arissen tot de bij art.4 Reglement RO bedoelde inlandsche hoofden van aanzien?," 89-90.

[56] Fasseur, *Violence and Dutch rule in mid-nineteenth century Java,* 7-8.

cultuurprocenten than the four regents of Bantam (f90.000 versus f2500).[57] However, transfers also functioned as rewards for regents loyal to the colonial state. In Semarang in 1850, after a famine in central Java—caused by an increase in land rent, revenues, the burden of cultivation farming and extortion by priyayi—the "extorter" *(knevelaar*) Radhen Adhipati Ari Adi Negoro, regent of Demak, was dismissed.[58] He was not allowed to reside outside of Semarang and his son did not succeed him as regent. He was replaced, instead, by Ario Tjondro Negoro, at that time regent of neighbouring Kudus. Tjondro Negoro was appointed "to restore there what has been in a terrible condition for years." Tjondro Negoro agreed to the transfer, for which he was amply rewarded. In addition to the title of pangeran, and a monthly salary of two thousand guilders, he also secured the future of his two sons. One of them would succeed his replacement in Kudus, when that regent died or retired. [59] The other son, would succeed Pangeran Ario Tjondro Negoro in Demak upon his retirement or death. Thus, through the transfer, he extended the dominance of the family to another regency.[60]

10.5 Extortion Criticized

Although the priyayi were important for the maintenance of dual rule and the cultivation system, many European officials certainly saw the extortion of the people as a problem, and at the residency level there were residents who would have preferred that these chiefs adjudicated in a court of law. In 1846,

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[57] For more about the famine, see: Fasseur, *Kultuurstelsel*, 29.

[58] Fasseur, *Kultuurstelsel*, 53.

[59] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim IB. October 18, 1850, no.G2. "*..om daar te herstellen, hetgeen sedert jaren in eenen jammerlijken toestand verkeert."* This would still not bring his income to the level of his income in Kudus, but the government expressed the hope that this would "soon be compensated when the welfare among the population of Damak will revive" (*weldra ruimschoots zal worden vergoed door het herleven van eene sedert jaren ongekende welvaart onder de Damaksche bevolking*). Radhen Adhipati Ari Adi Negoro was dismissed—without the addition "honorable"— and received a pension of three hundred guilders per month.

[60] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. October 22, 1851, no.15. Tjondro Negoro had a difficult start when accusations against him were made in *De Indier* of 17 April 1851, writing that the Regent had said that "it would not be hard to improve the conditions of the regency, since there were no people left" (*het hem niet moeijelijk zou vallen het aan hem toevertrouwd Regentschap wedere in eenen goeden staat te brengen, om reden hetzelve geheel ontvolkt is*)." Tjondro Negoro assured the Resident in a letter that he had never said something like that, and Governor General Duymar Twist assured "that the government attached little value to what the newspapers write" (*hoe weinig de Regering waarde hecht aan Couranten artikels*).

for example, the resident of Surabaya expressed his concerns regarding article 4 of the new Court Regulations: "The number of people who, by this article, are put outside of the immediate reach of the judge, is so immense, that it will cause serious inconveniences." Yet, he observed serious inconveniences chiefly because the Javanese of the nobility class who were not working for the colonial government, were—in his nearly quarter century experience in the colony—the most criminal Javanese: "The Natives of lineage, who do not work in service of the Government constitute the worst part of Javanese society. Due to the awe and fear of the aristocracy, as it still exists among the Javanese, numerous crimes committed by this class remain hidden. How much more would this be the case, if they were—due to a prohibition—immune to judicial prosecution!"[61]

The resident even described Javanese chiefs as the "natural enemies" of the common man: "Therefore, it is in the political interest of the Government to efficaciously protect the little man against his natural enemies, the chiefs, and in particular, against the relatives of the chiefs."[62] All in all, the resident feared for his own effectiveness in prosecuting the Javanese elite when the group of Javanese for whom special approval from the governor general was needed was expanded. He guessed that in his residency, this would comprise no fewer than 5000 people, including several banned and retired regents and their families from other regions.

After 1848, there was an increase in critical pamphlets about the cultivation system[63] and the possible causes of the extortion of the Javanese people was increasingly discussed. The financial situation of the priyayi was often mentioned. Others argued how their addiction to opium led to debts to Chinese opium farmers. Liberals would refer to the cultivation system under

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[61] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.6. Letter written bij the Resident of Surabaya. June 17, 1847. In response to a request from Whichers to all Residents to inform him about their thought about the regulations introduced by Scholten Oud-Haarlem in 1846 (the Court Regulations). In this archive only the response of the Resident of Surabaya has been preserved. *"De Inlanders van geboorte, die niet in Gouvernementsbetrekking zijn, maken dan ook het slechtste gedeelte der Javaansche maatschappij uit. Ten gevolge van het ontzag en de vrees voor den adel, dat alsnog bij den Javaan bestaat, blijven thans reeds talrijke misdrijven van deze klasse verscholen, hoeveel te meer zou zulks het geval zijn, wanneer zij door een verbod voor regterlijke vervolging was gevrijwaard!"*

[62] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.6. Letter written bij the Resident of Surabaya. June 17, 1847. *"Het politiek belang van het Gouvernement vordert daarom naar mijn oordeel, dat de kleine man krachtdadig tegen zijne natuurlijke vijanden, de hoofden, en vooral de nabestaanden van de hoofden, worden beschermd…"*

[63] Fasseur, *Kultuurstelsel*, 77.

which systematic extortion had been made possible: "A Javanese chief usually does not see any harm in massively exploiting his inferiors; and where can he better do this with impunity than in the residencies where the cultivation system is operating?"[64] Arminius argued in 1854 that the existence of unpaid services was the most important cause of extortion, since it put too much power in the hands of the Javanese elites, who could easily, and intentionally, provide an incorrect accounting of people in their regency, thereby increasing the burden of labour on the people. According to Arminius, the Javanese elite had been transformed into autocrats with too much power in their hands. Complaints by the population found no response, because the Dutch civil servants were often misled by the Javanese elites who convinced them that the complainers were actually culprits. The Colonial Constitution had increased the power of the Javanese elites even more, by making the position of regent hereditary.[65] The publications and debates of the first half of the nineteenth century show that Multatuli's *Max Havelaar* was not the first to observe that the Javanese chiefs' abuses of power were causing problems in several residencies. However, Multatuli was the first to address the problem to a broader audience.

The influential minister and later member of parliament Van Hoëvell also regarded the unpaid services as the main problem. The solution he proposed was to abolish the forced services and donations from the people to the priyayi. According to Van Hoëvell, only its complete abolition would solve the problem, because it had been impossible to define how far the chiefs were allowed to go in demanding services from the population: "Nowhere is it defined which limits they are not allowed to cross," he observed. "It is impossible to define these limits. But even if the limits could be defined, they would not be acknowledged anyway. No one would be able to monitor them, no one would be able to prevent [abuses]. Thus, if we do not abolish it [the unpaid services] altogether ... the abuse that one can take from it is irreversible."[66]

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[64] T.L.R., "Iets over de misbruiken van inlandsche hoofden op Java," 35-43. "*Een Javaans hoofd ziet er gewoonlijk geen kwaad in, zijne minderen tot het merg toe uit te zuigen; en waar kan hij het meer ongestraft doen dan in die Residentien, waar het stelsel van kultures in werking is?"*

[65] Arminius, "Heerendiensten en misbruiken," 254-266.

[66] Van Hoëvell, "De Inlandsche hoofden en de bevolking op Java," 258-266. *"Nergens zijn de grenzen aangegeven, die zij niet mogen overschrijven. Die grenzen kunnen niet worden aangegeven, "t is onmogelijk. Maar al werden ze aangegeven, ze zouden toch niet worden*

The priyayi and village chiefs were not the only officials abusing their power. According to Multatuli, the residents were just as guilty. For example, convicts were obligated to maintain the courtyards of the residents' houses. And, when there were not enough convicts, the regents were ordered to send commoners to do the work. Multatuli wrote that the regent would meet this demand with pleasure: "He is very aware that it will be hard for the authoritative official abusing his power, to reprimand a native chief later for a similar wrongdoing. And this is how the offense of the first serves as a license for the second."[67] Multatuli also accused the residents of avoiding conflict. When the Javanese complained about being maltreated by the regent, the complainants were often accused of being mere troublemakers, and after being threatened by their chiefs, they often recanted. Even though the residents were aware of the real reason for the complaints being withdrawn, he would nonetheless punish the protestors for disturbing the peace and order. This was: "a nice opportunity to maintain the Regent in office and honour, and spared himself the disagreeable task of troubling the government with an unfavourable report. The rash accusers were punished by caning, the regent triumphed, and the resident returned to the to the capital with the agreeable consciousness of having again managed so nicely."[68]

Maintaining peace and order was of the utmost importance for the residents. Their yearly reports informing the governor general about the political and economic state of their respective residencies always began with a sentence emphasizing the complete tranquillity in the residency. Even in the yearly report of Besuki of 1836, when Jaksa Niti Sastro (see chapter 5) and others had conspired against the colonial government and a revolt had

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geëerbiedigd. Niemand zou "t kunnen controleren, niemand kunnen beletten. Wanneer dus niet finaal wordt verboden ... is het misbruik, dat daarvan kan gemaakt worden en gemaakt wordt, niet te keeren."

[67] Multatuli [Eduard Douwes Dekker]. *Max Havelaar*, 193. Citation as in Dutch original: *"...hij weet zeer goed dat het de gezaghebbende ambtenaar die van dat gezag misbruik maakt, later moeilijk vallen zou een inlands hoofd te bestraffen over een gelijke fout. En alzo strekt het vergrijp van de een tot vrijbrief van de ander."*

[68] Multatuli [Eduard Douwes Dekker]. *Max Havelaar*, 276. Citation as in Dutch original: "*...een schone gelegenheid om de Regent te handhaven in ambt en eer, en hemzelf was de onaangename taak bespaard de regering te bemoeielijken met een ongunstig bericht. De roekeloze aanklagers werden met rottingslagen gestraft, de Regent had gezegenpraald, en de Resident keerde naar de hoofdplaats terug, met het aangenaam bewustzijn die zaak alweer zo goed "geschipperd" te hebben."*

almost erupted, the yearly report began with the calming claim that "just as in previous years, the tranquillity in this residency has remained undisturbed."[69]

The criticism of the extorting priyayi, however, would bear fruit. In 1858, the 1841 ordinance requiring the governor general's approval for prosecuting all extortion cases was withdrawn. The direct reason for this was that it led to too much delay; but in general, the stance towards the priyayi was changing. In 1865, it was decided that extortion by local chiefs was to be handled without leniency if it damaged the situation of the Javanese population. This was a direct consequence of the publication and success of the *Max Havelaar* in the Netherlands. The regents of Bantam received an increase in pay, but the personal remuneration of the regent of Lebak, Karta Nata Negara, remained unchanged. Earlier, in 1857, after the case of Lebak (described in the *Max Havelaar*) had taken place, the regent had still received an increase in pay, even though he was suspected of "so-called extortions." At that time, this was "deemed excusable" by Governor General Rochussen because the "native chiefs do not understand the unlawfulness of this and almost all regents in Java are guilty of it."[70] Several years later, in 1865, the Minister of Colonial Affairs Fransen van de Putte opposed this: "That it should be redundant to mention that such a lenient stance on the account and the disadvantage of the native population is not to be agreed with; and one trusts that the governor general, when an undesired repetition of such a case happens, will be led by different considerations."[71] It was a reversal of the position taken in 1841. In 1865, it also became possible to prosecute Javanese officials who had already been dismissed without permission from the governor general.[72]

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[69] ANRI, GS Besuki, nos.25, 26 and 27. Algemene verslagen 1835, 1836 and 1837. *"...evenals in vorige jaren de rust in deze Residentie ongestoord is gebleven."*

[70] NL-HaNA, 2.10.02 MvK 1850-1900, IB. December 11, 1856, no.17. *"inlandsche hoofden het ongeoorloofde daarvan niet inzien en schier alle Regenten op Java zich daaraan schuldig maken."*

[71] NL-HaNA, 2.10.02 MvK 1850-1900. IB. January 2, 1865, no.9. *"Dat het wel overbodig zal zijn op te merken, dat zoodanig toegevende beoordeling, ten koste en ten nadeele der inlandsche bevolking, door hem in geene deele wordt beaamd: en dat hij meent te kunnen vertrouwen dat de GG bij onverhoopte herhaling van een dergelijk geval, zich door andere beschouwingen zal laten leiden."*

[72] KV 1865, Chapter F "Regtswezen en Justitie", 59.; Bijblad, no.1373.; NL-HaNA, 2.10.03 Koloniale Supplementen, no.24. "Overzicht van de Staatkundige toestand van NI op het tijdstip der aftreding van den Gouverneur Generaal Sloet van de Beele", 1866.

The regents—the highest priyayi—still had to be handled carefully. In 1863, when Governor General Sloet van de Beele did not doubt the guilt of the regent of Karanganyar, Radhen Adhipati Ario Djojo dhi Ningrat—who had been regent for thirty-three years and was now suspected of abuses of power, severe extortions, theft from mosque funds, and unauthorized disposal of land—he nonetheless decided only to dismiss him and not to undertake any prosecutions, because he doubted it would be possible to convict the regent: "It seems doubtful whether the performed actions, of which he is accused, are of such illicit character, that the judge will convict him. Moreover, that a prosecution would take ample time, due to the many witnesses involved in this case, and therefore might be to the disadvantage of the people. Also, it would be preferable if in this particular case a decision were taken at short notice." The regent was allowed to stay in the residency and he received a monthly stipend of two hundred guilders. [73] This was in line with the other cases studied for this dissertation; regents were only dismissed in quite old age, and no criminal prosecution followed, partly because it was extremely hard to collect enough evidence against such influential men, as we will also see in the cases described in the next chapter. Yet, at the same time, criticism of the practice of extortion among priyayi continued and led to the Extortion Ordinance of 1866.

10.6 The Extortion Ordinance of 1866

In 1866, a new regulation was issued regarding the judicial treatment of extortion.[74] As described before, the crime of extortion was closely linked to the issue of the unpaid services.[75] The complete abolition of all unpaid services would never become reality, although some reforms were introduced in 1882. The extortion ordinance of 1866 simply defined the crime more precisely.[76]

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[73] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim IB. December 12, 1863, M2. *"…dat het evenwel twijfelachtig voorkomt of de aan hem ten laste gelegde en door hem gepleegde handelingen wel zulk een misdadig karakter hebben, dat de regter hem op grond daarvan zoude kunnen veroordelen. Dat bovendien een geregterlijke vervolging wegens de vele getuigen, die in deze zaak betrokken zijn, niet alleen zeer veel tijds vereischen, maar ook tot bezwaar van de bevolking strekken zoude; terwijl het daarenboven wenschelijk in in deze aangelegenheid spoedig een beslissing te nemen."*

[74] S 1867, no.124.

[75] S 1867, no.122 and 123.

[76] Fasseur, "Purse or principle: Dutch Colonial Policy in the 1860s and the Decline of the Cultivation System," 48.; De Jong, *Het Koninkrijk der Nederlanden in de Tweede*

The Extortion Ordinance resembled article 115 of the Indies' Criminal Code for Europeans (implemented the same year), which was in its turn derived from article 174 of the French Penal Code, which still applied in the Netherlands. One sentence was added in which "demanding unpaid personal services" was made a criminal offense due to the "typical circumstances of the Indies" society." This alteration to the description of extortion was made because in the Netherlands Indies, extortion often meant the demand of personal services without providing compensation. So, the crime of extortion was formally defined to mean "to demand or to receive—or ordering to demand or receive—that of which they know is not owed for land rent, estimations, revenues, cash or income, or for rewards or imbursements." Furthermore, ownership or usage of lands formerly owned by Javanese chiefs in active service (*ambtelijk land;* this privilege was abolished in 1867) fell under the definition of extortion as well, just as demanding disallowed unpaid services and deliveries. The headmen and officials found guilty of this were to be punished with chain labour of five to ten years on the island where the verdict was reached, preceded by public display. Persons subservient to them were to be punished with unchained labour for two to five years.[77]

On 8 January 1868, Minster for Colonial Affairs Hasselman, who had been appointed a year before, expressed his doubts about the Extortion Ordinance. He and the jurist F. F. L. U. Last—who around that time had been removed from his work drafting a criminal code for natives for including too many local laws (see chapter 3)—were making the case for not implementing any penalties against extortion. Hasselman wondered, in particular, whether illicit land-owning and demanding forbidden personal services and deliveries were rightfully designated as extortion. "When judging violations," he observed, "we should not omit to notice whether the morals and institutions of the people, the prevailing

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Wereldoorlog Part 11 a, 24. Until the end of the colonial era, the unpaid services (*herendiensten*) would be (partly) maintained. In 1867, 1874 and 1882 the unpaid services were limited and in 1912 the decision was made that the last four remaining unpaid services had to be abolished as well. In reality, however, this would never happen since the colonial government continued to use unpaid services executed by the local population for the construction and maintenance of roads and other public works.

[77] S 1867, no.124. *"in te vorderen of te ontvangen, of te doen invorderen of ontvangen hetgeen zij weten dat geheel of ten deele niet verschuldigd is voor landrenten, schattingen, belastingen, gelden of inkomsten, of voor belooningen of bezoldigingen."*

principles and the circumstances under which they are committed, might place the facts in a less negative light, in which neither the native chief nor the natives themselves consider these violations as an abuse of power or inexcusable extortion.[78]

The opinions of these two conservative authorities, however, could gain no traction against the prevailing liberal spirit of the time. One of those prominent liberals, the jurist T. H. der Kinderen, asserted that the Javanese population certainly thought of extortion as a criminal offence. "The Experience has taught us," he wrote, "how he [the local population]—when the cup of iniquity is full or the native official loses his power due to dismissal—turns to the ruling European officials with numerous complaints."[79] Moreover, the severity of the punishments imposed for extortion had to be comparable to those imposed on Europeans, certainly because the Javanese official had a greater inclination to extort, according to Der Kinderen. Finally, he took into consideration that the priyayi's stipends had recently been raised in an effort to reduce extortion. If, then, extortion still took place, a severe punishment was appropriate:

> Up to now, the judge would usually impose relatively light punishments for extortion. However, this was not because one considered it to be minor crime in a legal sense, but because the judge understood that most of the accused were not able to live according to the rank and office from the income they received from the government, and were therefore forced to seek more income pursuing illegal means. Therefore, in many verdicts the small income was taken into

[78] NL-HaNA, 2.10.02 MvK 1850-1900. Kabinet V. 1868, D8. Hasselman (January 8, 1868) cited in advice by Der Kinderen. Batavia, February 18, 1868. "*Bij de beschouwing van overtredingen ... moet niet worden nagelaten er op te letten of de zeden en instellingen des volks, de heerschende begrippen en de omstandigheden, waaronder zij gepleegd worden, dergelijke feiten niet in een minder afkeurenswaardig daglicht stellen, terwijl noch het inlandsch hoofd noch de inlander zelf in dergelijke overtredingen altijd misbruik van gezag of schandelijke afpersing plegen te zien."*

[79] NL-HaNA, 2.10.02 MvK 1850-1900. Kabinet V. 1868, D8. Advice by Der Kinderen. Batavia, February 18, 1868. *"... de ondervinding leert, hoe hij, wanneer de maat der ongeregtigheid overloopt of de inlandsche ambtenaar door ontslag zijn gezag verloren heeft, zich met tal van klagten weet te wenden, tot de besturende Europese ambtenaren…"*

> consideration as a mitigating circumstance and distinctly mentioned as such.[80]

In the Dutch Parliament, C. A. Sijpestein questioned the Extortion Ordinance of 1867 after reading newspaper articles and letters he had received. Minister for Colonial Affairs de Waal agreed that the punishments for extortion seemed rather severe.[81] Therefore, the residents were asked for their practical experiences with the ordinance. It turned out that only the residents of Pekalongan and Surabaya thought the punishments too severe. In general, though, the residents were pleased with the new ordinance. Remarkably enough, some residents—Batavia, Tegal, Besuki, Banyumas, and Banyuwangi—reported that the priyayi in their regencies were well paid enough that they had no reason to extort. Therefore, these residents could not tell whether the ordinance was useful. The resident of Besuki even added that his residency was inhabited only by "freedom loving Madurese," who would not accept any extortion and certainly would have complained. Other residents' reports mentioned that the Javanese had become more assertive and tended to file complaints earlier than before. Only the residents of Japara and Probolinggo reported that the people there had not reached that "stage of civilization" and was still very attached to the "authoritative traditions of the priyayi" with "profound obedience" as a consequence.[82] Due to the rather positive evaluation of the resident, it was subsequently decided to include the Extortion Ordinance of 1867 in the Native Criminal Code of 1872.[83]

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[80] NL-HaNA, 2.10.02 MvK 1850-1900. Kabinet V. 1868, D8. Advice by Der Kinderen. Batavia, February 18, 1868. *"Tot nu toe legde de regter in den regel bij knevelarij slechts betrekkelijk ligte straffen op, maar dit geschiedde niet omdat men het misdrijf in strafregterlijken zin ligt telde, het was omdat de regter inzag dat de meesten van hun van landswege toegekend inkomen niet konden leven naar rang en ambt, en wel verpligt waren zoch op deze of gene onwettige wijze inkomsten te verschaffen, zoodat dan ook in menig vonnis dat geringe inkomen als eene zeer verligtende omstandigheid werd aangenomen en uitdrukkelijk vermeld."*

[81] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 7, 1872, no.26.

[82] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 19, 1872, no.1/1796. Report (and summaries of the experiences submitted by the resident) by Attorney General Coster. Batavia, June 9, 1872.

[83] Native Criminal Code, 1872, article 122: *"Alle openbare ambtenaren, zoomede de aan hen in hunne dienstbetrekking ondergeschikte personen; die zich schuldig maken aan het misdrijf van knevelarij, door in te vorderen of te ontvangen, of te doen invorderen of ontvangen*

Chief Jaksa Pangeran Ario Hadiningrat, would articulate some substantial criticism on this in a colonial journal. Article 122 was applicable to village chiefs as well and according to Hadiningrat, this was practically impossible, since the village chiefs received no compensation from the colonial government and instead were supported by the villagers in various ways. The judicial committee drafting the code, however, emphasized that extortion through unpaid services was a big problem at the village level as well: "He who abuses his power by illicitly taking away farmland from a native, or orders him to deliver bamboo for a new house, or even makes him build this house, is just as guilty as those who take more guilders than officially prescribed when receiving land rent from the native. Yes, it is even valid to ask whether the first example is much more illegitimate than the last one."[84]

Designating all kinds of benefits held by the village chiefs but not confirmed in colonial regulations as being extortion was infeasible though. Hadiningrat enumerated some of the benefits: offering a feast (*selamatan*) to the village chief during a wedding, handing over a share of a house or buffalo that had been sold, or a share of chopped firewood, caught fish, or the harvest. "If someone reports the rice in his fields is ready to be harvested, he will pay some dimes per *bouw* [farmland of one

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hetgeen zij weten dat geheel of ten deele niet verschuldigd is voor landrente, schattingen, belastingen, gelden of inkomsten of voor belooningen of bezoldigingen, worden gestraft, te weten: de openbare ambtenaren met dwangarbeid in den ketting voor den tijd van vijf tot tien jaren; en de aan hem in hunne dienstbetrekking ondergeschikte personen met dwangarbeid buiten den ketting voor den tijd van twee tot vijf jaren. Aan knevelarij maken zich ook schuldig en worden ingevolgde de vorige zinsnede gestraft: 1. Openbare ambtenaren, die, in strijd met de daartoe betrekking hebbende verordeningen, gronden, aan inlandsche gemeenten of inlanders toekomende, wederregelijk zich toeëigenen of in gebruik of bezit nemen of houden, of, onder welk voorwendsel ook, daarover ten nadeele van de regtmatige bezitters of andere daarop regthebbenden beschikken;2. Openbare ambtenaren en aan hen in hunne ambtsbetrekking ondergeschikte persoenen, die zich schuldig maken aan het vorderen van persoonlijk diensten of van leveringen ten behoeve van wien ook, welke niet uitdrukkelijk bij algemeene verordening zijn toegelaten." This article had been derived from the ordinance of September 29, 1867 (S 1867, no.124), article 115 of the European colonial Criminal Code and article 174 of the penal code as applied in the Netherlands.

[84] Der Kinderen, *Wetboek van strafregt voor inlanders in Nederlandsch-Indië, gevolgd door eene toelichtende memorie*, 180. Explanatory note art.122. "*Hij, die, misbruik makende van zijn gezag, aan den Inlander wederregelijk een akker ontneemt, of hem bamboe laat leveren tot het bouwen van een huis, of wel hem voor zich dat huis laat bouwen, is even strafbaar als hij, die bij het in ontvangst nemen der landrente van den Inlander eenige guldens meer heeft dan verschuldigd is, ja het mag gevraagd worden of de eerste niet veel strafbaarder is dan de laatste."*

family] to his chief," he explained, "and he also invites his chief's wife to cut the first rice, and to bring home herself what she has harvested." In the case of slaughtering a buffalo, the village chief could count on the head of the animal or the best piece of meat. The village chief also did not have to buy any bamboo; if his house needed repairs, he could take bamboo wherever it grew. All these sources of income were substantial to the village chief, according to Hadiningrat, not only to sustain his own livelihood, but also to pay for his duties, since he did not receive a government payment.[85]

Hadiningrat judged the ordinance to be perfectly applicable to officials who received enough payment, but not to officials whose incomes in no way corresponded to their obligations and responsibilities. Police investigations in particular were expensive, as the village chief often had to track down the suspect and travel great distances: "I know of one case," he reported, "in which someone had to travel two hundred *palen* [approximately three kilometres] back and forth to locate a stole horse. Did he receive any traveling money for this? No, he had to provide this himself, and he had to decide for himself how to arrange it." Hadiningrat argued that this responsibility made the village chief "the focal point, around which everything regarding the civil administration turns."[86] He therefore called for people to respect local customs and protect the village chief. If a village chief was adjudicated for extortion, the judge could apply the article 37 on mitigating circumstances of the Native Criminal Code.[87] Hadiningrat was also annoyed that, with the introduction of article 122, only the Dutch residents were asked for their advice although their knowledge on such matters was often "flawed":

> Legislation can only be good where light comes from the people. In countries where the intellectual

[85] Hadiningrat, "Knevelarij van dessahoofden," 194. *"Maakt iemand rapport, dat zijn padie op het veld rijp is, zoo betaalt hij eenige dubbeltjes per bouw aan zijn hoofd, en noodigt tevens diens vrouw uit om de padie het eerst te komen snijden, en het door haar verkregene voor zich te behouden."*

[86] Hadiningrat, "Knevelarij van dessahoofden," 196. *"de spil, waarom alles ten opzichte van het binnenlandsch bestuur draait."*

[87] Hadiningrat, "Knevelarij van dessahoofden," 197. *"...ja mij is een geval bekend dat iemand ruim 200 palen heen en weer heeft moeten reizen om een gestolen paard op te sporen. Krijgt hij daarvoor reisgeld? Neen, hij moet zich daarvan zelf voorzien en hoe hij dat doet, moet hij ook zelf weten."*

> development is little, as here, the legislator is forced to rely on his own bright insights and that of his officials. When his knowledge is insufficient, which is not uncommon, then it should be completed with advice; but if this advice is insufficient itself, who then can expect legislation to meet the needs of society?[88]

As with knowledge production regarding Islamic law and the positions of the penghulu (described in chapters 2 and 3) neither the Javanese chiefs nor other Javanese officials were consulted; instead, the Dutch residents were preferred as the most appropriate informants. Even Hadiningrat, one of the most respected priyayi, trained by a western tutor and lauded as a skilful jaksa, had not been asked for his advice on a matter so directly related to his daily professional experience.

10.7 Conclusion: Limits to Dual Rule

Throughout the entire nineteenth century, caution was urged in dealing with the regents. Even if they were dismissed, this only happened if they were already older, and even then they were often dismissed "with honour." Moreover, their transgressions had to be severe before they could not be succeeded by their son. Lower priyayi, however, were adjudicated and even humiliating punishments were imposed, although there were some regional differences in the extent to which rank was taken into account. The privilegium fori of 1829 did not change this; rather it seems to have been a formalisation of the way things were already done in many parts of Java.

One reason why the privilegium fori was such a sensitive topic had to do with the issue of extortion. The crime became well-known due to Multatuli's novel *Max Havelaar*, but it was acknowledged as a problem in and for colonial society long before the novel was released. The Dutch were concerned about extortion for two reasons: it was a crime against the

[88] Hadiningrat, "Knevelarij van dessahoofden," 195. *"Dáár alleen kan wetgeving goed zijn, waar het licht uit het volk oprijst. Gebrekkig is zij meestal in landen van geringe verstandelijke ontwikkeling gelijk alhier, aangezien de wetgever genoodzaakt is zich tevreden te stellen met zijn eigen helder inzicht en dat zijner dienaren. Is zijn kennis onvolledig, wat niet zelden tot de zeldzaamheden behoort, dan moet die aangevuld worden door adviezen; maar als deze zelf gebrekkig zijn, wie durft dan te verwachten dat de wetgeving aan de behoefte van de maatschappij voldoet?"*

population, but it could also have dangerous consequences for colonial rule if excessive extortions led to a revolt or famine that disturbed peace and order. In practice, extortion was only punished if it threatened Dutch rule. In other words, both Javanese and Dutch officials knew that extorting the Javanese people was perfectly possible so long as the population did not revolt. As a result, the population had nowhere to go with their complaints.

11 — Privileged Outlaws

The previous chapter showed how during the early nineteenth century a privilegium fori came into existence in Java to "protect" priyayi from getting involved in civil cases. It was also possible to keep the priyayi outside of court in criminal cases, for example in extortion cases, to prevent damage to the prestige of the colonial state. In this chapter, I argue that the circumvention of bringing priyayi to court, would have a second consequence. The privilegium fori—at first designed to protect the priyayi—over time got intertwined with a political measure in criminal cases; a way for the colonial administration to banish people who were considered controversial, dangerous, or potentially threatening to colonial rule, as I will show by analysing two big and complex 'priyayi cases' from the second half of the nineteenth century.

11.1 Privilegium Fori and the Political Measure Intertwined

As described before, the privilegium fori was initially introduced in 1829 to protect Javanese nobles from the humiliation of a public trial, which was seen as diminishing their status in the eyes of the population. Besides, it seemed difficult to agree on a system in which regents were judged by pluralistic courts in which often lower priyayi, such as wedonos, served as members and would decide over their fate. Thus, the privilegium fori simply allowed for the transfer of Javanese nobles from one jurisdiction to another. However, the resolution of 1829 included one sentence that would have considerable consequences: priyayi could only be prosecuted in a court of law on the approval of the governor general.[1] This mandatory approval of the governor general could instantly change the privilegium fori of the Javanese nobles—a favour—into a powerful tool of the colonial government.

The Origins of the Exorbitant Rights

Even before being affirmed in the regulations, the exercise of political measures had been a common practice of the colonial rulers. We have seen

[1] S 1829, no.98.

already how in the Borwater case the suspected regent was not prosecuted, but was banned from the regency nonetheless. In general, there was a longstanding tradition of political exile in the Netherlands Indies. During VOC times, unruly nobles were deported without trial for political reasons. For example, the Patih Raden Adipati Natakusuma and the brothers of Sultan Mangkubumi were banned to Ceylon for leading the pro-Chinese court faction.[2]

Banishment as political means, as distinct from banishment as the result of a criminal trial, was further consolidated in articles 45 to 48 of the Colonial Constitution of 1854. The decision to apply political measures was taken by the governor general, but in the case of a Dutchman, the minister of colonial affairs and the Dutch parliament had to be informed, whereas in the case of a person born in the Netherlands Indies, such as priyayi, it was considered sufficient to inform only the minister of colonial affairs. Also, a rationale for the decision to deport was obligatory for Dutchmen but not for Javanese.[3] Banishment as a measure of control could be imposed for a undefined period, and no proof was required. The legal system was not involved in the procedure. The political measure was a "measure" and not a "punishment." Formally, punishments had to be proportional to the committed offence, whereas in case of a "measure," the maintenance of peace and order in the colony was of foremost importance.[4] The governor general's license to arbitrarily deport people who had not necessarily committed a crime was referred to as "exorbitant rights."

The exorbitant rights were the result of the "regulation of the right of residence," which stated that people were only allowed to stay in the colonies with the permission of the king. If, after permission had been given, someone was deemed dangerous to peace and order—without necessarily being accused or found guilty of having committed a criminal act—he could be forced to leave the colonies.[5] Before deportation, the person could be held in custody.[6] People born in the Indies, such as common Indonesians and

[2] Ricklefs, *Jogjakarta under sultan Mangkubumi,* 155. Kerry Ward did research on the history of forced migration in the Indian Ocean world by the VOC: Ward, *Networks of Empire.*
[3] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 51.
[4] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 39.
[5] RR 1815, art.18.; RR 1818, art.29/3.; RR 1827 art.29.; RR1830, art.32.; RR 1836, art.24.; Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 5.
[6] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 9. "*Regeling of recht van verblijf."*

priyayi, whom the governor general considered to be a threat to peace and order, could also be deported. Exactly what was meant by "deemed dangerous" was not clarified in the regulations. This was completely up to the governor general to decide.[7]

Most relevant and interesting for this dissertation though, is the "amalgamation of a legal prosecution with the political measures." This was an extraordinary rule that was only allowed in the Netherlands Indies. It meant that the approval of the governor general was mandatory for the legal prosecution of people from certain strata of Javanese society such as high-ranked priyayi, as discussed in chapter 8. However, if he decided not to approve a legal prosecution, but nonetheless had a "moral conviction" that the person was guilty, he held the authority to impose a political measure.[8] In 1847, the influence of the governor general on the decision to prosecute Javanese officials would become part of article 4 of the Court Regulations, which would be the primary source for article 84 of the Colonial Constitution of 1854: if the governor general decided to withhold permission to prosecute, he could subsequently decide to use his exorbitant rights.[9]

During debates over the drafting of the Colonial Constitution, some members of the Dutch parliament expressed their concerns about the exorbitant rights regarding suspects in criminal cases. In particular, Van Hoëvell had serious objections to article 84 because it contradicted article 83, which stated that everyone had the right to be tried by a judge. Van Hoëvell explicated how article 84 appeared to be a privilege, since the governor general had to approve the prosecution of priyayi, but was in fact a "quasi-privilege which [can] put chiefs in a very deplorable position." He gave the example of the regent of the Kendal regency, who had been accused of extortion, but denied his guilt and requested a trial to prove his innocence.

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[7] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 5, 9 and 38. The exorbitant rights were first given this term in 1852. It was a neutral term and not meant as a critique or something negative.

[8] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 62. *"Samengaan van een rechtsvervolging en de politieke maatregelen*."

[9] RO 1847, art. 84: *"Het verlof van den Gouverneur-Generaal, of buiten Java en Madura van den hoogsten gewestelijken gezaghebber, is noodig tot het instellen van burgerlijke regtsvorderingen en van vervolgingen tot straf tegen inlandsche vorsten en hoofden, bij algemeene verordering aangeduid."*

However, the governor general withheld his permission and he was banned by political measure to Menado, "living there now on one guilder a day."[10]

J. C. Baud and Rochussen fiercely defended the use of political measures. Rochussen emphasized that the interests of the state were paramount. Baud, in his turn, argued that the article was intended primarily to protect people "of high birth" from the "humiliation" of a public trial. For the sake of argument, he neglected to mention that these particular courts cases were held behind closed doors. Furthermore, Baud argued, the article aimed to keep the and order. Legal procedures took time and during that period, influential relatives and followers of the accused could easily disturb the peace in the region. He could not imagine that the regent, in the example given by Van Hoëvell, had himself thought of requesting a judicial trial, and blamed the jurists for this: "I can very well imagine, that the native chief, confident that no decisive witness would testify against him, had given the advice from one or another European jurist to request a public trial." The consequence of such a trial would have been acquittal, and that would have damaged the colonial authorities."[11] Van Hoëvell agreed that Javanese did not dare to testify against a regent, but he blamed the policy of not adjudicating priyayi cases on the reluctance of the Javanese to testify against their chiefs. If, however, the population could rely on the colonial ruler to prosecute and adjudicate criminal and extorting chiefs, Van Hoëvell argued, then they would certainly be willing to testify.[12]

A few days later, the Minister of Justice D. Donker Curtius argued that the principle that everyone held the right be tried by a judge was only applicable after the prosecution had started. Article 83 did not provide rules for the right of prosecution before a prosecution had begun. He argued that

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[10] Handelingen Tweede Kamer, "Ontwerp van Wet tot vaststelling van het reglement op het beleid der regering van Nederlandsch Indië" July 27, 1854, 1236. www.statengeneraaldigitaal.nl (Last accessed: 20-5-2015) Van Hoëvell: *"…niemand kan tegen zijn wil worden afgetrokken van den rechter.* (…) *…quasi-voorregt die hoofden in een zeer beklagenswaardige positie [kan] brengen*) (*en leeft daar nu van één gulden daags."*

[11] Handelingen Tweede Kamer, "Ontwerp van Wet tot vaststelling van het reglement op het beleid der regering van Nederlandsch Indië" July 27, 1854, 1238. www.statengeneraaldigitaal.nl (Last accessed: 20-5-2015) J.C. Baud: *"Ik kan mij zeer goed voorstellen, dat het inlandsch hoofd, verzekerd dat geen beslissende getuige tegen hem zal optreden, van een of ander Europeesch regtsgeleerde den raad heeft gekregen, om openbare teregtstelling te vragen."*

[12] Handelingen Tweede Kamer, "Ontwerp van Wet tot vaststelling van het reglement op het beleid der regering van Nederlandsch Indië" July 27, 1854, 1239. www.statengeneraaldigitaal.nl (Last accessed: 20-5-2015)

this was also the case in the civil legislation of the Netherlands: "in some cases, certain persons require authorisation for filing legal proceedings, and if the authorisation is not provided, the lawsuit cannot be brought. However, once approval has been given, the legal proceedings should be conducted before the competent judge." Thorbecke subsequently wondered why the governor general had the "inordinate privilege" to decide over legal procedures to be held against local rulers or chiefs. The minister of colonies replied that the article was to protection Javanese rulers from being sued in civil cases concerning debts.[13] This had indeed been the reason why the regulations on privilegium fori had been introduced in 1829. However, the minister did not explain why criminal cases were also made part of this rule. Despite the critical questions asked, article 84 was implemented in the Colonial Constitution.

The Djojodiningrat Conspiracy

A few years after the debate in parliament, a major case appeared and the colonial government was faced with the dilemma of whether to intervene in a criminal case in which a regent was suspected by imposing a political measure: the Djojodiningrat conspiracy. The case had appeared to be a straightforward murder case in which a European was killed by a disgruntled Javanese worker, but soon it would prove to involve much more complicated.

On 26 December 1856, around eleven at night, Bernardus Reinierus Meulman, administrator and co-tenant of the Pesantren sugar factory in Kediri, was attacked on his way home. According to a newspaper article in *De Oostpost*, he was stabbed in his lower back with a lance and died from his injuries that night. The murderer had remained unnoticed in the dark.[14] The preliminary investigations, executed by the chief jaksa of Kediri, Mas Ngabehi Padmo Soediro, did not turn up the identity of the assassin, so Resident H. M. Le Roux decided to set up an investigative committee made up of several prominent priyayi from Kediri to solve the case. The president

[13] Handelingen Tweede Kamer, "Ontwerp van Wet tot vaststelling van het reglement op het beleid der regering van Nederlandsch Indië" August 3, 1854, 154. www.statengeneraaldigitaal.nl (Last accessed: 20-5-2015) Donker Curtius: *"…in somige gevallen hebben sommige personen autorisatie nodig om een proces te mogen voeren en wordt dat verlof niet gegeven, dan kan het proces niet begonnen worden, maar wordt het verlof gegeven dan moet het geding voor den competenten regter gevoerd worden."*

[14] *De Oostpost*, January 12, 1857, 2-3.

was the regent, Radhen Mas Adhipati Djoijo dhi Ningrat (hereafter Djojodiningrat), and also appointed were the patih of Kediri, the wedono of the Modjoreto district, the wedono of Godean district, the chief penghulu, a jaksa, and the aforementioned chief jaksa of Kediri.

This was similar to the action taken after the assassination attempt on Assistant Resident Borwater of Radjekwesi discussed in chapter 8, but this time the committee was composed entirely of Javanese priyayi instead of Dutch officials. That this was a less prestigious committee—from the viewpoint of the colonial government—might have been affected by the fact that the victim was not a direct representative of the colonial authorities, but the administrator of a sugar factory. Also, the assumption may have been that the culprit was a Javanese commoner and not a priyayi or European.

The committee began its work and four months later they had drafted a procès-verbal concluding that the European Merghart, a mechanic at the sugar factory of which Meulman had been the administrator, was the main suspect. The murder was adjudged a crime of passion (*minnenijd).* However, the procès-verbal was not signed by the chief jaksa, who was not convinced of Merghart's guilt. The "little" jaksa signed the relevant documents in his place.[15] Since the suspect was a European, the file was sent to the Council of Justice in Surabaya, where it soon became clear that Merghart could not be the perpetrator. Witnesses had swiftly withdrawn their statements and among the Council of Justice members suspicions arose that the investigation committee had made up the entire procès-verbal. Thereupon, they arrested one of the committee members, the wedono of Godean, for bribing witnesses. The experienced Public Prosecutor W. W. Scheltema[16] went to Kediri himself to gather more information. There, the chief jaksa informed him of the dubious role of the patih and wedono of Modjoreto.[17]

Little progress was made hereafter because Resident Le Roux of Kediri was still convinced of Merghart's guilt. Only in August, when the new Resident A.F.H. van der Poel arrived, did the discussion about whether

[15] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Ordinance (*Besluit*) governor general. Batavia July 1, 1858.

[16] W.W. Scheltema was public prosecutor at the Council of Justice in Surabaya since 1857. Before that, he has been the president of the Council of Justice in Makassar. Scheltema died in 1870, in Leiden, after an early retirement due to weak health conditions.

[17] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Report of investigations, by Public Prosecutor Scheltema, sent to the attorney general. Surabaya, January 7, 1858.

the priyayi should be prosecuted advance. If the falsely accused had not been a European, it might have been possible to keep the case quiet, but now that the prosecutor of the Council of Justice was involved, the genie was out of the bottle. Moreover, at the heart of the case there was a conspiracy of Javanese chiefs who had deliberately deceived the colonial government. Altogether, a severe case.

On 5 December 1857, almost a year after the assassination, charges were filed against the wedono of Godean. Later that month, the wedono of Modjoreto and the patih were ordered to temporarily leave Kediri in the interest of the investigations, and Public Prosecutor Scheltema returned to Kediri to undertake more extensive investigations. This time, he was cooperating with both the resident and the regent of neighbouring Tulungagung, who was trusted by the colonial government. It reflects the total distrust prevailing at that time regarding the priyayi of Kediri. In the meantime, Djojodiningrat, the regent of Kediri, was still in office, although accusations had been made against him as well. Securing incriminating witness accounts against the Javanese chiefs was hard, because of their great influence over the people, and Scheltema would later lament that "those well-versed in the character of the Javanese will be able to imagine the almost insurmountable difficulties of an investigation into truths, which are incriminating to six of the most superior heads of a regency, including the regent himself."[18] Scheltema wrote to the governor general that he suspected that the entire initial investigation committee, including the regent, had been part of the conspiracy to falsely accuse Merghart of Meulman's murder. The main suspects now included the wedono of Godean, the patih of Kediri, and the wedono of Modjoreto. Scheltema also found out that the "little" jaksa had initially conducted real investigations and decided that Tirtodjoijo and the coach driver Saijang were the main suspects. Thanks to the effort the committee put into misdirecting the first investigation and subsequently

[18] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. December 19, 1860, no.305. NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Overview and timeline of the Djojodiningrat case procedures by Public Prosecutor W.W. Scheltema (to proof that procedures could not have been organised faster). Surabaya, December 28, 1859. "*Men moet wel zeer bekend zijn met het karacter van den Javaan om zich een denkbeeld te vormen van de bijna onoverkomelijke moeijelijkheden van een onderzoek naar waarheden, die bezwarend zijn voor zes van de voornaamste hoofden van een Regentschap, waaronder de Regent zelf."*

inventing accusations levelled at Merghart, Scheltema deduced that these two must have been acting on the orders of the priyayi.[19]

As in the Borwater case, the European victim was blamed for not having behaved properly towards the Javanese chiefs, and Meulman's coarse character was offered as an explanation for the murder. Or, as Scheltema described it, "the victim [was] attacked as a consequence of his gruff character and his inability to deal with natives."[20] Meulman had "grossly insulted" the wedono of Modjoreto by throwing "rotten reed at his head ... using low curses."[21] Another source spoke of an indecent letter that Meulman had sent to the resident complaining about the lack of police in the area.[22]

Of major importance for the investigation was the observation that the family ties of the priyayi of Kediri—and within the investigation committee—were very tight. The patih was a brother of the regent, as was the wedono of Modjoreto. Furthermore, it turned out that the wedono of Godean had "for a long time aspired to marry the younger sister of the regent," and therefore he was a "diligent servant" of the regent "hoping to be rewarded with the marriage he had been hoping for, and to take the wind out of the sails of the chief jaksa ... in whose position he wanted to be." The chief jaksa, who had told the truth and refused to sign the procès-verbal, was not a direct relative, and Scheltema described him as "honest, but not strong enough against the dominant majority of the committee, which [had] even won over the resident." The other members of the committee were dismissed as "weak and accommodating to his superiors" (the wedono of Kota Kediri),

[19] On 7 January 1858. At first, the wedono of Modjoreto had attempted to falsely accuse two local men, but eventually it was decided to produce false evidence against Merghart, which was the responsibility of the patih.

[20] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. . Report of investigations, by Public Prosecutor Scheltema, sent to the attorney general. Surabaya, January 7, 1858. *"De gevallene [is] gevallen ten gevolge van zijn barsch karakter en ongeschiktheid om met inlanders om te gaan."*

[21] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. August 22, 1859, no.371/G1. Secret letter written by Resident Van dere Wijck at Governor General Pahud. Surabaya, June 8, 1859. *"..groovelijk beledigd." (...) "..verrot riet naar het hoofd.." (...*) "*…lage scheldwoorden te gebruiken."*

[22] Veth, "De woorden en daden tegenover de Inlandsche ambtenaren. Aantooning van hunnen tegenstrijdigheid," 377.

"crawling for the Regent" (the jaksa), and "old, sluggish and deceived" (the penghulu).[23]

Public Prosecutor Scheltema repeatedly consulted Attorney General Swart in Batavia and described to him how the judicial interest in a criminal prosecution went against the political interest. Because of the disloyalty of almost all the chiefs in Kediri, Scheltema concluded that a quick resolution was important and that the case had to be looked at from a political point of view. Therefore, in early 1858, he advised that the court case against the wedono of Godean be dropped and that the fate of the other suspected chiefs be decided in consultation with the government. Moreover, he warned against letting the patih and wedono of Modjoreto return to the area, because they could find out who had "betrayed" them by informing the government about the conspiracy or withdrawing witness accounts.[24] Attorney General Swart agreed and in May 1858 he advised the governor general to apply a political measure. "Generally, I am not a proponent of an administrative handling of criminal cases, which easily leads to arbitrariness," he wrote. "However, if—as in this case—there are decisive reasons to proceed as such, then the measures taken should be characterized by stern righteousness."[25]

Swart designated the conspiracy by the Javanese chiefs as a crime not "of the usual kind" and precisely for that reason advised using a political measure. There was a chance that the chiefs would be acquitted if the witnesses withdrew their statements out of fear. Moreover, a criminal trial would take up too much time, allowing the chiefs to remain in Kediri and preventing them from being "neutralized." The resident of Kediri was even

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[23] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Report of investigations, by Public Prosecutor Scheltema, sent to the attorney general. Surabaya, January 7, 1858. "*…lange tijd gedongen te hebben naar de hand van eene jongere zuster van den Regent." (…) "…*met uitzigt om beloond te worden door het huwelijk waarop hij zo lang had gehoopt, en om den loef af te steken aan den hoofddjaksa ... in wiens plaats hij wenschte te zitten." (…) "*..eerlijk, maar niet sterk genoeg tegen over de groote meerderheid van de commissie welke zelfs den Resident voor zich [had] weten te winnen." (…*) "*..zwak en toegevende aan zijn meerderen." (…*) "*..kruipend voor den Regent." (…) "…oud, suf en misleid."*

[24] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Report of investigations, by Public Prosecutor Scheltema, sent to Attorney General Swart. Surabaya, January 7, 1858.

[25] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Letter from Attorney General Swart to Governor General Pahud. Batavia, May 1, 1858. "*Over het algemeen ben ik geen voorstander van eene administratieve afdoening van strafzaken, welke zeer ligt tot willekeur aanleiding geeft, doch bij aldien daartoe zooals onderwerpelijk, om redenen van overwegend belang moet worden overgegaan, behooren de genomen maatregelen zich te kenmerken door strenge rechtvaardigheid."*

of the opinion that no political measure needed to be taken against the regent, and he proposed a honourable resignation and retirement instead, but this was a step too little for Swart. He was of the opinion that the regent should not be treated too harshly though, and proposed five years banishment to a place in Java but outside of Kediri. The patih and the two wedonos were to be banned for fifteen years, with a reimbursement of expenses, to an outer region.[26]

Thus, the Public Prosecution Service advised applying a political measure and it was in the line of expectations that this was entirely in the interests of the colonial government, which would therefore impose the measure. Then something remarkable occurred. The Council of the Indies, led by Vice President P. de Perez, was of the opinion that the public prosecutor and the resident had misunderstood articles 45 to 48 of the Colonial Constitution (the exorbitant rights). The Council dismissed the application of these articles as an "addition to the criminal legislation," in contradiction to article 26 of the General Rules of Legislation for the Netherlands Indies, that stated that everyone had the right to be tried by law.[27] The Council members considered deporting the patih and wedono of Modjoreto by political measure to be legitimate, because they had produced false evidences by bribing witnesses and their return could potentially be a danger to the witnesses who had "betrayed" them; but they felt this did not apply to the others. Governor General Pahud followed this advice from the Council of the Indies.[28] Remarkably enough, a few weeks later, Attorney General Swart requested permission to prosecute not only the wedono of Godean, but also the patih, the wedono of Modjoreto, and the regent. Approval was provided without any hindrance. All of a sudden, the way was

[26] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Letter from Attorney General Swart to Governor General Pahud. Batavia, May 1, 1858. "…van den gewonen stempel…" (…) "*..onschadelijk gemaakt worden."*

[27] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Advice Council of the Indies. Batavia, June 8, 1858.; Algemeene bepalingen van Wetgeving voor Nederlandsch-Indië, 1848, art. 26: *"Niemand mag tot straf vervolgd of daartoe veroordeeld worden, dan op de wijze en in de gevallen bij de Wet voorzien."*

[28] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Ordinance (*besluit)* Governor General. Buitenzorg, July 1, 1858.

open for a prominent regent to be prosecuted in a colonial court of law, an unprecedented phenomenon.[29]

Subsequently, the criminal procedure was executed in the manner prescribed in European colonial courts of law, with their more deliberate and precise procedures than was common at the pluralistic courts of law. All witnesses and suspects had to be interrogated again and new statements produced. By this time, however, all these people had been transferred to different places in Java, and it was only on 22 March 1859, more than two years after the crime had taken place, that the last person was transferred to Surabaya to be heard, and the investigations closed. By that time, more than 275 judicial documents had been collected. There were further delays, because some documents did not meet the formal requirements. Finally, in May the indictments were signed and it was decided that the court sessions would commence three months later, in August 1858, because for all eight sessions, the indictments and witness lists had to be produced eightfold, in Javanese and Dutch. Moreover, during the "native feasts" (Ramadan and Eid al-Fitr) no court sessions were held. Also, accused "from Batavia to Tebing-Tingga in the inner regions of Palembang" had been summoned.[30]

Everything was finally signed and sealed, and fully prepared for the sessions to start, when something happened that put everything up in the air again. From the moment on that the suspects had been apprehended, the newspapers had reported on the case; it had been impossible to conceal any longer that a regent was suspected of involvement in a murder case. It was also newsworthy that the regent was imprisoned in Surabaya together with commoners. According to a letter in a Dutch newspaper, the actions taken in Kediri were abominable, in particular because of the high birth of the regent, whose father had supported the Dutch during the Java War. At that time, Djojodiningrat himself had been a young man and had served as captain (*ritmeester*) in the cavalry of his father's army corps (*kleinlegerkorps*). "This man was not an average regent," wrote the anonymous author. "He was a man of influence and noble lineage, sincere and good, honest, not too proud

[29] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Letter Attorney General Swart to Governor General. Batavia, July 27, 1858.; Advice Council of the Indies, August 20, 1858.; Ordinance (*besluit*) Governor General. Buitenzorg August 28, 1858.

[30] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Overview and timeline of the Djojodiningrat case procedures by Public Prosecutor W.W. Scheltema (to proof that procedures could not have been organised faster). Surabaya, December 28, 1859.

or too easily offended; he was a man who had been regent of Kediri for twenty-five years; he was a man, who in 1838, for services rendered, had been personally elevated to the rank of *adipati* by Governor General De Eerens, who visited him during an inspection tour."[31]

The letter focused on the imprisonment of the regent, arguing that there were other, less humiliating ways to prevent the regent from fleeing or intervening in the investigations. Moreover, the article suggested that the accusation against the regent was the consequence of intrigues amongst those Javanese officials in Kediri, who themselves originated from different regions. The author pressed for a fair trial to follow, in which the judges should be well-aware of the possibility of false witness accounts and priyayi intrigues.[32]

To make matters worse for all parties involved, the succession of Djojodiningrat had unfolded dramatically. After his dismissal, Djojodiningrat had been succeeded by Regent Radhen Mas Adhipati Rio Soemo dhi Ningrat (formerly regent of Tulungagung). He was the one who had helped Scheltema reveal the conspiracy by the investigation committee, and was rewarded for this with the position of regent of Kediri. Simultaneously, in order to not disturb the inheritance rights of a prestigious family, the son of Djojodiningrat, Raden Mas Pandjie Djoijoadmodjo, in his turn, had been appointed regent of Tulungagung. However, two months after Djojodiningrat's imprisonment, his son committed suicide, "out of shame and sadness, due to the humiliation done to his father," according to the Dutch newspaper *Nieuwe Rotterdamsche Courant*.[33] The colonial newspaper *De Oostpost* was less explicit—perhaps due to strict censorship—writing "The reason for this desperate deed, that has plunged an entire population into the deepest mourning, can be guessed at, but not determined with

[31] "Ingezonden stukken," *Nieuwe Rotterdamsche Courant,* February 8, 1859, 2. *"Die man was geen gewoon Regent; het was een man van invloed en geboorte, rondborstig en goed, eerlijk, een weinig trotsch of ligt geraakt; het was een man die sedert 25 jaren ... Regent van Kedirie was; het was een man, die, wegens bewezen diensten, in 1838 door den gouverneur-generaal De Eerens, tijdens zijne inspectiereis, op de plaatse zelve van Tommangung werd verheven tot Adipattie."*

[32] "Ingezonden stukken," *Nieuwe Rotterdamsche Courant,* February 8, 1859, 2.

[33] "Ingezonden stukken," *Nieuwe Rotterdamsche Courant,* February 8, 1859, 2. *"..uit schaamte en verdriet, wegens de vernedering zijnen vader aangedaan."*

certainty."[34] The newspaper did print a long appraisal of the young regent, who was described as a good person, intelligent, and westernized—the Europeans' ultimate compliment: "It is a pity, a loss, of a gifted youngster, who has recklessly put a bullet through his brave heart, that was so passionate for European civilization and thirsty for knowledge and enlightenment."[35] Moreover, he was known as a good tiger hunter and promising regent. The newspaper gave a detailed report of the events of Djoijoadmodjo's last hours:

> The recently appointed regent of this regency, the former lieutenant of the Prajurits of Kediri, Raden Mas Pandjie Djoijoadmodjo, took his own, still so young, life. He was the promising child of a prestigious family who, although only twenty years old, had already reached the highest position. A position to which he was entitled due to his lineage as well as the most brilliant accomplishments. ... His aged mother, who had made up excuses to stay in the *dalam* [palace] and had secretly observed his movements, saw how he took a pocket pistol from his chest and shot himself in the heart without any hesitation. For a moment, he staggered and then fell into the arms of the despairing, pitiable woman, who was now only holding a body. Horrific was the wailing, the heartbreaking lamentations of his relatives. His children, two sons and two daughters, are too little to comprehend the scope of their loss.[36]

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[34] "Surabaya den 1sten November 1858", *De Oostpost*, November 1, 1858, 4. *"Wat aanleiding gaf tot die wanhopige daad, die eene geheele bevolking in den diepsten rouw dompelde, zulks laat zich wel gissen maar niet met zekerheid bepalen."*

[35] "Eene tijgerjagt in de wouden van Kedirie", *De Oostpost*, April 11, 1859. *"Jammer, eeuwig jammer, van den rijk begaafden jongeling, toen hij met eene roekelooze hand een kogel joeg door zijn moedig hart, dat zoo warm sloeg voor Europesche beschaving en zoo vurig dorste naar kennis en verlichting."*

[36] "Surabaya den 1sten November 1858", *De Oostpost*, November 1, 1858, 4. *"De onlangs benoemde Regent dier plaatse, de gewezen Luitenant der Pradjoerits van Kedirie, Raden Mas Pandjie Djoijoadmodjo beroofde zich door middel van een pistoolschot van zijn nog zóó jeugdig leven. Hij was de hoopvolle telg eener talrijke aanzienlijke familie en alhoewel slechts 20 jaren oud, reeds opgeklommen tot den hoogsten post, waarop zoowel zijne*

The funeral cortege was long: "An immense crowd gathered who attended the ceremony. In Kediri, the deceased was awaited by the high authority, as well as numerous [Islamic] priests, who soon commenced singing their monotonous wailing dirge."[37]

The Minister of Colonial Affairs Rochussen, based in The Hague, got wind of the entire issue and was infuriated about the course of events, about which he had not even been informed. He asked Governor General Pahud why he had not been informed and pressed to keep the issue in administrative hands, because of the state interests at stake. He clearly did not trust this case to the judiciary: "I have to request Your Excellency to ensure that the higher state interest will not be sacrificed rashly to the presumably excessive diligence of the officials of the judiciary."[38] At first, the governor general held firm, even after the Rochussen's warning. In a response, he wrote that he had not decided rashly, as the minister had suggested. He had only decided that a criminal procedure was inevitable after "careful considerations" with the Council of Justice and the attorney general on the gravity of the case. After all, the case involved not only the assassination of a European, but also a conspiracy by Javanese chiefs and a false accusation against another European.[39] The governor general did not mention that during the "careful considerations," both Attorney General

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geboorte, alsmede de schitterendste hoedanigheden hem aanspraak gaven... . Zijne bejaarde moeder, die heimelijk zijne bewegingen bespied had en tot dat einde, onder allerlei voorwendsels zich nog steeds in den Dalem had opgehouden, zag hoe hij een zakpistool uit den boezem tevoorschijn haalde en zonder een oogenblik te dralen, zich een kogel joeg door het hart. Hij waggelde een oogenblik en viel toen in de armen der ongelukkige beklagenswaardige vrouw, die slechts een lijk omklemd hielden. Vreesselijk was het gejammer, het hartverscheurend geweeklaag der zijnen. Zijne kinderen, twee zonen en twee dochters, zijn nog te jong om de waarde van hun verlies te beseffen."

[37] "Surabaya den 1sten November 1858," *De Oostpost,* November 1, 1858, 4. *"Onafzienbaar was de toevloed van menschen die de plegtigheid vergezelden. Te Kedirie werd het lijk opgewacht door de hooge autoriteit, alsmede door eene talrijke schaar van priesters, die weldra hun eentoonig weeklagend grafgezang aanhieven."*

[38] NL-HaNA, 2.10.02 MvK 1850-1900. Kabinet Vb. April 19, 1859, no.W1. Letter from Governor General Pahud to Minister of Colonial Affairs Rochussen. Buitenzorg, December 23, 1858. *"Ik moet Uwe Excellentie verzoeken te zorgen dat hooger staatsbelang niet ligtvaardig aan welligt te groote ijver der ambtenaren van het regtswezen worde opgeofferd."*

[39] NL-HaNA, 2.10.02 MvK 1850-1900. Kabinet Vb. April 19, 1859, no.W1. Letter from Governor General Pahud to Minister of Colonial Affairs Rochussen. Buitenzorg, February 2, 1859.

Swart and Public Prosecutor Scheltema had advised applying a political measure rather than a legal procedure.

Resident H. C. van der Wijck of Surabaya wrote a letter on 8 June 1859 that would finally put all officials involved on the same page. He deemed the adjudication of the Javanese chiefs impolitic, pointing to the instable situation in the outer regions of the Netherlands Indies, the animosity of the Muslims who "were to be feared more than ever," and war threatening in Europe "that might seriously impede sending troops to the Indies." Moreover, one of the people involved in the case was the *Susuhunan* of Solo's grandson, whose brother had been grossly insulted by Meulman. Van der Wijck also invoked the Indian Mutiny of 1857, which had made quite an impression on the Dutch and increased their fear of anti-colonial revolts. Moreover, the regent's health had deteriorated in prison, and now his son had committed suicide. Van der Wijck wondered what kind of impression the prosecution of these distinguished chiefs would make on the population, "when he and his brothers are transported from prison to the court of law, for several days in a row; something that, even when behaving gingerly, cannot be concealed? And how shall this impression be augmented, when against all these persons death penalties are imposed and one has to wait even longer for the final decision about their fate?"[40]

Then, the Council of the Indies changed tack and advised using the governor general's right to employ a "political measure." They emphasized that the composition of the Council had changed in the meantime and that its members no longer agreed with the earlier recommendation. However, the judge had already ordered that the trial could proceed. The only possibility left was that the governor general would end the judicial prosecution by remission (*abolitie*). But this would lead to another problem, because after remission criminal records were fully erased, making enforcement of a political measure impossible. But, as the Council of Justice argued inventively, a political measure would be allowed nonetheless due to the

[40] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. August 22, 1859, no.371/G1. Secret letter written by Resident Van dere Wijck at Governor General Pahud. Surabaya, June 8, 1859. *"..die welligt het uitzenden van troepen naar Indie zeer zal bemoeijelijken.* (…) *wanneer zij hem en zijne broeders gedurende een aantal dagen van de boeijen naar de raadzaal en weder terug ziet brengen; hetgeen, al wordt daarbij nog zoo omzigtig te werk gegaan, niet voorhaar kan verborgen blijven? En hoe moet die indruk verhoogd worden, wanneer tegen die personen doodvonnissen worden uitgesproken en maanden lang op eene eindbeslissing omtrent hun lot moet gewacht worden?"*

ongoing danger caused by the Javanese headmen nursing vengeance for the way they had been treated by the Dutch:

> Even if a pardon is granted to all the native chiefs involved, the Council, taking into consideration the character of the Javanese, does not doubt that an indelible resentment will live on in their hearts against Europeans in general. To allow these chiefs—of a very prestigious family, related to the *Susuhunan* of Solo—to return with such a resentment in their hearts to one of the so-called new residencies, which have only been brought under Dutch rule in 1830, is without doubt politically dangerous in the eyes of the Council.[41]

And therefore, it was the bitter irony that the priyayi were banned after all. The higher priyayi were sent to Menado and those of lower ranks to Banda, where they had to perform paid labour on the spice plantations. Djojodiningrat and his immediate family were deported to Menado in July 1859, and received a stipend of one hundred guilders per month.

This was not the end of discussion, though, since the minister wondered whether it was just to ban the priyayi without any prospect of returning, as prescribed by the political measure. On 30 April 1860, Governor General Pahud wrote the minister that he had informed the resident of Menado to "treat him [Djojodiningrat] with all the honours to which he is entitled based on his former position and lineage."[42] He was not

[41] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. August 22, 1859, no.371/G1. Advice Council of the Indies to Governor General Pahud. Batavia, June 28, 1859. "*Dat, al wordt aan de in deze betrokken inlandsche hoofden abolitie verleend, een ontuiwischbare wrok tegen den Europeaan in het algemeen in hunnen boezem zal blijven voortleven, komt den Raad, met het oog op het karakter van den Javaan niet twijfelachtig voor deze hoofden van een zeer aanzienlijk geslacht, aan de Solosche keijzer familie vermaagschapt, met zoodanige stemming in het hart weder toe te laten in een der zoogenaamde nieuwe Residentien, welke eerste sedert 1830 onder het Nederlandsche gezag zijn gebragt, is in "s Raads oog onbetwistbaar staatkundig gevaarlijk."*

[42] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Letter from Governor General Pahud to Minister of Colonial Affairs Rochussen. Batavia, April 30, 1860. "*…hem met al die egards te behandelen waarop zijne vroegeren stelling en afkomst hem aanspraak geven."*

in favour of the minister's plan to give the regent the prospect of a return to Java though. The Council of Justice had also advised against this.[43]

The minister for colonial affairs also wondered why the criminal prosecution of Djojodiningrat had taken such a long time. Vexed and defensive, Attorney General Swart reminded the governor general that he had immediately proposed imposing a political measure, but that he had been overruled by the Council of the Indies and the governor general. That now, seventeen months later, a political measure had been applied after all he also considered insulting to Public Prosecutor Scheltema, who was now asked to present an overview of the judicial activities in this period: "It might be not entirely superfluous to note hereby, that in cases in which chiefs of the Native aristocracy are involved, it takes infinite efforts, time and care to find out the full truth," he wrote. "And the fact that the Public Prosecutor, due to his knowledgeable leadership, has succeeded in this, should have been rewarded with somewhat more recognition, instead of calling him to account."[44] Criticism was also expressed in the *Tijdschrift voor Nederlandsch Indië*, in an article written by Pieter Johannes Veth, professor Eastern languages. His informant was an anonymous regent who seemed well-informed about the events.[45] It is possible that the informant was Djojodiningrat himself or a close relative. The article is a general condemnation of the policies regarding the regent families in Java. The position of regents had been made hereditary, and their in-laws and relatives often held priyayi positions, causing the regencies to be dominated by one family. According to Veth, this tradition was increasingly less

[43] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. February 8, 1860, no.38/E. Letter from Minister of Colonial Affairs Rochussen to Governor General Pahud. The Hague, February 8, 1860.

[44] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Letter from Attorney General Swart to Minister of Colonial Affairs Rochussen. Batavia, January 5, 1860. "*Het is welligt niet geheel overbodig hierbij optemerken, dat het in zaken, waarin hoofden der Inlandsche aristocratie betrokken zijn, oneindig veel moeite, tijd en zorg kost om volledig achter de waarheid te komen, en dat den Officier van Justitie, die door de oordeelkundige leiding, welke hij aan de instructie gegeven heeft, daarin per slot naar wensch geslaagd is, mijn inziens billijker wijzer, wel eenige meerdere voldoening had mogen tebeurt vallen, dan terzake ter verantwoording te worden geroepen."*

[45] Criticism followed on the article written by Veth. See: [anonymus], *TNI* 23:2 (1861): 252.; "Aan P.J.V. insender van Java in 1858&1859, of fragmenen eener correspondentie in Tijdschrift van N.I. 1861," *Java Bode*, August 28, 1861, 7. In this last article the author stated that the information gathered by Veth found her source "in the dirty cavities of defamation" (*haren oorsprong heeft in de vuige holen des lasters*). However, the information presented by Veth matches with the information I found in the archives.

respected. regents were transferred, their advice on appointing lower-ranked chiefs were not followed, European officials did not treat them respectfully, the Javanese police were not paid sufficiently with corruption as a result, and if regents did something wrong, they were treated like commoners. This was dangerous, argued Veth, and to strengthen his argument he quoted his informant, the regent, who had told him:

> If one wants to retain the colony, one should honour the great families. Instead, one makes thousands of enemies, but does not have sufficient power to hold [firm] against them. One declares the regent's position to be hereditary, and thereby places them above the law; but with every shortcoming or crime committed in their regency, once equates them with coolies and villagers ... yes, even by imprisonment under one roof with assassins, counterfeiters, etc.[46]

The *Nieuwe Rotterdamsche Courant* saw a connection to the debate on the heritability of the office of regent that had been conducted prior to the introduction of the Colonial Constitution. Some had sought to turn the regents into hereditary princes of a sort, whereas other wished to increase colonial control over them. Now, the *Courant* concluded that the situation in Kediri had proved that exercising too much colonial control over a regent was very unwise: "The everlasting dismissal of regents and chiefs, the dethroning of rulers in the Indies, and, foremost, the judicial prosecutions are a calamity," wrote one correspondent. "It causes unrest, confusion, and opposition from the side of the relatives and followers of those dismissed, dethroned, or prosecuted."[47] Veth concluded from the Djojodiningrat case

[46] Veth, "De woorden en daden tegenover de Inlandsche ambtenaren. Aantooning van hunnen tegenstrijdigheid," 373. *"Zoo men de kolonie wil behouden, eere men de groote familiën. Men kweekt duizenden van vijanden, maar heeft geene voldoende magt om daartegen over te stellen. Men verklaart de Regenten erfelijk, en stelt hen daardoor als het ware boven de wet, maar bij ieder verzuim of misdrijf, in hun Regentschap gepleegd, stelt men hen gelijk door konfrontatie met koelies en dessa-bewoners ... ja, zelfs door gevangenzetting onder één dak met sluipmoordenaars, valsche munters enz."*

[47] "Ingezonden stukken," *Nieuwe Rotterdamsche Courant,* February 8, 1859, 2. "*Dat eeuwigdurend ontslaan van Regenten en hoofden, dat onttroonen van vorsten in Indië, en vooral het crimineel vervolgen derzelve, is eene calamiteit. Het verwerkt onrust, verwarring*

that all this had been the consequence of "characterless rule." In Baud's time, at least the government's point of view had been clear, wrote Veth: "When Baud was still minister, at least the deeds resembled the words. ... But now? The most gentle critic cannot suppress a smile filled with pity ."[48] It was clear that the attempt by the Council of the Indies and Governor General Pahud to take into account the criticism of "exorbitant rights" allowed for in article 84, by not applying a political measure, had failed seriously.

A dossier compiled by Pahud, who in 1862 had done some research to find out how the colonial government had dealt with this kind of cases in the past, shows that the Djojodiningrat case was exceptional above all, because it dealt with the prosecution of a regent. Pahud's dossier constitutes an overview of all persons against whom the approval for prosecution had been granted between 1828 and 1860. Djojodiningrat was the only regent on this list; the other criminal cases mainly involved lower-ranked priyayi. It did show that in those cases there had also been a lack of clarity about who had to be referred to which court, and about whose prosecution had to be approved by the governor general.[49] Scheltema wrote later that he had been preoccupied with two other big cases at the time of the Djojodiningrat investigations in which wedonos from other regions were adjudicated "which could both compete with the Kediri case." Thus, it was not usual that wedonos were judicially prosecuted at the European courts, and the attorney general also wrote about this as happening regularly.[50]

Finally, Veth also noted rightfully in his article on the Djojodiningrat conspiracy that loyalty was inadequately acknowledged. In chapter 6, on the role of the jaksas, we have seen the intermediary position

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en tegenwerking van de zijde der betrekkingen en der aanhangers van den ontslagene, onttroonde of vervolgde."

[48] Veth, "De woorden en daden tegenover de Inlandsche ambtenaren. Aantooning van hunnen tegenstrijdigheid," 373. *"Toen de heer Baud minister was, waren de daden althans in overeenstemming met de woorden. ... Maar nu? Een glimlach van medelijden plooit zich bij die vraag om de lippen van den zachtmoedigsten beoordeelaar."*

[49] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13 / 1384. Historical overview prosecution of priyayi by Pahud. Batavia, December 21, 1862. The overview does not mention when the prosecution was stopped by the governor general and a political measure was imposed instead.

[50] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Overview and timeline of the Djojodiningrat case procedures by Public Prosecutor W.W. Scheltema. Surabaya, December 28, 1859.

they often took. Veth rightfully pointed out that the chief jaksa had not been rewarded for his refusal to sign the falsified procès-verbal and informing the colonial administration, adding cynically, "Such a strong encouragement of the devotion to duty!" Instead of the chief jaksa, the regent of Tulungagung was asked to assist during the investigations and was thereafter rewarded for his help by being offered the position of regent of Kediri. After the suicide of Djojodiningrat's son, his grandson had become regent in Tulungagung. Having described the case extensively, Veth lamented, "Is there still anyone who is surprised about the regents in Java feeling deeply hurt?" He turned against the unscrupulous replacing of old regent families by other families, but he also thought it problematic that there was still no education for future regents. Hereafter, Veth voiced his ideals as an ethicist *avant la lettre*: "Why does the king's speech [*troonrede*] never speak of educating, raising, and civilizing the Javanese?"[51]

With this desire to civilize, Veth was several decades ahead in time. Moreover, with the publication of Multatuli's *Max Havelaar* one year earlier, the will to protect old regent families had diminished rather than increased. More than ever, it was not the character and institutions of colonial rule itself but the regents that were seen as responsible for the suppression of the common Javanese people. Although the Djojodiningrat case was not quickly forgotten—newspaper articles would still refer to it years later—*Max Havelaar* and the issue of extortion in general would have a greater influence on the stance taken by colonial rulers regarding the priyayi. Young administrative officials who came to the colony having read *Max Havelaar* often brought with them their idealistic intentions to protect the population against the Javanese priyayi.[52]

Moreover, Van Hoëvell was now fully targeting the Javanese chiefs. In 1862, he wrote an article that looked back on the introduction of article 84 in 1854. He emphasized that he and Thorbecke had opposed this article at the time because it gave special privileges to the Javanese chiefs.[53] However, as described above, their earlier argument in 1854 had rested on protection

[51] Veth, "De woorden en daden tegenover de Inlandsche ambtenaren. Aantooning van hunnen tegenstrijdigheid," 373. "*Krachtige aanmoediging tot plichtsbetrachting!" (...)* "Verwondert het nog iemand dat de Regenten op Java zich in hun hart gekwetst voelen?" (…) *"Waarom spreekt de troonrede nimmer van het onderwijzen, opvoeden, beschaven van Javanen?"*
[52] Van den Doel, *De Stille Macht,* 99.
[53] "Over den toestand van het regtswezen in Indië," 374-375.

of the priyayi, arguing that Article 84 gave free reign to the banishment of Javanese priyayi without trial. By 1862, the priyayi had fallen out of favour and Van Hoëvell changed his reasoning for opposing Article 84. The Djojodiningrat affair had not ended well because of the choice for prosecution—a choice that might even have been inspired by the arguments presented by Van Hoëvell and Thorbecke in 1854—so this was perhaps something Van Hoëvell preferred to not talk about anymore.

Instead, he gave two practical reasons for opposing article 84, both of them previously raised by Attorney-General Swart in a report against the privilegium fori. First, getting approval to prosecute a priyayi took a long time. Even when the approval was given, the investigations had to be completely redone, because the requirements for investigation were more stringent in European courts. Second, it was extremely difficult to get powerful suspects convicted. The attorney general quoted Public Prosecutor Scheltema, who had remarked that "many policy measures are necessary to simultaneously, on the one hand, preserve the European criminal procedures and, on the other hand, persevere in the battle against powerful suspects, who—being better acquainted with the people, language, and the area—know how to bear their influence, which leverage leaves one amazed."[54] Clearly two lessons were learned from the Djojodiningrat affair. And these lessons learned by the colonial government, led to a preference for the political measure over that of judicial adjudication of regents.

The 1867 Ordinance

The Djojodiningrat conspiracy had proven that the adjudication of a regent was all but impossible within the dual rule system. Regardless of the outcome, the damage done to the reputation of both the Javanese priyayi and Dutch rule was inevitable. However, regarding lower priyayi, the outcome was less clear and even more relevant because of the pressing extortion issue. In the last chapter, we saw how in 1866 a new extortion regulation was affirmed and also included in the Native Criminal Code in 1872. Yet, it was not clear who qualified for the privilegium fori. Article 84 was silent on

[54] "Over den toestand van het regtswezen in Indië," 374-375. *"dat er veel beleid noodig is, om aan de eene zijde de regelen te bewaren eer wijze van strafvordering van Europeschen oorsprong, en aan de andere zijde den kampstrijd vol te houden tegen magtige verdachten, welke, beter met het volk, de taal en het terrein bekend, invloeden weten aan te wenden, over welker werking men verbaasd staat."*

this, saying simply that the article was applicable to those "designated by general instructions." Some interpreted this as an assignment to draft such a general instruction, whereas others thought the sentence referred to article 4 of the Court Regulations.[55] However, article 4 of the Court Regulations itself was not explicit either, because it stated that "all native princes and chiefs" fell under the privilegium fori.

From 1855 forward, various people would attempt to clarify this matter. First, the Dutch official F.H.J. Netscher was assigned to create clarify the different ranks of local officials. A few years later, the residents were asked for their opinion, but Governor General Sloet van de Beele (1861–66) did not consider their advice to be of much help. On 14 February 1863, he wrote that over five years, all relevant authorities had been consulted, some "even more than once," and he concluded from this that the compilation of a new ordinance was "nearly impossible." And indeed, a quick glance at the advice provided shows that the circumstances were diverse and complicated. A broader provision would include an enormous number of people within the privilegium fori, whereas a more narrowly defined list of local "respectable people" (*aanzienlijken*) removed any possibility of the colonial authorities making their own considerations in each case.

Resident Vriesman of Tagal, for example, wondered how to proceed regarding the children of concubines (*bijwijven)* of Javanese chiefs. He proposed to make the selection according to aristocratic titles: the prosecution of a *raden* needed the approval of the governor general, whereas the prosecution of a *mas* could start without any delay.[56] Resident Potter of Semarang argued differently, and thought the selection had to be made based on formal positions. All local officials appointed by the governor general, as well as relatives of regents and princes up to the third grade, should be included in the privilegium fori. Other residents, however, preferred the uncertainty of the current situation, because they valued the freedom of the resident to decide based on the situation.[57]

[55] Eekhout, "Vraagpunten, mededeelingen en bemerkingen van verschillenden aard", 438.
[56] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Resident Vriesman. Tagal, February 18, 1857.
[57] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Resident Potter. Semarang, March 17, 1857.

The Director of Cultivation Schiff was one proponent of preserving the current flexible situation, which allowed the resident to pull someone out of the "arms of the law" for political reasons.[58] Attorney General Swart disagreed with this though. He found that article 4 of the Court Regulations, implemented at the insistence of J. C. Baud, was a regulation that "strangely contrasted" with the general principle to "gradually accustom the native to our Western understandings of law and justice." He thought it unwise that the Public Prosecution Service was currently kept in uncertainty about whether a criminal trial would be held. The consequence of this was that evidence of a crime could disappear in the meantime, and that "the preliminary custody of the accused was sometimes being stretched excessively."[59]

The Council of the Indies used the term "privilege" in their advice and believed that "the privilege has done more harm than good," because "a kind of immunity" had been given to the Javanese chiefs that was to the disadvantage of the population.[60] Others, however, considered the privilegium fori more of a Western measure to be used in the interest of the colonial government. It is not surprising that it was impossible to draw clear conclusions from a discussion based on such different starting points. Some emphasized civil cases, in which chiefs with debt were protected against their creditors, whereas others had in mind their experiences with criminal cases in which chiefs could directly be deported by the colonial government. Attorney General Rappard attached the greatest importance to the latter, and he also adverted to the problematic aspect of having lower priyayi being adjudicated before courts consisting of members of their own class.[61]

To further the confusion, the Council of State (*Raad van State*) in the Netherlands filed complaints against the privilegium fori in general. The Council of State was the only party to point out the fundamental problem behind the privilegium fori, that it violated the separation of powers. The

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[58] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Director of Cultivation Schiff. Batavia, September 24, 1857.

[59] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Attorney General Swart. October 20, 1857. "…den Inlander van lieverlede aan onze regtsvormen en onze Westersche begrippen van wet en regt te gewennen."(…) "*de praeventieve gevangenis van beklaagden somwijlen buitensporig wordt gerekt."*

[60] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Council of the Indies. Batavia, June 30, 1865.

[61] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Attorney General Rappard. Batavia, October 2, 1861.

Council of State questioned the interference of the governor general in the judicial prosecution of Javanese chiefs. The collision between the administrative and judicial authorities in particular was mentioned as one of the "evil consequences" of the privilegium fori. But the Council of State also denounced the resident's appointment of the two Javanese priyayi who attended the trial by the Council of Justice as an example of the government's exercising too much influence on the judiciary. Furthermore, the Council of State had problems with the court sessions held behind closed doors in cases involving privilegium fori. "Because of this secret adjudication," it advised, "the administration of justice loses one of its most prominent guarantees. It seems unnecessary to further elaborate on this, since by now it has been generally acknowledged that the public nature of justice is a main principle of an incorruptible administration of justice."[62]

With regard to criminal cases, the Council understood that the prestige of the chiefs could suffer from a public trial, but they argued that the prestige would have already been damaged by the prosecution anyway. And, in case of an acquittal, the prestige of the chiefs would only be restored if a public trial was held. In this, however, the Council overlooked the fact that although an acquittal was certainly to the advantage of the prestige of the chiefs, it did not enhance the prestige of colonial rule. The final advice of the Council of State, to leave the decision about whether to prosecute a prestigious Javanese chief to the judges, found no following in the colony.[63]

The colonial government was initially left in complete confusion, but the straightforward Minister of Colonial Affairs I. D. Fransen van de Putte decided that at the very least, article 84 had to be made somewhat clearer. He agreed with the Council of State's criticism of the system of privilegium fori in general, but pragmatically advised that its complete abolition would be unwise. Therefore, he aimed at strictly restricting the "privilege" of an approval by the governor general to incumbent princes, regents, and wedonos. After a final correspondence with the Council of the Indies, Attorney General Rappard brought further clarity by proposing a dual

[62] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. May 25, 1866, no.17. Advice by Council of State. The Hague, March 27, 1866. *"Door geheime behandeling toch verliest de regtspraak harer voorname waarborgen. Het schijnt onnoodig deze stelling thans nog te bewijzen, nu algemeen als onomstootelijk waar is aangenomen dat openbaarheid eene hoofdvoorwaarde van eene onkreukbare regtsbedeeling uitmaakt."*

[63] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. May 25, 1866, no.17. Advice by Council of State. The Hague, March 27, 1866.

division, in which a first group consisting of a fairly large number of prominent priyayi—including, for example, the jaksas and penghulus—were adjudicated before European colonial courts without prior approval from the governor general, whereas the second group consisted of a small number of prominent priyayi—only incumbent regents—for whose adjudication the governor general's approval was required.[64]

An agreement was finally reached in 1867.[65] Articles 4 and 131 were revised, which led to a considerable restriction of the privilegium fori regarding the approval of the governor general, explicitly mentioning that it was only applicable to incumbent "native princes, *rijksbestierders*, regents, and vice regents." Furthermore, the privilegium fori regarding the priyayi that were to be adjudicated in European colonial courts of law was also specified. Instead of the rather vague "prestigious chiefs," article 4 spoke of "native princes, *rijksbestierders*, regents, vice regents (also after resignation), wives, relatives, in-laws of those mentioned above up to the fourth grade, as well as active patihs, district heads (and other chiefs ranked higher than district heads), assistant collectors, chief priests, chief jaksas, jaksas, members of native courts [pluralistic courts] in service."[66] Altogether, the power of the governor general was curbed regarding the granting of approval for prosecution—probably also in order to quicken the procedures—and the rules regarding which priyayi could be prosecuted at European colonial courts of law were not curbed but certainly clarified.

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[64] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. October 31, 1866, no.20. Advice by Attorney General Rappard. Batavia, October 23, 1865.

[65] S 1867, no.10.; RO, art.165.; Bijblad, no.2088. "Interpretatie van art. 4 en 5 van het Reglement op de rechterlijke organisatie enz voor zooveel betreft het instellen van burgerlijke of strafrechterlijke vervolgingen tegen fungeerende inlandsche vorsten, rijksbestuurders, Regenten en onderRegenten ivm Ind Stbld 1867 no.10."

[66] S 1867, no.10.; NL-HaNA, 2.10.02 MvK 1850-1900. Vb. October 31, 1866, no.20. *"Geene burgerlijke regtsvordering, noch vervolging tot straf kan worden ingesteld tegen inlandsche vorsten, rijksbestierders, Regenten en onder-Regenten, zoolang zij niet als zoodanig afgetreden of uit hun ambt ontslagen zijn, zonder daartoe verlof te hebben verkregen, indien het geding gevoerd moet worden op Java en Madura, van den Gouverneur Generaal."* ... *"inlandse vorsten, rijksbestierders, Regenten, onder-Regenten (ook als ze al afgetreden waren), vrouwen, bloedverwanten en aangehuwden van de hiervoor genoemden tot in de vierde graad, en ook in dienst zijnde patihs, districtshoofden (en andere hoofden hoger dan districtshoofden), onder-collecteurs, hoofdpriesters, hoofd-djaksa's, djaksa's, leden van inlandse regtbanken."*

11.2 Political Measure Extremes

Curbing the authority of the governor general regarding approvals for a criminal prosecution was a strengthening of the judiciary during the Liberal 1860s, at least on paper. However, whether it was so in reality is debatable. After all, the exorbitant rights still existed and, as we have seen, it was not very complicated to deport a person even after he had been acquitted, since a new fact could easily be found as a rationale to impose the political measure.[67] Finally, it is important to note that the political measure could be imposed not only on priyayi, but on anyone who constituted a possible threat to colonial rule. Fear of such people increased during the 1870s, especially as means of communicating new ideas among the local population and priyayi expanded.

Fear of Revolts

From the 1870s onwards, the fear of Islam, returning pilgrims from Mecca, and religiously inspired revolts grew. The colonial government expanded the use of the political measure for the deportation of potential insurgents. Even "to omit informing about a revolt" or "inappropriate behaviour threatening to the peace and order" could be given as a reason for deportation. Criticism of the colonial government in general was also not appreciated and often rewarded with a one-way ticket to an outer region. There are even examples of deportation because someone was "deemed" dangerous to peace and order or had performed "inappropriate behaviour" or someone who disturbed the peace without political character. Remarkably enough, the political measure was even applied in cases of opium smuggling or "omitting to inform" the police about a murder. Thus, among the political deportations there were cases that should have been dealt with through the criminal justice system but that were treated as political threats.[68]

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[67] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 122–123.; Bijblad, no.199. Missive by the first government secretary A. Loudon. Batavia, July 10, 1857. Referring to art. 47 of the RR: *"Door den regter vrijgesprokene personen kunnen niet ter zake van dezelfde feiten welke hun voordien regter werden ten laste gelegd, doch waaraan hunne schuld regtens niet is kunnen bewezen worden, bij politieken maatregel worden verwijderd."*

[68] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 85. Other reasons for deportation given were disturbance of the peace due to a power struggle among local rules and princes, "religious elements", illegally enforcing deeds of power, prohibited organisations and kongsis, extortion, murder, robbery, slave trade, smuggling opium, forgery, arson, not informing the government of a murder and releasing prisoners.

On 9 October 1887, Governor General Otto van Rees announced that from then on criminal interrogations could be conducted with the purpose of deciding whether a political deportation was "desirable." This was prevented by the jurist Keuchenius, who severely criticized this policy in the Dutch parliament. In particular, he denounced the paragraph of the ordinance which stated that someone who had been acquitted in a court of law could still be deported on political grounds at request of the resident. The Minister of Colonial Affairs J.P. Sprenger van Eyk responded to the criticism by saying that all this had been "a long-established custom" that had "never received any remarks, and does not appear to me as being illegitimate."[69]

That this did happen in practice was shown in Banten one year later. In 1888, a revolt in Cilegon caused the death of several Europeans and a wave of fear swept over the European citizens of Banten. Some of the people revolting had been shot dead during the army's intervention, and others were tried by the circuit court and convicted to hard labour or hanging. Ninety-four locals from Banten, some of whom had been acquitted by the circuit court, faced a political measure and were banned for unspecified periods.[70]

The religious elements of the revolt led to a distrust of the numerous hajis residing in Banten, traditionally a devout part of Java and former sultanate. According to Snouck Hurgronje, a real witch-hunt took place with the hajis as target: "The hajis, in Banten more numerous than in any other part of Java, were constantly subjected to severe molestations by soldiers, even if they belonged to the most obedient instruments of the [colonial] authorities." In Batavia, too, several hajis decided to stop wearing their Arab gowns temporarily out of fear for molestations.[71]

One of the captured Muslims was Moehamad Arsjad, a haji who Snouck Hurgronje had met a few years earlier in Mecca and who, according to Snouck Hurgronje, could not possibly have been guilty of taking part in the revolt because he had been the head penghulu of Serang in service of the government, which proved that he was "averse to narrow-minded

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[69] "Politieke uitbanning," 1. ".. *die nimmer aanmerkingen heeft uitgelokt, en die mij ook niet onwettig voorkwam."*

[70] KV 1889, 4.; KV 1890, 2. A total number of 204 persons was tried by the circuit court. Of those, 94 were acquitted and 107 were sentenced to death. After review by the Supreme Court, 100 of those death sentences were confirmed by the Governer General. In 1899, the political measure was imposed on 88 persons who had been acquitted by the circuit court. One year later, in 1890, this number had increased to 94. .

[71] Snouck Hurgronje, "Vergeten jubiles, " 63.

fanaticism". Proving his innocence was impossible, because without any form of trial Moehamad Arsjad had been banished to Timur Kupang for an undefined period. Many decades later, Snouck Hurgronje told how Arsjad had received ten guilders in financial assistance for the first six months. Thereafter, he had to provide for his—and his wife's—sustenance. Fortunately, Arsjad's wife possessed "a certain skill in preparing cakes" and they could earn money from the "selling of these sweets."[72]

Snouck Hurgronje describes how Arsjad tried to use his many European contacts to get the banished family released, but to no avail. He was unable to convince influential officials that a "gross injustice" had been done. Only after twenty-nine years, in 1919, were Moehamad Arsjad, his wife, and their two adult sons allowed to return to Java.[73] Snouck Hurgronje was shocked about the insensitivity of the colonial Dutch, involved in these judicial processes, when talking about the Javanese and the little responsibility they felt for their actions:

> Apparently, they only thought about the Cilegon murderers, and they saw it as of little importance that many innocents had been shot or deported after the revolt, and that probably some had been hanged by mistake. They warmly applauded the rough measures taken to restore order. This is how an administrative system works that is built on the destruction of the will of the people, and on the long-lapsed fantasy of the utmost superiority of its own race.[74]

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[72] Snouck Hurgronje, "Vergeten jubiles, " 62. "*wars van bekrompen fanatisme" (...) "De hadjis nu, in Banten talrijker dan in eenig ander deel van Java, stonden voortdurend aan ernstige molestatie door hen ontmoetende soldaten bloot, ook al behoorden zij tot de gehoorzaamste werktuigen van het gezag."* (..) "*een zekere vaardigheid in de bereiding van gebakjes, en van den verkoop dier zoetigheden."*

[73] Snouck Hurgronje, "Vergeten jubiles, " 74-75.

[74] Snouck Hurgronje, "Vergeten jubiles, " 75-76. *"Zij dachten blijkbaar alleen aan de Tjilegonsche moordenaars en vonden de zekerheid, dat vele onschuldigen na den opstand neergeschoten of verbannen, de waarschijnlijkheid, dat enkelen bij vergissing opgehangen waren, van weinig gewicht en juichten de krasse en ruwe maatregelen tot herstel der orde hartelijk toe. Zoo werkt het contagium van een bestuurssysteem, dat op de wegcijfering van den wil der bevolking, op de lange verjaarde inbeelding der volstrekte superioriteit van het eigen ras, berust."*

Yet from the Netherlands, where the death penalty had been abolished in 1870, directly after the Banten trials some had pressed to reduce the number death penalties from the one hundred that were imposed. Opinions about this differed in the Netherlands Indies; there were both ardent opponents and proponents of granting pardons to those insurgents sentenced to death.[75] Eventually, eighty-nine people sentenced to death were pardoned.[76] The political measure could still be applied in Java, although the number of banishments would not be superseded in the years to come (see appendix 2, Table 7).

New Channels: The Brotodiningrat Affair

While the possible threat posed by political Islam was a recurring concern during the 1880s and 1890s, there were also developments regarding the position of the priyayi. Around 1900, the regents' power and income fell. The maintenance of a regent's court cost a lot of money, but regents were not allowed to engage in business. The Dutch increasingly intervened in the actions of regents, who were clearly not inviolable anymore.[77] Some regents from old lineages, in particular, often from traditional families with close contacts to the rulers of the princely lands, felt hard-pressed. We will now look into the Brotodiningrat affair to see the pressure that relations between the Dutch officials and priyayi were under in this period, and how this incident was handled by Brotodiningrat in particular, a course of action that would have been unimaginable a few decades earlier.

On the night of 6 October 1899, a burglary took place in the house of Resident Donner of Madiun. Other burglaries of European houses had taken place around the same time, but breaking into the house of the resident was considered as being of the utmost impertinence. Moreover, it was a strange burglary, since almost no items were missing except for a table cloth, a sun hat, and part of a green curtain. The resident was out of his mind, particularly because the piece of curtain that had been stolen was cut precisely from behind where the resident would usually enjoy his morning tea "in negligee." According to the resident, this proved to everyone who

[75] Kartordirdjo, *The peasants' revolt of Banten in 1888*, 265.
[76] KV 1890, 55. This made the total number of those condemned to death thirty-two in the year 1899.
[77] Sutherland, *Pangreh Pradja*, 161.

knew the "character of the Javanese" that this was clearly a personal attack to him.[78]

It was also immediately clear to the resident that only one person could possibly have targeted him: Regent Brotodiningrat. During the years following, Madiun would remain preoccupied with the Brotodiningrat affair. The entire affair is rather extraordinary and mainly a clash between two little nuanced personalities. The historian Onghokham conducted extensive research into the case and described the regent and the resident strikingly as "the inscrutable and the paranoid."[79] Yet, the issue also reveals much about power relations between resident and priyayi, and on the application of criminal law and the political measure.

On 23 November 1899, Resident Donner described the regent as being talented, but unreliable, and therefore a "highly dangerous person." Donner stated that the regent held a grudge against him because of some decisions taken by the government, such as the transfer of his uncle to a remote district and letting his thirty-year regency pass without appropriate acknowledgment. Moreover, the regent had been reprimanded by the government for having expressed himself rudely in a letter to the resident. When the resident asked him the reason for his tone, he had responded with: "*ja sebab saja boekan satoe nenek*" (because I am not an old grandma).[80] Although the regent had always behaved correctly, the resident expected him to soon express his animosity towards him. The theft was a first step in this direction, but he expected more to come: "Probably his mask has to be removed soon, and I will have to publicly stand out against the regent of Madiun. Then, his true nature will be revealed, and then I deem this insolent man to be capable of doing anything."[81]

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[78] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from Resident Donner to Governer General Rooseboom. Madiun, November 23, 1899.

[79] Onghokham, "The inscrutable and the paranoid: an investigation into the sources of the Brotodiningrat affair," 3-73.

[80] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from Resident Donner to Governer General Rooseboom. Madiun, November 23, 1899. "O*mdat ik geen oud wyf ben."*

[81] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from Resident Donner to Governer General Rooseboom. Madiun, November 23, 1899. *"Vermoedelijk zal echter eerstdaags het masker moeten worden afgeworpen en ik tegenover de Regent van Madioen openlijk als aanklager moeten optreden. Dan zal zyn ware natuur tevoorschyn komen en acht ik den insolenten man alsdan tot alles in staat."*

Donner had great troubles with the investigation into the thefts because, according to him, a number of police spies were siding with the regent. These spies accused the chief jaksa of having taken part in the thefts, but Donner trusted the chief jaksa and suspected that the regent was attempting to blacken the reputation of the jaksa: "Everyone here knows, that the jaksa of Madiun has constantly been in the position of a pariah."[82] Almost two weeks later, the resident wrote another secret letter to the governor general, in which he explained how much more he had learned about the "fabric of deceit and lies." He added that Brotodiningrat was not a scion of a Javanese regency family originating in Madiun, because before he had been the regent of Ngawi. Donner assumed that for this reason, if Brotodiningrat were impeached, his son would not necessarily succeed him.[83] On 7 January 1900, the governor general decided that Brotodiningrat would be suspended and had to reside in Padang while the resident conducted a "strict and impartial" investigation into the affair.[84]

The resident eagerly started these investigations and on 20 March, he delivered a report of no less than 125 pages. In the meantime, Mas Mangoenadmodjo, former tax collector (*ondercollecteur)* of Magetan, had temporarily replaced the regent. The chief jaksa, however, who had been loyal to the resident until that moment, was sidelined by Donner. He would not be able to conduct impartial investigations. Donner deemed himself capable of staying impartial though, and did not think it a problem that he was also personally involved in the case, whereas such objectivity could not be expected from "a native":

> Until now, I was solely assisted by the Chief Jaksa Raden Hadipoetro and this for the simple reason that he was the only native official who had constantly sided with me, referring to article 56 of the Native

[82] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from Resident Donner to Governer General Rooseboom. Madiun, November 23, 1899. *"Iedereen hier weet, dat de fiscaal te Madioen steeds de positie van een paria heeft ingenomen."*

[83] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter (*geheime missive*) from Resident Dooner to Governer General Rooseboom. Madiun, December 3, 1899. "*…weefsel van list en leugens."*

[84] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Decision letter Governor General W. Rooseboom. Batavia, July 7, 1900.

> Regulations.[85] Consequently, the chief jaksa had fallen into the disgrace of the regent for six years already, causing him to lead the life of a pariah within native society. Since we cannot expect a native to take a high moral position and sacrifice his own grievances to an impartial investigation, therefore, for my subsequent investigation I will be assisted by [Mas Mangoenadmodjo] a man who stands almost entirely outside of the case and is completely reliable.[86]

In chapter 6 or 9, we saw how the jaksas were more often the subject of controversy between the regents and resident, because they were not subordinate to the Public Prosecution Service.

In the meantime, Donner had also started with replacing the majority of the priyayi. The adjunct chief jaksa, the district clerk, and the regent's clerk were all transferred; the regent's guards were dismissed and the chief penghulu was no longer trusted, because he had been the close advisor of Brotodiningrat. The list of suspects presented by Donner was long. Village chiefs were involved and an Indo-European brothel owner was also identified as part of the conspiracy. Even an district administrator who had been completely charmed by the regent, was transferred at Donner's request. Donner also feared that Brotodiningrat had attempted to win over the

[85] Article 57 of the IR decided that the chief jaksa worked in service of the resident, whereas the jaksa fell under the regent. There was conflict in particular about the adjunct chief jaksa, since both the regent and the resident claimed to have the power to give orders to this official. See Chapter 6 and 9.

[86] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Investigations report Resident Donner. Madiun, March 20, 1900. "*Tot nog toe werd ik bij het onderzoek uitsluitend geassisteerd door den hoofd djaksa Raden Hadipoetro en wel om de eenvoudige reden dat hij de eenige inlandsche ambtenaar was die steeds aan de zijde van den Resident had gestaan, zich beroepende op artikel 56 van het Inlandsch Reglement. Dientengevolge stond de HoofddJaksa zes jaren in ongenade bij den Regent, waardoor hij in de inlandsche maatschappij feitelijk het leven van een paria leidde. Daar van een inlander moeilijk verwacht kan worden dat hij zich op het hooge morele standpunt weet te stellen om eigen grieven op te offeren aan een onpartijdig onderzoek, zoo hem ik mij bij mijne verdere onderzoekingen bijna uitsluitend doen bijstaan door den Patih, waarnemend Regent, een man die feitelijk geheel buiten de zaak staat en volkomen betrouwbaar is.*"

landraad president to his side.[87] To put it briefly, Donner soon stood all but alone in his battle, supported only by the Magetan-based family of the temporary regent of Madiun. Whether the choice of that particular regent's family was wise is questionable. A thirty-year regency easily accumulated many feuds and intrigues that were not easily forgotten. The animosities between the regents of Magetan and Brotodiningrat went back to the year 1889, when Brotodiningrat had accused the regent of Magetan of smuggling opium. The regent of Magetan had remained in his position; but relations between the two regents remained strained.[88]

Donner's report concluded that Brotodiningrat suffered from "obnoxious character flaws, complete unreliability, and narcissism."[89] The report was full of actions by the regent that Donner characterised as problematic. To name a few, the regent organized *tandak* parties where he would dance with an uncovered chest, and would make provocative comments to the European medical doctor on the resemblance between the doctor and regent's albino assistant.[90] Donner also mentioned somewhat more substantive accusations, but he did not seem to want a criminal prosecution. He explained how the regent had made the *mantri oeloe oeloe* (water management assistant) and the opium *mantri* responsible for police affairs rather than the assistant wedono. He noted that the regent had a gang of twenty-five "thugs" obeying him, commanded by brothel owner Kartoredjo. Donner argued that it was impossible that all these persons were "real" police spies, because in that case it would not have been *this* unsafe in Madiun. According to Donner, Kartoredjo's gang had committed the burglaries of Europeans' houses and also of the landraad courtroom, and that they would then arrest innocent people to be brought to the assistant wedono

[87] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Investigations report Resident Donner. Madiun, March 20, 1900.
[88] Zie Onghokham, *The residency of Madiun*, 296-302.
[89] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Investigations report Resident Donner. Madiun, March 20, 1900. "*..hinderlijke karaktergebreken, totale onbetrouwbaarheid en zelfvergoding*."
[90] Brotodiningrat was not only accompanied by a albino assistant, but also by a small person ("dwarf"). By this, Brotodiningrat followed a long Javanese tradition of power, where Javanese rulers surrounded themselves with objects and people with "extraordinary power" to increase the power available in the palace. For a discussion on the Javanese ideas and traditions of power, see: Anderson, *Language of Power*, 22-23, 27. In this case Brotodiningrat, however, made it into a comment referring to race, knowing that the Dutch were sensitive for such comments attacking their sense of superiority, partly based on their whiteness.

and convicted at the landraad. The houses of Chinese were spared, because Kartoredjo received money from Ong Hway Liem, leader of the Chinese quarter.

Altogether, there were sufficient grounds to start a criminal judicial inquiry, but Donner advised the government to do all they could to prevent Brotodiningrat from ending up in a courtroom, because incitement to crimes was hard to prove. But also because Brotodiningrat—"the sly regent of Madiun"—was well aware of this and would, according to Donner, "move heaven and earth" to "provoke" a court case at the Court of Council, where he would be acquitted due to a lack of evidence. According to Donner, Brotodiningrat had been in contact with people involved in the judicial system, and he would easily be able to silence witnesses through "intimidation, bribing and harassment." He advised that Brotodiningrat be dismissed honourably, retired, and forbidden to live in Madiun.[91] Brotodiningrat would be dismissed a few months later, but the governor general was of the opinion that it was not possible to prohibit him from returning to Madiun.[92] The minister of colonial affairs let it be known that he would have preferred an exertion of exorbitant rights and the regent's banishment as being more legitimate and more forceful.[93]

It is notable that Brotodiningrat was more aware of the judicial regulations than the other priyayi we have discussed, and he invoked them several times. First, he asked the governor general whether the case could be investigated impartially by a special committee. This was rejected, but Brotodiningrat did not give up and sent several formal requests to both the governor general and the parliament in The Hague. In doing so, he was advised by lawyers, an Indo-European *pokrol bambu* and his cousin Raden Mas Djokomono Tirto Adhi Soerjo (hereafter Tirtoadhisoerjo). He also filed a complaint against Donner with the attorney general, and wrote three pamphlets which he sent to parliament.[94] All these documents represent his side of the case. Brotodiningrat argued that Donner had fallen for the tricks of the regent's family of Magetan, who had turned him against

[91] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Investigations report Resident Donner. Madiun, March 20, 1900.
[92] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Decision letter Governor General W. Rooseboom. Batavia, July 7, 1900.
[93] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from the Minister for Colonial Affairs J.Th. Cremer. October 26, 1900.
[94] Broto di Ningrat, *Memorie van toelichting*, 10.

Brotodiningrat. The chief jaksa had also used the resident, at the expense of the regent, to further his own career.[95]

It is notable as well that Brotodiningrat was able to act on the legal knowledge he had procured. He explicitly mentioned a violation of the Colonial Constitution, because according to article 48 he should have been heard in his defence. He also requested a fair trial. Moreover, he also criticized that someone had attempted to prevent him from returning to Madiun by threatening that if he did return, he would be placed under police supervision.[96] When Snouck Hurgronje was sent to Madiun to look into the case, he described both Brotodiningrat and Donner as complicated personalities. He also noted that Brotodiningrat resided in Yogyakarta and was advised there by an Indo-European *pokrol bambu* named Kläring.[97] In The Hague, Brotodiningrat's complaints were investigated by a committee, who adviced in favour of Brotodingrat's request to return to Madiun, since he only had been dismissed from his office and not banned by article 47.[98]

In the end, Donner completely lost track of reality and published a pamphlet in which he depicted Brotodiningrat as being the centre of a pan-Islamic conspiracy against the Dutch.[99] This was not very plausible, but it is clear that Brotodiningrat could indeed use more channels to express his views than had been the case during the Djojodiningrat affair, for example. Although the press had played an important role then, too—something that would have been unimaginable at the time of the Borwater case in the 1820s—now, around 1900, Brotodiningrat's position could be strengthened by legal advice provided by *pokrol bambus* who did not refrain from advising against the colonial government in sensitive cases such as these, and Brotodiningrat's pamphlets also reached parliamentary discussions in The Hague.

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[95] Broto di Ningrat, *Na een een-en-dertig-jarig Regentschap*, 2-3.

[96] Broto di Ningrat, *Een bede om recht*, 13.; RR 1854, art.48: *"In de gevallen, bedoeld in artt. 45, 46 en 47 wordt door den Gouverneur-Generaal niet beslist dan nadat de betrokken persoon in zijne verdediging gehoord, of daartoe behoorlijk opgeroepen is. Van het verhoor wordt een proces-verbaal opgemaakt."*

[97] Gobee, *Ambtelijke adviezen van C. Snouck Hurgronje 1889-1936*, Part 1, 587. Advice Snouck Hurgronje regarding Brotodiningrat case. Batavia, March 5, 1902.

[98] Kamerstuk Tweede Kamer, May 11, 1905, no.96/3. "Adres van Raden Mas Adipati Broto di Ningrat, gepensionneerden regent van Madioen, te Djokjakarta, om onderzoek zijner zaak" www.statengeneraaldigitaal.nl (last accessed: 13-9-2017)

[99] Zie Onghokham, *The residency of Madiun*, 296-302.

11.3 Political Measure under Discussion

Opposition to the political measure grew in the early twentieth century. In some ways, there always had been resistance against it from the European side, as in 1865, when the European Hageman had attempted to help a regent, on the basis of friendship, obtain permission to return to Java after having been banned.[100] However, the early twentieth-century protests were louder and focused on the fundamental problems regarding the system of political measures, in part because they were also imposed on representatives of early nationalism, something that caused a stir.

Political protest arose in Parliament and, after 1918, in the People's Council (Volksraad). In 1921, Tjipto Mangoenkoesoemo described how complete "exile colonies" had come into existence, as on Ambon, where the descendants of Diponegoro still lived "in poverty" in the early twentieth century.[101] Willem Vliegen, a founder of the Sociaal Democratische Arbeiders Partij (SDAP) accurately assessed the rationale for the political measure in 1913: "that before the judge, against these people—Douwes Dekker, Tjipto Mangoenkoesoemo, and Soewardi—no verdict would have been announced. In other words, they have done nothing [on which] to base a successful prosecution. ... Where criminal justice will not adjudicate, the administration steps in and imposes a punishment that would have never been imposed by a judge."[102]

Two publications that did not hide their disapproval of the exorbitant rights came out as well. The authors, P.H.C. Jongmans and C.A. Wienecke wrote at a time when criticism of the colonial judicial system in general was unleashed. Jongmans for example, wrote his doctoral thesis when Snouck Hurgronje was rector magnificus of Leiden University, and he wrote in line with the viewpoint of Snouck Hurgronje. Wienecke, a jurist, wrote very disapprovingly about political banishment as well:

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[100] Hageman, "Historisch onderzoek naar de redenen tot ontslag van de Regent van Bezoeki," 444.

[101] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*,154. Handelingen Volksraad, first special session 1921 and first regular session 1921.

[102] Cited in: Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*,39. *"...dat men bij den rechter tegen die menschen (Douwes Dekker, Tjipto Mangoenkoesoemo en Soewardi) geen vonnis zou hebben gekregen, maw zij hebben niets gedaan waarop een strafvervolging success zou hebben gehad ... waar de strafrecht niet veroordelen zou, treedt de administratie op en past een straf toe, die van een rechter niet te krijgen zou zijn geweest."*

> The Indies' legislation should certainly reflect that the circumstances in the East are different from the Motherland. It should be taken into account that in the Indies, political and civil liberties are generally not developed to the extent of those in the Netherlands. However, political banishment does not fit into the Indies' legislation, since it is such a repudiation of this freedom that it only belongs in despotic or ultra-democratic states, but not in a community of law that is already touched, and increasingly submerged, by deeply anti-revolutionary and truly liberal principles.[103]

Wienecke recalled how during the debates on the introduction of the Colonial Constitution in 1854, both Thorbecke and Van Hoëvell had strongly disapproved of the political measure. Proponents of the measure had argued that the interest of the state was served. However, Wienecke says that the position of the Dutch in the Netherlands Indies had never given any proof of why such "despotic provisions" were necessary. Apparently, some people had argued that political banishment was only carried out in circumstances in which no criminal offenses were commissioned; but Wienecke pointed out that this was untrue.[104] Indeed, as we have seen in the cases of Yoedo Negoro, Djojodiningrat, and Brotodiningrat, several priyayi who were banned were suspected of having committed crimes. Wienecke also refuted the idea of the political measure as being an emergency law. First, he argued that the police and criminal procedural law should be able to function without an emergency law. Second, he maintained that article 43 of the Colonial Constitution already allowed for the announcement of a state of

[103] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 172. "*Hoewel er nu zeer zeker in de Indische wetgeving dient uit te komen, dat er in het Oosten andere toestanden zijn dan in het Moederland, en er rekening mede moet gehouden worden dat in Indië de politieke en burgerlijke vrijheid in "t algemeen niet die ontwikkeling heeft als in Nederland, past de politieke verbanning toch niet in het Indische recht, omdat zij zulke een miskenning dier vrijheid in zich houdt, dat zij alleen thuis behoort in een despotischen of ultra-democratische staat, maar niet in een rechtsgemeenschap, die toch door diep-antirevolutionaire en waarlijk liberale beginselen wordt aangeraakt en meer en meer dooraderd."*

[104] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 174.

war or siege. Wienecke thought it "indefensible" that a third measure existed for "a state of tumult, that might possibly be followed by troubles."[105] As an alternative, Wienecke suggested limiting political banishment to a maximum period of one year.[106] But it would be even better if banishment were imposed solely by judges. Wienecke concluded: "When legal provisions would lead to a quick, sharp, and not too humane legal administration, no single official of the Public Prosecution Service and no head of the administration, would lament that the exorbitant political banishment, with its slow procedure, no longer takes this responsibility out of the hands of the judge."[107]

Jongmans, however, disagreed with the solution; intervention by the judge had to be prevented. In cases where it would be completely transferred to the judge, then—due to a lack of proof—no punishment could be imposed. Jongmans was also critical of the political discussions about exorbitant rights in 1854. According to Jongmans, the politicians had been worried mainly about Dutch citizens being threatened by the exercise of exorbitant rights. Member of Parliament Sloet tot Oldhuis had said: "it is very well imaginable that a Dutch citizen falls under the provisions of this article." To which Jongmans sarcastically remarked: "Yes, but it will certainly be the rule that a native falls under the provisions and languishes." He condemned Parliament's reaction as reflecting of "the utmost indifference." The government preferred "certain banishments over the uncertain results of a criminal prosecution."[108]

In an overview, Jongmans showed that in many cases that had been punished by political measures, severe punishments would have been imposed according to criminal law as well. However, the government had

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[105] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 175-177. *"den toestand van gisting, die soms door troebelen kan gevolgd worden.*

[106] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 179.

[107] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 195. *"Wanneer aldus de wettelijke bepalingen een vlotte, scherpe, niet al te humane rechtspraak zouden in werking helpen, zou geen ambtenaar van het OM en geen hoofd van Bestuur het bejammeren als de exorbitante politieke verbanning met haar leemvoetige procedure den Rechter het werk niet langer uit handen neemt."*

[108] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 58. "*..het zou wel zeer denkbaar zijn, dan een Nederlander onder de bepalingen van dit artikel viel." (...) "Ja, maar het zal wel regel zijn dat een inlander onder de bepalingen valt en verkwijnt.*"

been too frightened that acquittal would have followed in those cases: "Yet, what is the purpose of criminal laws that are not imposed! A banishment can easily be controlled by the administration, circumventing the stubborn jurists and law courts. If a judge is not convinced by the legality of a criminal conviction regarding certain facts, the administration—with its special investigation methods—has long been ready to impose deportation."[109]

From 1900 onwards, the number political deportations had increased exponentially, according to Jongmans. "That many and sometimes massive deportations take place without any explanation," he wrote, "is a deplorable indifference towards those who are deported, not because of criminal acts according to the rules of general criminal justice, but only in the interest of public order and peace according to a decision by the Indies' government—which is often based on nothing more than the opinion of one resident or assistant resident."[110]

During the early twentieth century, a new reason to deport someone was nationalistic activities or ideas, one victim being Soewardi, who had written the pamphlet "If I were Dutch" (*Als ik een Nederlander was*). In this case, in 1913, the Council of Justice had already approved adjudication of the case, for "press offences" (*persdelict*), but the criminal prosecution was halted on the orders of the attorney general and article 47 was imposed instead.[111]

In the meantime, the privilegium fori was also still used by the priyayi themselves as a true privilege in civil cases. It exceeds the scope of this research, but a quick glance at some reports on civil cases shows how Javanese elite families also made use of the colonial courts themselves. In

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[109] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 124. "*..zekere verbanning boven de ongewisse uitkomsten van een strafrechterlijke vervolging." (...) "Doch wat geven strafbepalingen, die niet worden opgelegd! Een verbanning heeft de administratie in haar hand en daarbij zijn geen eigenwijze juristen en rechtbanken nodig. Als de rechter niet lang overtuigd is van de strafoplegging wegens bepaalde feiten, staat de administratie, door haar bijzondere onderzoekingsorganen, al lang klaar met verbanning."*

[110] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 128. "*Dat vele en soms massale uitzettingen plaat hebben zonder eenige toelichting in het koloniaal verslag, is een niet genoeg te laken onverschilligheid tegenover hen, die verwijderd worden, niet om eigen strafbare daden volgens de regels van het gemeene strafrecht, doch in het belang der openbare orde en rust volgens het oordeel der Indische regering (dat in vele gevallen wel niet meer is dan het oordeel van de Resident of Assistant-Resident)."*

[111] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 129. Fromberg, *Het geval Soewardi*, 11-12. Bt. August 18, 1913. Soewardi was banned to Banka for undetermined time.

1858, the woman Salima was accused by her deceased husband's family members of living in a house which was not legally hers but theirs. The question was whether the case had to be administered by the European Council of Justice, because the woman had been married to a son of a regent, or by the landraad because the woman herself was not from an elite family. It was decided that the case should be administered by the Council of Justice, because she was related by marriage to the regent's family.[112] These kinds of requests were also made in the twentieth century. In 1912, for example, Entjik Hadija asked the governor general whether she fell under the privilegium fori since she was related to the former sultan of Yogyakarta and appended a genealogy. This request was turned down with reference to the 1867 decree.[113]

In practice, however, Europeans' ideas of which Javanese could invoke the privilegium fori did not change much, especially in Batavia. Achmad Djajadiningrat depicts a telling example of this in his memoirs. One time, when he was a *Higher Burgerschool* (Higher Civiv School, HBS) student in Batavia, he visited—together with his Dutch friends—a boarding school for girls at night. The boys were caught by the police and sent to the assistant resident. However, the assistant resident sent Djajadiningrat to the jaksa for punishment because he was Javanese. Djajadiningrat felt extremely humiliated:

> One by one we were summoned by the assistant resident... However, when it was my turn and I mentioned my name, the assistant resident said: "Ah, so you are a native. Then you should go to the jaksa, who will refer you to the police law." Luckily, the family Meister had told me that the descendants of a regent in service, up to the fourth grade, cannot be adjudicated by the police magistrate. I told the jaksa that I was the son of the regent of Serang, with the effect that I received only a reprimand, but not from

[112] ANRI GS Surabaya, no.1436. Letter by assistant resident. Surabaya, July 20, 1858; Approval by Governnor General. Batavia, August 20, 1858.
[113] ANRI AS B. October 2, 1912, no.25. Request Entjik Hadija Benkulen, July 2, 1912.; Decision Governor General. Batavia, October 2, 1912.

> the assistant resident, but from the jaksa, something that severely hurt me.[114]

In practice, Djajadiningrat was culturally and socially part of the highest class of society. He lived with a Dutch host family and was a student at a Dutch school. He also formally fell under the jurisdiction of European law courts through the privilegium fori. Yet, when he encountered the legal system, what counted foremost to the European resident was his non-European background.

11.4 Conclusion: Double Standard

The exorbitant rights of the governor general to impose a political measure held consequences for the position of the priyayi. Although often described as local elites with an unlimited power, this image of the priyayi has to be somewhat nuanced. The priyayi were at risk of becoming privileged outlaws deported for an unspecified length of time, even in criminal cases that the colonial government not considered a political threat. The 'priyayi cases' assessed in this and the former chapter show that during the second half of the nineteenth century, in this, there was a different dynamic compared with that in the first half of the nineteenth century. The press was more intensely involved and some of the priyayi themselves now knew how to find and use the right colonial communication channels to disseminate their side of the story. However—and despite the limitations on the governor general's authority to decide on the prosecution of priyayi, as introduced in 1867—he could still exercise a considerable influence over the priyayi through his exorbitant rights. The possibility of a political measure made the position of priyayi vulnerable and even—in fact—opened them up to be declared outlaws.

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[114] Djajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 78. "*Één voor één moesten wij voor den Assistant-Resident komen. ... Doch toen ik aan de beurt kwam en mijn naam noemde, zeide de Assistant-Resident: "Zoo, dus jij bent een inlander. Dan moet je naar den Djaksa gaan, die zal je voor de politie-rol brengen.' Gelukkig had ik bij de familie Meiser gehoort, dat nabestaanden van een in hunctie zijnden Regent tot in den vierden graad niet voor den politie-rol mochten worden getrokken. Ik vertelde den Djaksa, dat ik een zoon was van den Regent van Serang, zoodat ik tenslotte ook maar een standje kreeg, doch niet van den Assistant-Resident, maar van den Djaksa, hetgeen mij erg griefde.*

EPILOGUE — New Actors and Shifting Paradigms

In 1903, the Dutch author Augusta de Wit wrote the *The Waiting Goddess* (*De Godin die wacht*), a novel that describes a judicial official's first year in Sumberbaru in Java. Although the story is fictitious, it touches on many of the issues related to the pluralistic courts discussed in this dissertation. Assessing the novel in the context of criminal law in colonial Java is relevant here because the book not only provides an extensive description of landraad practices, but also displays most nineteenth-century stereotypes of court officials *and* several of the changes that occurred around 1900.

The novel presents a very nineteenth-century stereotypical image of the landraad, as can be found in other colonial sources written by jurists. However, in this novel no one present in the courtroom was saved from criticism, including the Dutch. One scene, describing a landraad session, effectively encapsulates the developments discussed in the previous chapters. All existing stereotypes were included and the court session has the feeling of a theatrical farce. The landraad session was held on the front porch of the house of the regent, around

> a long table, with a green cloth spread out over it, and on it a bell, a carafe and glasses, and some books and piles of documents, a line of chairs and a large exuberantly decorated screen, in front of the entrance to the hidden interior of the house, gave a suggestion of European order and comfort, contrasting strangely with the darkening shadows of real native life behind the fences of the courtyard at the back.[1]

The jaksa was smart, but also vain and very much concerned with his appearance. "The attractive young native, with the black and golden *kopjah* on one ear, rose up in an elegant move that made the pleats of his sarong

[1] De Wit, *De Godin Die Wacht*, 79. *"…een lange, met een groen kleed bespreide tafel met een schel, een karaf en glazen en eenige boeken en stapels papieren er op, eene rij stoelen en een groot bont-beschilderd scherm voor den ingang naar het verborgen binnenhuis, een zweem van Europeesche orde en geroeg gaven, zonderling contrasterend met die opdonkering van echt Inlandsch leven over de schutting van het achtererf."*

glide down without getting creased, tossed back his head and started to read hurriedly in a whining-singing way." After reading the indictment, he sat down "stroking his sarong, the pleats of which had become slightly creased after all." [2] Besides, he was not using his intelligence to prosecute the real culprits, but to close as many cases as possible—regardless whether the right person was convicted—to satisfy the expectations of the assistant resident. During the interrogations of the witnesses, the jaksa was the translator from Malay to Sundanese, and it turned out that he had been rehearsing with the witnesses.

> "The president glanced over the documents and asked casually: "Did Pah-Djas know the contents of the document?" He looked up when he heard a clear "*Hanten*." This was one of the few Sundanese words he understood. He knew that Pah-Djas had answered "No."
>
> The jaksa stood there, indecisive for a moment. ... He was annoyed. Had he not instructed the suspect and witnesses to memorize all [their] answers and had he not made them say the answers out loud, over and over again, until it went as smoothly as a Quran chapter at school? He had tested them as recently as last night. And everything went fine. And everything fitted in such a way that all three of them could be sentenced the way it should be when Sir Assistant Resident gave the order to put people on trial. ... Now everything was ruined![3]

[2] De Wit, *De Godin Die Wacht*, 81. *"De knappe, jonge inlander, met de zwart en gouden kopjah op het eene oor, rees overeind met een sierlijke beweging, die de plooien van zijn sarong kreukelloos deed neerglijden, wierp het hoofd in den nek en begon op zeur-zingerigen toon haastig te lezen."*

[3] De Wit, *De Godin Die Wacht*, 89. "*De Djaksa stond een oogenblik besluiteloos. ... Hij ergerde zich. Had hij beschuldigde en getuigen al hun antwoorden niet van buiten laten leeren en laten opzeggen, altijd maar over nieuw, totdat het zoo glad ging als een hoofdstuk uit den Koran op school? Gisteravond nog had hij hen overhoord. En het ging goed. En alles klopte, zoo dat zij alle drie veroordeeld konden worden, zooals het behoorde wanneer de Heer Assistent-Resident beval menschen terecht te doen staan. Nu was alles bedorven!"*

In the meantime, the regent felt too important to attend something as irrelevant as a landraad session, where "people of low descent" were on trial. "Much against his will, he performed for this time only his duties as a judge, duties in charge of which he usually put one of his subordinates from the minor chiefs. ... And why should he deal with the affairs of these people of low descent?"[4] The wedono had only gotten his position because he was a cousin of the regent, but he held little talent for his function: "he belongs to the kind that people here describe as 'flower in a pot'—beautiful to look at but for the rest of no use."[5]

The novel displays a deeply rooted racism as well as Dutch jurists' ignorance of Javanese legal traditions. The main character, Van Heemsbergen, wondered whether the Javanese members' disinterest came from indifference or from the hasty introduction of the Dutch institutions to people who were not ready for them. The possibility that the Javanese members had been increasingly marginalized and that Javanese knowledge and institutions within the realm of criminal law had been torn down over time by the Dutch did not occur to them, or probably to the author.

The penghulu was described as a "lay figure" who was "dressed up as an Arab," and knew less than the 'real' Arab who was present "princely in his garb streaming down in long folds and atmosphere of sweet smell" as a witness in the case:

> He stood straight up in front of the penghulu, who on tiptoe and with stretched arms tried to put the Quran book on the [Arab's] head, while in mumbled words prompting him [in] the form of the Mohamedan oath. Said-Mohammad gazed in front of him indifferently. He waited for a moment, once the native priest had stopped his gibberish. Then he spoke loud and clear, emphasizing the holy words: "To God the Great! To God the Great! To God the Great! And to what is written in this Book, the Word of God!" In every

[4] De Wit, *De Godin Die Wacht*, 83. *"... Zeer tegen zijn zin vervulde hij voor deze enkele maal den rechter-plicht, waarmee hij gewoonlijk een zijner ondergeschikten uit de mindere hoofden belastte... . En wat had hij te doen met de aangelegenheden van die geringe lieden?"*

[5] De Wit, *De Godin Die Wacht*, 156. *"hij hoort tot het slag dat het volk hier 'bloem in de pot' noemt—mooi om te zien en verder van geen nut."*

> syllable, he expressed his pride in the language that was his mother tongue, his pride in the religion that was the religion of his people, the chosen people from whose midst the Prophet had arisen. In shy deference, the priest looked up to this man so well-educated in matters of religion, who so fluently pronounced the difficult maxim.[6]

Thereafter the penghulu fell asleep during the session, only to wake up to give his advice: "The penghulu gave his judgment, which was always asked but never executed, and which was based on the laws of the Prophet. 'I declare the suspect guilty and he should be punished by cutting off his hand,' he said solemnly."

It was a fully rehearsed play in which everyone knew his part. A play presided over by a Dutch judge, who, before the start of the court session, got dressed behind the Chinese screen and appeared again "broad, black, and solemn, in robe and beret." At the end of the table, an Indo-European clerk of the court sat "entrenched behind a pile of stools and writing a letter." The suspect was there, "with a soft face and something almost childishly naïve in his gaze." The session depicts a colonial society in which the Dutch jurists had firmly established their position, strangely enough without really being aware of what was going on.[7]

Simultaneously, the novel shows a conflict between the older landraad judge Oldenzeel and the younger Van Heemsbergen, that is, between a follower of European law and a believer in the adat school. The novel's protagonist, Van Heemsbergen, was engaged to the daughter of an ethical law professor from Leiden whom he wholeheartedly admires. Van

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[6] De Wit, *De Godin Die Wacht*, 88. *"Rechtop bleef hij voor den Panghoeloe staan die op de teenen en met opreikende armen hem het Koran-boek op het hoofd trachtte te leggen, hem de woorden voormompelend van het Mohammedaansche eedsformulier. Met minachtende onoplettendheid tuurde Said-Mohammad voor zich uit. Hij wachtte een oogenblijk nadat de Inlandsche priester zijn gebrabbel gestaakt had. Toen sprak hij overluid en met nadruk de heilige woorden: "Bij God den Groote! Bij God den Groote! En bij wat geschreven staat in dit Boek, het Woord Gods!." In elke syllabe liet hij zijn trots klinken op die taal die zijn moedertaal was, en op den godsdienst die de godsdienst was van zijn volk, het uitverkoren volk uit welks midden de Profeet was opgestaan. In verlegen eerbied keek de priester op naar den in zaken des geloofs wèl-onderwezene, die zoo vloeiend de moeilijke spreuk opzegde."*

[7] De Wit, *De Godin Die Wacht*, 79. *"..breed zwart en plechtig in toga en baret." (...)* "*iets bijna kinderlijk-argeloos in de oogen."*

Heemsbergen is highly motivated to bring justice to the inner regions of Java, in contrast to some of the other young civil servants he meets in Batavia. They were also recently arrived from Holland and one of them tells him: "'In the Indies you won't get anywhere without powerful connections,' he said in a tone of unshakable conviction. 'And the idea to be sent into the bush—ugh!'"[8] These ambitions quickly fade after some sobering months in Sumberbaru, where he is appointed as an assistant landraad judge. The landraad judge Oldenzeel—"sitting comfortably, in lounge pants and kebaya, closely perusing the *Java-Bode*, and with small nips and gurgles sipping his third cup of tea"—appears to have never heard of the famous professor from Leiden and is more interested in going to an auction where Europeans and "a fat Chinese" were outbidding each other for fun.[9]

Oldenzeel was an old-style jurist, Van Heemsbergen thought, and Oldenzeel in his turn was convinced that his new colleague had obtained useless knowledge during his studies, which followed "the new direction": "I can't say that I am enthusiastic about this new direction, comparative legal studies, and the development of law among primitive peoples, and the ethical basics of the idea of law, and so forth, and so forth, our dear Lord may know what else. ... That is what they are cramming these youngsters' brains with now. And when they arrive here, how will it be of use to them?" In practice, according to Oldenzeel, they would not gain much from that knowledge. "Right now, our friends are appearing for the landraad—Warten who illicitly traded in opium, and Djembar who has poked Sapin with his kris because of a dance girl, or Ardangi who has breached his cart contract—should I fix these small cases according to the comparative history of law, huh? No sir! I have to do this according to the Native Regulations! That is what I should know—what I call 'really know,' you understand!" The young jurists were capable of reciting the Native Regulations from back page to front, but they could not apply it.[10]

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[8] De Wit, *De Godin Die Wacht*, 29. *'In Indië kom je er niet zonder kruiwagens', zei hij op een toon van onwrikbare overtuiging. 'En het idee om de rimboe ingestuurd te worden – brrr!'*

[9] De Wit, *De Godin Die Wacht*, 52. "**...** *zat de President van den Landraad gemakkelijk, in slaapbroek en kabaai de "Java-boede" uit te spellen, met slokjes en gegorgel zijn derden kop thee slurpend."*

[10] De Wit, *De Godin Die Wacht*, 139. *"Daar komen nou onze vrinden voor den Landraad—Wartan die opium geslikt heeft, en Djembar die Sapin een por met zijn kris heeft gegeven om een dansmeid, of Ardangi die zijn karre-contract gebroken heeft—moet ik die zaakjes dan*

Clerks were playing card games and files of civil cases—to be decided according to adat law—were piling up because of the "colonial tradition" of giving priority to criminal cases. Van Heemsbergen: "All of them were civil cases lying waiting there for a decision based on native common law, exactly the job that he had longed for, as a training in that kind of law, and that he up to now was never or hardly ever asked to do. Mr. Oldenzeel was rigidly set in the habit of giving preference to criminal cases to be judged under Dutch law." Then, Van Heemsbergen meets the district administrator, who he knows from his time in Leiden as the son of the concierge. It appears that he *does* have knowledge of the local society and, moreover, he informs the jurists that the witness is a "a front man in the hands" of someone influential.[11]

Finally, the novel shows that the rule of lawyers (as discussed in Chapter 9) would be challenged from new emerging actors during the early twentieth century. In the case of the novel D*e Godin die Wacht* itself, by the author—a woman.[12] The real hero in the book is the wife of Van Heemsbergen, who guides him back on the right track just as he was about to lose his ethical ideals from a disappointment when faced with the reality of colonial judicial administration. During the years after 1900, there would be more and fiercer criticism from other corners as well. Indonesians started to criticize the legal system, or they became more entrenched in the colonial legal system itself. Thus, there was change from outside and from within.

First, the *pokrol bambu* had become active in the 1890s.[13] In his memoirs, landraad president Oostwoud Wijdenes presents the example of a

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opknappen volgens de vergelijkende geschiedenis van het recht? He? Nee meneer! Dat moet ik doen volgens mijn Inlandsch Reglement!"

[11] De Wit, *De Godin Die Wacht*, 76. *"…citeerde Hendriks. 'Niet dat het er veel toe doet – Singadikrama is maar een stroopop in de handen van u weet wel wie.'*

[12] Augusta de Wit (1864–1939) was the daughter of Jan Carel de Wit, who held a doctorate in Humanities and a Masters in Law. During the second half of the nineteenth century he worked as a colonial official in the Dutch East Indies and was the Resident of the Padangse Bovenlanden on Sumatra from 1865 until 1869. The family moved to the Netherlands in 1874, but Augusta de Wit herself returned to Java as an adult twice. She wrote travel accounts and novels inspired by her impressions. De Wit was a follower of the Ethical Policy. In 1916 she became a member of the SDP, a Dutch communist political party. In her travel account on Java (*facts and fancies*, 1898) she makes no account of attending a session of the Landraad. https://socialhistory.org/bwsa/biografie/wit.

[13] The word "*procureur-bamboe*" (or "*prokureur-bamboe*" or *"pokrol bamboe"*) appears in the Dutch colonial newspapers first at the end of the 1890s. The description of "*inlandse*

pokrol bambu who took advantage of the population. He was a retired jaksa, who wrote requests—2,50 guiders each—to the governor general for farmers whose land was being confiscated. He already knew that writing such a request would be of no avail, but it was money earned easily.[14] The *pokrols bambu* were described in a very negative way in the Dutch press and many priyayi were also not in favour of them. Achmad Djajadiningrat's memoirs describe how a village chief around 1900 hired a *pokrol bambu* in order to accuse Djajadiningrat—who was wedono of Bojonegara at that time—of physically abusing him. Djajadiningrat had visited the *djaro* (village chief) because he had threatened Djajadiningrat's authority by ordering someone to steal an egg. Because of this, Djajadiningrat wanted to propose to dismiss the village chief from his position. Before that, however, he went to his house to reprimand him and give him a "spanking like a little, naughty boy."[15] According to Djajadiningrat, he had accidently wounded the *djaro* on his head when he pushed open the door of the *djaro*'s house hard after he refused to open the door. Now, Djajadiningrat was accused for mishandling himself, which was made possible by the help of a *pokrol bambu*. Djajadiningrat thought this very unfair:

> These folks would do very little actual attorney work; their foremost activity would be to write anonymous complaints against native officials and village chiefs, in return for relatively coarse money. Therefore, village chiefs would refer to them as being *lintah darat* (land leeches). One of the most notorious *lintah darats* lived in my subdistrict. He wrote anonymous letters, not only to the assistant resident and the resident, but even to the governor general. He had belonged to the priyayi ranks before, but had sunk to the village because of misbehaviour.[16]

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procureurs" appears first around 1880. www.delpher.nl Database last accessed: August 1, 2016.

[14] UL, H922, M.J.A.Oostwoud Wijdenes. "Op en om de weegschaal. Voor leken en aspirant juristen," 63-65.

[15] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat,* 170. "*..als een kleinen jongen, stouten jongen een duchtig pak slaag geven."*

[16] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat,* 170. *"Procureurswerk deden die lieden echter weinig; hun voornaamste werk was tegen relatief*

Yet, Djajadiningrat admitted that the *pokrol bambu* were at that time the only way by which the population could be protected from abuse by officials: "A so-called native movement did not exist yet at the time when these events happened. Thus, there were no leaders of the people to control the actions of the native government time and time again in the interests of the large masses. Instead, the interests of these masses were protected by so-called *pokrol bambus*."[17]

In a less negative light and a more neutral sense, the *procureur bambu* were called *procureurs* (attorneys) or *zaakwaarnemers* (legal representatives). Mas Tirtohadisoerjo, cousin of the regent Brotodiningrat, was both a legal representative and a journalist. In chapter 11, we saw how Brotodiningrat was advised by *pokrols bambu*, among others by his cousin Tirto, but also by an Indo-European *pokrol bambu*, basing his defence against the resident partly on judicial grounds. Shortly after, Tirto—who would later be called a "pioneer" by Pramoedya Ananta Toer, a novelist who based the fictional character Minke on him—founded the magazine *Medan Priyayi* and later *Soenda Berita* (1903–10), which mainly advocated for the interest of lower priyayi. Legal aid was offered in *Medan Priyayi.*[18] He also translated laws and ordinances from Dutch to Malay, and published pamphlets about this.[19] His activities were not much appreciated by the Dutch, though, and he would be sentenced twice by the Council of Justice—as a priyayi he fell under the privilegium fori—for "press offences."

He continued writing and criticizing the colonial legal system while in exile. He firmly condemned the police magistracy and the fact that there

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grof geld voor de bevolking anonieme klachten tegen Inlandsche Bestuursambtenaren en desahoofden te schrijven. Daarom werden zij door desahooden genoemd: "lintah darat" (landbloedzuiger) Een der meest beruchte lintah-darats woonde in mijn onderdistrict. Hij schreef anonieme brieven, niet alleen aan den Assistent-Resident en den Resident, doch zelfs aan den Gouverneur-Generaal. Hij behoorde tot de priyayi-stand, doch was er door wangedrag afgedaald in de desa."

[17] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 170. *"Een zoogenaamde Inlandsche beweging bestond in den tijd, waarin deze gebeurtenissen plaats hadden, nog niet. Volksleiders, die te pas en te onpas in het belang van de groote massa der Inheemsche bevolking contrôle op de handelingen van het Inlandsch Bestuur uitoefenden, waren er dus no niet, doch in plaats van door hen werden de belangen dier massa tegen Bestuur beschermd door de zoogenaamde prokols-bamboe".*

[18] Toer, *De Pionier*, 71.

[19] Toer, *De Pionier*, 100.

were still landraden outside of Java that were presided over by administrative officials. He also denounced the privilegium fori:

> People here are divided into the following categories. First, full people or "heavenly" people: the Europeans and natives of aristocratic descent with a privilegium fori. Second, half people: priyayis and Chinese officers who fall under the privilegium fori for the duration of their office. Third, one-third people: priyayis without a forum, but who are exempted from doing unpaid services. Fourth, one-quarter people: all people without a forum and not exempted from performing unpaid services. Think about the following, readers, a native doctor who has studied for so long, and is respected—also by the Dutch—is a one-third person, equal to guards. They are exempted from unpaid services, but still fall under the police register [*politierol*, police magistracy].[20]

In 1909, Tirtohadisoerjo established the Sarekat Dagang Islam (Islamic Trading Union), the predecessor of the Sarekat Islam, in Buitenzorg.[21] The Sarekat Islam also took an active stance when it came to legal affairs. From 1912 onwards, when support in the countryside increased, the association represented the interests of the local commoners. For example, they negotiated over strict police measures in Besuki, where since 1904 in the event of a sugarcane fire, villagers had been obliged to guard the burned field until the culprit had been found. In Kediri, since 1905, the entire male population of adjacent villages had been summoned to be interrogated and reprimanded after a sugar cane fire. Both measures were in fact collective

[20] Toer, *De Pionier*, 218. *"De mensen hier kan men in de volgende categorieen verdelen: hele mensen of "hemelse" mensen: de europeanen en inladners van adel met een forum privilegiatum; ½ mensen: priyayi;s en officieren der chinezen die een forum genieten zolang ze hun ambt uitoefenen; 1/3 mensen: priyayi's zonder forum maar van herendiensten vrijgesteld; ¼ mensen: alle mensen zonder forum en niet van herendiensten vrijgesteld. Denkt u eens in, lezer, een dokter Djawa of inlands arts die zoveel gestudeerd heeft, zo gerespecteerd wordt- ook door de Nederlanders—is een 1/3 mens, precies zoals de oppassen die wel van herendiensten zijn vrijgesteld maar toch onder de politierol vallen!"*

[21] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 281.

punishments of the local population for arson, which at that time was a common way of protesting local rule and elites. Such collective punishment, imposed without formal judicial interference, was criticized, yet approved, by the Dutch parliament. However, in 1917 the *strafbewaking*—literally, "punishment surveillance," guarding sugar cane plantations as a punishment—was abolished after negotiations by the Sarekat Islam in Besuki. The Sarekat Islam offered a new way for people to express their complaints. Support for the Sarekat Islam was already declining again 1916, however, so this success was short-lived; but it does show new actors interfering in the colonial state.[22]

The legal system was also discussed at congresses of the Sarekat Islam. For example, there was criticism on the still not unified criminal procedural law, which was responsible, for example, for long pre-trial detentions. During the second Sarekat Islam congress in 1917, O.S. Tjokroaminoto gave a speech on criminal procedural law. He used harsh words to condemn "rotten legislation" that was imposed by "people with bad character traits," by which he meant the priyayi and local police. On laws, he said, "The Colonial Constitution makes a very clear distinction between the races. It places Europeans in a high position and the natives in a low position." He denounced the pre-trial detention, because it gave lower police officials the power to lock up someone when on the slightest suspicion, because the Native Regulations mentioned that a "well-founded fear" that someone would flee was enough reason to apply pre-trial detention. Thus, in fact, this could always be the case.[23] Moreover, according to him, in practice much more effort was made in cases in which Europeans were robbed than for Indonesians: "When an administrator of a company has lost one spoon, how diligently the police (assistant wedono) works to solve the case and forces the entire police force to trace the lost object." But, when instead one or another haji has been robbed through a burglary, the efforts made were "not commensurate with the fuss made over the lost spoon of the wife of the administrator."[24] During the debate following the speech, Semaoen

[22] Bloembergen, *De Geschiedenis Van De Politie in Nederlands-Indië*, 123-132.
[23] Sarekat-Islam congres, *Sarekat-Islam congres (2e nationaal congres), 20-27 October 1917*, 20-23. *"..rotte wetgeving (...) menschen met slechte karaktertrekken." (...) "Het Regeerings-Reglement maakt zeer duidelijk onderscheid tusschen de rassen, stelt de Europeanen op een hoog standpunt en de Inlanders op een laag."*
[24] Sarekat-Islam congres, *Sarekat-Islam congres (2e nationaal congres), 20-27 October 1917*, 21. *"Wanneer een administrateur van eene onderneming ook maar slechts één lepel kwijt is,*

addressed the impact of the limited separation of powers: "As long as administrative officials [priyayi], who simultaneously exercise police affairs, remain judges, we cannot expect any protection of suspects. In the landraad, many retired administrative officials are seated as court member."[25] During the same debate, Soerjopranoto (brother of Soewardi) explained how hard it was for the "legal office" Adhi Darmo, which he had founded, to work, because they were not given access to the procedural documents from preliminary investigations.[26] During the fourth Sarekat Islam conference, in 1919, Tokroaminoto again spoke about pre-trial detention. Using explicit language, he said "it makes us nauseous," and he gave examples of preliminary custodies that lasted one and a half years, only to have the suspect acquitted.[27]

The protests were not directed exclusively at the Dutch colonial legal system. For example, *Medan Priyayi*, the magazine for lower priyayi, was also against *paseban* arrests, as imposed by higher priyayi, which were still in use. According to a critical article of 12 February 1910, the *paseban* arrest was imposed exclusively on lower priyayi and *desa* chiefs, for mistakes made in administrative duties or for disobeying the regent. In the case of the latter, it was often for neglecting his evening rounds or for not cleaning the *desa*. At first sight, the *paseban* arrest seemed a minor punishment, but the journalist argued that this was actually not true. People subject to the *paseban* arrest had to remain at the *paseban*, the courtyard of the regent's or wedono's house for up to a month, according to the ordinance of 1854. There was neither shelter nor bed, and the one under arrest had to arrange for his family to bring him meals, though he could bring along a servant. According to the article, the punished persons got sick easily when the weather was bad, and another important objection against the punishment

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hoe is dan niet de politie (assistent-wedana) in de weer om ter zake licht te krijgen en dwingt het geheele ondergeschikte politie-personeel om het verlorene op te sporen. Maar wanneer andersijzds een of andere Hadji middels braak bestolen is ... niet evenredig aan de drukte die gemaakt wordt om de verloren lepel van mevrouw de administrateur terug te vinden."

[25] Sarekat-Islam congres, *Sarekat-Islam congres (2e nationaal congres), 20-27 October 1917*, 25. *"...zoolang de bestuursambtenaren, die tevens de politie uitoefenen, tevens nog rechters zijn, zal er op bescherming van den persoon van beklaagden niet te rekenen vallen. In den Landraad hebben vele gepensionneerde bestuursambtenaren zitting als lid."*

[26] Sarekat-Islam congres, *Sarekat-Islam congres (2e nationaal congres), 20-27 October 1917*, 25. *"rechtskundig bureau"*

[27] Sarekat-Islam congres, *Sarekat-Islam congres (4e nationaal congres), 26 Oct.-2 Nov. 1919 te Soerabaja*, 49. "*Wij spugen ervan*."

was its humiliating character: "Sometimes the convict even has to partake in the guarding rounds through town. During the afternoon, people who know him will recognise him. Isn't that humiliating?"[28]

Moreover, a distant village chief—away from the village during the *paseban* arrest—was not conducive for the safety of the village. A village chief who was punished because he had been unable to arrest alleged criminals was away from the village and the criminals could still go about their way. A last criticism pointed towards the unreliability of the spies who reported on village chiefs. Spies could easily bribe the village chiefs, who would often feed, or pay, the spy to report to the regent that the village was clean and peaceful. A weak village chief, or one who refused to be bribed, could easily be punished by reporting otherwise to the regent.[29] As Djajadiningrat wrote about the *paseban* arrest:

> When I was young, I saw in Serang, where my uncle was regent, how a wedono was subjected to a *pantjaniti* [other word for paseban] arrest. From my perspective, this was so humiliating that I could not understand how it was possible that certain administrative punishments were applied to wedonos, who occupied quite high and important positions within the native administration.
>
> Dressed in black coat with office buttons, carrying a kris on his back and followed by a *paying* [umbrella] carrier, the wedono to whom the punishment had been imposed, arrived at the regent's. He laid down his *payung* and kris in front of the feet of the regent. Thereafter, he took off his coat and put it down next to the kris and *payung*. These objects were taken away by a guard and kept in the office of the *mantri kaboepaten* [regent's assistant], who would ensure that the convict had no other possessions with

[28] "Hoekoeman paseban." Medan Priyayi 6 (12-2-1910): 1-4. *"Terkadang orang jang terhoekoem tiap-tiap malem haroes toeroet mengideng dengen ronda kota. Boekoenkan sia namanja? Diwaktoe siang sekalian orang lalang kita taoe. Apa tida maloe orang dihoekoem sembarang orang bisa taoe? Apa tida boleh diseboet permaloekan?"*

[29] "Hoekoeman paseban." *Medan Priyayi* 6 (12-2-1910): 1-4.

> him than a thin mat to sleep, eat, and sit on. In this manner, the wedono had to stay at the *patjatini* for the duration of his punishment.[30]

In 1917, article 2 of the ordinance of 1854—in which the *paseban* arrest had been made official in the colonial regulations—was abolished. Carpentier Alting, at that moment director of the civil service, had proposed abolishing the *paseban* arrest altogether, and he had asked all residents for their advice. In Kedu the *paseban* arrest had already been done away with. The residents of Cirebon, Semarang, and Yogyakarta were in favour of a complete abolition. Other residents argued that the arrest should not be imposed on paid officials, but most wanted to maintain the punishment for unpaid village and *kampung* chiefs. However, Carpentier Alting was determined and argued for complete abolishment. He observed the punishment to be out of place in the modern times, too humiliating and he preferred a discrete reproach.[31]

On 21 September 1917, the Advisor of Native Affairs Hazeu wrote in his advice that "developed native officials" had told him more than once that they thought the punishment ridiculous and old-fashioned. The village chiefs would waste time chatting with the guards during their punishment. Altogether, according to Hazeu, the punishment was considered to have belonged to "an era, from which we are breaking free, and from which we have liberated ourselves partly already."[32] Acknowledging that European

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[30] Djajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 170. *"In mijn jeugd heb ik te Serang, waar mijn oom Regent was, weleens gezien, hoe een Wedana een pantjaniti-arrest onderging. Het was in mijn ogen zo vernederend, dat ik niet begirjpen kon hoe het mogelijk was, dat dergelijke administratieve straffen op een Wedana, die in het Inlandsch Bestuur toch een vrij hooge en belangrijke positie inneemt, konden worden toegepast. Gekleed in een zwarte jas met ambtsknoopen met een kris aan zijn rug en een pajoengdrager achter zich, kwam de Wedana, wien de straf was opgelegd, bij den Regent. Hij begon met zijn pajoeng en kris voor de voeten van de Regent neer te leggen. Daarna trok hij ook zijn jas uit en legde die bij zijn pajoeng en kris neer. Die voorwerpen werden door een oppasser opgenomen en in het kantoor van den Mantri-Kabcoepaten, die zich ervan moest vergewissen, dat de gestrafte in de pantjaniti niets anders bij zich had dan een dun matje, waarop hij kon zitten, eten en slapen. Zoo moest de Wedana zoolang zijn straf duurde in de pantjaniti blijven."*

[31] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. May 6, 1920, no.6. Circulating letter from Carpentier Alting to the residents, Batavia, December 6, 1917.

[32] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. May 6, 1920, no.6. Advice written by the Advisor of Native Affairs Hazeu. Batavia, 21 September 1917. "…een beeld dat behoort tot een tijdperk, waaraan wij bezig zijn ons te ontworstelen, waarvan wij ons gedeeltelijk reeds hebben vrij gemaakt."

administrative officials were mostly in favour of the punishment, the Council of the Indies still advised otherwise. Carpentier Alting had prepared an alternative system of admonishments, but the council wanted to leave this open.[33]

Another new aspect of colonial policy in the early twentieth century was the increasing interest by Dutch Parliament in colonial affairs, which reflected the changing political climate in the Netherlands generally. Around 1900, the Ethical Policy was announced as the new Dutch approach to 'develop' and 'educate' the local population under Dutch rule. We have seen how during the 1860s various reforms to the colonial legal system were introduced. The first two decades of the twentieth century were a similar period of reform, although the tone now was fiercer and more public, and included Indonesian voices that had hardly been heard before in colonial discussions. By 1918, there was a strong conservative backlash to these voices for reform. A number of planned reforms were not put through, such as for example the abolition of the death penalty or reversed such as the unified criminal procedural law. Also, the exorbitant rights continued to exist. In 1930, Indonesian nationalist and future President Sukarno, was arrested and put on trial. However, after a passionate plea by Sukarno in front of the landraad, a speech that intensified nationalist fervour, he was given political exile and banned according to the governor general's exorbitant rights.

Until 1918, however, the Ethical Policy inspired some reforms that would (partly) last. For the first time, for example, there were extensive investigations into the workings of police and justice on a regional level, as part of an initiative published as the Diminishing Welfare Research reports between 1906 and 1910. Police and justice was one of the topics about which questions were sent to the residencies. Such inquiries had circulated during the nineteenth century, but then answers were expected only from the resident. Now, however, responses came from regional committees consisting of the regent and lesser Javanese officials including jaksas. The Diminishing Welfare Research (*Mindere Welvaartonderzoek*) initiative

[33] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. May 6, 1920, no.6. Advice written by the Council of the Indies. Batavia, October 26, 1917.

confirmed the issues and problems discussed in previous chapters.[34] In 1914, the notorious police magistracy was abolished, replaced by a court presided over by a judge, the *landgerecht* (district court).

In 1908, the Law School for Indonesians was established, as discussed in chapter 7. The Law School, was on advice of a committee established after a request of Achmad Djajadiningrat, whose brother Husein Djajadiningrat wished to study law but knew that until then no non-European ever had been allowed to work for either the Civil Administration nor the Judicial Administration. The committee consisted of the advisor of Native and Arabic affairs Christiaan Snouck Hurgronje, attorney-general B.H.P. van der Zwaan and the secretary of the Department for Education and Religion M.S. Koster. The idea to establish a law school for non-European students met severe opposition from prominent jurists such as former Supreme Court president W.A.P.F.L. Winckel but also from I.A. Nederburgh, member of the Supreme Court, and lecturer at the OSVIA of Probolingo W.F. Haase who stated in a newspaper article that Indonesians were lacking the integrity a judge needed. Yet, the counter argument of Snouck Hurgonje that integrity was the result of upbringing and education, and not of race (*volksaard*), convinced the Minister of Colonial Affairs A.W.F. Idenburg. Referring to the success of Surinam lawyers and of Indian judges in British India, he also convinced the Senate in The Hague. In 1924 a Law College (*rechtshogeschool*) was opened in Batavia, making an academic education—including admission to the Bar—possible for Indonesians.[35] That same year, the first Indonesian landraad president Moehamad Hamid was appointed.[36]

The new requirement for educated officials changed the old landraad relations and balance of power. The Indo-European registrars—often only with a *klein-ambtenaarsexamen* (small official exam)—felt threatened by the arrival of Dutch and Indonesian jurists. Others, however, got more chances when certain legal ranks opened for Indonesians. The clerks—commoners

[34] Welvaartcommissie, "Onderzoek naar de oorzaken van de mindere welvaart der inlandsche bevolking op Java en Madoera."; Steinmetz, *Overzicht van de uitkomsten der gewestelijke onderzoekingen naar 't recht en de politie.*

[35] Massier, *Van recht naar hukum*, 67-72.

[36] Lev, "Colonial Law and the Genesis of the Indonesian State," 68. The percentage of local and Chinese advocates increased from 3.07 percent in 1925 to 37,10 percent in 1942.; Massier, *Van recht naar hukum*, 78, 105 (footnote 238). Moehamad Hamid (*rechtsschool*, no admission to the Bar) was appointed as president of the landraad in Kraksaän. From 1920 onwards he had been the adjunct landraad president at the landraden of Batavia and Tangerang.

without training at the OSVIA—previously had had no chance of pursuing a career. However, with the establishment of the *landgerecht* as the replacement of the police magistrate in 1914, many registrars were suddenly needed. De Loos-Haaxman described how one of the clerks of the landraad of Tulungagung then had the chance to become registrar. The Supreme Court assessed a number of his procès-verbaux and decided that they were of the required quality: "We were sitting on the grass in front of the house, drinking tea, when Saleh arrived speechless with gratitude and offering us an antique copper kettle. ... Within a year he owned his own house, his first financial certainty for the future."[37]

The solidly established position of the Dutch landraad president would start to be questioned after the advent of the *pokrol bambu*, the efforts of the Sarekat Islam, and Indonesian jurists. Or at least, this is how one experienced this, as landraad President Oostwoud Wijdenes noticed when he became the assistant president to the Indonesian landraad president Soenario during the 1920s: "And even though he was not lesser as a jurist or as a human being, compared to his predecessor, and had done ... his entire training in Leiden, still 'one' thought it to be—even openly in the Surabaya press, if I remember correctly—'too strange,' that I, as a Dutchman, had become the subordinate of a Javanese."[38]

A change is also evident from the extensive dossier of the so-called Karanggasem case of 1914, in which a leader of the Sarekat Islam and Gonggrijp (resident of Rembang, pseudonym Opheffer) accused the landraad President Milius of abusing witnesses. It was a court case in which Sarekat Islam members were accused of having attacked priyayi. A resident accusing a landraad president of illegal behaviour was a remarkable situation. Van Deventer asked questions about the case in Dutch Parliament and further

[37] De Loos-Haaxman, *Dagwerk in Indië*, 23-24. *"Wij zaten op het grasveld voor het huis thee te drinken, toen Saleh sprakeloos van erkentelijkheid een antieke koperen ketel bracht… binnen een jaar had hij een eigen huis, de eerste zekerheid voor de toekomst."*

[38] UL, H 922, Oostwoud Wijdenes, "Op en om de weegschaal," 3. *"En al was hij noch als jurist, noch als mens de mindere van zijn voorganger, terwijl hij (..) zijn hele studie in Leiden had genoten, toch vond "men"—ik meen zelfs openlijk in de Soerabaia-pers—'te gek," dat ik, als Hollander, van een Javaan de ondergeschikte was geworden."*

investigations commenced, but the incident eventually fizzled out without any consequences.[39]

Although with some positive effects, the Ethical Policy was a rather broad and general aim that was only supported by all political parties due to its ambivalent character. In practice, the contradictions between colonial policies remained to exist, as the debate on adat versus unification shows. The Ethical Policy was based on the idea of the development of the local population according to Western model, and therefore, as historian Elsbeth Locher-Scholten has argued, represented both the opposing adat and unification ideologies. The Ethical Policy: "….encapsulated the tension between adat studies (originating in the idea of development) and the unification of law (Western model)."[40]

It is also important to realize that reforms that fit the aims of ethical policy did not necessarily lead to a more independent legal system, either. Nor were they any less paternalistic. Adat law actually had the potential of being simply reactionary. Therefore, Conrad Theodor van Deventer pleaded in parliament in 1906 for a unification of laws because, he felt, applying local laws had led to significant uncertainty: "The judge who can speak about adat subjects can ultimately decide whatever is in his interest, and if such a judge is *le bon juge* or King Salomo in person, one can easily say that the fate of the suspects is not always safe."[41] At the same time, Van Deventer argued that the dual legal system nonetheless had to remain intact, in order to make it possible that Indonesians would be adjudicated by Indonesian judges. He did not think it realistic for Europeans to be tried by Indonesian judges, in particular in criminal cases: "If one wants to come to the unification of the judiciary, then there can be no other solution than bringing European litigants to the native courts as well. If one does not dare face this

[39] NL-HaNA, 2.02.22 Tweede Kamer der Staten-Generaal, no.938. "Stukken betreffende het onderzoek naar de houding van de Landraadvoorzitter Mr. J.G. Milius bij de behandeling van de zogenaamde Karangasem-zaak voor de Landraad te Toeban, 1913-1915."

[40] Locher-Scholten, *Ethiek in fragmenten*, 202.

[41] "Handelingen Tweede Kamer", October 10, 1906, 35. Accessed through www.statengeneraaldigitaal.nl C.T. van Deventer: *"De rechter, die over adat-onderwerpen heeft echt te spreken, kan per slot van rekening uitmaken, wat hem goeddunkt en tenware zulk een rechter le bon juge of Koining Salomo in eigen persoon is, kan men gerust zeggen dat de toestand voor de justitiabelen niet altijd zonder gevaar is."*

consequence—and I would not recommend this at this moment—then the dual judiciary has to be maintained."[42]

Addressing parliament in 1906, Henri van Kol of the SDAP (Social Democratic Workers' Party) cited the ill-functioning system of legal evidence at the landraden as one of the reasons why he was a proponent of the application of adat law. According to him, the introduction of European laws and the method of presenting legal evidence had led to a situation in which "our justice system regarding criminal law is despised by the Native."[43] He even doubted the separation of the powers: "It may sound somewhat reactionary to some dogmatists," he said, "but in the still primitive circumstances in the Indies, one needs less witness proof and more moral certainty of a superior judge. Although I do not have a fixed opinion on this subject, I even believe, that in the outer regions the far-reaching separation of the judicial and administrative powers deserves less appraisal than most might think." Van Kol argued that adat courts—he gave the example of Bali—could certainly work well. He argued Van Deventer to be wrong on this, noting that "this speaks of an unfamiliarity with adat, something not rare among jurists."[44]

In fact, both Van Kol and Van Deventer were making valid arguments. Deventer was correct that the possibility of applying adat alongside colonial laws could lead to arbitrariness because (European) judges could shop in different legal traditions and pick the one that suited him best in a given case. Van Kol, however, was correct in that most European jurists looked down on adat from a sense of superiority about

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[42] "Handelingen Tweede Kamer", October 10, 1906, 34. Accessed through www.statengeneraaldigitaal.nl C.T. van Deventer: *"Wil men dan komen tot unificatie van den magistratuur, dan kan er geen andere oplossing zijn, dan dat men Europeesche justitiabelen ook brengt voor inlandsche rechtbanken. Durft men deze consequentie niet aan—en ik zou haar vooralsnog niet durven aanbevelen, dan moet de dubbele magistratuur behouden blijven."*

[43] "Handelingen Tweede Kamer", October 10, 1906, 40. Accessed through www.statengeneraaldigitaal.nl Henri van Kol: *"Onze rechtspraak op het gebied van het strafrecht door den inlander wordt geminacht."*

[44] "Handelingen Tweede Kamer", October 10, 1906, 40-41. Accessed through www.statengeneraaldigitaal.nl Henri van Kol: *"Het klinkt misschien wat reactionair in de ooren van sommige dogmatici, maar bij de nog primitieve toestanden in Indië heeft men minder getuigenbewijs nodig dan wel de moreele zekerheid van een hoogstaanden rechter. Ofschoon ik op dit gebied geen vaste opinie heb, geloof ik zelfs, dat, althans in de Buitenbezittingen, de doorgedreven scheiding van rechterlijke macht en administratieve macht minder toejuiching verdient dan de meesten wel meenen." (...)"Hieruit spreekt onbekendheid met de adat, die niet zeldzaam is onder juristen."*

Western law and did not have enough knowledge about how adat worked, and that adat courts in general did not necessarily executed inferior justice. However, reality in Java did not meet this last ideal, because the landraden were no longer set up as adat courts. The actors in the landraad had changed, and their responsibilities and interests had been altered by the colonial government's interventions. The disruptions to the Javanese legal systems mean that, as Van Deventer had noted, adat law had become a means for European judges to go their own way and circumvent written laws.

Thus, the interest in adat law caused landraad presidents possibly to administer justice by "circumventing the laws" under the guise of accommodating differences in civilization, race, and culture. In articles and memoirs produced by landraad judges, a paternalistic writing style is apparent, filled with anecdotes belittling the local population in an almost comical way, even when their stories dealt with criminal cases and matters of life and death. Publications from this period are also characterized by a strong conviction that one simply had to adjust to the "Eastern" world and that they—as judges—had the freedom to do this. It is a very stark difference from the tone of the liberal jurists of the second half of the nineteenth century, although paternalism was also evident then.

A telling example are the memoirs of landraad Judge C. W. Wormser, written in 1941: "If the relation between the administration and the judicial power is as it should be, then both will cooperate, support each other, and share advice." Wormser gives the example of *tebusan* (ransom) cases in which a cow was stolen, and the owner only received back the stolen cow if he paid ransom to the thieves. Wormser and the district administrator decided to use police magistracy to penalize a village for failing to prevent the theft. Therefore, villagers slept on top of their cows and the number of *tebusan* cases quickly decreased:

> The method worked remarkably well. All the villagers were sitting by their buffalo at night, and it even happened once that an owner had fallen asleep and woke up two *paal* [i.e., three kilometres] away from his house, after his buffalo had been stolen with him on top. Buffalo thefts decreased by fifty percent within one week. The villagers were armed with *patjols* (pickaxes) and sabres, and when one of them

> caught two thieves creeping up the front porch, he approached them immediately and wounded both of them quite seriously. The jaksa prosecuted both notorious thieves for attempt of theft, but *toetoepte* (closed) the wounding case; he did not prosecute the villager.[45]

Wormser openly described in his memoirs how he sometimes did not stick to the legal regulations because he thought that he should adapt to the Eastern situation and "the Oriental," and because he wanted to protect the villagers, or because he was determined to get a certain culprit convicted. On the one hand, he tried to carry out the principles of Western law. He wrote how during one important case, the regent attended the court session to be seated as a landraad member: "There was indeed a very unscrupulous villager who was on trial for *rampok* [robbery]*."* In that instance, the Javanese members and the jaksa were very keen on getting the suspect convicted. However, Wormser did not see any legal evidence and did not want to agree with the regent and wedono who wanted to impose a heavy punishment. He eventually convinced the Javanese members that acquittal was the appropriate verdict: "I was relieved that the *desa* thug became so overconfident after the acquittal that we could firmly catch him half a year later after all."[46]

On the other hand, the memoirs are full of anecdotes lead one to seriously doubt Wormser's judicial independence. He describes, for

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[45] Wormser, *Drie en dertig jaren op Java. Deel 1: In de rechterlijke macht,* 37. *"Indien de verhouding tusschen bestuur en rechterlijken macht is zooals zij wezen moet, zullen beide samenwerken, elkaar steunen en elkaar van advies dienen." (...) "Het middel werkte wonderbaarlijk snel en goed. Alle desalieden zaten 's nachts boven op hun karbouw, en het is zelfs een keer voorgekomen, dat een ingeslapen eigenaar wakker werd op twee paal afstand van zijn woning, nadat hij met zijn karbouw was meegestolen en er onderweg was afgevallen. De karbouw-diefstallen verminderden binnen een week met vijftig procent. De desalieden hadden zich gewapend met patjols (houweelen) en sabels, en toen een bewaker twee karbouwen-dieven zijn erf zag opsluipen, ging hij, gedachtig aan de waarheid dat de eerste klap één daalder waard is, onvervaard op hen af, en verwondde beiden vrij ernstig. De jaksa vervolgde de twee beruchte dieven wegens poging tot diefstal, maar "toetoepte" de verwondingszaak, hij vervolgde den desaman niet."*

[46] Wormser, *Drie en dertig jaren op Java. Deel 1: In de rechterlijke macht,* 36. *"Er stond inderdaad een zeer lastige desaman terecht voor "rampok."" "Het deed mij goed, dat de desaboef door dit vrijsprekend vonnis zoo brutaal was geworden, dat wij hem een half jaar later stevig in zijn kraag konden pakken."*

example, without hesitation how he acquitted the murderers of "desa thug Mas Boesoek." A number of *desa* chiefs had decided to kill this criminal, because he caused too much trouble. During his interrogation of the suspects, Wormser deliberately suggested that they might have acted in self-defence. The chiefs took the hint and confirmed this. They were acquitted. Wormser decided in this case that to not strictly follow the colonial legislation and adjudicate justice in a society where, according to adat, it was important that villages be kept safe by their village chiefs and an *omo* (translated by Wormser as "dangerous creature') had to be "destroyed."[47] The memoirs of Wormser present a somewhat exaggerated version of reality, since he vividly described only his most enervating court cases and reality was most likely less enthralling.

Oostwoud Wijdenes' memoir—written around 1972 and looking back on his career as landraad judge from 1924 until 1942—emphasizes the importance of the landraad judge' thorough interrogations during the court session in order to detect false statements made during the jaksa's earlier interrogations. He described how suspects were hit and kicked; in one case a European policeman had held a suspect under water during an interrogation, after which the suspect confessed, even though he was innocent. An assistant wedono present as a landraad member solved the same case—proven with two cut-off cows' tongues presented as evidence—through clever interrogation during the court session. It turned out that the owner of the cows had maimed them himself so he could slaughter them for his daughter's wedding without a license. Therefore, Oostwoud Wijdenes emphasized the necessity of cooperating with the Javanese court members.[48]

It was certain that the Javanese members were still voting court members who had to be approached diplomatically. Oostwoud Wijdenes remembered how the deliberations behind closed doors proceeded during a theft case:

> Then the "courtroom" is being emptied by the guard who uses many "Hush! Hushes!" The judicial part of the landraad, and the clerk, remain seated as if "entering the deliberation room." Although the

[47] Wormser, *Drie en dertig jaren op Java. Deel 1: In de rechterlijke macht,* 61.
[48] UL, H 922, Oostwoud Wijdenes, "In en om de Rechtszaal," 162–173.

> deliberations are strictly secret, behind each bamboo wall one can overhear the discussions. ... The eldest member of the landraad gives his (fully judicially valid) layman's vote and declares Pa Asoep guilty, accompanied by a few—possibly for Orientals—pressing grounds for evidence: One, the suspect had an unfavourable appearance. Two, the suspect had been married to the person robbed. ... The youngest voting member brought up a somewhat unusual mitigating circumstance: the suspect had been a good customer of his textile shop(!). The eldest members agreed on the jaksa's recommendation of eight months, whereas the youngest members were of the opinion that four months was enough.[49]

Subsequently, Oostwoud Wijdenes had to vote himself and had to adjust to the members in order to get a conviction. He had some doubts about the suspect's guilt, but six witnesses declared against the suspect under oath: "And no single case was ever possible to be completely *terang* (clear), due to the limited time and possibilities for investigations."[50] According to the law, a punishment was allowed of between one day and nine years of imprisonment. Then commenced, as Oostwoud Wijdenes calls it, the "game with the scales of Lady Justice":

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[49] UL, H 1206, Oostwoud Wijdenes, "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 22. *"Hierna wordt de "zaal" met vele "hush!husch!s" door de oppas ontruimd en blijft het*
rechterlijk gedeelte van de Landraad met de griffier zitten, "gaande in de raadkamer." Wel is de raadkamer diep geheim, maar elk oor achter de nabije zijwand-van-bamboe kan de beraadslaging opvangen. ... Het oudse lid van de Landraad staaft zijn (volledige rechtsgeldige lekestem) vóór eenschuldig-verklaring van Pa Asoep met een paar—voor Oosterlingen mogelijk—klemmende bewijsgronden: 1. Beklaagde heeft een ongunstig uiterlijk. 2. Beklaagde is met de bestolene getrouwd geweest, (dus bekend met haar bezittingen? Of is de diefstal een logisch gevolg van de echtscheiding? Dat vemeldt het Lid niet). De jongste stemmer brengt een wat ongewone verzachtende omstandigheid te berde: beklaagde is steeds een goede klant van "s lids textielzaak geweest (!)" Het oudste lid sloot zich aan bij de eis van de Djaksa van acht maanden, terwijl het jongste lid vier maanden genoeg vond."

[50] UL, H 1206, Oostwoud Wijdenes, "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 22. *"Helemaal terang (zonneklaar) was trouwens bij de beperkte tijd en mogelijkheid van onderzoek geen enkele zaak ooit te krijgen*."

> The door to imprisonment on the one scale has to weigh as heavily (preferably not as lightly) as the small pile of puzzling factors, such as denial of guilt, age, social position, antecedents, value of the loot, an article of general and special prevention, a scoop of revenge, a doses improvement aim, and finally some tradition…. plus all other arguments that had come up. The result of this landraad-penalty-lottery was six months of imprisonment for Pa Asoep.[51]

Despite the romanticized stories, the memoirs show that the landraad judges moved between two worlds. On the one hand, they were proud of their knowledge of Western legal traditions and "civilized" justice. On the other hand, they emphasized that they had to adjust to local circumstances, in which they had to deal with situations that were not comparable to Dutch criminal cases and in which they depended on the cooperation of Javanese officials. The character of the landraad judge was deemed very important, because he had to adjudicate justice as a morally superior father, and had to decide himself whether it was better to let go of Western legal principles in a given case. As Jonkers wrote in 1942, "And even though on certain points the laws are not as perfect as we are, raised in a Western spirit, would wish them to be, then still, with the right insight, using the limited means available, the judge will be able to bring justice. In an Oriental society, this insight of the judge matters more than exorbitant Western formalism."[52] He thought it the duty of the judge to discover intrigues and to not be misled by

[51] UL, H 1206, Collectie M.J.A. Oostwoud Wijdenes, "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 22. *"de deur van een gevangenisstraf of de ene schaal moet even 'zwaar' gaan wegen (liefst nooit even 'licht') als een bij mekaar gepuzzeld stapeltje factoren, bijvoorbeeld: ontkentenis van schuld, leeftijd van de beklaagde, maatschappelijke positie, antecedenten, waarde van het gestolene, een partikeltje algemene en speciale preventie, een schepje vergelding, een dosis verbeteringsoogmerk en dan nog een beetje traditie en ongeschreven tarief plus wat het moment nog aan andere argumenten oplevert. Als resultaat komt dan voor Pa Asoep uit de Landraads-strafmaat-tombola rollen: zes maanden gevangenisstraf."*

[52] Jonkers, *Vrouwe Justitia in de Tropen*, 73. *"En al zijn dan op bepaalde punten de wetten onder den invloed van begrensde mogelijkheden niet zoo volmaakt als wij, opgegroeid in Westerschen geest, wel zouden willen, dan nog zal de werker (gebruikt hij dit woord echt? rechter?) met het juiste inzicht, al zijn middelen, welke hem ten dienste staan, beperkt, in staat zijn gerechtigheid te brengen. Op dit laatste komt het in de Oostersche samenleving meer aan dan op overdreven Westersch formalisme."*

false witness statements. He mentions that Javanese officials mainly sought to solve cases without caring for the actual truth, out of a "desire for status and promotion." Yet, he still thought the priyayi administration to be irreplaceable, because of their "many branches reaching deep into the *desa*," making them well-informed.

The power of the landraad judge was extensive, the punishments were still heavy, the legal position of the local population uncertain, and there were few legal guarantees. Oostwoud Wijdenes himself only realized years later how heavy the punishments he had imposed actually were, when he was imprisoned himself during World War II. The prisoner-of-war camp in Cilatap where he was imprisoned was situated across the island of Nusa Kembangan, to which were sent colonial-era convicts who had been sentenced to up to twenty years in prison. It was only when he ran into a group of Indonesian prisoners—while marching with his fellow prisoners of war—and they greeted them "sneeringly as colleagues" (he even thought he recognised one of them), that he fully realised the heavy punishments to which he had condemned people:

> Many times I had announced a prison sentence of twenty years, especially at the start of my career. ... How young and stupid I had been back then towards the field of crime! How careless had I been when imposing punishments. ... My God! How insanely long twenty years was now came to my understanding! ... How long had the eleven months being deprived of freedom in the camp felt already! (And how endlessly long would be the 3,5 years behind barbed wire later on).[53]

[53] UL, H 922, Oostwoud Wijdenes, "Op en om de weegschaal," 97-98. "..*honend als collega's." (...*) *"Vele malen had ik 20 jaar gevangenisstraf uitgedeeld vooral in "t begin van mijn loopbaan (...) Hoe jong en dom stond ik toen nog tegenover het gebied van de misdaad! Hoe gemakkelijk en royaal was ik nog met strafopleggingen. (...) Mijn God! Wat werd "20 jaar" een krankzinnig lange straf voor mijn begrip! (...)Hoe lang waren mij de elf máánden van vrijheidsberoving in "t kamp al gevallen! (en hoe eindeloos lang zouden mij later de 3,5 jaar achter prikkeldraad duren)."*

Conclusions

Colonial officials and jurists in the Netherlands Indies found pride in the narrative of the Dutch having brought "enlightened Western justice" to "the East." The facade of the city hall of Batavia was even ornamented with a statue of the blinfolded Lady Justice with her scales. However, according to Christaan Snouck Hurgronje in 1924, the "common Native-Arabic explanation" of the blindfolded lady was not that of justice without partiality or bias, but of "judges often purposely closing their eyes to the truth." Snouck Hurgronje followed this anecdote by offering fierce criticism of the colonial legal system: "…our criminal codes are a fallible human creation, and the judges applying them are fallible humans. This combination has created a practice of criminal procedures and criminal law for natives, to which no-one wants to be subjected. It is even seen as a privilege to be withdrawn from it. Is it a miracle then, that natives speak of racial justice?"[1]

Even though it is unclear who Snouck Hurgronje's local interlocutors were—and the anecdote might even be invented for rhetorical purposes to support his argument—the criticism on an *unequal* legal system stands. Indeed, the separate courts and codes offered ample space for an unequal legal system designed for the enforcement of colonial rule over the local population. Whereas the Councils of Justice that tried Europeans were presided by trained judges, until 1869 the landraad was presided by an (assistant) resident with no legal training and executive powers in the region. Furthermore, the separate criminal law code for the Javanese (and Chinese) population resulted in different punishments for the same crimes. In the case of theft, Europeans faced imprisonment, while Javanese convicts were usually sentenced to several years of forced labour.

[1] Snouck Hurgronje, "Vergeten jubile's", 69. *"Eene gangbare Inlandsche-Arabische verklaring dezer voorstelling, als zou zij beteekenen, dat de rechters vaak de oogen moedwillig sluiten voor de werkelijkheid, heb ik meermalen in gesprekken trachten te vervangen door die er rechtspraak zonder aanzien des persoons." (...)"Intusschen zijn en blijven onze strafwetboeken feilbaar menschenwerk, en de rechters, die ze toepassen, feilbare menschen. De samenwerking van al die feilen heeft de practijk van strafvordering en strafrecht voor Inlanders zoo gemaakt, dat het als en privilege voor hooggeplaatsten onder hen geldt, eraan onttrokken te zijn, en dat niemand onzer zich eraan onderworpen zou willen zien, Is het dan wonder, dat Inlanders wel eens van rassenjustitie spreken?"*

Only in 1918 a unified criminal code was introduced for all the inhabitants. However, even that did not bring much change, since certain punishments, such as the death penalty, were in practice only imposed to non-Europeans. Moreover, the criminal procedural codes still differed, with one procedural code for Europeans and another for non-Europeans. The Native Regulations were simpler, contained fewer guarantees for accused persons and did not provide for a lawyer.

The aim of this dissertation, however, has not only been to point out the stark inequalities of segregated criminal justice in Java. It tried to understand this unequal system in practice, shown by an actor-focused approach and through a framework of legal pluralities. I started from the courtroom and searched for the conflicts occurring around the green table. The pluralistic courts, the only places in Java where all regional power structures met and actively worked together, were courtrooms of many conflicts. The courts were also in interaction, and conflict, with other state institutions, together all furthering the project of colonial state formation. By taking this approach, I have shown how it was not only *inequality*, but also *uncertainty* and *injustice*, that were central to colonial criminal justice imposed on the local population.

Uncertainty: Powerful Pluralities

A long Javanese history of legal pluralities continued, though substantively transformed, with the arrival of the Dutch and the establishment of colonial rule. Beginning during VOC times, pre-colonial judges—the jaksas and penghulus—were incorporated in pluralistic colonial courts as advisors, sharing Javanese customary and Javanese-Islamic legal traditions. Prominent Javanese priyayi were appointed as judges. The pivotal belief was to try the Javanese, and other population groups, according to their own laws, although all this under the supervision of a Dutch court president. The rapidly expanding number of pluralistic courts throughout Java, made colonial rule visible, tangible and practical on a regional level, making them the anchors of colonial rule in the eighteenth and early nineteenth century.

Later in the nineteenth century, however, the pluralistic courts were often mocked, seen as insignificant sites dealing with minor cases and unimportant classes of the Javanese people. The Dutch landraad president was presented as the most knowledgeable in the courtroom,

while the local actors were imagined to be sleeping in their chairs at the green table. The Javanese judges, prosecutor, and advisors were often described as mere puppets, who did not make any decisions on their own and were of not much influence on the verdict. The jaksa was described as the real artist, but he would play the court session exactly as his stage director, the European judge, ordered him to do. In newspaper articles, the other Javanese actors were often not even mentioned, as in the 'mail coach murder case' described at the beginning of this dissertation. Memoirs of colonial judges also caricatured them as indifferent and superfluous: a wedono who fell asleep during interrogations, the penghulu who always advised cutting off criminals' hands. Landraad court sessions seem to have been completely organized and rehearsed; nothing new or unexpected was supposed to happen during a court session.

The colonial caricatures of the local officials were neither factual nor justified, but even caricatures tell us something. It points at an actual decrease in the legal pluralities actively applied, causing a marginalised role for local actors. Especially with regard to the application of Javanese-Islamic laws, soon in the nineteenth century these laws were not applied anymore. Dutch jurists and scholars, in particular the Supreme Court driven by a codification fever and a strong belief in the superiority of Western law, overlooked old Javanese traditions of Islamic and customary laws. Even if attempts were made to take the laws of Java seriously, the question asked was what *the* Javanese' "own" customs and laws *were*. This was not only an erroneous question to ask about such a diverse legal landscape, it also proved a tricky endeavour to undertake. Over time, a different group of informants on Javanese laws were consulted, which caused a shift in perceptions about the assumed origins of Javanese legal traditions. The (negative) ideas and expectations of the Dutch regarding Islam and the knowledge of Islamic law among the Javanese were also decisive for this process of law-making. The advice by the penghulus on Javanese-Islamic laws was ignored from the start, and criminal law in particular became increasingly Dutch. The jaksas experienced a similar marginalisation. Their advisory role was taken away from them altogether, and their responsibilities as prosecutor were diminished over time as well.

A sense of superiority, racial prejudices, and suspicion about Islam, led to ignorance and distrust regarding local actors. By

marginalising the penghulus and jaksas and underestimating the knowledge and expertise of the court members, the Dutch administrators might have undermined the power of the pluralistic courts. It is hard to prove whether the Javanese population regarded the pluralistic courts as less powerful or legitimate, because Islamic laws were not followed and the penghulu was ignored. It certainly led to less knowledge on the side of the Dutch though, by not acknowledging the potential of the local knowledge and powerholders present in the courtroom. That the jaksa transformed from an influential prosecutor into a lowly official from the nineteenth into the twentieth century, has most likely not only undermined his power, but also that of the colonial state relying on his network and expertise. It is remarkable that, even though these intermediaries were essential to the information gathering during the investigations in big cases, especially in 'priyayi conspiracy cases', they were generally not treated all too well.

From this decrease in legal pluralities at the landraden and circuit courts, at first sight it seems as if the pluralistic character of the courts, after the first stage of state formation, was not relevant anymore for the legitimization of the colonial state. Why then were the pluralistic courts maintained? I have argued that there are some strong indications that the pluralities in criminal law practice nonetheless led to powerful courts important for the colonial state. First of all, the legitimization of the colonial state continued to be an important project throughout the nineteenth century (and the twentieth century), even when colonial rule was more firmly established. The legal pluralities in the laws applied might have disappeared over time, but the legal pluralities in the form of the local court members and officials continued to exist. All local actors continued to be present in the courtroom, continuously representing local power structures, and by being present in the courtroom—wearing their 'traditional' costumes—legitimizing the colonial state.

Moreover, and this is an important argument to stress, the continued existence of legal pluralities offered the possibility to maintain a level of uncertainty, giving the pluralistic courts considerable amount of freedom to exercise their power in criminal cases. Even though the Javanese-Islamic and customary laws were not taken seriously, until 1872 the Colonial Constitution still stated explicitly to judge population groups according their "own" laws and customs.

However, without the obligation to follow the penghulu's advice and thus providing space to manoeuvre. After the introduction of the Native Criminal Code of 1872, based on Dutch laws, this possibility disappeared, but a certain level of uncertainty still existed because a mixture of cultural, religious and racial arguments was still used as mitigating circumstances. The uncertainties in the legal administration and laws, did not always originate from deliberately creating possibilities of oppression; there were sincere attempts to adjust the criminal law system to local interests of the Javanese people. However, in the long run, the uncertainty created could be used to reinforce rule. Therefore, emerging legal pluralities were pragmatically used to advance the colonial agenda. As I have argued in this dissertation, it was by keeping laws undefined, procedures vague, and networks informal—by institutionalising uncertainty—that space was created to exercise colonial rule. Finally the suggestion that pluralistic courts were relying on the local officials and judges for their advice and votes, offered the possibility for Dutch colonial rule to keep their hands clean. Dutch judges blamed the Javanese court members or officials—instead of themselves or the colonial legal system—for certain verdicts announced if something went wrong. By doing this, the Dutch presented themselves as the representatives of enlightened Western justice, while simultaneously maintaining colonial domination.

At the beginning of this dissertation I defined the term pluralistic courts as courts where (1) several actors fulfilled a role originating from more than one legal tradition and (2) the laws and regulations applied originated in more than one legal tradition. I conclude that, in practice, the various actors were indeed present; but, regarding criminal law, there was not so much legal plurality. Although the procedures show some traces of it, for example regarding the Islamic character of the oath, an application of Javanese-Islamic laws and customs did not ensue. The character of the pluralistic courts, therefore, depended not so much on legislative pluralities as on the internal political dynamics amongst a plurality of court's actors.

Injustice: A Dual State

Pluralistic courts in colonial Java were legal spaces within the segregated dual system in which colonial and Javanese (administrative and legal) elites met, administered justice, and exercised control over the Javanese

population. The pluralistic courts, the landraad in particular, not fitting neatly in the framework of divided dual rule, proved a site where imperial justice was mediated, and where the interests and agendas of regional elites dominated. Dutch officials could assess what was going on in the local society only at a very superficial level, and they were therefore merely dependent on the willingness of the priyayi to share information.

Generally, this was not a problem since the priyayi and Dutch officials often had the same interests. Until 1869, the Dutch (assistant) residents were landraad presidents, and they shared the responsibilities with the priyayi to maintain 'peace and order' in the Javanese cities and countryside. The landraden judged over most crimes—often theft or robbery at the public roads—and held the power to impose harsh punishments such as chain labour. The freedom to manoeuvre offered by the vague laws and procedures was used, but also certain ordinances, to punish vagrancy for example, were designed to meet these administrative ends. The police magistracy was a notorious instrument in this regard, but the partiality of the landraden could also easily lead to injustice.

The priyayi were responsible for police affairs and they were much pressured by Dutch administrators to keep the peace among the Javanese. If this meant that abuse of power by the priyayi happened, or that false evidence in criminal cases was produced, the Dutch residents could accept this and look the other way. In the period of the Java war, and shortly after, the Dutch moreover appointed 'new' priyayi, elevated commoners in rank, in return for loyalty, even if they were clearly guilty of misconduct. Loyalty to the colonial state was deemed more important than a universal notion of proper governance. During the cultivation system, this pact between the priyayi and the Dutch grew even stronger, due to the common (and financial) interests in high results from the cultivation system, and the oppressing of protest against the cultivation services through criminal law and the landraad. Due to this entanglement of administrative and financial interests with judicial powers, the impartiality of law was far away, with injustices as result. Review by the Supreme Court was the only supervision of the procedure, but witnesses could not be interrogated again, nor could the evidence presented in the case file be re-checked.

Dual rule in colonial Java inhabited a tension between trust and distrust. Dutch administrators relied heavily on the priyayi, because they lacked the knowledge and information networks themselves, but this also caused 'zones of ignorance' to come into existence, leading to distrust when the limits to dual rule were reached. As concluded above already, the first zone of ignorance from the Dutch side was related to the contents of local laws, leading to false and negative prejudices about Javanese-Islamic laws, and an eventual overruling of these legal traditions. The second zone of ignorance was related to political information of events occurring in the regions. Both zones led to fear within the colonial government, and in times of crisis this fear caused the panic-stricken colonial government to be confused and to act rashly. Extortion by priyayi clearly shows how this mechanism worked in practice. As long as the priyayi maintained peace and order, and the cultivation system worked, they would not be punished for extortion. Only if the extortion was so severe, or if the priyayi were not asserting their control well enough, that it almost erupted in revolt, then the Dutch would interfere. After a first panicked response, however, regents were usually still protected, or given relatively light measures such as transfer of office or (honourable) retirement.

At first sight, it might seem that the priyayi were also better protected from the unequal legal system through the *privilegium fori*, which gave them access to the European courts. This has to be nuanced though. I do not deny that ideas about class, education, culture, and local circumstances were influential, just as race was, but even though a privilegium fori for the higher Javanese class had been introduced, this privilege mainly served the colonial ruler. Most priyayi would fall out of the privileged position once they were no longer in office. Moreover, in criminal cases, the forum was mainly used by the colonial ruler to be able to efficiently apply the political measure, and by doing this the colonial ruler denied also the highest Javanese class a fair trial. The Council of Justice was avoided in priyayi cases, because this would lead to acquittal in most priyayi cases. This fear of acquittal at the Councils of Justice also proofs the independence and higher quality of the European branch of the legal system. Instead of a fair trial at the Council of Justice, priyayi were banned for an unlimited time through the political measure.

But the persons most vulnerable to the partial colonial law system, were of course the vast majority of the local population, who had no chance at all to extricate themselves from the label of "native". Too much emphasis on the possibilities for individuals to ascend in social rank—breaking through racial boundaries - discounts the strict segregation between Europeans and most Javanese in an unequal world legitimized by a segregated legal system.

Rhetoric and Reality

The intertwined dual rule and criminal justice was not undisputed, but colonial administrators generally put off or rejected certain reforms under the guise of the supposed 'lower stage of civilisation' of the Javanese people. The introduction of independent judges as presidents of the landraad, in particular, was expected to make the colonial state too vulnerable in court cases. Liberal jurists strongly advocated this reform though, arguing that the rule of law belonged in Java. Although the fear of losing colonial control was often stronger than the liberating mission, trained jurists were introduced as presidents of the landraad, from 1869 onwards. After their arrival to the pluralistic courtroom the jurists professionalised landraad sessions, and an increase in acquittals shows an improvement in the assesment of legal evidence by the landraden. The jurists also advocated reforms regarding the length and procedures of pre-trial detention. However, most of the abovementioned issues of inequality, uncertainty and injustice would not be solved, and not only because the jurists were not allowed to, but often also because they were not willing to advocate certain reforms, being convinced that solving these problems was impossible in the colonial context.

First of all, even though the judicial landraad presidents confirmed the importance of the jaksa for preliminary investigations, they were dissatisfied by their written indictments. Instead of advocating better training for jaksas, they gradually took over writing the indictment, and became prosecutor and judge in one, thereby furthering the partiality of law, in contrast to their rule of law ideals and earlier so determint crusade for impartial landraad judges. With the introduction of more liberal or "enlightened" measures in the colonial legal system, the distrust vis-à-vis Javanese officials within the legal system seems to have increased. They were seen as unqualified to participate in a modern legal

system. Ironically, western education for Javanese officials was not introduced until the early twentieth century. The jaksas were for a long time not legally trained in the Western tradition because this was considered dangerous, as it would be threatening to colonial rule to give them too much information. The transfer of several of the jaksas' responsibilities to the landraad judge led to the establishment of a rule of lawyers in the courtroom, rather than of a rule of law, at the end of the nineteenth century. In order to strengthen their own position, the Dutch jurists undermined the separation of powers for which they themselves had fought in the 1860s.

In a similar vein, the Dutch jurists also did not invest in striving for educating local attorneys, leaving local suspects deprived of any legal defence. The unofficial *pokrol-bambu* were not taken seriously and even deemed to be dangerous for the local population in the eyes of Dutch jurists and officials alike. The jurists would also not fight for furthering the impartiality of the pluralistic courts, by generally not observing independent *local* court members a necessity. Although after 1869, the landraad president was an independent judicial official, the Javanese priyayi court members—still with the right to vote over the verdict—were still local priyayi with police responsibilities, political interest and a considerable influence in the region.

Regarding the nineteenth century, I conclude that Javanese members and the resident, and later the landraad judge—all found their own space to manoeuvre in the landraad. This dissertation showed how priyayi and colonial administrative officials used the pluralistic courts in order to maintain their rule. With the arrival of judicial landraad presidents, also these jurists found space to act—if they deemed this necessary—in a contingent and open-ended manner. Therefore, administrative colonial officials were not the only ones who deemed the rule of law impossible for Java. Colonial jurists established a rule of lawyers, and they were partly responsible for maintaining colonial legal practices modelled according to the supposed 'uncivilized nature' of the Javanese. Jurists in the Dutch East Indies were often the most strident critics of those features of the colonial state that violated the ideal of the rule of law, but they also gave legal ground to the politics of difference.

Understanding Courtrooms

Javanese men and women entering the pluralistic courtroom, as suspects or witnesses, were confronted with a green table at which men of power in regalia were seated on chairs. While sitting on the ground themselves, their chains released during the court session, the suspect looked up at the court judges, the colonial law books on the table, the writing registrar, the Quran in the hands of the penghulu, a portrait of a Dutch majesty on the wall, and could only wait for the decision over his or her fate. In order to understand, and to do justice to, the histories of the local people subjugated to the pluralistic colonial courts, the conflicts between all these actors and objects are important, because these conflicts were decisive for how they were tried and what punishment they would get—for how their lives would continue after the trial.

The regional colonial courtroom in Java can be regarded as a site where court proceedings were performed as if they were a theatre play, a farce, but also as a place of force where—behind closed doors—imperial justice was mediated. At the same time, it was an arena in which the power of the colonial state was gradually consolidated over the course of the nineteenth century. The pluralistic courts—based on early-modern legal pluralistic practices—existed until the end of the colonial era in 1942, despite many modern reforms in the legal system. The answer to the question why pluralistic colonial courts were maintained has much to do with the channelling of influences within dual rule. The explanation points towards the power of information as a crucial factor in the practice of maintaining law and order in the colonial state. Javanese intermediaries like the jaksas, and local informants such as the penghulu, but also the regent, were distrusted and therefore their influence and status declined over time. Yet, the pluralistic courts would continue to exist because they were the only way in which a relatively effective execution of criminal law was possible within the dual rule structure of Java.

Pluralistic courts fitted within many, seemingly incompatible, Western ideologies floating around in nineteenth-century Java, adjusting to the colonial context. At the start of the century, jurists from the conservative *and* the more liberal stream advocated the incorporation of local legal traditions in criminal justice "for as long as necessary" until the Javanese would be "enlightened enough" for Western laws. At the end of the century, conservatives still vividly advocated these ideas—although the emphasis had

shifted more to the assumed racial and religious difference of the local population—this time accompanied by advocates of the upcoming ethical ideas about 'discovering' adat law and the importance of customary law. The only ones who at some point had serious doubts about the pluralistic character of the landraden and circuit courts, were the liberal jurists of the 1860s and 1870s. Yet, they also realised in practice that they could not administer justice without the local officials, and even though they successfully removed local laws from the codes, the institutional pluralistic character of the courts continued.

The twentieth-century landraad presidents and their practical execution of the adat school ideas in the courtroom, is only one of the issues still open to be assessed after my research was done. And also for the nineteenth century the conclusions of this dissertation lead to more questions to be asked, more research to be done. An analysis of civil cases administered by the landraden, would reveal more about the penghulus and the application of Javanese-Islamic laws. Moreover, the religious courts (*priesterraden*) deserve to be the subject of archival research, in order to understand the practices of these courts and test the validity of the claims made by nineteenth-century orientalists about these courts and the penghulus. As suggested long ago by Cees Fasseur, a comparative study of the racial stratification in the legal system of the Netherlands Indies and South Africa in the context of *apartheid* would also be an important study.[2] Furthermore, the 'Javanese model' of the legal system was applied at other islands as well, although everywhere in a different way. This led to colonial courtrooms all over the archipelago, where (just as in Java) the independence and certainty of law was seriously damaged, for example—and perhaps worst—at the East coast of Sumatra where plantation administrators were seated in the landraad as court members.[3] I also think of the possibilities of studying more in-depth the continuities of colonial law practices in post-colonial Indonesia. Legal anthropologists have already pointed at continuities in the distinctive position of the Supreme Court in Indonesia—regarding

[2] Fasseur, "Hoeksteen en struikelblok," 218-219. In this article, Fasseur called for a comparative research into the common roots of racial stratification in the Netherlands Indies and *apartheid* in South Africa.

[3] See for example: ANRI AS Bt. March 30, 1893, no.18. Administrator D.E.K. Richelmann of the firm Eekels & Co, appointed as court member at the Landraad of Medan.

review and circulating legal advice to lower courts—and also at the current Islamic codes having their origins in VOC compilations of Javanese-Islamic laws. The current Criminal Code of Indonesia continues to be the Criminal Code as introduced by the Dutch.[4]

Finally, this research travelled through the entire nineteenth century, and many of the themes of this dissertation—state formation, legal pluralism, colonial liberalism, uses of justice, the material culture of courts and legal professionals engage with wider debates in history and allied discplines. The purpose of this dissertation was to explore a less travelled field of study, that of the practices of law in colonial Java, and to better understand how a focus on courtroom interactions gives important insights on these larger themes. Bringing together the work of Lauren Benton and others on legal pluralism, and scholars such as Chris Bayly on local intermediairies and colonial knowledge, I draw from both these lines of thought in order to craft a new approach to research the interaction between state and society in colonial Java. I argue that the local context of colonial spaces, and their actors as a focal point is crucial in understanding the process of colonial state formation.

I used the lens of the pluralistic courtroom, to identify the conflicts of the courtroom. Not the conflicts one would expect in a courtroom—those between suspect and victim, between state and suspect—but the jurisdictional and political conflicts between local and colonial laws, between Javanese and Islamic legal traditions, between Supreme Court and regional interests, between conservatives and liberals, between jaksas and penghulus, between residents and jurists, between colonial courts and local attorneys, and between priyayi and Dutch officials. Conflicts that were central to daily criminal practice in colonial Java and central to the formation and maintenance of a multi-layered and complex colonial state based on precariously balanced dual rule.

[4] See for example: Termorshuizen-Arts, "Revisie en Herziening"; Van Huis, *Islamic courts and women's divorce rights in Indonesia.*

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Appendix 1 – Colonial Compendia and Codes

1750	Semarang Compendium.
1761	Freijer Compendium. [reintroduced in 1828].
1765	Pepakem Cirebon.
1803	Asian Charter. "Charter, opzichtelijk het beleid der Policie en Justitie mitsgadershet drijven van den Handel in de Asiatische Bezittingen der Bataafsche Republiek."
1814	Raffles' Court Regulation. "Regulation for the more effectual administration of Justice in the Provincial Courts of Java."
1815	Regeringsreglement (Colonial Constitution). "Reglement op het beleid van de Regering, het Justitiewezen, de Cultuur, en den Handel in 's lands Aziatische Bezittingen."
1818	Regeringsreglement (Colonial Constitution). "Reglement op het beleid van de Regering, het Justitiewezen, de Cultuur, en den Handel in 's lands Aziatische Bezittingen."
1819	Provisional Regulations. "Reglement op de administratie der politie en de krimineele en civiele regtsvordering onder den Inlander in Nederlandsch-Indië."
1827	Regeringsreglement (Colonial Constitution). "Reglement op het beleid van de Regering, het Justitiewezen, de Cultuur, en den Handel in 's lands Aziatische Bezittingen."
1828	Police regulations Batavia and Ommelanden. "Reglement op het bestuur der policie onder den Inlander, in de staf en voorsteden van Batavia."
1829	Police regulations Surabaya. "Policie reglement voor de stad en voorsteden van Soerabaija."
1830	Regeringsreglement (Colonial Constitution). "Reglement op het Beleid der Regering in Nederlandsch Indie."

1836	Regeringsreglement (Colonial Constitution). "Reglement op het Beleid der Regering in Nederlandsch Indie."
1847	Colonial Law Codes: • "Algemene Bepalingen van Wetgeving voor Nederlandsch Indië." • Court Regulations. "Reglement op de Regterlijke Organisatie en het Beleid der Justitie in Nederlandsch Indie."
1848	Colonial Law Codes: • "Nieuwe Zamenstelling der Inlandsche Regtbanken en Geregten op Java en Madura en Beëdiging van dezelve." • Native Regulations *[Inlandsch Reglement*]. "Reglement op de Uitoefening der Policie, de Burgerlijke regtspleging en de Strafvordering onder de Inlanders en de daarmede Gelijkgestelde personen op Java en Madura." • "Bepalingen ter regeling van eenige onderwerpen van Strafwetgeving, welke eene dadelijke voorziening vereischen." • "Bepalingen omtrent de invoering van en den overgang tot de nieuwe wetgeving."
1854	Regeringsreglement (Colonial Constitution). "Reglement op het beleid der Regering van Nederlandsch Indie van 1854."
1872	Native Criminal Code. "Wetboek van Strafrecht voor Inlanders en daarmede gelijkgestelden in Nederlandsch-Indië."
1918	Criminal Code. "Wetboek van Strafrecht voor Nederlandsch-Indië."
1941	Revised Native Regulations. "Herzien Inlandsch Reglement."

Appendix 2 - Tables

Table 1 48 files of landraad cases collected from the residency archives in ANRI (sources: ANRI GS Tangerang, Semarang, Pekalongan, Inlandsche Zaken)

When	Where	Name(s) accused	Accusation	Laws referenced to	Verdict
9-10-1820	Semarang	Singotroeno	Receiving stolen goods	"Mahomedan laws"	3 months chain labour
12-12-1821	Gresik	Pa Badjing, Pa Giena, Singo Wongso, Tro Yoijo, Singo Diwongso, Singo Krongso	Buffalo theft	PR 1819, Article 125.'	100 rattan lashes and 5 years chain labour
20-12-1821	Gresik	Pa Moor	Misrepresentation *(misbruik van vertrouwen)*	None	30 rattan lashes and 3 months chain labour
20-12-1821	Gresik	Chinese trader Tan Toedjan and former demang Wiero Patty	Fencing	None	50 rattan lashes and 3 years chain labour
12-12-1821	Gresik	Farmer Singo Tjondro	Theft of government´s wood	Ordonnance of 29 Augustus 1808: Regulations regarding the woods at Java.	2 years chain labour
10-6-1822	Semarang	Village chief Metto Singo and Javanese woman Ombo Kaser	Receiving stolen goods (village chief)	None	6 months chain labour
16-1-1826	Tangerang /West Quarters Ommelanden	Oetang Bappa	Burglary rice storage	"Native laws"	30 rattan lashes and 1 year chain labour
16-1-1826	Tangerang	Nakiem	Burglary	"Native laws"	40 rattan lashes and 4 years chain labour
16-1-1826	Tangerang	Dul-akier	Burglary	"Native laws"	30 rattan lashes and 1,5 years chain labour
16-1-1826	Tangerang	Djimien and Ama	Burglary	"Native laws"	40 rattan lashes and 1,5 years chain labour

16-1-1826	Tangerang	Noramien	Burglary rice storage	"Native laws"	3- rattan lashes and 2 years chain labour
3-7-1826	Tangerang	Chinese coolie Lim Boentjioe	Burglary	None	40 rattan lashes and 2 years chain labour
15-10-1827	Tangerang	Jaliman	Burglary	"Native laws"	40 rattan lashes and 1 years chain labour
15-10-1827	Tangerang	Farmers Mariem, Tahieb, Kaliem and Samsoe	Buffalo theft	"Native laws"	40 rattan lashes and 4 years chain labour
24-5-1830	Semarang	Coolies Soedoo, Padjidin, Goedik and Sidik	Burglary	None	5 years chain labour and whipping at location of crime
9-11-1831	South Quarters Ommelanden	Farmers Samaidien and Tjeng-en	Burglary	PR 1819, Article 120	30 rattan lashes and 2 years chain labour
11-9-1831	South Quarters Ommelanden	Tjengteng	Attempt of burglary	Nee	30 rattan lashes and 3 years chain labour
11-9-1831	South Quarters Ommelanden	Dril	Theft of head scarf	"Native laws" and PR 1819, Article 120	30 rattan lashes and 2 years chain labour
26-11-1831	South Quarters Ommelanden	Farmer Sarida	Burglary	"Native laws" and Vagrancy Ordonance of 23 August 1825, article 1 and 2.	4 years chain labour [burglary not proven, nonetheless convicted because of vagrancy]
19-11-1834	South Quarters Ommelanden	Salie-in	Burglary rice storage	"Native laws" and PR 1819, Article 120	25 rattan lashes and 3 years chain labour
19-11-1834	South Quarters Ommelanden	Kodja Spring	Theft of chicken (recidivism)	"Native laws"	25 rattan lashes and 2 years chain labour
26-11-1834	South Quarters Ommelanden	Foengier	Accomplicity burglary	"Native laws"	25 rattan lashes and 3 years chain labour

3-12-1834	South Quarters Ommelanden	grass cutter Badak and gardener Djanoesien Singke	Burglary	"Native laws" and PR 1819, Article 120	30 rattan lashes and 4 years chain labour
12-3-1834	South Quarters Ommelanden	farmer (and spy) Radien Bapa Ratiemien	Accomplicity burglary	"Native laws"	30 rattan lashes and 5 years chain labour
12-10-1834	South Quarters Ommelanden	Sawang, Lompo Bapa Saijman and Saimien	Accomplicity burglary	"Native laws"	30 rattan lashes and 3 years chain labour
12-10-1834	South Quarters Ommelanden	Boender	Burglary	"Native laws"	25 rattan lashes and 2 years chain labour
17-12-1834	South Quarters Ommelanden	[file incomplete]	Burglary and vagrancy	"Native laws" and Vagrancy Ordonance of 23 August 1825, article 1 and 2.	30 rattan lashes and 4 years chain labour
17-12-1834	South Quarters Ommelanden	Farmer Mieng	Burglary (recidivism)	"Native laws"	25 rattan lashes and 5 years chain labour
6-2-1839	Semarang	Soditro	Accomplicity burglary	None	4 years chain labour and whipping
15-7-1840	South Quarters Ommelanden	Farmers Blonga, Sukiem and Nairien	Buffalo theft	None	25 rattan lashes and 3 years chain labour
15-7-1840	South Quarters Ommelanden	Farmer Bagong Bapak Daimoen	Buffalo theft	None	25 rattan lashes and 3 years chain labour
6-4-1842	South Quarters Ommelanden	Sairoen Bapak Saime	Burglary	None	25 rattan lashes and 3 years chain labour
23-5-1842	South Quarters Ommelanden	Farmers Bokor Bapa Am, Boegies Bapak Baija and house wife Satija Ma Baija	Burglary	None	25 rattan lashes and 3 years chain labour
22-8-1842	South Quarters Ommelanden	Gardener Armaroedien	Rape	None	3 years chain labour and whipping
22-8-1842	South Quarters Ommelanden	Enslaved man Lombo	Burglary (by enslaved woman)	None	15 rattan lashes and 2 years chain labour

26-6-1847	Tangerang	Moesliem	Misrepresentation *(misbruik van vertrouwen)*	None	25 rattan lashes and 3 years chain labour
30-10-1847	Tangerang	Scribe Oeij Kanhoen	Misrepresentation *(misbruik van vertrouwen)*	None	[incomplete file]
1-12-1855	Tangerang	Senan	Burglary	RO art.9552. IR art.282, 283, 284, 297, 232 and 417. Temporary Regulations Criminal Law 1848, art.20.	2 jaar dwangarbeid buiten de ketting
17-7-1863	Pekalongan	Farmer Tarban and Wandjo	Burglary	"Tatjir" (*tazir*) and Police Regulation art.245.	2 years chain labour
30-6-1864	Pekalongan	Hadji Krintel	Burglary	"Chad" (*hadd)*	4 years chain labour
27-3-1874	Tangerang	file incomplete	Burglary	"Hat" (*hadd)*	5 years chain labour
20-6-1874	Tangerang	file incomplete	Physical abuse that not led to more than 20 days of disability to work.	None	1 years forced labour and fine of 50 guilders.
14-7-1874	Tangerang	Chinese gambling license holder Poo Tjeng	Allowing seven days of gambling at the pasar of Tangerang without paying taxes.	S 1849, no.52.; S 1873 no.227.	Fine of 100 guilders *or* 14 days forced labour.
12-8-1875	Tangerang	Chinese gardener (file incomplete)	misrepresentation (*misbruik van vertrouwen)*	Native Criminal Code art.332 no.4 and IR art.241.	1 year forced labour
16-11-1875	Tangerang	Chicken trader Midien and farmer Sentong	Buffalo theft	"Mahomedan laws" and Native Criminal Code art.301 no.4 and IR art.241.	7 years chain labour
19-7-1877	Tangerang	Chinese woman Thieng Pangsio and Chinese farmer Ko Boen	Fraud	IR art. 242, 312, 329 and 417. Native Criminal Code art.329.	2 years forced labour and fine 1000 guilders.

4-7-1885	Tangerang	Fisherman Ardaman and basket maker Arman	Accomplicity burglary	Pre-printed advice penghulu: "according to religious laws and institutions of the Native." Written advice penghulu: "Hadd"	5 years chain labour
20-12-1888	Tangerang	Farmer Sana-at bapa Sairoen	Expropriation property (Cutting trees that belong to someone else)	Pre-printed advice penghulu: "according to religious laws and institutions of the Native."	Acquittal

NB: In this table a basic overview is given of the information as collected from the sources. The names of the court members and the verdict's confirmation of the Supreme Court, for example, are not included. Also, only the laws are mentioned that are referenced to in the files. The advice on the punishment as provided by the penghulu (and jaksa) is not included (for example: cutting of the right hand) in this table (see Table 5).

Table 2 Newly convicted persons in Java and Madura (criminal cases) per year [Colonial Report (*Koloniaal Verslag)* 1854, 1864, 1874, 1884]

	Europeans	**Natives**	**Foreign Orientals**
1854	16	2573	
1864	58	5198	214
1873	114	9785	385
1882	109	8371	323

NB: These statistics are the verdicts as imposed by the law courts in Java and Madura and exclude the measures takes by the residents functioning as police magistrats. The police magistrate numbers are much higher, as some colonial reports mention. In 1864, for example, when 5198 Natives and 215 Foreign Orientals were convicted by courts (as shown in this table), another 61.425 Natives and 4744 Foreign Orientals were convicted by police magistracy (with inprisonment, pillory or forced labour). The statictics of 1882 shows that in that year 108.575 Natives and 3473 Foreign Orientals were convicted by police magistracy in Java and Madura. (see Table 3)

Table 3 Total number of accused persons in criminal cases (*misdrijven)* in the Netherlands Indies at colonial law courts [Colonial Report (*Koloniaal Verslag)* 1893 Appendix 3]

	Europeans	**Natives**	**Foreign Orientals**
1862	69	7.649	340
1863	90	6.384	237
1886	156	15.132	544
1887	148	15.988	576
1888	136	16.615	619
1889	139	18.945	629
1890	175	18.706	588

Table 4 Persons punished by police magistracy in Java and Madura [Colonial Report (*Koloniaal Verslag)* 1893 Appendix 3]

	Natives	**Foreign Orientals**
1857	62.584	
1862	88.851	
1863	80.414	
1886	144.089	23.981
1887	163.429	20.031
1888	186.807	19.675
1889	180.012	25.691
1890	210.695	24.075

Table 5 - Overview of the advice provided by the penghulus of the landraden in the Environs of Batavia and the landraad of Pekalongan (in thirty theft cases).

Theft cases	**1826–42**	**1863–85**
Mutilating punishment	6	4
Other (milder) punishment	19	1

Table 6 Overview of the salary of priyayi and Dutch officials in 1867 and 1928. [S 186/5, S 1866/6, S 1867/125, S 1928/38].[1]

Rank	**Monthly salary *f* in 1867**	**Monthly salary *f* in 1928**
Resident	1000-1500	1150 – 1300
Assistent-Resident	600-700	625 – 1250
Landraadvoorzitter	_	625 – 1250
Controleur	300-400	400-775
Bupati (regent)	1100 – 1200	1350
Patih	300	525 – 675
Hoofd-jaksa	250	325 – 525
Wedono (Districtshoofd)	250	325 – 525
Jaksa 1e klasse	_	225 – 350
Adjunct hoofd-jaksa 1e klasse	_	225 – 300
Adjunct hoofd-jaksa	100	175 - 250
Jaksa	100	100 – 250
Assistent wedono (Onderdistrictshoofd)	100	100 - 250
Adjunct jaksa 1e klasse	_	160 – 175
Adjunct jaksa	75	100– 160

[1] In 1867, for the Dutch officials, their salary would be increased by representation and travel expenses. The Javanese regents obtained cultivation percentages on top of their salary, until 1907. For Europeans the cultivation percentages were abolished in 1867.

Table 7. Political measure imposed in Java, 1858-1918.[2]
[Jongmans, *De exorbitante rechten*, 179-200.**]**

Year	Banned by political measure	Year	Banned by political measure	Year	Banned by political measure
1858	1	1879	23	1900	0
1859	1	1880	1	1901	0
1860	2	1881	1	1902	0
1861	0	1882	0	1903	7
1862	0	1883	3	1904	1
1863	0	1884	2	1905	0
1864	1	1885	1	1906	0
1865	0	1886	0	1907	0
1866	0	1887	3	1908	9
1867	0	1888	0	1909	4
1868	0	1889	91	1910	1
1869	0	1890	21	1911	1
1870	0	1891	0	1912	0
1871	0	1892	0	1913	0
1872	0	1893	2	1914	2
1873	5	1894	10	1915	1
1874	1	1895	2	1916	5
1875	0	1896	1	1917	0
1876	0	1897	1	1918	1
1877	0	1898	0		
1878	0	1899	0	**Total**	**205**

[2] This table only includes Java. Most of the persons banned, were Javanese. They were designated as 'hajis', 'magicians' and 'priyayi' (after conspiracy but also criminal deeds such as murder), and 'revolters' after acquittal. In the entire Netherlands Indies, 750 people were banned by political measure from 1855-1900, and around 500 from 1901-1911. (see Jongmans, 85 and 128.). The total number of people banned was higher, since wives and children of the banned priyayi, accompanied them to the place of exile.

Samenvatting

Javaanse mannen en vrouwen die in de negentiende eeuw als verdachte of getuige een koloniale rechtszaal binnenkwamen, werden geconfronteerd met een grote tafel bedekt met een groen tafelkleed, waarachter mannen in vol ornaat zaten. Terwijl de verdachte zelf op de grond plaatsnam en omhoog keek naar de Javaanse en Nederlandse rechters op stoelen, de koloniale wetboeken op de tafel, de schrijvende griffier, de Koran in de handen van de *penghulu* (Islamitische adviseur), en een portret van de Nederlandse vorst aan de muur, konden zij slechts wachten op het vonnis over hun lot. Om de geschiedenissen van lokale personen, onderworpen aan de pluralistische rechtbanken, te begrijpen, zijn de ontmoetingen en conflicten tussen de actoren aan tafel en de 'objecten' in de rechtszaal belangrijk. Deze staan daarom centraal in dit proefschrift.

Op koloniaal Java bestonden aparte rechtbanken en wetten voor verschillende bevolkingsgroepen. Dit gesegregeerde systeem bood ruime mogelijkheden voor een ongelijk rechtssysteem, ontworpen voor het opleggen van koloniaal bestuur aan de lokale bevolking. In de praktijk hield dit in dat de rechtbanken waar Europeanen werden berecht, werden voorgezeten door meer ervaren juristen en betere mogelijkheden tot verdediging door een advocaat boden. De lokale bevolking werd daarentegen veelal berecht door de landraad. Deze pluralistische rechtbank bestond niet uit juristen, maar uit Javaanse en Nederlandse bestuursambtenaren en was daardoor niet onafhankelijk van het bestuur. Op Java waren begin negentiende eeuw voor het berechten van halsmisdrijven wel rondreizende rechtbanken aangesteld met een jurist als voorzitter. Het vonnis in deze ommegaande rechtbanken werd echter, net als in de landraden, bepaald na stemming door een college van rechters waarvan de meerderheid bestond uit lokale Javaanse bestuursambtenaren, die ook verantwoordelijk waren geweest voor het politieonderzoek.

Bovendien leidde de gescheiden strafwetboeken voor de Javaanse (en Chinese) bevolking tot verschillende straffen voor dezelfde misdaden. In het geval van diefstal belandden Europeanen in de gevangenis, terwijl Javaanse veroordeelden over het algemeen werden veroordeeld tot kettingarbeid. Pas in 1918 werd een geünificeerd strafwetboek

geïntroduceerd voor alle bevolkingsgroepen. Dit bracht echter niet veel verandering, aangezien bepaalde straffen, zoals de doodstraf, in de praktijk vrijwel alleen aan de lokale en Chinese bevolking werden opgelegd. Bovendien werd alleen het Wetboek van Strafrecht geünificeerd, terwijl het procedurele strafrecht — voor niet-Europeanen het Inlands Reglement — verschillend bleef voor de diverse bevolkingsgroepen. Het Inlands Reglement was eenvoudiger en bevatte minder waarborgen voor verdachten, die hierdoor bijvoorbeeld heel lang in preventieve hechtenis gehouden konden worden. Ook kregen ze vaak geen rechtsbijstand van een advocaat.

Het doel van dit proefschrift is echter niet alleen het aantonen van de grote ongelijkheid in het gesegregeerde strafrechtssysteem in koloniaal Java, maar tevens het bieden van inzicht in de werking van dit ongelijke systeem in de praktijk, door middel van een actor-gerichte benadering binnen het theoretische raamwerk van rechtspluralisme. Met als startpunt telkens de rechtszaal zelf analyseert dit proefschrift de conflicten die zich voordeden tussen de diverse actoren rond de groene tafel. Dit was de enige plek op Java waar alle regionale machtsstructuren elkaar ontmoetten en actief samenwerkten. De pluralistische rechtbanken waren daardoor vol met juridische, politieke en persoonlijke conflicten. Ze waren bovendien ook in interactie, en conflict, met andere staatsinstellingen en -lagen, die gezamenlijk het project van de koloniale staatsvorming voortstuwden. Via deze benadering toon ik aan hoe niet alleen *ongelijkheid*, maar ook *onzekerheid* en *onrechtvaardigheid* centraal waren in het koloniaal strafrecht zoals dat opgelegd werd aan de lokale bevolking.

Aan het begin van het proefschrift definieer ik de term pluralistische rechtbank als een rechtbank waar [1] actoren uit meer dan één rechtstraditie een formele rol vervullen, en waar [2] de toegepaste wetten en reglementen stammen uit meer dan één rechtstraditie. Ik concludeer dat in de praktijk de toegepaste wetten niet erg pluralistisch waren, maar dat de pluraliteit van actoren wel tot het einde van de koloniale tijd werd gehandhaafd.. Alhoewel de procedures enkele sporen laten zien, bijvoorbeeld het Islamitische karakter van de eed, hield de toepassing van Javaans-Islamitisch en gewoonterecht in de pluralistische rechtbanken geen stand. Het karakter van de pluralistische rechtbanken was daarom niet zozeer gebaseerd op plurale jurisdictie als wel op interne politieke en persoonlijke dynamiek tussen de diverse actoren.

In deel 1 ‘Ankers van koloniale macht’ traceer ik de lange-termijnontwikkeling van de pluralistische rechtbanken op Java met een focus op de rechtbanksamenstelling en de toegepaste wetten. De komst van de Verenigde Oost-Indische Compagnie (VOC) naar Java in de zeventiende eeuw vormde geen rechtshistorische breuk, maar een voortzetting van een lange pre-koloniale Javaanse geschiedenis van rechtspluraliteiten. Geleidelijk werden tijdens de achttiende eeuw pre-koloniale rechters — de jaksa’s en penghulu’s — onderdeel van koloniale rechtbanken, waar zij advies gaven over Javaans gewoonterecht en Javaans-Islamitische rechtstradities. Prominente Javaanse priyayi (regionale bestuurders uit adellijke families) werden aangesteld als rechters. De centrale gedachte was dat Javanen en andere lokale bevolkingsgroepen volgens hun eigen wetten berecht moesten worden, onder de supervisie van een Nederlandse rechtbankpresident. Het snel toenemende aantal pluralistische rechtbanken op Java, maakte koloniaal bestuur zichtbaar, voelbaar en praktisch op een regionaal niveau. Zulke rechtbanken waren de ankers van het koloniaal bestuur op Java in de achttiende en de vroege negentiende eeuw.

Later in de negentiende eeuw werden de pluralistische rechtbanken echter vaak gezien als onbelangrijke plekken die zich slechts bezighielden met kleine strafzaken en de onbelangrijke ‘gewone’ Javaan. Nederlandse juristen, in het bijzonder die in het Hooggerechtshof in Batavia, werden gedreven door codificatiekoorts en een sterk geloof in de superioriteit van het ‘westers recht’. Zij toonden amper interesse in of kennis van oude Javaanse rechtstradities met betrekking tot het Islamitisch en gewoonterecht. De Javaans-Islamitische (straf)wetten werden al vroeg in de negentiende eeuw niet meer toegepast. De Nederlandse landraadpresident werd bovendien in koloniale bronnen gepresenteerd als degene in de rechtszaal met de meeste kennis, terwijl de lokale actoren er niet erg goed vanaf kwamen. Stereotyperingen van Javaanse rechtbankleden die in slaap vielen tijdens ondervragingen, de jaksa die onjuiste vertalingen gaf, en de penghulu die altijd adviseerde om de handen van dieven af te hakken, werden gemeengoed.

In deel 2 ‘Gelegitimeerd recht’ toon ik aan via de actor-gerichte benadering, en op basis van archiefonderzoek, dat deze karikaturen van de lokale actoren niet juist waren. Ik onderzoek vervolgens wat de ontwikkeling van de positie van de penghulu’s en jaksa’s binnen de koloniale rechtszaal was, hoe zij gemarginaliseerd werden en wat hiervan de gevolgen waren.

Een superioriteitsgevoel, raciale vooroordelen en achterdocht over de Islam onder de Nederlanders leidden tot onwetendheid en wantrouwen ten opzichte van lokale actoren. De adviezen van penghulu's over Javaans-Islamitisch recht werden grotendeels genegeerd vanaf het moment dat zij plaatsnamen in de pluralistische rechtbanken. De jaksa's maakten eenzelfde marginalisering door. Hun adviseurschap werd volledig van hen afgenomen, en hun verantwoordelijkheden als aanklager werden op den duur geminimaliseerd.

Door het marginaliseren van de penghulu's en jaksa's en het onderschatten van de kennis en expertise van de rechtbankleden, ondermijnden de Nederlandse ambtenaren mogelijk de macht van de pluralistische rechtbanken. Of de Javaanse bevolking de pluralistische rechtbanken als minder machtig of legitiem ging beschouwen, omdat de Islamitische wetten niet gevolgd werden en het advies van de penghulu genegeerd werd, is moeilijk te bepalen. Zeker is wel dat dit alles leidde tot minder kennis aan de zijde van de Nederlanders, doordat zij het potentieel van lokale kennis aanwezig in de rechtszaal niet erkenden. Dat de jaksa tijdens de negentiende eeuw transformeerde van een invloedrijke aanklager in een lage ambtenaar heeft zeer waarschijnlijk niet alleen zijn macht aangetast, maar ook die van de koloniale staat die leunde op zijn netwerk en expertise.

Ondanks de verminderde pluraliteiten in het koloniaal strafrecht betoog ik dat het voortdurende plurale karakter van de landraden en ommegaande rechtbanken — in de vorm van de diversiteit aan actoren — desondanks leidde tot machtige rechtbanken die belangrijk waren voor de koloniale staat. Ten eerste bleef de legitimering van de koloniale staat een voortdurend en essentieel project tijdens de negentiende (en twintigste) eeuw, ook toen het koloniaal bestuur op Java al steviger was gevestigd. De rechtspluraliteiten in de toegepaste wetten waren in de loop der tijd dan wel grotendeels verdwenen, maar pluraliteiten in de vorm van lokale rechtbankleden en medewerkers bleven bestaan. Alle lokale actoren bleven aanwezig in de rechtbank om de lokale machtsstructuren te vertegenwoordigen. Alleen al door die aanwezigheid in de rechtszaal — in 'traditioneel' kostuum — legitimeerden zij de koloniale staat.

Verder leidden de rechtspluraliteiten tot een grote mate van onzekerheid in het recht. Dit gaf de pluralistische rechtbanken veel vrijheid om hun macht naar believen uit te oefenen in strafzaken. Ook al werden de Javaans-Islamitische wetten en het gewoonterecht in de rechtspraktijk niet

serieus genomen, in het Regeringsreglement stond tot 1872 expliciet vastgelegd dat de lokale bevolking berecht moest worden volgens hun 'eigen' wetten en gewoonten. Er bestond echter geen verplichting om het advies van de penghulu hierin te volgen en dus was er ruimte om te manoeuvreren. Na de introductie in 1872 van het Wetboek voor Inlanders en met hen gelijkgestelden, dat grotendeels was gebaseerd op Nederlandse wetten, verdween deze mogelijkheid, maar een bepaald niveau van onzekerheid bestond nog steeds. Nog altijd werd een combinatie van culturele, religieuze en raciale argumenten gebruikt onder het mom van 'verzachtende omstandigheden'. De onzekerheden in het rechtssysteem kwam niet altijd voort uit het opzettelijk creëren van mogelijkheden tot onderdrukking; er waren oprechte pogingen om het strafrecht aan te passen aan de lokale rechtstradities en belangen van de Javaanse bevolking. Op de lange termijn kon de onzekerheid niettemin leiden tot misbruik van macht.

In deel 3, 'Ruimte om te manoeuvreren', onderzoek ik deze strategie van onzekerheid in de praktijk en analyseer ik de samenwerking en conflicten tussen de Javaanse rechtbankleden en de Nederlandse voorzitter. De landraad in het bijzonder paste niet binnen het raamwerk van het gescheiden duale bestuur. Het was een plek waar koloniaal recht werd onderhandeld en waar de belangen van de regionale elites domineerden. Nederlandse ambtenaren konden slechts tot op zekere hoogte achterhalen wat speelde binnen de lokale samenleving, en zij waren daardoor afhankelijk van de bereidheid van de priyayi om informatie te delen.

Over het algemeen leidde dit niet tot conflict tussen de rechtbankleden, aangezien de Javaanse priyayi en Nederlandse ambtenaren vaak dezelfde belangen hadden. Tot 1869 waren de Nederlandse (assistent-) residenten de landraadvoorzitters en zij deelden de verantwoordelijkheid met de priyayi om de 'rust en orde' op Java te behouden. De landraden berechtten de meeste misdaden — vaak diefstal of beroving — en hadden de macht om zware straffen op te leggen zoals kettingarbeid. Vage wetten en procedures bevorderden zoals gezegd de manoeuvreerruimte van de rechtbank Bepaalde ordinanties, zoals bijvoorbeeld die om landloperij te bestraffen, waren zelfs speciaal ontworpen om aan de bestuurlijke belangen tegemoet te komen. De partijdigheid en afhankelijkheid van de landraden kon gemakkelijk leiden tot onrecht.

De priyayi waren verantwoordelijk voor politiewerkzaamheden en zij werden door Nederlandse ambtenaren onder druk gezet om de rust te

bewaren onder de Javaanse bevolking. Machtsmisbruik door priyayi en het produceren van vals bewijs in strafzaken werd oogluikend toegestaan door veel Nederlandse residenten. In de periode van de Java-oorlog stelden de Nederlanders bovendien 'nieuwe' priyayi aan in ruil voor hun loyaliteit aan het Nederlandse bestuur en zelfs als zij zich schuldig hadden gemaakt aan misdaden. Het daarop volgende cultuurstelsel versterkte het pact tussen de priyayi en de Nederlanders nog verder, doordat het leidde tot gezamenlijke (financiële) belangen in goede opbrengsten, en in het onderdrukken van lokale protesten via het strafrecht en de landraad.

Door deze verstrengeling van de administratieve en financiële belangen met de rechterlijke macht was de onpartijdigheid van de rechtsbedeling ver te zoeken. Revisie door het Hooggerechtshof was de enige aanwezige controle op een landraadproces, maar getuigen werden niet opnieuw gehoord en ander bewijs kon vaak niet meer worden geverifieerd.

Al met al rustte het duaal bestuur van koloniaal Java op een wankel evenwicht tussen vertrouwen en wantrouwen. In deel 4 'Grenzen aan het duaal bestuur' onderzoek ik de spanningen binnen het pact tussen de priyayi en de Nederlandse koloniale overheid, door middel van het analyseren van grote zaken betreffende (1) knevelen van de Javaanse bevolking door priyayi, en (2) samenzweringszaken van priyayi tegen Nederlandse bestuurders. Deze zaken onthullen het karakter van het duaal bestuur; gewoonlijk bleef dit verborgen, maar in tijden van crisis werd het zichtbaar.

Nederlandse koloniale ambtenaren leunden zwaar op de Javaanse priyayi, omdat het hen aan de kennis en informatienetwerken ontbrak, maar dit veroorzaakte ook het ontstaan van 'zones van onwetendheid' die leidden tot wantrouwen als de grenzen aan het duaal bestuur werden bereikt. De kwestie van knevelarij door priyayi laat duidelijk zien hoe dit mechanisme in de praktijk werkte. Als de priyayi de 'rust en orde' bewaarden, en het cultuurstelsel floreerde, werden zij doorgaans niet gestraft voor knevelarij. Alleen als de knevelarij zo ernstig was dat er bijna een opstand uitbrak, of als de priyayi deze niet effectief onderdrukten greep het Nederlandse bestuur in. Na een eerste paniekreactie werden regenten (de hoogste priyayi) dan over het algemeen toch beschermd, of kregen zij relatief lichte straffen zoals overplaatsing of een (eervolle) pensionering.

Het was ook mogelijk om de priyayi geheel buiten de rechtbank te houden in het geval van strafzaken, om schade aan het prestige van de koloniale staat te voorkomen. Het ontwijken van de pluralistische rechtbank

via het *forum privilegiatum* (dat Javaanse priyayi onderbracht bij de Europese rechtbanken als zij verdacht werden van een misdaad) had echter ook een tweede consequentie. Het forum privilegiatum, in eerste instantie ingesteld om priyayi te beschermen, raakte na verloop van tijd in geval van strafzaken verstrengeld met de politieke maatregel; het werd een manier voor het koloniaal bestuur om personen te verbannen die beschouwd werden als gevaarlijk, controversieel en bedreigend voor de koloniale overheersing. Het forum privilegiatum werd voornamelijk gebruikt om de politieke maatregel effectief te kunnen gebruiken. Op die manier werd ook de priyayi, de hoogste Javaanse klasse, een rechtvaardige procesgang ontzegd.

Het meest kwetsbaar binnen het partijdige koloniale rechtssysteem was natuurlijk de 'gewone' lokale bevolking, die geen enkele kans had zichzelf te ontdoen van het etiket 'inlander'. Daarom betoogt dit proefschrift dat in historisch onderzoek te veel nadruk is gelegd op de mogelijkheden voor personen om te stijgen in sociale rang — en door raciale grenzen heen te breken — en buiten beschouwing laat dat er in Nederlands-Indië sprake was van een strikte segregatie tussen Europeanen en niet-Europeanen. Het was een ongelijke wereld die gelegitimeerd werd door een gesegregeerd rechtssysteem.

Het onderling verstrengelde duaal bestuur en strafrecht op Java was niet onomstreden, maar koloniale ambtenaren verwierpen de meeste hervormingsvoorstellen met verwijzing naar de 'lagere trede van beschaving' waarop de Javaanse bevolking zich zou bevinden. Vooral de introductie van onafhankelijke landraadvoorzitters werd gezien als een verandering die de koloniale staat te kwetsbaar zou maken. Liberale juristen streden desondanks hevig voor deze hervorming, en betoogden dat de rechtsstaat ook op Java thuis hoorde. En alhoewel de angst voor het verliezen van koloniale controle vaak groter was dan de overtuigingskracht van de liberale missie, werden vanaf 1869 professionele rechters inderdaad aangesteld als landraadvoorzitters. Ik concludeer echter dat de Javaanse leden en de Nederlandse voorzitter, en later de professionele landraadvoorzitter, allemaal hun eigen manoeuvreerruimte in de rechtszaal vonden. Alhoewel de komst van de liberale juristen in de pluralistische rechtszaal leidde tot enkele verbeteringen, met name op het gebied van juridisch bewijs en preventieve hechtenis, laat ik zien dat deze koloniale juristen uiteindelijk toch ook de ongelijke en onzekere praktijken van het koloniale rechtssysteem voortzetten. Dit deden zij vooral door taken van de

jaksa's over te nemen en te fungeren als aanklager en rechter in een. In plaats van een rechtsstaat (*rule of law*) ontstond een machtige juristenstand (*rule of lawyers*), die de koloniale rechtspraktijken grotendeels in stand hielden, aangepast aan de volgens hen 'onbeschaafde aard' van de Javanen. Juristen in Nederlands-Indië waren vaak de meest fervente critici van de koloniale staat als deze het ideaal van de rechtsstaat aantastte, maar uiteindelijk gaven ook zij juridische legitimiteit aan het ongelijke, onzekere en onrechtvaardige rechtssysteem.

De regionale rechtszaal op Java was een plek waar de juridische procedures werden uitgevoerd alsof het een toneelstuk was, een farce, maar tegelijk een plek waar, achter gesloten deuren, werd onderhandeld over macht. Tegelijkertijd was de rechtszaal ook een arena waar de koloniale staat geleidelijk werd geconsolideerd gedurende de negentiende eeuw. De pluralistische rechtbanken — gebaseerd op vroegmoderne rechts-pluralistische praktijken — bleven bestaan tot het einde van de koloniale tijd in 1942, ondanks diverse moderne hervormingen in het rechtssysteem. Javaanse tussenpersonen zoals de jaksa's, en lokale informanten zoals de penghulu's, werden gewantrouwd en daardoor verminderde hun invloed en status na verloop van tijd. Toch bleven de pluralistische rechtbanken bestaan, omdat zij de enige manier waren waarop relatief effectief strafrecht konden worden opgelegd binnen de duale bestuursstructuur op Java.

In dit proefschrift heb ik de conflicten binnen de pluralistische rechtszaal geïdentificeerd. Niet de conflicten die men wellicht verwacht in een rechtszaal — die tussen verdachte en slachtoffer, tussen staat en verdachte — maar de juridische, politieke en persoonlijke conflicten tussen lokale en koloniale wetten, tussen Javaanse en Islamitische rechtstradities, tussen Hooggerechtshof en regionale belangen, tussen conservatieven en liberalen, tussen jaksa's en penghulu's, tussen residenten en juristen, tussen koloniale rechtbanken en lokale advocaten, en tussen Javaanse priyayi en Nederlandse ambtenaren. Conflicten die centraal waren in de dagelijkse strafrechtspraktijk op koloniaal Java en centraal in de vorming en het behoud van een gelaagde en complexe koloniale staat gebaseerd op een wankel duaal bestuur.

Curriculum Vitae

Sanne Ravensbergen werd geboren in Leiden in 1985. In 2003 behaalde zij haar VWO-eindexamen aan College ’t Loo in Voorburg. Van 2003 tot 2008 studeerde ze Geschiedenis en Journalistiek & Nieuwe Media aan de Universiteit Leiden, en sloot haar Bachelor af met een scriptie over Nederlandse oorlogsmisdaden tijdens de Indonesische dekolonisatieoorlog. In 2011 voltooide zij de Master *Colonial and Global History* en studeerde *cum laude* af met een scriptie over de doodstraf en gratieverlening in Nederlands-Indië. Naast haar studie was Sanne werkzaam als tekstschrijver en journalist en schreef zij onder andere over Zuidoost-Azië en de geschiedenis van Indonesië. Verder was ze ook werkzaam als communicatiemedewerker bij het Tong Tong Festival (Pasar Malam Besar) in Den Haag. In 2011 begon ze aan een promotieonderzoek naar het koloniaal strafrecht in negentiende-eeuws Java, met een beurs van het NWO-programma Promoties in de Geesteswetenschappen. Als promovendus was zij verbonden aan het Instituut voor Geschiedenis en het Van Vollenhoven Instituut in Leiden. Zij doceerde tevens diverse vakken in de Bachelor Geschiedenis. Momenteel is Sanne als visiting fellow verbonden aan het Koninklijk Instituut voor Taal-, Land- en Volkenkunde. Haar onderzoeksinteresses zijn de praktijk en ideologie van koloniaal recht, rechtspluralisme, koloniaal liberalisme, de materiële cultuur van rechtbanken en tussenpersonen in de koloniale context.