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

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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.

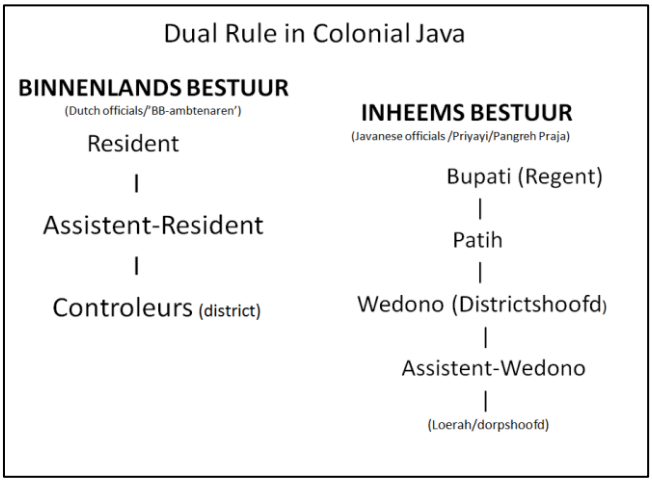

Fig.2 Dual Rule government lands colonial Java.

[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.

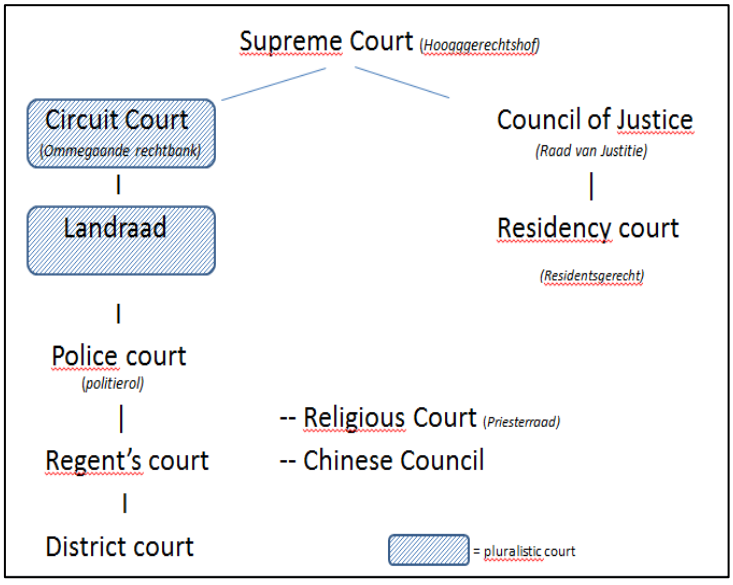

Fig.3 Dual legal system government lands Java, 1819-1901.

[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.