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

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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

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[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.

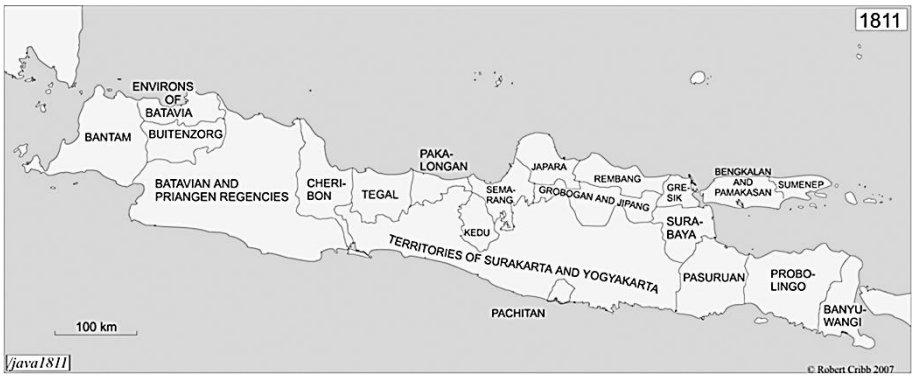

Fig.6 Java's administrative divisions at the conclusion of Daendels' rule, 1811. [Cribb, *Digital Atlas of Indonesian History*].

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]

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[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.

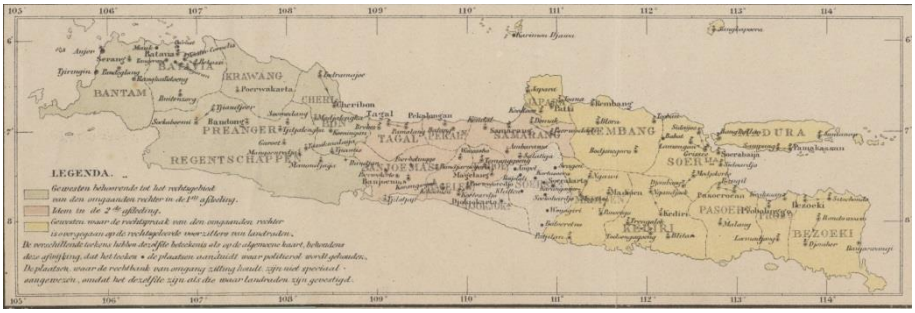

Fig.7 Map showing all landraden in Java, 1883. "Kaart aangevende den bestaanden toestand met betrekking tot het rechtswezen in Ned. Indië, behalve wat betreft de districts- en regentschapsgerechten." [KITLV DB 1,5].

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.

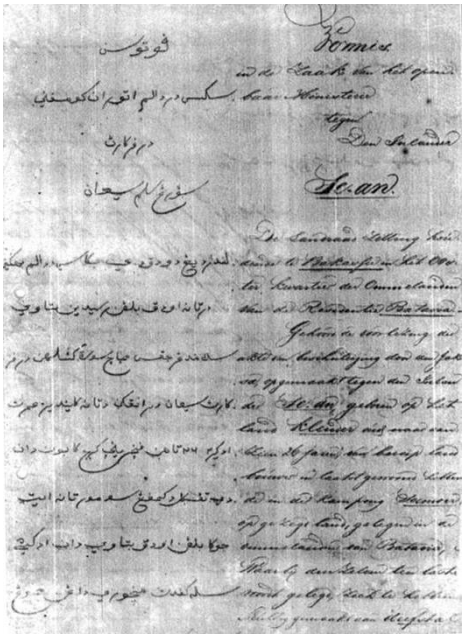

Fig.8 Verdict Landraad Bekasi written in Jawi and Dutch, 1846 [ANRI, GS Tangerang, no.91.5].