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

Ravensbergen, S.

7 — Behind Closed Doors

Dynamics between the Dutch president and the Javanese priyayi, who together decided over the verdict in the landraden and circuit courts, are central to this chapter. I shed light on the decision-making process, held behind closed doors, in criminal cases and I investigate how the resident and priyayi cooperated in maintaining "peace and order" by assessing the issues of police magistracy, vagrancy, and the cultivation system. In this chapter, I discuss the situation up to 1869, when the resident was the president of the landraad. I argue that the ultimate purpose of the legal system was primarily the enforcement of colonial control, before and during the cultivation system. In this the Supreme Court and private attorneys had only limited influence, as I will show by investigating the practices of review, mercy and (the lack of) private attorneys.

7.1 Javanese and Dutch Judges before 1869

After their return to Java in 1819, the Dutch gave Javanese members of the landraden and circuit courts a greater role again than they had had under Raffles (see Chapter 2). They regained their right to vote and the verdict of the pluralistic courts was allowed to go against the advice of the jaksas and penghulus. This had not been the case under Raffles, when, if the opinions of the jaksa and penghulu differed from that of the resident, the case had to be sent to the governor general for a final decision. Altogether, during the British period, the decision-making process in the landraad had been much more with the resident, whereas the emphasis after 1819 was on cooperation between the Javanese priyayi as judges, including the regent, and the Dutch resident in his role as landraad president. This fit into the dual-rule policy of the Dutch. In the circuit courts, the Javanese judges were also from the priyayi class, but in this court the president was a Dutch jurist without any administrative tasks in the region. Initially, the number of Javanese members in this court was not fixed, but it was decided in 1848 that the number of appointed members should be at least four and that the members of the circuit courts would ideally be different people than those in the landraden.

When it comes to the landraden, we have to realise that, often, the Javanese members and the resident had shared interests: the maintenance of

quiet and order in the region. Since 1820, the regents were responsible for the supervision of the police, and the resident was the formal head of the police.[1] Until 1897, a colonial police force did not exist, because—according to the dual system—daily police functions were in the hands of the priyayi. While the resident was in charge of the police and the attorney general was formally responsible for the police force, daily maintenance of peace and order was in the hands of Javanese officials[2] who maintained their own networks of spies by which they solved cases. There existed an entire world of which the Dutch knew hardly anything, since in practice they left police affairs almost completely to the priyayi.

The priyayi networks were also a world in which priyayi and village chiefs applied "unofficial" ways to maintain order. This was a world in which, for example, the *jago* exercised his influence. The jago was, during the nineteenth century, a kind of criminal, who was protected by the village chief in order to make him leave the village alone and protect it from other robbers. Consequently, he could rob other villages uninterruptedly while being protected by a village chief of another village.[3]

As a consequence of the responsibilities on police affairs, if influential priyayi themselves had no interest in bringing a case to the landraad, this most likely did not happen. However, if the resident and priyayi held the same interests, as was often the case, and collaborated successfully, they could quickly secure a culprit's conviction. After all, they were also collegiate judges at the landraad. In 1828, for example, in Baviaan (residency Surabaya) one Kyai Pana distributed magic letters (*toverbriefjes*, *jimat*). He sold the letters and buried them in front of houses at night, which was illegal according to colonial regulations. Assistant Resident J. C. Duncki had given orders to start a preliminary investigation executed by priyayi who

[1] S 1820, no.22. "Reglement op de verpligtingen, titels en rangen der Regenten op het eiland Java," art.6. *"De Regent zal in zijn regentschap voor eene goede politie zorgen, naarvolgens de bevelen, welke de Resident hem dienaangaande geeft; de mindere hoofden moeten, in zaken van de politie, zijne voorschriften volgen."*

[2] Bloembergen, *Geschiedenis van de politie in Nederlands-Indië,* 18, 38. Bloembergen enriched the historiography on colonial state rule by researching the information networks of the modern police force in the Indies and the effect of the police force on society. She also pays attention to the origins of the modern colonial police force which can be traced back to 1897 when the organization of the police was reformed. Much is still unknown, however, about the period before the establishment of a colonial police force.

[3] Onghokham, "The Jago in Colonial Java," 327-343.; Schulte Nordholt, "De Jago in de schaduw," 664-675.

had arrested the *kyai*. Thereafter, Duncki requested the resident's approval to refer the case to the landraad. After three weeks, the resident replied that the *kyai* could be prosecuted by the landraad. Then, the assistant resident could continue with the investigation and, together with the regent—as together they were respectively the president and member of the landraad —condemn the *kyai*.[4]

In Batavia and the Ommelanden, dual government was not as firmly established as in the rest of Java. There was no regent and instead each district was led by a *demang*. There did exist a separate colonial police force, whose members dressed in a short blue skirt with a green collar and a white linen undervest, and a sabre on a black belt with a copper plate, with "police" inscribed on it.[5] Letters in Malay or Dutch were sent between the assistant resident and the jaksa and vice versa, and between the *demang* and the jaksa. In 1856, for example, two female witnesses were sent to the landraad of Tangerang by a *demang* at the request of the jaksa.[6]

When in 1824 the landraden in Batavia were installed, there were doubts among the Dutch about the local headmen in Batavia who would become the majority of voting members in this court. Merkus wrote in his proposal that he did not expect any problems in Semarang and Surabaya, but that he was concerned about Batavia: "For a long time and especially during English rule, it has been a truly disadvantage to the proper order and police that the authority and reputation of the Native headmen have been decreased." However, he viewed the landraden as a way to restore their prestige…, "even though the lesser prestige of the Batavian chiefs or commandants might offer any difficulty in their appointment as assessors, on

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[4] ANRI GS Surabaya, no.1486. Request to prosecute. Assistant resident to resident of Surabaya, March 10, 1828; Approval to prosecute. Resident to assistant resident, April 2, 1828.

[5] S1819, no.37, art.17. *"...groene kraag en een witte linnen borstrok, een sabel aan een zwarte band met een koperen plaat.";* Bloembergen, *De geschiedenis van de politie in Nederlands-Indië,* 40-44. In Semarang and Surabaya, there was also a small colonial police force. Furthermore, in the countryside there were local paramilitary forces in service of the colonial government, such as the *prajurits* and the *djajeng-sekar*.

[6] ANRI GS Tangerang, no.183.2. *"Kepada Jaksa die Tangerang. Tjiekande den 12 April 1856. Dengan inie soerat saya kassie bertaoe diesieni saya soeda trima Jaksa poenja soerat tertoelies tangal 8e inie boelan no.9 terseboet ada minta 2 orang prampoean satie bernama Amienah bienie darie Liendiet den Samissah bienie darie Naroen, kerana harie Senen hendak Landraad? Maka darie pada ietoe njang bersama sama dengan inie soerat saya ada kieriem 2 orang prampoeannya sebegiemana njang soeda ada terseboet di atas soepaya Jaksa trima nyang sadoemikian ietoe adanya. Demang district Tjiekande Oedieksejelier (?) W Bangzu (?)*

the other hand, the act of trust given to them by this appointment shall strengthen them to regain their lacking prestige and therefore over time restore a shortcoming which currently exists in the organisation of the interior administration of Batavia." [7] Thereafter, the landraden were introduced, including local members with a right to vote, although they were called "assessors" instead of "members," as in the rest of Java. The assessors were the commandants, or division heads, of the various districts in Batavia. They were often not Javanese, but of another ethnicity or of mixed descent.

In any case, in all landraden and circuit courts in Java the verdict was decided by ballot. Even though Dutch judges were often depicted by Dutch administrators and journalists as if they were single judges, in fact they were dependent on the votes of the local law court members. This required at least a partial adaptation to Javanese legal traditions. However, it is hard to find information about these deliberations and discussions, since they were held behind closed doors. Moreover, the residents tended to pretend as if they controlled the deliberations and were in full control, so they wrote little about these proceedings.

It is slightly easier to find out more about the deliberations of the circuit court judges and the Javanese members of these courts though, because the archives contain letters of complaint from residents on the deliberations in the circuit courts. For example, in 1847, former Assistant Resident G.L. Baud wrote a letter to his cousin, Governor General J.C. Baud. He recalled from his experience as a resident that the circuit court judges were not always capable of dealing with the Javanese members in court. "When I governed the Residency Semarang in 1838, a remarkable verdict was announced by the Circuit Court," he recalled. A group of murderers had been convicted to just a few months of chain labour, which was considered a minor punishment. The remarkably mild verdict was the

[7] ANRI AS, R. Januari 27, 1824, no.14. Explanation Merkus of art. 2 & 3 of his "Voorstel Landraden naar de steden. Conceptreglement voor de administratie der civiele en criminele justitie onder den inlander binnen de steden Batavia, Semarang en Sourabaya alsmede onder de Chinezen en vreemden behoorende tot de Indische bevolking in het algemeen," undated. *"Sedert lang en vooral onder het Engelsche bestuur, is ten werkelijke nadeele van de goede orde en policie, het gezag en het aanzien van de Inlandsche hoofden verminderd."*; "*Dan, zoo het minder aanzien der Batavische hoofden of kommandanten eenige zwarigheid mogt aanbieden in hunne benoeming tot assessoren, moet van eene andere kant het blijk van vertrouwen dat hen door zulk een benoeming wordt gegeven sterken om het hen ontbrekende aanzien terug te geven en daardoor een gebrek, hetwelk thans in de inrigtingen van het inwendig bestuur te Batavia bestaat, met den tijd te verhelpen."*

talk of the town. After questioning the Dutch judge, B. G. Rinia van Nauta, he confessed that during the considerations in the courtroom, the Javanese members had stated that, according to Javanese laws, someone was only guilty of murder if he committed the murder himself. However, Rinia van Nauta had insisted quite directly that, according to European laws, all five persons suspected of the murder were equally guilty. The Javanese members had responded with "*bagaimana toean Raad sembaring poenje soeka*" ("as you wish, Sir"). The Dutch judge had not understood the indirect disapproval expressed in this phrase and assumed the Javanese members would follow the European perspective, so the voting started. The formal procedure prescribed two voting rounds, one for deciding on the guilt of the accused, the second to determine the punishment.[8] During the first round, the Javanese members agreed on the guilt of all five suspects. In the second round of voting, however, they voted for minor punishments for all suspects rather than the usual capital punishment imposed for murder. This indirect protest by the Javanese members against European laws and procedure—and against the rough manner of the Dutch judge—shows their influence in colonial criminal cases. According to G. L. Baud, this was no exception: "Circuit Court Judges Berg, Bols, and others have exercised the position of [circuit court] judge in a way that is beneath all dignity; they have announced verdicts of which I would have been ashamed."[9]

Interestingly enough, another archive preserves a letter by Rinia van Nauta, the judge in question.[10] It turns out he had experienced problems more often with both the Javanese members and the penghulu. In the letter, he requests the legislative committee Scholten van Oud-Haarlem (see Chapter 3) to ban the penghulus and Javanese members from court sessions. In particular, he wrote of his conflict with the *ondercollecteur* (local tax-collector) of Demak, Raden Ingebeij Soema Dirdjo. During a case in which a

[8] S 1819, no.20. "Reglement op de administratie der politie en de krimineele en civiele regtsvordering onder den Inlander in Nederlandsch-Indië," art.118.

[9] NL-HaNA, 2.21.007.58 Collectie 058 J.C. Baud, no.638. Letter G.L. Baud to J.C. Baud, September 11, 1847. The salutation is *"Uwer excellenc geh. dienaar & neef*". The subject of the letter is in response to the new colonial law codes that decided that the circuit courts would remain to be chaired by judges, whereas the landraden would remain to be chaired by the residents. "..*de ommegaande regters mr. Berg, mr. Bols, en anderen, hebben het ambt van regter waargenomen op eene wijze, die beneden alle waardigheid is, zij hebben vonnissen geveld over welke ik mij zou geschaamd hebben."*

[10] Rinia van Nauta had been part of the second committee Scholten Oud Haarlem for a few months.

local man named Pak Toebin was accused of murder, the Javanese members had decided to acquit, against the will of Rinia van Nauta: "Strengthened by the advice of the penghulu, and due to his higher rank, he [Raden Ingebeij Soema Dirdjo] has influenced the other assessors with his bombastic stubbornness and imposed his opinion, regardless of anything I brought to the table." In his letter, the judge gave four more examples of court cases in which the Javanese members had decided otherwise than he had wished. The murder suspects Wono di Lago and Soemo Yoedo were acquitted, just as Prawiro Dewerio, who was suspected of forging bank notes. Although he would have preferred that the penghulu and Javanese members be prohibited from court sessions altogether, for now he proposed to replace Raden Ingebeij Soema Dirdjo. The request from the troubled circuit court judge was not granted. Both the penghulu and the Javanese members continued to advise during circuit court sessions, and the Javanese members' right to vote continued to be guaranteed.[11]

The criticism of the circuit court judges who were overruled by Javanese members, and were therefore blamed for being incapable of convincing the Javanese members, can still be found in sources from the later nineteenth century. The *Java-Bode* of 14 October 1872 reported that in Sukabumi "a haji" was acquitted after having been accused of murdering his father. The Javanese members of the circuit court decided on this verdict against the will of the president because the murder had been religious in character. The circuit court judge in question immediately felt the urge to reassure the governor general. He emphasized that the acquittal had been the result of a shared conviction among the court members that the murderer Moein had not been fully sane when he took his father's life. "Taking into consideration article 41 of the Court Regulations," he wrote, "I am not allowed to reveal the views expressed within the council chamber on this case, but I consider it harmless to assure here that, to my conviction, the

[11] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.76. "Ingekomen brief bij de Indische commissie van 1837 inzake een suggestie van een rechter te Samarang om zowel de panghoeloe's—hoofden van de moskee—als de assessoren bij rechtszittingen te weten." Semarang, May 28, 1838. *"Door het praeadvies van den Panghoeloe gesterkt en door zijnen meerderen rang, heeft hij met eigendunkelijke onverzettelijkheid op de andere assessoren geïnfluenceerd en dit zijn gevoelen, wat ik ook in het midden heb mogen brengen, door gedreven."* In this period, *ondercollecteurs* were not yet mentioned in the almanac, so I have not been able to find out whether Raden Ingebeij Soema Dirdjo was replaced indeed, as Rinia van Nauta proposed.

Native members of the law court, after an open examination of this case, have voted in line with their duty and views, without being led at all by any sickly ideas from the religion they practice."[12]

It is likely that discussions and disagreements took place regularly though, and in both the circuit courts and the landraden. In 1830, the draft regulation of the Merkus committee included a rule that if there was a tie vote, the lightest punishment mentioned had to be imposed. This rule had been copied from the regulations of the Moluccas and was considered necessary "since experience has shown, that many landraden found itself in this unfavourable situation."[13] Gaijmans also mentioned in his handbook that it happened that a president's verdict "implied in veiled terms" that he did not agree with the decision made by the majority of the council. In these cases, the Javanese members had apparently opposed him.[14] Yet, it seems that the residents in the landraden were better at convincing the Javanese court members to vote for the verdict they preferred. Their criticism of the circuit court judges—who unlike the residents were less successful in securing the vote of the Javanese judges, or who consciously did not want to do this—highlights that the compromising stance of the circuit court judges was not seen as preferable by the colonial administrators.

In any case, Dutch administrators *and* jurists were usually not very impressed by the opinions and thoughts of the Javanese members. The committee of Scholten van Oud-Haarlem considered the Javanese members of the landraden and circuit courts more as sworn men "judging according to their inner beliefs" than as judges, because they did not have adequate knowledge of the law.[15] However, the Javanese members nonetheless

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[12] NL-HaNA, 2.10.02 MvK 1850-1900, MR 1872, no.887. Letter from Circuit Court judge Gaijmans to the director of justice. "*..met het oog op artikel 41 R.O. is het mij niet gegund, de gevoelens in de raadkamer over deze zaak geuit, te openbaren, doch ik acht mij onbezwaard, hier de verzekering af te leggen, dat, naar mijn overtuiging, ook de inlandsche leden der Regtbank, na een gemoedelijke onderzoek der zaak, hunne stemmen in de raadkamer hebben uitgebragt, overeenkomstig pligt en gevoelen en dat zij hierbij niet in het minst geleid zijn geworden door ziekelijke begrippen omtrent de godsdienst welke zij belijden."*

[13] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.73. Explanatory note, 1830. (See Chapter 4.2) *"naardien ervaring heeft geleerd, dat meenige Landraad zich in de ongelegenheid bevonden heeft."*

[14] Gaijmans, *De Landraden op Java,* 2. "*liet doorschemeren."* By doing this, article 41 of the Court Regulations was ignored, which stated that the deliberations in the deliberations room (*raadkamer)* had to remain secret.

[15] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.73. Explanatory note, undated (draft regulations committee Scholten Oud Haarlem). "Nota van Toelichting bij ontwerp van

retained their positions in the pluralistic law courts for the entire colonial period. More important, they retained their right to vote as well, which allowed them—more than the penghulu—to continue exercising their influence over criminal law verdicts. On the other hand, within the landraden they always had to consider the views of the resident, who presided over the landraad (until 1869). The priyayi were dependent on him outside the courtroom—he could give them a better position or dismiss them—and consequently they preferred to agree with him.

7.2 Dutch Residents as Presidents

Until 1869 the resident was not only the highest colonial official in a region, but also the president of the landraad. If he was absent, something that happened regularly, the assistant resident acted in his stead, and if he was not available, the secretary (*secretaris)* of the residency assumed the role.[16] The landraad president took the lead during the lawsuit, interrogated suspects and witnesses, and handed down the judgment.

That the landraad president was at the centre of each court session was considered an important expression of colonial rule. When in 1829, for example, the news reached Batavia that the resident of Surabaya had decided to leave the presidency of the landraad to the regent, Batavia condemned the move as a very "illegal course of action" against which strict measures had to be taken.[17] Commotion also ensued when an Indo-European official—European by law but with a Javanese mother—was listed for the office of judge in 1847. He held a doctorate in law from Leiden University and had returned to Java. Although considered qualified and suitable to work as a judge, according to Governor General Rochussen he would be unable to exercise enough authority over the population and priyayi, and was therefore ineligible for a government position. To this came protest from other colonial officials though—many of whom had Indonesian blood themselves or who had Indo-European children by their Javanese concubine. Therefore, it was decided that anyone who had passed the colonial exams, despite his "illegitimate birth," held the right to apply for the certificate necessary for

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het reglement op de administratie der policie mitsgaders op de burgerlijke regtspleging en strafvordering voor de inlanders en daarmede gelijkgestelde personen in Nederlandsch Indië, Kommissie ingesteld bij besluit van 15-8–1839/102." "*..op innige overtuiging regtdoende."*

[16] Gaijmans, *De Landraden op Java,* 8. Article 93 of the Court Regulations.

[17] ANRI, AS, R. May 29, 1829, no.27. "*..illegale handelswijze.*"

government positions (*radikaal*) and was allowed to work as a judge in the Netherlands Indies.[18]

Thus, being the most visible representatives of colonial rule, residents and assistant residents wore several hats. They were not only responsible for proper administration in their region, but they also led the police and presided over the landraden. This intermingling of the judicial and administrative spheres, caused by this, was a thorn in the side of some, as we will discuss in the next chapter. But, how dependent was the legal system in practice until 1869? We will now investigate this by looking at three much discussed topics during the nineteenth century: the police magistracy, the issue of vagrancy, and the cultivation system.

Police Magistracy

In 1823, the attorney general in Batavia rapped the resident of Besuki over the knuckles for assuming too boldly in a letter that the permission to seek the death penalty would be granted. The attorney general wrote back to make clear that the "lower official" had to leave this to the governor general. However, he added that this was obviously not the case regarding "immediate and legitimate judgments, which are often of much importance to the peace and safety in society."[19] With these "immediate and legitimate" judgments he referred to the police magistracy, in Dutch usually called *politierol* (police register). The resident (or in his absence, the assistant resident) was not only an administrative official and landraad president, but also the police magistrate (see appendix 2, Table 4).

As such, the resident had the right to impose punishments on the Javanese population for small misdeeds. He handed down his judgments from the front porch of his house. In these cases, no evidence had to be presented, the case was not sent to the Supreme Court for review, and the convict had no right of appeal. The suspect could be sentenced to flogging with a rattan cane, a maximum of eight days' imprisonment, the pillory, or labour at the public works.[20] Through the police magistracy, non-European

[18] Fasseur, *De Indologen*, 117–118.; Stoler, *Along the Archival Grain*, 57-72. Stoler presents this protest and debate to point out that nineteenth-century states were not only following 'rational Enlightened' ways of thinking, but were also "states of sentiment."

[19] ANRI, AS, R. June 17, 1823, no.18. Letter attorney general to the supreme court. Batavia, May 27, 1823. "*..prompt en regtige executies, die dikwerf van veel belang voor de maatschappelijke rust en veiligheid wezen kan."*

[20] Consten, "Geweld in dienst," 143-149.

subjects were sentenced for all sorts of petty offences, but also, for example, for wandering around or impudent behaviour.[21] For example, at the end of the 1820s, a woman in Semarang was convicted for pledging a golden strap. The private prosecutor was a European man named Waterloo. There were no witnesses. The woman was sentenced by the resident to be whipped twenty times with a rattan cane.[22]

Regarding the police magistracy, there were two police regulations to follow: those of Batavia of 1828 and the police regulations of Surabaya of 1829.[23] This latter were made applicable to the rest over Java, except Batavia, in 1851,[24] but residents were also allowed to draft their own local regulations, giving them not only the right to fulfil administrative and judicial positions, but also legislative ones. Moreover, they were not even obligated to refer to the formal regulations when imposing a punishment as police magistrate.

The police magistrate was a continuation of the magistracy implemented under the British. After 1816, in the cities the duties of the magistrate were transferred to the residents, whereas outside of the cities these were already being performed by the residents during Raffles' administration. The system did not exist in the Netherlands itself. It was also contrary to the principles of the dual system in Java. After all, in case of the police magistracy, the resident exercised direct administrative power exercise without the consultation or cooperation of the Javanese priyayi court members. They only held the right to decide over landraad cases but were excluded from police magistracy cases. This system did not change until 1914, when the police magistracy was abolished.[25]

The *politierol*, police magistracy, had wide support among colonial administrative officials. Persons known for their efforts to improve the treatment of the Javanese could be simultaneously fierce proponents of police magistracy. In 1849, Eduard Douwes Dekker (a.k.a. Multatuli), as the Resident of Menado at the time, wrote a letter in favour of flogging with a rattan cane, a punishment imposed by the resident in his position as police

[21] Bloembergen, *De geschiedenis van de politie*, 38.
[22] Arsip karesidenan Semarang, 1800-1880, no.863.
[23] S 1828, no.63. "Reglement op het bestuur der policie onder den Inlander, in de staf en voorsteden van Batavia."; S 1829, no.8. "Policie reglement voor de staf en voorsteden van Soerabaija."
[24] S 1851, no.26.
[25] Bloembergen, *De geschiedenis van de politie in Nederlands-Indië*, 38.

magistrate. In the same letter, though, he opposed other types of flogging and branding, which he described as "barbaric punishments." He therefore observed it as a "rejoicing sign of current times" that flogging with a whip and branding had been abolished one year before. He even envisioned a future in which the death penalty was absent and "leniency was preached always and everywhere." However, on the possible abolition of flogging with a rattan cane, he said nothing. He even proposed increasing the maximum beyond twenty strokes, which had been imposed in 1848. According to Douwes Dekker, the difference with other corporal punishments was that the rattan strokes were not endured in public, and therefore were "a fatherly chastisement" of the "naughty native."[26]

Jurists who generally sought more supervision over the legal system also spoke out in favour of the police magistracy. In 1842, Merkus expressed his doubts on Scholten van Oud-Haarlem's proposal to abolish the police magistracy.[27] And, even though the Supreme Court regularly doubted the functioning of the lower law courts, they were not in favour of an abolishment of the police magistrate. This despite the fact that they were not in the position of influencing the police magistrate's verdicts since these were not subject to their review.[28] Scholten van Oud-Haarlem, however, adopted an uncompromising position in this case and refused to include the police magistracy in a legislative regulation "when observed from the side of human compassion" and because it "shall and will give ongoing arbitrariness and major condemnable and even, in my view, dangerous abuses." However, since he was opposed by an important part of the colonial elite, the police magistracy endured.[29]

It was only during the 1860s, when a group of liberal jurists began to agitate about colonial legal issues, that the police magistracy became a target of significant criticism. According to the Indies' *Weekly Journal of Law*, these jurists' unofficial mouthpiece, the police magistracy was not

[26] Van 't Veer, "E. Douwes Dekker over het Indisch strafrecht," 30.

[27] Already in the 1820s, Merkus was a proponent of the police magistracy but critical of the residents as landraad presidents. Merkus had in the mean time become Governor General and took after the mid-1830s a more conservative turn in general and worked in favor of the cultivation system. See Fasseur, Kultuurstelsel, 38, 48.

[28] Tjiook Liem, *Rechtspositie der Chinezen*, 91-92. At that time, the Supreme Court was presided by H.J. Hoogeveen.

[29] Immink, *De regterlijke organisatie*, 16–19. *"..van den kant der menschelijkheid beschouwd." (...) "..bij voortduring kan en zal geven groote willekeur en grove laakbare en zelfs in mijne oogen, gevaarlijke misbruiken."*

mentioned in the Court Regulations "as if one if ashamed to include it...!" They disapproved strongly of the severe punishments imposed by the residents. "For those who do not want to believe this and who have strong nerves," one writer recommended, "please visit a Residency office on a *politierol* day![30] In fact, the word *politierol* had already been mentioned in 1847 in article 84 of the Court Regulations, although not explicitly defined, and the term can also be found in the procedural Native Regulations.[31] This regulation reveals that there were barely any procedural requirements to a police magistracy case. The resident gave his judgement "with knowledge of the events," but without any obligation to refer to regulations or laws.[32] The verdict—"a punishment proportional to the nature of the offence"—was executed immediately.[33]

It is not surprising that this situation gave free reign to all kinds of abuses of power. In fact, the resident could punish any non-European without offering any proof or having the obligation to explain his decisions. The case lists were sent to Batavia, but these gave such little information that this cannot count as real supervision. Moreover, it provided a loophole for the resident to decide cases by police magistracy that formally belonged to the jurisdiction of the landraad or even the circuit court. If a resident presumed a case would end up as an acquittal after review by the Supreme Court, police magistracy made it possible to impose a punishment anyway. According to Attorney General Allard Josua (A.J.) Swart in 1856, the only solution to this problem was a law code in which police laws would be included and defined, but he considered the police magistracy, despite its being a "source of many abuses," a "powerful means to maintain order."[34]

It was only in 1866 that rattan strokes were abolished, and in 1872—in conjunction with the promulgation of the Native Criminal Code—a general police law regulation (*politiestrafreglement*) was introduced. From

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[30] "Regtspleging onder de inlanders op Java en Madura volgens de op 1 mei 1848 ingevoerde wetgeving." *Indisch Weekblad van het Regt*, 1. *"...alsof men zich schaamde het in de Regterlijke Organisatie op te nemen! (...) Wie het niet geloven wil en voldoend sterke zenuwen heeft, begeve zich op een politie-roldag in de nabijheid der Residentie-kantoren!"*

[31] RO, art.84. *"Van de regtspleging voor den Resident in zaken, welke op de policie-rol worden afgedaan."*

[32] IR, art.370. *"naar bevind van zaken."*

[33] IR, art.371. *"een aan het feit geëvenredigde straf."*

[34] KV 1856. Attachment "Verslag van den procureur-generaal bij het Hooggerechtshof van NI over de werking der in 1848 ingevoerde nieuwe wetgeving voor Nederlandsch Indië." "*..krachtig middel der orde.."*

that moment, theoretically, arbitrary verdicts by the residents were no longer allowed due to a more regulated procedure.[35] Nonetheless, police magistracy executed by residents would survive until 1914.[36]

The Landraad and Vagrancy

Police magistracy was the most efficient and unchecked means of control in the hands of the (assistant) resident, because it was not subject to review by the Supreme Court. However, the position of the resident as the president of the landraad was important as well, particularly because the landraad could impose more severe punishments. The police magistrate could not punish notorious troublemakers for a longer period nor be banned from the region. Therefore, habitual offenders would often end up before the landraad for a series of petty crimes.

On 19 November 1834, Kodja Spring was adjudicated by the landraad in the Batavian suburb of Meester Cornelis for stealing a chicken. The suspect had previously been caught for stealing a head scarf, for which he had been punished "conventionally" by the police magistrate with fifteen rattan lashes. Thereafter, at his own request, he had been appointed to work as a coolie on a gravel prau earning seven guilders to prevent him from falling into poverty again and stealing again. Sometime later, he was dismissed at his own request and returned to his village to live with his brother. There, he stole a chicken. This was a minor crime, but during the landraad session the jaksa argued "that it comes through clearly that he is a chap making a living by stealing instead of working." He argued for twenty-five lashes and three years of chain labour in Java. The penghulu advised more lenient sentence of one month imprisonment. The landraad members decided to impose twenty-five rattan lashes and two years of chain labour due to repeated theft.[37]

Another way to sentence subjects who were known for being "troublesome" was to charge them with vagrancy. In 1825 a special ordinance was produced regarding this subject. The direct cause for drafting

[35] S 1872, no.111. "Algemeen poltiestrafreglement voor de Inlanders in Nederlandsch-Indië."; Sibenius Trip, *Het politie-regt op Java en Madura.*
[36] S 1914, no.317.
[37] ANRI, GS Tanggerang, no. 27/III. Landraad criminal case Kodja Spring. Meester Cornelis, November 19, 1834. "*..dat ten duidelijkste doorstraalt, hij een sujet is, welke door diefstal die middelen zoekt te verwerven, welke hij door geoorloofd arbeid kan erlangen."*

the ordinance had been a trial during which a man named Ratal was tried. On 11 January 1825 at the landraad of Buitenzorg, the roughly forty-year old man Ratal was found guilty of vagabondage. The president was the resident of Buitenzorg, J.G. van Angelbeek; the members were the regent, Raden Adipatti Wiera Natta, the *demang* of Parong, Raden Aria Soeta diWangsa, and Kanduruan Soera Nangalla (*kanduran* being an honorific). The secretary was J.H. Cornets de Groot. One month earlier, the landowner of the private land Dramaga had written the resident to complain about Ratal's "irregulated and impudent behaviour, and the continuous wandering around." The jaksa investigated and concluded that although Ratal owned a house in the village Cilubang, he was always wandering around the bazars and could be found regularly in the opium dens. He had no permanent job and would visit his home twice a month at most, leaving it up to his family members to work in his rice fields and take care of his wife and children. He had been tried a few times before—at the circuit court, because he had fired a gun in the direction of a priyayi in Comas, and at the landraad for theft; but he was acquitted both times for lack of proof. He was known as a "bad and dangerous person." The prisoner was asked if he understood the accusation and if he wished to oppose it. The clerk recorded his response as follows: "I do go out once in a while, but usually only to sell fruit." The *mandoor* of the kampong where the suspect owned a house was called as a witness and declared that Ratal was often away from home for a long time without anyone knowing where he went, and that he was a "dedicated visitor" of the opium dens. Ratal responded, "I never visit the opium dens." The other three witnesses—villagers—confirmed Ratal's bad reputation. The advice of the jaksa and penghulu was written down very concisely. They considered the accused guilty of vagrancy and recommended adjudicating him according to the existing regulations. Dated 6 February 1795 and 25 March 1806, these ordinances confirmed that all persons without proof of residence could be arrested and had to perform chain labour in Batavia. Accordingly, Ratal was sentenced to six years of banishment outside of the residency of Buitenzorg, to a place to be decided by the governor general. More than two months later, however, on 18 March 1825 the verdict was reversed by the Supreme Court for lack of evidence.[38]

[38] ANRI AS R. August 23, 1825, no.18. Landraad criminal case Ratal. Buitenzorg, January 11, 1825. *"Ongeregeld en losbandig gedrag, en het aanhoudend rondzwerven."; "Ik ga*

It was not the first time that such a verdict had been turned down in review and the resident wondered how he had to deal with the vagrants. Then, the Supreme Court did something remarkable: they advised the resident of Buitenzorg to apply a political (extra-judicial) measure, and using this—circumventing the law courts—to ban Ratal from the residency.[39] When Attorney General P. H. Esser got hold of this, he flew into a rage and concluded that the Supreme Court "has erred". The application of a political measure after an acquittal by a law court was the violation of a "sacred principle" of law, according to Esser. As he wrote to Governor General Van der Capellen,

> Any political measure is essentially or seemingly arbitrary. All arbitrariness is essentially or seemingly violent; and the significant glory of Your Excellency's government will be in having avoided at all times the essence or even the semblance of violence as much as possible. Therefore, it has been the sacred principle of the High Government to never apply a political measure in order to seek there what could have been found at the judicial power.

Esser had no problem with the introduction of a criminal law against vagrancy, which was similar to a law already in force in the Netherlands, but he viewed the use of forced labour as a political means a "frightening and violent legislation."[40]

After this principled reasoning by Esser, the Supreme Court defended itself by writing that in the case of Ratal they had seen no other

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weleens uit, doch dan ga ik gewoonlijk vruchten verkopen."; "ijverig bezoeker"; "Ik ga nimmer in de amphioen kitten."

[39] ANRI AS R. August 23, 1825, no.18. Supreme Court to Resident J.G. van Angelbeek. Batavia, March 18, 1825.

[40] ANRI AS R. August 23, 1825, no.18. Attorney General Esser to Governor General Van der Capellen. Batavia, March 29, 1825. *"..heeft gedwaald" (..) "heilig beginzel" (...)* "*Elke politieke maatregel is wezenlijk of schijnbaar willekeurig. Alle willekeur is wezenlijk of schijnbaar geweld; en de groote roem van Uwe Excellenties regeering zal daar in bestaan van zoo veel mogelijk het wezenlijke of den schijn zelfs van geweld te hebben vermeeden. Daarom is steeds als een heilig beginzel door de Hooge Regeering vastgehouden om nimmer door een politieke maatregel te zoeken, dat bij justitie te vinden was (..) schrikbarende en geweldige wetgeving."*

option due to the lack of legislation. However, they concurred with Esser that there should be a judicial option to condemn vagrants. They trumpeted the possibilities of the law in the Netherlands, and referred to the Dutch Society for Beneficence, established by Johannes van den Bosch.[41] Their solution was to obligate vagrants in Java to work for "some" wage, after a criminal conviction by the landraad had sentenced them to do so.[42] In response, Esser emphasized that in those cases, vagrancy should be proven by a police report, the accused should have the right to refute the accusation, they should get a reduction of sentence for good behaviour, and the attorney general should prepare a yearly report to the governor general on this matter. A few months later, the regulation was introduced. The landraden could "put [vagrants] to work for a certain wage" for a maximum of ten years. The "misdeed of vagabondage" had to be proven by official reports from police officials, witnesses, and written statements from landowners. The suspect had the chance to refute the accusations by means of evidences.[43]

The vagrancy ordinance of 1825 was gratefully received by the colonial officials. Later that same year, for example, Assistant Resident A.J. Bik of the Ommelanden of Batavia was bothered by the man Aliep, who had been wandering around "here and there in the public bazar" for over five years, and who did not meet his obligations to his village chief. Aliep was sentenced for vagrancy and had to work on the public works for two years in a place to be decided by the governor general. The verdict was formally executed by the assistant resident at the local bazar.[44]

After the introduction of the ordinance, it became easier for landraden to sentence someone for vagrancy, but the Javanese judges had to agree on the sentence. If they disagreed, the assistant resident could circumvent this, as shown by another example that Esser disapproved of. Esser had received a complaint from someone named Ningan, reporting an action taken by the assistant resident of Meester Cornelis. On 5 February 1825, the landraad of Meester Cornelis acquitted the man Anan of cattle theft. The president of the landraad wanted to convict Anan, but the Javanese members decided otherwise. Directly after his acquittal, the police arrested

[41] Schrauwers, "The Benevolent Colonies of Johannes van den Bosch," 298-328.
[42] ANRI AS R. August 23, 1825, no.18. Supreme Court to Governor General Van der Capellen. Batavia, July 1, 1825.
[43] S 1825, no.34. Bepalingen tot wering van vagebondage, rondzwerving en lediggang.
[44] ANRI, GS Tangerang, no.161.5. Landraad criminal case Aliep. Batavia, December 5, 1825.

him and, employing a political means from an old ordinance (*plakaat*), sent to Onrust Island to work as a day labourer for three months. Thus, the local court members were circumvented, much to Esser's objection: "Due to the appearance of a violation of societal freedom, that should be protected by the judiciary, the law courts will lose their trustworthiness and esteem. And the members of the law courts have good reason to be offended by such a measure and to feel aggrieved in their respectability."[45]

Not much would change soon. When Johannes van den Bosch became governor general of the Netherlands Indies in 1828, he introduced his ideas about the establishment of special plantations where vagrants had to work. It is indicative of his rule that he reinstated the political element in the vagrancy ordinance. His ordinance of 1833 made it possible to circumvent the convictions of the Javanese court members and the review of the Supreme Court. He decided that persons whose vagrancy could not be proved in court could still be sent to these plantations.[46] This pleased the resident of Besuki, who wrote in his residency reports of 1836 and 1837: "The application of the publication of his Excellency Sir Commissioner General of the 23rd of July 1833 has had a beneficial effect, the robberies are not as numerous anymore and are limited to the remote *desas*."[47]

Cultivation System and Criminal Law

Van den Bosch's vagrancy regulation leads us to consider the extent to which criminal law was used with regard to the cultivation system introduced by him in 1830. Did the cultivation system—based on the VOC

[45] ANRI AS R. August 23, 1825, no.18. Attorney General Esser to Governor General Van der Capellen. Batavia, March 3, 1825. *"Hierdoor wordt de schijn geboren van schennis der maatschappelijke vrijheid die door de justitie gewaarborgd wordt, de Regtbanken verliezen hun vertrouwen en achting en de Leden van de Rechtbanken hebben reden om zich door zulk een maatregel in hunne achtbaarheid gekrenkt en beledigd te rekenen."*

[46] S 1833, no.46, art.1. *"Alle personen, die door rondzwerving, lediggang en slecht gedrag, zich als schadelijke voorwerpen hebben doen kennen, doch aan welke geen bepaald misdrijf, geregtelijk, kan worden bewezen, zullen op het eiland Java, of buiten hetzelve, worden vereenigd in een of meer Etablissementen van Landbouw, waarvan de plaats en de inrigting nadere zullen worden bepaald."* Article 3 proclaimed that they would be living together with their wives and children as much as possible.

[47] ANRI, GS Besuki, no.26 and no.27. Algemene Verslagen van 1836 en 1837. "*De toepassing der publicatie van zijne Excellentie den Heer kommissaris Generaal den 23e julij 1833 heeft eene heilzame uitwerking de roofpartijen zijn niet zoo talrijk meer en bepalen zich meestal tot de afgelegen dessa's."*

Priangan system still in use in the nineteenth century[48]—change the dynamics and relations within the landraad?

In 1835, Van den Bosch was accused of using the vagrancy ordinance not only against vagrants, but also against local people protesting against the government, for instance, by complaining about the compulsory cultivation services (*cultuurdiensten*). For this, they could be banned without trial. The accusation came from the pen of Merkus, who gave an example in a pamphlet directed against the cultivation system published anonymously in 1835. On 31 July 1834, a group of people from various districts had come to Pasuruan (East Java) to protest in front of the regent's courtyard against the amount of sugar crops they had to grow. Their protest was ignored, and within three days the group grew to approximately 2500 to 3000 people. The commotion grew and they demanded that not be required to plant any more sugar that year: "Among the various groups rebellious exclamations occurred; others were dancing (*tandak*); and still others were shouting, throwing their head scarfs in the air; no other options were left than either sending in the military, or succumbing to the demand of planting no more sugar that year." According to Merkus, the resident "wisely" decided to succumb to the demand and thereafter everyone returned to their homes. However, this turned out to have been a false promise, because the resident arrested the leaders of the protest. According to Merkus, it was clear that the complainants were neither criminals nor a danger to the government, and the complaints probably were more than justified. According to him, an independent investigation into the "grounds for the complaints and reproaches of the people" should have been conducted. However, Van den Bosch did not deem investigations necessary and had decided to apply his Vagrancy Ordinance of 1833 to the captured protest leaders. Consequently, the resident "being the cause, accuser, and prosecutor" could, after having done the investigations himself, ask Van den Bosch to impose a political measure, thereby circumventing court. Formally, the investigations had to be carried out by the landraad, but according to Merkus, the Javanese members were "subordinate officials" with little say.[49]

[48] Breman, *Koloniaal profijt van onvrije arbeid*, 205.

[49] [Merkus], *Blik op het bestuur*, 100–103.; Breman, *Koloniaal profijt van onvrije arbeid*, 216. *"Onder verscheidene troepen begonnen zich reeds oproerkreten te verheffen; anderen dansten (tandak); en wederom anderen schreeuwden, en wierpen hun hoofddoeken in de hoogte; zoodat er niets anders overschoot, dan de gereed zijnde militaire magt te doen*

Merkus had previously attempted to decrease the administration's influence on the justice system, but generally he had taken a compromising stance, for example when debating with administrative official Van der Vinne as discussed in part 1 and 2. Yet the tone of the pamphlet was, for Merkus, unprecedentedly harsh and a direct assault on the cultivation system. It is questionable, however, that there is a direct relationship between the cultivation system and the use of criminal law to exercise power. For example, it is doubtful that there was much difference in practice between the vagrancy ordinances of 1825 and 1833. The residency report of Kedu from 1827—when the first ordinance was still in force—shows that this ordinance even then considered a political measure. Kedu had only been brought under colonial rule in 1813 and was situated close to the princely lands, so the residency had been fully engaged in the Java War. In 1827, the residency was unsafe there were many robberies in the occupied districts of Probolinggo and Minoreh. In his annual report, the resident mentioned that he had made use of the vagrancy ordinance of 23 August 1825, the promulgation of which enabled him to ban all "roaming and damaging persons making use of the disorder" by "political measure." In 1830, forty vagrants were banned from the residency using the same measures.[50]

Thus, the vagrancy ordinance of 1833 was probably a confirmation of something that already took place in practice, and between 1830 and 1870 no other criminal law reforms were introduced to further increase the power of the residents and the priyayi. Such were not needed to sustain colonial rule or impose the cultivation system, because there were already plenty of available tools. As described in part 1, as early as the 1820s there had been extensive interventions in the law courts and the power of the residents had increased considerably. The police magistracy was in his hands, his presidency of the landraad had been affirmed, he could promulgate local ordinances at all times, and there was ample opportunity to diverge from Javanese laws and customs: the criminal legal system already helped the Dutch exercise the sort of power they deemed necessary to maintain colonial

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aanrukken, of aan hunnen eisch, om in dat jaar geene suiker meer te planten, toe te geven." (…) "*de gegrondheid der bezwaren en grieven van de bevolking"* (…) "*als oorzaak, aanklager en vervolger."*

[50] ANRI, GS Kedu, no.2. Algemene Verslagen van 1827–1833. "*..alle rondzwervende en schadelijke sujetten welke van de confusie gebruik maakte*."

rule. Thus, the uncontrolled power exercise was inherent to colonial rule in general and not so much to the cultivation system in particular.

It is nonetheless likely that the exercise of power abuses increased during the cultivation system, because even down to the village level there were local chiefs and officials who profited from it and had an interest in the oppression of the Javanese.[51] The cultivation system was built on the principle of dual rule, by making the priyayi responsible for the supply of crops to the colonial government and preserving the Javanese hierarchy and society as much as possible. However, like the Priangan system on which it was modelled, the cultivation system would change Javanese society in several ways. Land rights changed profoundly, because the cultivation system increased village rights to rice fields, whose crops were intended for the colonial government, and thereby decreased individual rights to land. Also, due to reparcelling, owners of large estates lost parts of their land which diminished class differences. In villages incorporated into the cultivation system, each villager became a worker in service of the colonial government. They were obliged to grow crops for which they received a "planting wage" (*plantloon*), but only for the harvested products. In the event of crop failure, they received no compensation. Often, they also had to pay interest for the fields (*landrente)* on which they grew crops for the government. Besides, the villagers also had to perform unpaid services (*herendiensten*) for their Javanese priyayi chiefs, such as building fortresses and maintaining infrastructure. Also, all kinds of taxes were introduced, including for opium, bazar, and buffalos.[52]

While most Javanese felt the burden of the cultivation system, there were lucrative benefits for Javanese chiefs. Village chiefs (*lurahs*) were made responsible for collecting the harvest and handing it over to the colonial government, for which they received eight percent of the total amount of landrent collected (*collecteloon)*. They also received a percentage of the profit made on the crops (*cultuurprocenten)*. They did not receive a salary, nor were they appointed by the colonial government, so they were not part of the priyayi class. However, the colonial government could dismiss them. The priyayi also had personal interests in high results from the cultivation system, because they obtained *cultuurprocenten*, which were

[51] Onghokham, *The residency of Madiun: priyayi and peasant*, 150.
[52] Fasseur, *Kultuurstelsel*, 13-14, 21-22

sometimes—and in some districts—even higher than the salaries they received from the colonial government. In 1832, regents in active service were again allowed to own land (*ambtelijk landbezit*), and they could receive the *landrent* for lands used for the cultivation system.[53] After 1841, the advantages for an intensification of the cultivation system became even bigger for the priyayi when it was decided that they would only receive the full amount of *cultuurprocenten* over the *increase* in yields compared to the year before.[54] European officials also received *cultuurprocenten*. Thus, altogether, all branches of the colonial and village administration favoured making the Javanese grow and harvest as many crops as possible.

Within the landraad, Javanese members and the Dutch president often had the same interests, although they also had their own agendas. While the Javanese and Dutch judges debated certain things in the landraden, regarding the cultivation system they often shared an interest in maintaining peace and order. If the Javanese members raised objections anyway, the Dutch always had the option of the exercising political means. Attempts in this period by jurists and critics to improve the independence of the justice system foundered, usually due to arguments about the importance of the cultivation system, as will be shown in the next chapter.

The profitability of the cultivation system easily led to extortion and abuses of power, and crossing the line between what was and was not allowed proved tempting for many. It is evident that while the cultivation system was in place, officials were protected from prosecution for abuses of power. Therefore, one aspect in criminal law often associated with the cultivation system was extortion by colonial officials (*knevelarij)*. Knevelarij existed before the introduction of the cultivation system, but now it became a point of heated discussion. On the one hand, it was to the disadvantage of the Dutch if priyayi engaged in extortion, because it could lead to unrest among the population and so decrease the profits from the cultivation system. Therefore, legislation to curtail extortion was deemed necessary. On the other hand, it was to the advantage of the colonial administration, and the cultivation system, if the priyayi had the freedom to oppress the population by forcing them to grow more or otherwise repress resistance. The need to simultaneously curb and protect the priyayi made the prosecution of

[53] Fasseur, *Kultuurstelsel*, 28, 34, 32. It was especially this regulation which led to abuses.
[54] Fasseur, *Kultuurstelsel*, 29. The penghulus did not have a special position within the cultivation system, in the way they had in the Priangan System. See Chapter 5.3.

extortion a sensitive issue. In 1841, for example, the colonial government restricted those residents who—in their position as head of the police—regularly accused lower-ranked priyayi at the circuit court of extortion. From then on, extortion cases could not be sent to a circuit court with the governor general's approval.[55] In part 4, we will elaborate on the issue of extortion and the protection and prosecution of priyayi to obtain better insight into the workings and limits to dual rule in this period.

7.3 Supervision of Pluralistic Courts

Both residents and priyayi had many opportunities to exercise their authority without much interference from judicial power. There were only few judges in Java and they were part of a small circle of high officials in the cities. This leads to the question of how the landraden *were* supervised? Through an analysis of review, pardoning and private attorneys, the next sections examine the supervision of the pluralistic courts.

Review

In the previous chapter, we saw that the Supreme Court was not well informed about local laws. But did they exercise control over the lower law courts—and thus over the actions of the priyayi and residents—through the system of review? It is clear that the most important supervision over the criminal justice as administered by colonial officials was the review by the Supreme Court.[56] This system had its limitations though. Firstly, the Supreme Court could not carry out new investigations, but solely decided over the bnprocedures followed. Secondly, it was an onerous responsibility to go through all the criminal case files. The number of reviewed cases increased hugely during the first half of the nineteenth century. In 1820, the Supreme Court still assessed 731 criminal cases. In 1830, this had been doubled and in 1847 the criminal cases to be checked had been increased up to 3850.[57] Thirdly, the Supreme Court were not very informed on the law practices in Java, in particular not during the early nineteenth century. Since

[55] IB, June 24, 1841, no.2. In Bijblad, no.1181. See Chapter 10.2.2.
[56] For an overview of the system of review (*revisie)* from colonial to postcolonial times, see: Termorshuizen-Arts, "Revisie en Herziening." The Indonesian supreme court (*Makkamah Agung*) still has bigger responsibilities and more powers than the Dutch High Council. The MA leads in the correct explanation and application of the laws, and still circulates instructions to lower courts, as they did during the colonial era.
[57] "Statistiek," *RNI,* 228–132.

there were only three—later four—circuit court judges in Java, the Supreme Court members themselves often did not have experience on the ground. All other cases were administered by the residents at the landraden. Yet, the revision system could certainly prevent irregularities. As we have seen already, for example, Attorney General Esser performed critical assessments of the procedural documents during the first half of the nineteenth century. Also, in cases of severe punishments for relatively small crimes, the courts could intervene.

Still, the system of review was only effective in a limited way and it was even possible to circumvent it altogether. In the first place, review was only for punishments above a certain degree of severity.[58] Consequently, it happened that by intentionally handing down more lenient judgments, the landraden kept criminal verdicts away from the review by the Supreme Court. In 1846, this loophole was closed, and from then on, all criminal cases had to be sent to the Supreme Court for review.[59] However, even after that, cases were still administered clandestinely under police regulations by the resident (who was also the police magistrate), on which no review was done. And, in 1872 it was even decided that review of criminal verdicts would only take place at the request of the jaksa or the convict.[60]

It was well-known that in reviewing cases, the Supreme Court mainly checked whether the right procedures had been followed. There are numerous examples of critics who mentioned that consequently the landraden dealt creatively in drawing up case files. It was even possible that the landraad only drew up the *procès verbal* after the verdict had been given, as the private lawyer C. J. F. Mirandolle wrote disapprovingly: "Then, with little good will, the statements of the witnesses will exactly match the considerations made in the verdict, and the higher judge can only be full of admiration for the correct conclusions made by the judge derived from statements that are so fully in compliance with the verdict."[61]

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[58] Provision Regulations 1819, art.127 and art. 128. Above thiry rotan strokes, longer than three months of chaingang and and imprisonment.

[59] NL-HaNA, 2.10.47 Wetgeving van Nederlands-Indië, no.27. Explanatory note draft regulations RO (undated, approximately 1845); RO 1847, art. 97 and art. 106.

[60] S 1872, no.130 and 131. Because the work load for the Supreme Court had become sky high since 1846.

[61] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163–174. *"met een weinig goeden wil zullen dan de verklaringen der getuigen treffend passen bij de overwegingen van het vonnis, en de hoogere rechter zal alleen kunnen bewonderen de juiste*

It is hard to prove that landraden wilfully falsified procedural documents, as Mirandolle implied. And if they did, it is impossible to decide whether the practice was widespread. However, the regional archive of Tangerang reveals that in at least one case the case files were indeed deliberately falsified. In 1888, the landraad of Tangerang was presided over by Assistant Resident H. de Kock. On 20 December of that year, the farmer Sana-at bapa Sairoen, a man presumed to be thirty-two years old, inhabitant of the village Munjul, appeared before the landraad. He was accused of having harvested trees in the gardens of fellow villagers without permission. The witnesses stated that the suspect had not asked them for permission to harvest the trees, but the statement of the first witness came across as a bit odd. He told of standing next to the accused when the latter started harvesting the trees in his garden, but instead of preventing him from doing this, he had gone off to the police *mandoor* to report the conflict: "When the *mandoor* arrived at my house, the trees had already been harvested." Since this story was not very plausible, the second and third witnesses—who gave similar statements—were asked if the *mandoor* had perhaps told them to declare that the accused had not asked for permission. The third witness gave in. He withdrew his earlier statement and declared that the accused had indeed requested him to relinquish the trees, but that the *mandoor* of his kampong had convinced him to declare otherwise. After this confession, the *mandoor* seemed to be more suspect than the accused, who was acquitted.[62] The most fascinating aspect of the file—as it proves the falsification of the documents—is that different coloured pencils were used to cross out the witness accounts and replacing them with other statements, such as "Witness interrogated again, declares to have agreed on the harvesting of his *nanka* trees by the accused, without knowing that the accused had not received the permission requested from the land owner."[63] Thus, the highly dubious role of the *mandoor* was completely erased from the file and the entire case was presented as a misunderstanding. In this way, the innocent suspect was acquitted and simultaneously the *mandoor* was protected. The most viable

gevolgtrekkingen door den rechter afgeleid uit verklaringen, die zoo volkomen met de overwegingen van het vonnis overeenstemmen."

[62] ANRI, GS Tangerang, no.243B. Landraad criminal case Sana-at bapa Sairoen. Tangerang, December 20, 1888. *"Toen de mandoer ten mijnens kwam, ware de boomen reeds geveld*."

[63] ANRI, GS Tangerang, no.243B. Landraad criminal case Sana-at bapa Sairoen. Tangerang, December 20, 1888.

explanation is that the procedural documents had been forged before being sent to the Supreme Court for revision, in order to avoid criticism for not having prosecuted the *mandoor*.

Mercy

Mercy was another way in which the residents' judicial activities were controlled. This only took place after "justice had its course," so it was not a legal instrument and not bound to certain preconditions. The governor general could intervene if he suspected something had gone wrong during a court case.

There was variation among the Governors General dealt with grants of mercy in different ways.[64] Governor General Van der Capellen critically assessed the dossiers and sometimes even asked for a second opinion from the Supreme Court if he had doubts about the quality of a case's proceedings. In March 1823, he assigned the Supreme Court to contact the circuit court judge of the Semarang department and "remind him emphatically of his responsibilities and urge him to a precise and attentive administration of legal cases." If he could not fulfil his position up to standard, he would be dismissed from "his highly essential and important position of circuit court judge."[65] The Supreme Court judges provided advice to the governor general for each request for mercy. In this case, the correspondence in the dossier shows that they were much more lenient, and it was the governor general who made the most fuss about it.

The entire discussion had started one month before, when the Javanese man Soeto Soyo, who had been sentenced to death for murdering the Javanese man Sidie, appealed to the governor general for mercy. Although several witnesses had recognised him as the assassin, he wrote that he was innocent. Attorney General Esser also had doubts about the convict's guilt, but he followed the advice of the circuit court, who declared that there were no mitigating circumstances. In this case, Governor General Van der

[64] I collected 29 mercy request files in ANRI (AS) from the period 1819-1848. A systematic and large-scale approach was unfortunately not possible, since the index does not mention the location (Java or other island) and ethnicity of the convict who requested the governor general for mercy.

[65] AS, R. June 17, 1823, no.4. Letter Governor General Van der Capellen to the Supreme Court. Batavia, May 6, 1823. "*..nadrukkelijk zijne verpligting onder het oog te brengen en aan te manen tot eene naauwkeurigen en oplettende behandeling van zaken."* (…) "*..zijn hoogst kiesche en belangrijke betrekking van ommegaande regter*."

Capellen was much more critical of the court case proceedings and he did not want to approve the request for mercy without further consideration. Therefore he asked the attorney general to provide a new recommendation about a reduction of sentence on the grounds of "inadequate information, noticed by the high judicial officials themselves."[66] The attorney general agreed that the circuit court judge might have made mistakes, and he proposed that the governor general to set aside the "cold rules of justice" and decide for himself on a mitigation of the punishment.[67] He wrote that too many questions had been left unanswered after reading the procedural documents:

> Why then was this murder committed? Out of revenge? Out of envy? Out of insanity? Due to drunkenness? By mistake? Or for what other reason? The government asks this, the court and I must ask it and we cannot find a complete answer anywhere in the process.
>
> Has the convict been on the run for a long time? Did he show fear? Where and how was he arrested? Was he quiet and calm inside his house or was he captured like a fearful fugitive? The government asks this, the court and I must ask it, and we cannot find a complete answer anywhere in the process...
>
> The witnesses explicitly recognise the prisoner and the *klewang* used to commit the murder, but what is the basis of their knowledge? Did they know the prisoner that well? Were they able to see him and his *klewang* so precisely that there is no possibility of making a mistake during a dark night? These questions also have not been investigated during the questioning.[68]

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[66] ANRI, AS, R. June 17, 1823, no.4. Letter Governor General Van der Capellen to the Supreme Court. Batavia, May 6, 1823. "*..gebrekkige informatie, door deszelfs hooge justitieele ambtenaren opgemerkt*."

[67] ANRI, AS, R. June 17, 1823, no.4. Letter Attorney General Esser to the Supreme Court. Batavia, May 10, 1823. "*de koude regelen van het regt."*

[68] ANRI, AS, R. June 17, 1823, no.4. Letter Attorney General Esser to the Supreme Court. Batavia, May 10, 1823. "*Waarom toch is die moord gepleegd? Uit wraak? Uit nijd? Uit*

Thereafter, the Supreme Court informed the governor general that it had not gone unnoticed that irregularities had occurred in almost all cases administered by the circuit court of the Semarang Department. Yet, they disapproved of the attorney general's writing down such accusations when there were at the same time no grounds to annul the verdict. They recommended that the governor general should "from great caution" change the penalty from death to the punishment next to death—still a severe punishment for someone whose trial had most likely been conducted very badly. Yet, the governor general followed this advice and the man was banned to Banyuwangi.[69]

Governor General Rochussen also assessed death punishment files critically and granted mercy when he had any doubts. The Madurese men Pa Sasoedin, Salek, and Pa Sadalier were saved from the colonial gallows for this reason on 23 April 1846. Although the assistant resident, the circuit court judge, the attorney general and the Supreme Court recommended turning down the request, Rochussen disagreed with them: "When considering the verdict and reading the procedural documents closely and meticulously, I cannot find sufficient proof of guilt. All witnesses are related to the victim by consanguinity, marriage or employment," he wrote with some alarm, and he decided unilaterally to grant mercy.[70]

Legal Representatives

Both review and mercy were ways of overseeing the administration of justice from Batavia, which was far from the courtrooms concerned. Without

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zinneloosheid? In dronkenschap? Bij vergissing? Of om welke andere reden? Het gouvernement vraagt dit, het hof en ik moeten het vragen en nergens vinden wij in het proces een volledig antwoord. Was de gecondemneerde duurzaam voortvlugtig? Heeft hij zich beangst getoond? Waar en hoe is hij gearresteerd? Bevond hij zich stil en rustig in zijn huis of is hij als een angstig vlugteling achterhaald? Het gouvernement vraagt dit, het hof en ik kunnen het nog vragen en nergens vinden wij in het proces een antwoord. ... De getuigen herkennen stellig de gevangene en den klewang, waarmede hij den moord heeft bedreven, maar waar is hunne reden van wetenschap? Kenden zij den gevangene zoo nauuwkeurig? Hadden zij hem en zijn klewang zoo naauwkeurig bezien dat er in eene donkeren nacht geene mogelijkheid bestond om zich te kunnen vergissen? Ook deze vragen zijn bij de instructie zonder onderzoek gebleven."

[69] ANRI, AS, R. June 17, 1823, no.4. Letter from Supreme Court to the Governer General Van der Capellen. Batavia, June 10, 1823. "*..uit groote voorzichtigheid..."*

[70] ANRI, AS, Bt. April 23, 1846, no.3. Resolution Governor General Rochussen. Batavia, April 23, 1846. "*Bij resumptie van het besluit den proccesale stukken nader en bedaard lezende, kan ik maar niet vinden dat de schuld bewezen is. De getuigen zijn alle of in door bloedverwantschap, huwelijk of dienst aan den verslagene verbonden."*

doubt, it would have been much better for the Javanese suspects to have had legal protection during the court session in the courtroom itself, but this was almost never the case. Formally, private attorneys were allowed in the pluralistic courts for most of the nineteenth century, but local suspects could almost never use their assistance.

During Raffles' rule, Javanese attorneys (*vakeels*, or native lawyers) had been kept out of the landraden altogether: "That class of people not being allowed to exist, who, as deriving from litigation their sole subsistence, may fairly and without invidiousness, be considered as having some interest in increasing the business of the courts."[71] Legal representatives were allowed at the landraad in 1819, prohibited five years later, but accepted again in 1832.[72] Most residents were not in favour of accepting attorneys in the landraden over which they presided though. In 1832, the assistant resident of Semarang wrote the governor general that there was much dissatisfaction with the proceedings at the Council of Justice and that the hiring of a private lawyer "has left many careless people penniless."[73] The arguments of the assistant resident, however, seems to have been contradictory. He argued that almost no one could afford the cost of an attorney; but at the same time he was afraid that the attorneys would "swiftly take a grip on most cases":

> The native[74] judge—from whom cannot be expected more than common sense when deciding over cases, and to whom the case should be presented in the simplest way—is currently confronted by legal representatives ... [Who] by presenting shams and so-called powerful judicial sayings ... embezzle the simplest case in such a way, that the judge, even with

[71] Raffles, *History of Java.* Appendix D. "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java," art.135.

[72] Heicop ten Ham, *Berechting van misdrijven door Landraden*, 26.; S 1824, no.64.; S 1828, no.64.; S 1832, no.36.

[73] ANRI, GS Semarang, no.4059. Letter Assistant Resident H.M. Le Roux of Semarang to the Supreme Court. Semarang, November 12, 1832. The letter was written in direct response to the decision to allow suspects at the Landraden to be assisted by a legal representative. *"menig onvoorzichtigen aan den bedelaarsstaf heeft gebracht."*

[74] *Inlandsche*; this term was also used for the European judges in the pluralistic courts, it remains unclear to whom the author refers exactly, the Javanese or the Dutch judges.

> the best intentions, will not be able to save himself from the conflicting [illegible] derivations from judicial writings from former and later centuries, from the most contradictory ideas and arbitrary interpretations and from all the various attack and defence mechanisms which the current jurisprudence has at hand.[75]

At the end of the letter, the truth came out. The assistant resident had been presiding over landraad sessions regularly and he mainly feared a loss of face if the lawyers pointed out to him the judicial mistakes he made. He suggested that attorneys, when appealing, would accuse the landraad presidents of irregularities before a higher court. This would be inconvenient for his reputation as president of the landraad, and it would certainly harm his status as assistant resident:

> What will be the consequence of all this? That the law court compiled of Javanese and Chinese and presided over by a European official—who due to his numerous other responsibilities is often unable to focus his full attention on this particular task—will undoubtedly lose all its dignity. And the same attorneys who had appeared before their bar will attempt to assess them in a possibly harsh manner before a higher judge.[76]

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[75] ANRI, GS Semarang, no.4059. Letter Assistant Resident H.M. Le Roux of Semarang to the Supreme Court. Semarang, November 12, 1832. *"De Inlandsche regter, van wie men niet meer kan vorderen als zoo veel gezond verstand, om een geschil naar de inspraak van zijn geweten te kunnen beslissen en aan wien dit geschil dus op de mogelijkst eenvoudige wijze moet worden voorgedragen, ziet zich thans geplaatst tegenover zaak gelastigden voor welke de arena reeds zijn geopend of die ten minste door de practizijn zoo verre zijn gebragt om door schijngronden en zoogenoemde regtsgeleerde magtspreuken ... het eenvoudigste geschilpunt zoodanig te verduisteren, dat de Regter, zelfs met den besten wil, zich niet zal kunnen redden uit een conflict van ... onverstaanbare ... afschriften uit regtsgeleerde schrijven den vroegen en late eeuwen, van de tegenstrijdigste gevoelens en willekeurigste interpretatie en van al die veezijdigen aanvals en verdedigingsmiddelen welke de hedendaagsche regtgeleerdheid aan de hand heeft."*

[76] ANRI, GS Semarang, no.4059. Letter Assistant Resident H.M. Le Roux of Semarang to the Supreme Court. Semarang, November 12, 1832. "*Wat zal van al dit het gevolg zijn? Dat de regtbank zamengesteld uit Javanen en Chinezen en gepresideerd door een Europese*

In practice, the assistant resident will not often have faced an attorney in the courtroom. In none of the landraad cases analysed for this dissertation does a private lawyer appear, despite the fact that they were allowed in the landraden. A letter in the archives of Semarang does show that Chinese litigants did hire lawyers. On 7 September 1828, the Chinese trader Tan Hain was attacked on a street in the Chinese kampong of Semarang when returning from a visit to the Chinese temple. The culprit was a Chinese man named Tjia Yingkong, who wounded the victim with an iron weapon. On 18 September 1828, he was convicted by the landraad to thirty rattan strokes and six months of imprisonment. Sometime after, however, the governor general granted him mercy and he was released. In response, the victim's legal representative, W. v te B Scheffer, protested this decision because his client thereby "was in no way whatsoever compensated for the affront and abuses suffered." He requested that the resident impose a punishment after all; the resident's response, if there was one, was not found in the archives.[77]

The *Indies' Weekly Journal of Law* shows that Arabs in Batavia also hired lawyers when appearing before the landraad. On 22 December 1862, for example, Sech Abdul Rachman bin Mohamad Baharmoes was accused of fraudulent bankruptcy. The law journals only printed the verdict, and the exact contributions of the lawyer, L. J. A. Tollens, are therefore not clear.[78] In 1848, Mak Daun, a Buginese woman residing in Surabaya, hired the Dutch lawyer R. W. J. C. Bake, who asked whether an inheritance case could be handled by the religious court of Surabaya instead of the religious court of Gresik, since one of the heirs was the chief jaksa of Gresik, who would exercise outsize influence over that particular religious court.[79] In

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ambtenaar die door zijne overige veelvuldige ambtsbezigheden dikwijls in de onmogelijkheid gesteld op dien zijnen functien al zijne aandacht te vestigen, dat die regtbank, zeg ik, onvermijdelijk, hare waardigheid zal verliezen en gepoogd zal worden, om door dezelfde practizijns, welke zij voor hare balie ziet verschijnen, voor den Hoogen Regter op eene wellicht niet zeer kuische wijze te worden beoordeeld."

[89] Arsip Karesidenan Semarang, 1800–1880, no.899. Letter Scheffer to the governer general. March 11, 1829; Verdict Landraad criminal case Tjia Yingkong. September 18, 1828. "*..in gene deelen enige voldoening heeft verkregen van de ondergaande hoon en mishandelingen."*

[90] "De Landraad der stad en voorsteden van Batavia regtsprekende in strafzaken," *Indisch Weekblad van het Recht*, 3. "*bedriegelijke bankbreuk."*

[79] ANRI, GS Surabaya, no.1487. Rejection by the governor general of a request for mercy, on advice of the attorney general. Buitenzorg, April 4, 1851. See Chapter 6.1.3 for more on the position of the chief jaksa in this case.

civil cases before the Council of Justice, the Chinese and Arabs were also regularly assisted by Dutch lawyers. For the lawyers, it was easier to earn money in the Netherlands Indies than in the Netherlands, and attorneys who started their own law firm in Java were likely to return to the Netherlands being well-off.[80]

Although attorneys were obligated to offer free legal aid to people who qualified for this, this was only the case in courts to which fixed attorneys were appointed.[81] Since this system was not in place at landraden and circuit courts, hardly any lawyers performed their services at these courts.[82] According to Gaijmans' handbook of 1874, Javanese suspects were "rarely or never" assisted by a lawyer.[83] With significant consequences, there were no Indonesian, Arab, or Chinese attorneys in Java during the nineteenth century. Hiring a Dutch attorney was simply to expensive for most local suspects.

However, it was not an obligation for a legal representative to have followed judicial training, and from approximately 1880 onwards in newspapers there are reports on "native legal representatives", soon described as into *procureur-bamboe* or *pokrol-bamboe*—literally, bamboo-lawyers.[84] These were people who had legal knowledge, for example, because they had worked as a clerk or jaksa. They earned their money by assisting suspects in landraad cases. At the end of the nineteenth century the

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[80] Henssen, *Twee eeuwen advocatuur in Nederland*, 36, 43. In the Netherlands there was until 1875 a system of double legal aid, with *procureurs* (responsible for the procedural tasks; attorneys at law who were bound to work in one region due to the regional legal differences in the Netherlands) and *advocaten* (responsible for the defense; attorneys-at-law not bound to one region). In the Netherlands Indies there was singular legal aid and this lead to quicker procedures.

[81] Immink, *De regterlijke organisatie*, 429.; RO 1847, art.190. *"De advocaten en procureurs, daartoe door de regterlijke collegian, voor welke zij hunne bediening uitoefenen, aangewezen, zijn verpligt om gratis hunnen bijstand te verleenen aan hen, die vergunning hebben bekomen om kosteloos te procederen. Zij zijn mede gehouden om zich gratis te laten belasten met de verdediging in strafzaken, wanneer hun dit door den regter wordt opgedragen. Zij kunne zich aan die verpligtingen niet onttrekken, dan om redenen, door den president van het betrokkene collegie goedgekeurd."*

[82] Heicop ten Ham, *Berechting van misdrijven door Landraden*, 119. *"..dat prokureurs bij de Landraden gewoonlijk niet voorkomen."* In 1942, Jonkers notes that suspects of a crime imposed by the death penalty, were always defended by an attorney. The IR in 1915 does not include this right yet: Hirsch, *Het Inlandsch Reglement*, 132.

[83] Gaijmans, *De Landraden op Java*, 75.

[84] See for example: "De Inlandse Zaakwaarnemerij", *Bataviaasch Handelsblad*, January 27, 1891.; Lev, *Legal evolution and political authority in Indonesia*: 143-159.; Lev, "Origins of the Indonesian advocacy," 134-169.

complaints among the Europeans about the *pokrol bambu* increased, and this points at a probable increase in the number of *pokrol bambus*, as we will discuss in the epilogue. In the period before 1869 discussed in this chapter, however, there were as yet no active Javanese attorneys, and Javanese suspects were not given the option of being assisted by a European defence lawyer for free.

7.4 Conclusion: Dual Control

The colonial pluralistic courts relied heavily on the priyayi for preliminary investigations and the apprehension of suspects. As landraad presidents, the residents were juggling between meeting the requirements of the Supreme Court and cooperating with the priyayi to impose the cultivation system and simultaneously control the Javanese population. This, and the minimal involvement of attorneys caused tensions to appear more on a political level within the landraad than on content-based legal issues. In any case, it is certain that there were plenty of options for both Dutch and Javanese officials to maintain an iron grip on the Javanese people within the colonial legal system. Through the system of dual rule, the Javanese were held in a double stranglehold.

On the other hand, it was also the dual system that led to a very precarious colonial state, since the Dutch relied on the priyayi and their action in police and justice matters. They themselves were unable to find out who was responsible for many crimes because they lacked the regional information networks to do so. Consequently, the priyayi held a strong position on a regional level. We will investigate the enduring importance of family-networks and patronage of priyayi families, and the limits to dual rule, in part 4. But first, in the next two chapters, we will take a closer look at whether and how the dynamics changed between the local members and the Dutch landraad president, when in 1869 a jurist replaced the resident as president of the landraad.