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

Ravensbergen, S.

8 — Cutting the Ponytails

In 1861, an author in a colonial journal remarked that "the time has passed when the residents, like pashas with three ponytails, could do whatever they chose to do."[1] This description of the residents in Java as pashas with three ponytails was not unjustified, as shown in the former chapter, certainly regarding their involvement in criminal law practices. In addition to his administrative and (limited) legislative rights, the resident also represented the judicial power in the landraad, a situation that at the same time had become unthinkable in the Netherlands but was defended for a long time as acceptable regarding the colonial legal adjudication over the Javanese population and "those equal to them." This continued until it was decided in 1869 that administrative officials would be gradually relieved of their judicial position as president of the landraad. In practice, this meant that the judicially trained and independent landraad president would (very gradually) enter the residencies. In this chapter, I research the shift from the residents to judicial landraad presidents, to understand what the consequences of this reform were for dual rule in colonial Java. Was this indeed the end of the resident as a pasha with three ponytails?

8.1 Landraad Presidents under Discussion

Despite all the remarks made by the Supreme Court on residents' ignorance of judicial affairs and the criticism that they were not be very conscientious in following the rules, residents continued to fulfil the position of landraad president for a long time. It was only from 1869 onwards that they were gradually replaced by judges. The debate was influences by both developments in the Netherlands and the colony.

Independence of Judges in the Netherlands

The idea of the separation of powers had been circulating in the Netherlands since the end of the eighteenth century. Patriots who had been in France returned with these ideas, and the developments in the United States were

[1] "Hoe het tegenwoordig op Banda toegaat," 239-243. *"De tijden zijn voorbij, dat de Residenten, als pacha's met drie paardenstaarten, alles konden doen wat zij verkozen*."

also followed. However, there were various ideas about the theory of the separation of powers, some of them even contradictory, which did not facilitate the implementation of the system. The followers of Rousseau, for example, emphasized the subjugation of the administrative and judicial powers to the legislative power, which would increase the influence of the citizens. Others were proponents of the separation of powers because it would provide protection of the rights of citizens against this same legislative power. In this, they followed Locke. The aristocracy, among others, referenced Montesquieu, who considered the separation of powers as a possible protection of their position.[2]

Eventually in the Netherlands, the separation of powers would be enforced mainly to prevent the administrative power from gaining too much influence over the judiciary. In France, it had been the other way around. There, in the past, judges had regularly intervened in administrative affairs and the aim of the separation of powers was to curb judicial power.[3] In the Netherlands it would take many constitutional reforms to crystallize the principle of the separation of powers, and even after the Complete Constitution Reform (*Algehele Grondwetsherziening*) of 1848, the extent to which there would be a separation of the powers was not clearly described. Although the separation of powers in general would be increasingly strengthened in each new constitution, the principle was still not completely clarified in 1848. As a result, the division of powers was shaped through practice, mainly during the years after 1848.[4]

Thus, the so-called separation of the powers in the Netherlands was a lengthy process that developed over the course of the nineteenth century. It is important to note, however, that the struggle in the Netherlands focused mainly on the balance between legislative and administrative powers, and the position of the king in this constellation. The independence of the judiciary, on the other hand, was clear quite soon. Already in the Constitution of 1814 was "the judicial function ... specifically allocated to the judicial institutions." The Constitution of 1815, the Revision of the

[2] Oosterhagen, *Macht en Scheiding,* 124–125.
[3] Oosterhagen, *Macht en Scheiding,* 124–125.
[4] Oosterhagen, *Macht en Scheiding,* 337.

Constitution of 1840, and the Complete Revision of the Constitution of 1848 left no doubt as to the independence of the judiciary.[5]

Therefore, the question remains, how was it possible that in the Netherlands Indies, the independence of the landraad presidents was not guaranteed until well into the nineteenth century. Apart from the colonial circumstances, which we will discuss in this chapter, a first explanation for this is that even in the Netherlands itself, practice did not follow theory completely. In 1815, for example, regulations stated clearly that the High Court (*Hoge Raad*) held the *privilegium fori* in cases of office crimes (*ambtsmisdrijven*) committed by ministers or other officials. Willem I, however, essentially ignored this, as described by legal historian Maarten Oosterhagen: "In practice Willem I observed himself and behaved as the centre of the state. [He] fired those who opposed him."[6] Dutch conservatives, represented in the king and aristocracy, were not at all interested in a fully independent judiciary. They were convinced that the maintenance of order and the general interest should be a priority, and if necessary the power holders should be able to influence this. Liberals, however, considered the independence of the judiciary above the interests of the maintenance of order. It was only in 1848 that the upper middle class, with its liberal judicial convictions, held enough power to organise a more independent judiciary in the Netherlands. Even then, the legal system would remain a battleground, in particular regarding the aristocracy's influence on the provincial courts.[7]

Dependence of Judges in Colonial Java

In the Netherlands Indies, criticism of the landraad presidents was not limited to remarks made by the Supreme Court. Already at the start of the nineteenth century, proposals had been made for improvement. As discussed in chapter 2, the Asian Charter of 1803 proposed that local administrative officials should no longer preside over the Javanese courts. This call was not heeded at the time. Raffles was the first to make a start with a separation of the powers by appointing independent judges at the circuit courts. However, he retained the residents in the position of president at the landraad. To

[5] Oosterhagen, *Macht en Scheiding,* 180. "*De rechtsprekende functie (..) uitdrukkelijk toebedeeld aan de rechterlijke organen."*

[6] Oosterhagen, *Macht en Scheiding,* 222. *"In de praktijk voelde en gedroeg Willem I zich als het centrum van de staat ... [Hij] ontsloeg wie hem tegensprak."*

[7] Pieterman, *De plaats van de rechter in Nederland,* 79-81.

increase transparency at least somewhat, the people were given the opportunity to file petitions at the landraad.[8] After the return of the Dutch, the judicial presidents of the circuit courts were retained, although an exception to this was made during the period directly after the Java War, when the residencies of Banyumas, Bagelen, Madiun, Kediri, and the sub-residency Pacitan were annexed to the government lands of Java. In these new residencies, it was decided for political reasons to establish *groote landraden* (big landraden); a kind of merger of the landraad and circuit court presided over by the residents, because "the authority of the residents in these recently annexed regions, by a separation of the administrative and judicial powers and the involvement of judicial officials, would be weakened" and, moreover, that "the interference of the circuit court judges, being less compatible with the institutions and understandings of these peoples, had to be excluded." In 1848, the circuit courts were introduced in these residencies after all.[9]

The second committee of Scholten van Oud-Haarlem pleaded already in 1839 to install separate presidents at the landraden, to foster the independence of the judicial system. Besides, they feared for the immunity of the resident, since their verdicts were annulled or revised every now and then by the Supreme Court. Moreover, in veiled language the committee pointed out the danger of corruption. A resident could, for example, be approached by a regent with a request to turn a blind eye when a lower chief—"often relatives of the regents by blood or marriage"—were guilty of extortion. The committee imagined that it would be hard for a resident in

[8] Raffles, *History of Java.* Appendix D. "Regulation A.D. 1814, Passed by the Honourable The Lieutenant Governor in Council on the 11th of February 1814, for the more effectual administration of justice in the Provincial Courts of Java," art.134. *"As it is most essential that access to justice and redress be rendered as easy and free as possible to the injured, the Residents are ordered to receive at all times, and to pay the utmost attention, to every petititon that may be presented to him. ... he shall cause a box to be placed at the door of the Court, into which petitions may be dropped; of this he shall himself keep the key, and on going into Court open it with his own hand, and have the contents read to him. He shall, at the same time, in the open space before the Court, invite the giving in to him and complaints from persons who may consider themselves as aggrieved."* The landraad was called the Resident's court during the British interlude.

[9] Gaijmans, *De Landraden op Java,* 6. *"het gezag der Residenten in die pas ingelijfde gewesten, door eene scheiding van Administratieve en Rechterlijke macht en de inmenging van Rechterlijke Ambtenaren, zoude worden verzwakt (..)"de bemoeienissen der Omgaande Rechters, als minder vereenigbaar met de instellingen en begrippen des volks, moesten worden uitgesloten."*

such as situation to still prosecute such a person before the landraad. If, however, it became possible for him to say that this was not within his power, and if he could refer the case to an independent judge, the chances of local chiefs being punished for their illegitimate behaviour would improve, argued the committee.[10]

State Secretary J. C. Baud was not a proponent of separate landraad presidents though. From his perspective, an independent legal system was not very important. In response to the committee proposal, he wrote "that, if the influence of the resident on the judgments of the ... landraad were in conflict with the theory of the independence of the judicial power, that influence certainly did not oppose the convictions of the Javanese." Moreover, according to Baud, the power of the government had "to be broken as little as possible." Baud argued that it was exactly the concentration of all power in the hands of one person in a residency that had established the authority convincingly. This colonial authority was needed to demand "a before unknown effort in the interest of the cultivation [system]." The separation of the powers through the introduction of a separate landraad judge would deprive the resident of an important "instrument" of authority. In short, everything had to remain as it was, in particular to ensure that the colonial government continued to reap the benefits of the cultivation system:

> Java [is] in a state of transition from the Asian to the European ways of government … For as long as that transition has not made any progress and, foremost, for as long as the government obtains its most prominent income from the workings of the Asian institutions, it would certainly be unjust, and foolish and careless, to declare war on these institutions and thereby shut that source of rich and necessary income, solely out of love for the European theories and ways.[11]

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[10] Committee Scholten Oud-Haarlem cited in: Immink, *De Regtelijke Organisatie*, 4-7. *"dat, moge al de invloed van den Resident op de beslissingen van den ... Landraad in strijd zijn met de theorie der onafhankelijkheid van de regterlijke magt, die invloed zeker niet aandruischte tegen de begrippen der Javanen."*

[11] J.C. Baud cited in: Immink, *Regterlijke organisatie*, 9. "*..eene te voren ongekende inspanning van krachten te vorderen in het belang der cultures."(...) "Java [bevindt zich] in den staat van overgang van de asiatische tot de europesche vormen van bestuur... . Zoolang*

The ideal of an independent legal system was hereby declared inapplicable to colonial circumstances. The legislation of 1848 would not alter the position of the resident as landraad president in any way.

Had it been up to some conservative officials, even the circuit courts would have been presided over by a resident. For example, as described in chapter 6, Resident G. L. Baud complained in a letter to his cousin J. C. Baud, about the dispute between the Javanese members and the European judge of a circuit court. He believed this dispute would have never happened if the resident had presided over the circuit court: "Therefore I ask, would such a scandal have taken place if the resident had presided? Certainly, not." He proposed to let the resident preside in the circuit courts, in particular because they would be more capable of dealing with the local chiefs and detecting false witness accounts given by locals. In his letter, Baud gave two examples of landraad cases in which he had discovered that witnesses had given false testimony. He had discovered this by ordering the witnesses to be interrogated again after the court session had ended. In the first example, one witness in a civil case turned out to be the son of the defendant, even though he had declared himself to be unrelated to the litigant. In the second example, the witnesses in a criminal case had been bribed by a village chief to falsely accuse an innocent man, whereas in reality the village chief himself was the guilty party. Baud argued that these were not exceptional examples, and according to him the only solution would be to allow the resident to preside over the circuit courts, because they were better acquainted with the "nature, actions, and motivations of the chiefs and the people." Moreover, it would be easier for them to investigate the cases themselves in the residency, which could be handled quickly. Finally, the resident was in a better position to exercise influence over the Javanese court members. Baud wrote that he had mentioned all this already in 1841 to Merkus, who had been unwilling to believe that the judicial system was in such a bad state.[12]

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die overgang geene grootere vordering had gemaakt en vooral zoolang het Gouvernement zijne voornaamde inkomsten bleef tegemoet zien uit de werking der asiatische instellingen, het even onbillijk, als dwaas en onvoorzichtig zoude zijn om aan die instellingen den oorlog te verklaren en alzoo die bron van rijk en onontbeerlijke inkomsten te doen opdroogen, blootelijk ter liefde van europesche theorien en vormen."

[12] NL-HaNA, 2.21.007.58, 058 J.C. Baud, no.638. Letter G.L. Baud to J.C. Baud, September 11, 1847. "*Nu vraag ik, zou zoodanig schandaal begaan zijn wanneer de Resident had*

In general, Baud did not see the purpose of professional judges in criminal cases anyhow, "because I cannot understand how one needs an extensive knowledge of law to be able to judge whether someone is guilty of robbery, murder, or other crimes."[13] When G. L. Baud became the new Minister for Colonial Affairs, he took the opportunity, in a report of 24 May 1849, to propose again—this time to Whichers—replacing the circuit court judges by the resident. However, Whichers disagreed, because the circuit judges' judicial knowledge "provides a safeguard of proper justice." Moreover, the circuit court judges acquired knowledge of local circumstances through the circuit court cases, and this served as a preparation for their later careers at the Supreme Court. When Whichers' response reached The Hague, G. L. Baud had already resigned and the new minister, Charles Ferdinan Pahud, who was not as reactionary as his predecessor, endorsed Whichers.[14]

Yet, in the meantime, J. C. Baud had decided that all judicial officials in service could apply for administrative posts. The purpose of this was to include judicial officials as much as possible within the colonial civil service. In particular, during the cultivation system era, the position of administrative official was more attractive due to the cultivation percentages. If a judicial official wanted to be considered for an administrative position in the future, it was best to not be too critical of the administration, or as historian Cees Fasseur concluded, "More than anything, he wanted to prevent the development, in the Indies, of an independent judicial service consisting of professional judges who, with their verdicts, would be a threat to the omnipotence of the governor general."[15]

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voorgezeten? Voorzeker Neen. (..)…inborst, handelingen en drijfveren van Hoofden en bevolking."

[13] NL-HaNA, 2.21.007.58, 058 J.C. Baud, no.638. Letter G.L. Baud to J.C. Baud, September 11, 1847. "*..want ik kan niet inzien, dat men eene uitgebreide regtskennis noodig heeft om te beoordeelen of iemand als dan niet aan roof, moord of anderen misdaden schuldig is."*

[14] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. July 4, 1850, no.9. Letter from Minister of Colonial Affairs Pahud in response to Whichers. "*..een waarborg oplevert voor eene goede berechting."*

[15] Fasseur, *De Indologen*, 117–118. *"Voor alles wilde hij voorkomen dat in Indië een onafhankelijke rechterlijke macht zou ontstaan van professionele rechters, die met haar uitspraken een gevaar zouden vormen voor de almacht van de gouverneur-generaal."*

8.2 Towards Change

A new period started with the Dutch constitution of 1848, when the parliament acquired greater control over the colonial budget and colonial affairs.[16] Yet, the 1850s were not years of great change in either the Netherlands or the Netherlands Indies. This was certainly the case for the legal system. As described before, the colonial law codes of 1848 reflected discussions dominated by merely conformist views during the 1830s and 1840s. Also, there was not a pressing need for the introduction of independent landraad judges in the 1850s, although the reliance of law on administrative power was mentioned at times as a serious problem. In an evaluation of the workings of the legislation of 1848 attached to the Colonial Report of 1856, Attorney General Allard Josua Swart wrote that "when assessing the workings of the new legislation among the natives in Java and Madura, it should not be forgotten that this is almost completely entrusted to administrative officials and native chiefs, and that, imperfect though such a [system of] justice may be from a judicial viewpoint, apart from the political perspective, this cannot be changed radically without considerable expense."[17] Thus, although the problem was acknowledged, the solution—the introduction of independent landraad judges—was seen as an excessive financial burden. During the 1860s, the liberal course was resumed by the second government of Johan Thorbecke. And then, despite the reluctance of the 1850s, a debate on possible liberal reforms in the field of colonial law got underway.[18]

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[16] Until 1848 colonial affairs were decided by the king, and parliament had not much say in it. Only in 1848, with the introduction of the revised Dutch constitution, parliament gained some control over colonial affairs.

[17] KV, 1856. Attachment "Verslag van den procureur-generaal bij het Hooggerechtshof van NI over de werking der in 1848 ingevoerde nieuwe wetgeving voor Nederlandsch Indië." "*Bij de beoordeeling der werking van de nieuwe wetgeving op Java en Madura onder den inlander behoort niet uit het oog verloren te worden, dat dezelve bijna geheel is toevertrouwd aan administratieve ambtenaren en inlandsche hoofden, en dat, hoe gebrekkig zoodanige regtspraak uit een juridisch oogpunt ook zij, hierin, daargelaten nog het politieke oogpunt, geene radicale verandering kan worden gebragt zonder zeer aanmerkelijke uitgaven."*

[18] After 1848, liberal ideas and their representatives from the Netherlands slowly gained renewed importance in the colony. Although many liberal reforms were held off for decades—reluctance generally dominated the discussions—it was clear that eventually change would be inevitable. This was heralded by the introduction of the auditing principle (*comptabiliteitsbeginsel*) implemented in 1864, by which the minister of colonies had to submit the colonial budget to the Dutch parliament, whose control of colonial affairs was increased considerably. Furthermore, the public press became more influential, raising questions and criticizing regional politics in the colony on a more regular basis. Also, law in

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The calls for criminal law reforms got louder during the 1860s. In 1866, this led to the abolition of flogging with the rattan, and pressure to replace the landraad presidents with independent jurists increased. The new Attorney General Rappard wrote in 1860: "Also native justice would improve considerably if regionally the presidency of the native courts [pluralistic courts] were entrusted to a judicial official." His concerns about the legal system were based on the case files he had assessed in revision. Their poor quality concerned him to such an extent that he felt obliged to submit a proposal on how to improve the legal system. Therefore, in 1862 he asked that residents, circuit court judges, and a private lawyer share their experiences with him.[19] Their letters show that their viewpoints differed according to the author's profession.

The residents who responded to Rappard, did not mention any problems regarding criminal law practice, but emphasized the difficulties with civil law cases on a regional level. In 1855, the Chinese had been elevated to the same judicial position as the Europeans, with the consequence that both Chinese and Javanese—in cases in which one of the litigants was of Chinese descent—had to travel long distances to one of the three Councils of Justice in Java, in addition to which they had to pay for an attorney. Therefore, voices were raised to give the landraden the right to administer justice in minor civil cases between Europeans and Chinese. The resident of Rembang thought that in that scenario the landraad president—he himself—ought to be assisted by a "judicially well trained clerk." The resident of Surabaya went a step further by proposing the appointment of a judicial official subordinate to the resident, but who could substitute as president during the resident's absence. Regarding criminal law, none of the residents mentioned any problems, but it seems that—due to complaints about the administration of civil justice—there was some willingness to accept the appointment of judicial officials in the residencies.[20]

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the Dutch East Indies was vividly propagated by lawyers as a medium to civilize the Javanese people.

[19] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Proposal Rappard. Batavia, April 4, 1864. "*Ook de inlandsche retspleging zoude er zeer bij winnen, indien plaatselijk aan een regtsgeleerd ambtenaar het voorzitterschap der inlandsche regtbanken wierd opgedragen*."

[20] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letters from the residents: Resident of Kedu, G.M. van de Graaff. Magelang, March 11, 1863.; Resident O.

The circuit court judges who wrote to Rappard also mentioned the newly introduced equal status of the Chinese regarding civil law, but above all they observed problems in the field of criminal law as executed by the landraden. They noted the most pressing problems in the police investigations carried out by the priyayi. Circuit Court Judge J. Sibenius Trip of the third division in Java blamed the poor state of police affairs to the fact that European officials often delegated the supervision of police investigations to Javanese officials due to a lack of time: "Although much can be expected from the native personnel regarding the investigations of crimes, they usually lack insight and need intensive guidance in many cases."[21] Nor did Circuit Court Judge W. Diemont of the first division express much confidence in the Javanese officials: "The native is not devoid of good qualities," he acknowledged, "but above all he prefers ease; he is largely thoughtless and indifferent, he is very envious and revengeful; the loyalty to his chiefs is excessive and borders on fear. Little or no care has been taken for his intellectual and moral development. The financial compensation for the chiefs, with the exception of the regent, is too little to cover their expenses."[22] Thus, altogether, the character of the Javanese, his lack of education, and a low salary were seen as the causes of poor preliminary investigations in criminal cases. However, the solution that circuit court judges offered in their letters was not to solve any of these issues, but instead to appoint European judicial officials to supervise the investigations carried out by Javanese officials.

The criticism of police investigations expressed by the circuit court judges was based on the files of preliminary investigations they used in the circuit courts, which were compiled by the wedono (or in Batavia, the *demang*) and jaksa and signed by the resident. The circuit court judges received files that did not meet the regulations. Judge Sibenius Trip gave some examples. First, sometimes the procès-verbal was drawn up long after the inspection or autopsy. Second, he received police magistracy' case

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van Rees of Surabaya. March 4, 1863.; Resident Tijzelaar of Rembang. Rembang, March 24, 1863.

[21] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter from circuit court judge J. Sibenius Trip to attorney general Rappard. Rembang, November 24, 1862. "*Van het inlandsch personeel is, wel is waar bij de opsporing van misdrijven veel te verwachten doch het ontbreekt haar veelal aan doorzigt en behoort in vele zaken behoorlijk geleid te worden.*"

[22] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter of circuit court judge W. Diemont to attorney general Rappard. Batavia, 27 december 1862.

overviews (*politierollen*)—in cases of recidivism—on which cases had been handled that should have been referred to the landraad. Moreover, both circuit court judges mentioned that they had dealt with cases in which they had been forced to acquit the primary suspect for lack of proof, although he could have been convicted if his fellow suspects had been summoned as witnesses.[23] This point was not only a criticism of how Javanese police officials worked, but a careful and rather indirect criticism of the resident.

Private attorney C. J. F. Mirandolle felt less constrained in expressing his views and denounced the resident directly: "The major mistake that has been made at the introduction of the judicial organisation is that one has entrusted the instruments of justice to the administrative officials, whose nurture and course of life make them entirely unsuitable for administering justice." On the separation of administrative and judicial power, he wrote: "There is no greater favour than this to offer to Java." In his letter, he refuted the much-heard argument that "the Oriental" in nature would prefer a unification of the powers. According to Mirandolle, even if this was true, this was not an argument to allow injustice to exist. The dependent judge was in contradiction with the principles of justice, so this had to be changed anyway.[24]

Whereas the circuit court judges mainly identified the lack of time and knowledge among residents, Mirandolle emphasized the fact that residents would always put their political interests first, and this was especially detrimental to criminal law: "For all these officials, the written law and the formalities of justice—which they largely ignore and absolutely

[23] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter of circuit court judge J. Sibenius Trip to attorney general Rappard. Rembang, November 24, 1862. *"De inlander is niet ontbloot van goede eigenschappen doch rust is hem boven alles lief; onnadenkend en onverschillig is hij in groote mate, hij is zeer jaloersch en waarkzuchtig; de eerbied, welke hij heeft voor zijne hoofden is overdreven en grenst aan vrees. Weinig of geen zorg wordt er gedragen voor zijne verstandelijke en zedelijke ontwikkeling. De bezoldiging der hoofden, de regent uitgezonderd, is te gering dan dat zij daarvan kunnen bestaan."*

[24] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter from Mirandolle to Attorney General Rappard. *"De grote fout, die bij de invoering der Regterlijke Organisatie begaan is, is dat men atributen van regtspraak aan administratieve ambtenaren heeft opgedragen, wier opvoeding en levensloop hen voor die regtspraak geheel ongeschikt maken. (..) geen grooter weldaad kan in dit opzigt aan Java bewezen worden*." Charles Jean François Mirandolle (1827–84) was born in Paramaribo. He was a lawyer and owned a law firm in Semarang from 1853 until 1864. He returned rich to the Netherlands and became a member of parliament. He rejected the request to become minister for colonial affairs several times. www.parlement.com (last accessed: 28-7-2016)

do not understand—are in the background, whereas the maintenance of rule, order, peace, and wealth are in the forefront, and they are convinced that they are fulfilling their duty when sacrificing justice in order to reach a—from their perspective—much more important aim." Mirandolle claimed to have hundreds of examples "that are so telling, that they have the appearance of being illegal." According to him, residents only had two aims when administering criminal justice. Their main goal was to get the suspect declared guilty during a landraad session. Therefore, he maintained, they often neglected to investigate whether the accused was actually guilty at all. Second, the confession of the accused was considered the most important proof. To obtain a confession "often moral, and sometimes personal torture" was applied. This could include flogging, sleep deprivation, or the torture of relatives. Moreover, bribing and punishing witnesses was not uncommon.[25]

In the years following, Mirandolle repeated his claims in newspapers and journals, publishing pressing articles that demanded reform. He argued that it was unworthy of a civilized country to refrain from a separation of powers. He also emphasized that residents even united all three powers in themselves, because they were also entitled to promulgate local ordinances and regulations. Mirandolle blamed J. C. Baud for having given preference to the interests of the cultivation system over an independent judicial system. He condemned this as a "false principle" and he condemned police magistracy as a telling manifestation of this policy, with the most direct negative consequences: "At once, one will notice that the same resident who, through his legislative power, has issued local rules, and as head of the police shall watch over the obedience to those rules, as well as to other police regulations, now also acts as a judge to impose punishments on natives, who—according to him—are guilty of violating the rules. It is almost impossible to bring together more guarantees of judicial bias."[26]

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[25] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Letter from Mirandolle to Attorney General Rappard. *"Bij al die ambtenaren, staan de geschreven wet en de formaliteiten der regtspraak, die grootendeels ignoreren, en volstrekt niet begrijpen op den achtergrond, maar handhaving van het gezag, orde, rust en voorspoed in hun gewest op den voorgrond en zij gelooven slecht hun pligt te doen, indien zij het regt opofferen om een in hun oog veel gewigtiger doel te bereiken. (...)die zoo sterk sprekend zijn, dat zij den schijn van charges hebben. (...)..dikwerf morele wel eens persoonlijke pijniging.."*

[26] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Policie-rol," 14-24. "*Al dadelijk merkt men op dat dezelfde Resident die, krachtens de hem gegeven wetgevende macht, de plaatselijke keuren heeft vastgesteld, en als hoofd der policie moet waken tegen de overtreding van die keuren, zoowel als van andere policie-reglementen, nu ook als rechter*

Mirandolle also called for action by Governor General—and jurist—Pieter Mijer, and he referred to an article written in 1839 by Mijer (when he was a member of the codification committee) in which he had argued for the importance of "an impartial judicial administration based on proper laws,"[27] thereby being less reluctant regarding reforms to criminal justice than in his later days.[28] Mirandolle was also to the point on the existing fear that reform would undermine the authority of the resident: "The fear, that the unity of power will be ruptured if the resident loses his judicial position is hollow. The prestige of this chief official will not be reduced if he stops being the source of poor verdicts."[29]

More private attorneys would raise their voices. In 1863 attorney J. van Gennep and notary J. R. Kleijn established the Indisch Weekblad van het Recht (*Indies' Weekly Journal of Law*). There was already a judicial journal, but its editorial board was unable to fulfil one of the aims of the *Weekly Journal of Law* "due to the articles of incorporation and the direct relationship of the editors to the government."[30] This new aim was the denunciation of abuse: "A constantly open opportunity to report facts and existing abuses will be a forceful instrument, not only to repel but also to prevent arbitrariness."[31] In the first editions of the journal, articles were devoted to the rattan punishment and why it had to be abolished, the police magistracy, and the subject of the resident as landraad president.

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optreedt om de straf op te leggen aan den inlanders, die zich volgens hem aan overtreding heeft schuldig gemaakt. Het is bijna onmogelijk meer waarborgen voor eene partijdige rechtspraak bijeen te brengen."

[27] Mijer, "Bijdrage tot de geschiedenis der codificatie." "*goede wetten en eene daarop berustende onpartijdige rechtsbedeeling*"

[28] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163–174.

[29] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Policie-rol," 14-24. *"De vrees dat de eenheid van gezag zou verbroken worden, indien men den Resident zijne rechterlijke functien ontnam, is ijdel. Het prestige van dien hoofambtenaar zal niet verminderen indien hij ophoudt de bron van slechte vonnissen te zijn."*

[30] [Editors]. *Indisch Weekblad van het Recht* 3, 1. On the difference between the two journals the editorial board wrote: "that the Weekly represents the liberal constitutional principle of free debate (/speech) and progress, whereas the Journal seems to merely represents the autos epha, the conservative or authority principle." (*dat het Weekblad meer het liberale constitutionele beginsel van vrije discussie en vooruitgang vertegenwoordigt, terwijl het Tijdschrift meer het autòs ephâ, het conservatief of autoriteits-beginsel, schijnt voor te staan.)*

[31] [Editors]. *Indisch Weekblad van het Recht* 1, 1-3. "*..door zijne akte van constitutie en de ambtelijke betrekking doorgaans door zijn redactieleden bekleed*." (…) *"Een steeds openstaande gelegenheid tot mededeeling van feiten en van bestaande misbruiken zal een krachtig middel zijn, niet slechts tot keering maar tot voorkoming van willekeur."*

In the meantime, Attorney General Rappard had collected all advice on the matter and in 1864, he formulated a concrete proposal. As mentioned above, the advice had differed per profession, but everyone seemed to offer some room for the introduction of professional jurists. Although Rappard acknowledged the problems with police magistracy and "the incredibly arbitrary way in which cases are handled there," he was nonetheless opposed to the idea of abolishing the police magistracy altogether. This would be impossible, in his opinion, as long as the cultivation system was not bound by stricter rules:

> If one takes away the power of the administrative officials to impose punishments by police magistracy (*politierol*), all societal constructions of the natives would fall apart. Only when the cultivation services and the obligations of the native population towards the chiefs (…) are arranged legally—for which it is my earnest desire that the government will proceed to act soon—can we think of introducing proper justice in police cases.[32]

Thus, there was no abolition of the police magistracy; but Rappard did propose two other reforms. First, European judicial officials had to be appointed as landraad presidents, assisted by a clerk (preferably with judicial training). Second, these landraad presidents should also administer justice in small cases—and in certain civil cases with Chinese of equal standing with Europeans—where Europeans were involved. These cases would no longer be heard at the Councils of Justice.

What followed was wrangling between the various administrative bodies on the proposed reforms. In all responses, any criticism on the

[32] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. February 7, 1867, no.8. Proposal Rappard. Batavia, April 4, 1864. "*..de ongelooflijk willekeurige wijze waarop de zaken daar worden afgedaan..*" *(..)* "*Er is nog nagenoeg geene verpligting van den inlander wettelijk geregeld, ontnam men den administratieven ambtenaar de bevoegdheid om naar willekeur op de politierol straffen op te legen, dan zouden voor den inlander alle maatschappelijke banden los zijn gelaten. Eerst dan wanneer de heeren- en kultuurdiensten, de verpligtingen der inlandsche bevolking jegens de hoofden en die der mindere beambten op wettige wijze zullen zijn geregeld en straffen op overtredingen zullen zijn bedreigd, waartoe ik vurig wensch dat de Reering spoedig moge overgaan, is aan eene behoorlijke regtspraak in politiezaken te denken.*"

resident was formulated in very carefully. All letters stressed that the poor quality of the justice system was due to a malfeasance of the jaksas and police officials. The residents' lack of time was another cause mentioned. In the end, Rappard's proposal was not turned down because it was unneeded—Governer General L. A. J. W. baron Sloet van de Beele strongly supported it—but because the Council of the Indies objected to its feasibility. They preferred that a Department of Justice be established first, so that the director of that department could implement the reform. Finally, Minister of Colonial Affairs N. Trakranen rejected Rappard's proposal because it would be impossible to find enough jurists on such as short notice.[33]

As the proposal bogged down in interminable discussions, the new Attorney General Der Kinderen decided to bring Rappard's initial proposal to the table again. After summarizing the problem, he proposed two concrete solutions. First, he pleaded for a gradual introduction of the judicial landraad president, to make sure that there would be time to find enough jurists. Second, he proposed abolishing the circuit courts, which would release eight jurists to be available for the position of landraad judge. The new Minister for Colonial Affairs Engelbertus de Waal dealt with the dossier efficiently. He left out all minor recommendations and complaints and only focussed on the main issue; the separation of the administrative and judicial powers was a fact. In 1869 the formal decision to appoint judicial landraad judges was taken, and the first five judges were appointed in 1871.[34]

Around 1870, several issues that had been debated for years were suddenly resolved with the establishment of the department of justice and the introduction of the Native Criminal Code. These were years of change, although delay and doubt continued to exist. The question was raised, for example, what had to be done first? The code or the judges? Eventually, it all happened more or less simultaneously. After 1873, the gradual separation

[33] 49 jurists were needed to provide a judge for all landraden. It has been taken into account that the circuit courts would be abolished, so that the five circuit court judges would also be transferred to a landraad. Traktanen thought this number to be impossible, and the time of issue would also not suit because of the introduction of the auditing principle law.

[34] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. December 30, 1868, no.1a and 1b. Letter Minister for Colonial Affairs De Waal to the king. Batavia, December 30, 1868.; S1869, no.47.

of the administrative and judicial powers was also expanded outside of Java.[35]

In practice, however, the arrival of jurists in the residencies would be gradual. In 1888 (—the year of the case of the falsified procedural documents discussed in chapter 7), the landraad of Tangerang was still presided over by the assistant resident. In 1879, in Java fifty landraden were presided over by thirty-one judicial officials. At that time, there were still thirty-eight landraden headed by the resident. A start was made with the abolishment of the circuit court in East Java, where all landraden were presided over by professional judges.[36] Only in 1901 were all landraden in Java presided over by judicial officials. Then, all circuit courts were abolished.

Confident Jurists and Administrative Suspicions

After the introduction of the independent landraad president, all of a sudden, there were more jurists in Java, especially in the countryside and smaller cities. We will now return to the residency level and take a closer look at the consequences of reform for regional dynamics. What did the residents think of their dismissal from the position of landraad president, and how did they respond to the judicial landraad presidents entering their domains?

From the perspective of at least some jurists, the changing situation in the residency did not run smoothly. The jurist A.J. Immink, appointed landraad president in Surabaya in 1876, was very unhappy with the way he was treated by the resident. The two got into a conflict over who was authorized to order the assistant clerk of the landraad to act as a clerk at the circuit court. According to the official regulations, the resident would provide for a clerk when the circuit court held sessions in the residency, but Immink argued that in such cases the resident should have sent one of his own officials and not the clerk of the landraad, who worked for Immink. Thereupon, the resident filed a complaint to the government and Immink was transferred "without being heard" to Semarang, a city "feared for its unhealthy climate," as he wrote a few years later. The conflict may have been somewhat trivial and Immink was known for his irascible personality,

[35] S 1873, no.157.
[36] De Waal, *De invloed der kolonisatie op het inlandsche recht,* 104.

but his forced transfer shows that the resident could still exercise his influence on the functioning of the legal administration in his residency.[37]

Immink collected more examples of fellow landraad judges who had been in conflict with the administrative authorities. He argued that the colonial civil service was "far from content finding a kind of obstructer next to them, to whom the native could turn for protection against injustice and arbitrariness." The residents were not able to openly oppose the reforms, but they did not hesitate "to display their resentment towards the judicial landraad presidents." In 1880, Immink published a pamphlet entitled *Something on the Current Dependency of the Netherlands Indies' Judicial Officials* in which he discussed a few examples to show that the administrative officials were opposing the new judicial landraad presidents. The landraad president of Kediri M.C. Piepers had been transferred after a conflict on the seating arrangements at an official gathering at the *pendopo* of the regent of Kediri. To his "perplexity" the seat of the landraad president was not been right next to Resident J.H. Hagen, but one seat away. Seated next to the resident had been the secretary, "an official of a lower rank." After a fierce correspondence between Piepers and the resident, the landraad judge was transferred to Tuban. According to Immink, this case was especially harmful because it was important to communicate to the Javanese chiefs "which rank within official Javanese society was given to the—almost entirely newly established—independent law court."[38] In other words, this conflict could have meant a degradation of the status of the landraad.

Even more fierce was the conflict of landraad judge J. de Haas, with the assistant resident of Semarang, F.W.H. van Straaten in 1876. The assistant resident of Semarang had decided to preside over a court case when

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[37] Immink, *Iets over de tegenwoordige afhankelijkheid van de Nederlandsch-Indische rechterlijke ambtenaren*.; Fasseur, "Immink, Adrianus Johannes (1838–1914)." URL:http://resources.huygens.knaw.nl/bwn1880-2000/lemmata/bwn4/immink [12-11-2013] *"..weinig gemakkelijk en lichtgeraakt heer."*

[38] Immink, *Iets over de tegenwoordige afhankelijkheid*, 14. "*..ver van aangenaam was in den rechtsgeleerde Landraads-voorzitter eene soort van dwarskijker naast zich te hebben, bij wien de inlander bescherming zou kunnen zoeken tegen onrecht en willekeur."* (…) *"..zich het genoegen gunnen om op de nieuwe rechtsgeleerde LandraadspResidenten hun wrevel over den nieuwen toestand te verhalen." (...) "...welke rang aan de als onafhankelijk college zoo goed als nieuw opgerichte rechtbank in de officieele javaansche maatschappij moest worden toegekend."* The names of the landraad judge and the resident are not mentioned in the article by Immink. He uses their initials. Thefore, the full names are derived from the almanac of 1877 and 1878.

De Haas had fallen ill. Although De Haas wanted to continue presiding over the landraad sessions until his deputy arrived, in two opium cases the assistant resident decided he would himself preside instead. The assistant resident even wrote to the Javanese judges and advisors that they were not allowed to act in landraad sessions presided by the landraad president. This dispute became the talk of town and on the first day of the court session, a crowd gathered in front of the landraad. The chief jaksa, Javanese members, and the Chinese officer were present, but then the assistant resident ordered a messenger to announce that the landraad judge had to leave the room, because Van Straaten was to replace him. He also ordered the chief jaksa not to carry out his functions. This put the chief jaksa in a difficult position, since he was formally working on behalf of the assistant resident, as discussed in part 2, but within the courtroom he was closely cooperating with the landraad judge. This violation of the official regulations caused such a dilemma for the chief jaksa that he pretended to faint in court, causing the session to be cancelled. The other jaksas were nowhere to be found and the court session could not proceed. Of this incident, Immink wrote "whether the illness of the chief jaksa was truly severe has not been proven. It is certain though, that he and those in a similar position, had found themselves in a difficult position. … A sudden ailment was certainly a useful instrument to escape from this difficulty."[39]

Former Resident C. Bosscher checked the examples given by Immink and confirmed that all of this had indeed taken place. However, he emphasized that it was important that the administrative and judicial officials respect and understand each other's functions and interests. According to him, all Dutch people were already imbued with the importance of an independent judiciary: "The understanding among the Dutch, that a judge should be independent, is in their blood."[40] Therefore, he strongly disapproved of the behaviour of Assistant Resident V. S. However, at the

[39] Immink, *Iets over de tegenwoordige afhankelijkheid*, 19. *"Of de ziekte van den hoofdJaksa werkelijk van zoo ernstigen aard was, is niet gebleken. Zeker is het dat hij en degenen die met hem in hetzelfde geval verkeerden, voor een moeielijk alternatief geplaatst waren. (..) Eene plotseling opgekomen ongesteldheid was zeker wel een geschikt middel om aan die moeielijkheid te ontkomen."* The names of the landraad judge and the assistant resident are not mentioned in the article by Immink. He uses their initials. Thefore, the full names are derived from the almanacs of 1875 and 1876.

[40] Bosscher, "(reactie op) Iets over de tegenwoordige afhankelijkheid," 1041. *"Het begrip, dat de rechter onafhankelijk behoort te zijn, zit den Nederlander, in het bloed."*

same time, he added nuance to the other examples. According to Bosscher, the colonial jurists were inclined to behave in a disrespectful manner towards civil service officials, which he blamed on the youth of the judicial officials, who often reached the position of landraad judge at an early stage in their career and "without having much experience and knowledge of the Native." He argued this to have its origins in the "harmful haste" with which the introduction of the judicial landraad presidents had taken place under Minister Fransen van de Putte. Therefore, Bosscher considered it necessary that judicial officials remain impeachable, and he agreed that the colonial government should "also be vigilant about misbehaviour by judges, similarly to misbehaviour by others." He emphasized that "it is the duty of the government, to uphold the prestige of the administrative authorities, and protect them against harm, since every encroachment on administrative power will immediately lead to negative consequences for the respect, awe, and obedience that the native population especially should show to the authorities more than to anyone else."[41]

There were also jurists who partly agreed with the standpoint of the civil administration. In an article written at the end of his career, for example, the jurist W. Boekhoudt emphasized that the relationship between the landraad president and the resident was important, because they were mutually dependent. After all, the landraad president had to cooperate with several Javanese officials who were all subject to the resident. Boekhoudt explained how he had cooperated closely with the assistant resident, by preparing explanatory notes on how to conduct preliminary investigations. The assistant resident presented these notes during the monthly meeting (*kumpulan*) with the priyayi; hereby Boekhoudt made use of the resident's power. According to him, the young landraad presidents suffered from "overconfidence" and they needed to have more respect for the residents, "men of a more ripened age, who are rich in what they [the young jurists] are

[41] Bosscher, "(reactie op) Iets over de tegenwoordige afhankelijkheid," 1054. *"..evenzeer te waken tegen misdragingen van personen, met rechterlijke functien bekleed, als tegen die door anderen begaan."* (…) *"het de plicht is der Regeering, om het prestige van de bestuurvoerende autoriteiten omhoog te houden, en haar tegen elke krenking te bewaren, aangezien iedere inbreuk op het administratief gezag onmiddellijk een ongunstigen indruk te weeg brengt op den eerbied, het ontzag en de gehoorzaamheid, die vooral de inlandsche bevolking aan dat gezag meer dan aan elk ander moet bewijzen."*

still poor of themselves, in knowledge of country and people. They could be greatly useful to them as well."[42]

It was ensured that the judicial landraad presidents would not disturb the relations with the Javanese members. In 1876, jurists Godefroy and Diephuis, judge and secretary at the landraad of Bondowoso (Besuki), were reprimanded by the government for not attending a ceremony marking the end of Ramadan at the regent's house. Godefroy had also condescended to the regent. According to the governor general, the two men had been reprimanded also because judicial officials were obliged to uphold the prestige of the native chiefs towards the people. Moreover, the precarious balance of dual rule had to be protected. One way to do this was by attending "formal occasions," by paying visits, and by a "suitable homage" towards the chiefs "not only [by] administrative officials, but also the others—and in particular judicial officials. … Their contributions to a closer attachment of the bonds of goodwill that should connect the [colonial] authorities ... to the native chiefs and the people ... was, not without reason, observed as one of the tightest basic principles of Dutch rule in these regions."[43]

That the jurists suffered from too much confidence was also the criticism expressed by the administrative official P.H. Van der Kemp. In 1885, he put his annoyance with the civil administration succinctly. The aim of an independent judicial branch was out of place in a society such as the Netherlands Indies, he argued. Moreover, some dependency would always be unavoidable: "Judicial power, just like any other power, is enclosed by the state, and this enclosure leads automatically to dependency. To complain that one is not leading an independent life, is as if a head is crying that it always has to travel with the body." Also, according to Van der Kemp, the jurists were acting arrogantly and dismissively. Altogether, they had disturbed the way things had been going smoothly for years. They also followed the rules way too precisely. He gave the example of a landraad

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[42] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 332. "*..de schim van het Hoofd van het Plaaselijk Bestuur.." (…*) *"mannen van rijperen leeftijd, die rijk zijn in datgene waarin zij zelven nog zoo arm zijn, in kennis van dat land en volk, en daarom voor hen ook van zooveel nut kunnen wezen."*

[43] NL-HaNA, 2.10.02 MvK 1850-1900, MR 1876, no.745. "*plechtige gelegenheden*"; "*gepast eerbetoon*"; *"…dat niet alleen de besturende ambtenaren, maar ook de overige en vooral de regterlijke ambtenaren ... hunne bijdragen tot hechtere aanknoping van den band van welwillendheid, die de gezagvoerenden ... aan de inlandsche hoofden en aan de bevolking behoort te verbinden. … en die niet zonder reden als een der hechtste grondslagen van het Nederlandsch gezag in deze gewesten wordt aangemerkt."*

judge who thought that the office of the assistant resident had to be open until three in the afternoon, as prescribed in the regulations. If the office closed earlier because all the work was finished, the landraad judge would send an assignment just as the office was closing. Finally, Van der Kemp argued that the jurists' bookish view of the world was not appropriate in a colonial situation. He denounced the beliefs of jurists such as Immink and Piepers—both of whom served first as landraad judge and thereafter as a member of the Supreme Court—neither of whom accorded much value to a knowledge of local languages, but instead emphasized the importance of following the law codes closely.[44]

Most examples mentioned by both sides might seem trivial, but in the hierarchy of the colonial administration, issues like seating arrangements and rankings did matter. And therefore there was an often tacit power struggle between the residents and the landraad judges. In the case of the seating arrangements of P. for example, right after the judge's transfer, it was formally decided that from then on the landraad judge would sit right next to the resident at formal occasions.[45] Thus, the landraad judge's standpoint had been followed, but he himself was nonetheless transferred against his will.[46]

That the landraad judge could be dismissed by the government was an encroachment of his "independent" position. Thus, according to Immink, judges in the Netherlands Indies were still "legally fully dependent" and no measures had been taken to alter this. According to article 94 of the 1854 Colonial Constitution, the Supreme Court members were unimpeachable, but this did not apply to other judicial officials.[47] Therefore, Immink stated in his pamphlet that it would be an "inestimable blessing" if all judicial officials were appointed for life or, somewhat less far-reaching, if judicial officials could not be transferred without hearing the Supreme Court and the official himself.[48]

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[44] Van der Kemp, "De rechterlijke macht in haar streven naar onafhankelijkheid en in haren afkeer van het BB," 445-481. *"De rechterlijke macht wordt, evenals iedere andere macht, omsloten door den staatsband, en die omsluiting brengt vanzelf mede afhankelijkheid. Zich te beklagen, dat men geen zelfstandig leven leidt, ware alsof het hoofd weende, dat het altijd met het ligchaam op reis moest."*

[45] Bijblad, no.3330.; NL-HaNA, 2.10.02 MvK 1850-1900, IB May 5, 1878, no.2.

[46] Immink, *Iets over de Tegenwoordige Afhankelijkheid*, 8.

[47] Immink. *Iets over de Tegenwoordige Afhankelijkheid*, 3-5.

[48] Imink, *Iets over de Tegenwoordige Afhankelijkheid*, 31-32. "*onwaardeerbare zegen."*

Over the years, the tug of war between the administrative officials and the landraad judges continued—issues discussed were mainly the difference in remuneration and the heavy workload—but the intensity of the conflicts declined. In 1918, an author in a colonial journal, who used the pseudonym Jurist, looked back at the reforms of 1869 and concluded that although the resident had experienced the reforms as a "blow to the prestige of the Civil Administration," the commotion was ultimately unnecessary, for "a decrease in the prestige of the governing men has not happened and the people have benefited from it."[49]

8.3 Conclusion: Newcomers to the Courtroom

The call for independent, judicial, landraad presidents was reiterated during the entire nineteenth century and finally accomplished after 1869. The reform was possible only at that moment, due to the increased power of liberal jurists, who targeted the cultivation system for being the cause of there being no separation of powers in the colony. After much debate and doubt, the judicial landraad president was introduced in Java, although the jurists were impeachable by the government and the police magistracy would remain in the hands of the resident until 1914. The jaksas would also continue working under the guidance of the local administration. When the resident was no longer acting as landraad president, this was not entirely the end of his three ponytails—of his administrative, legislative and judicial powers.

[49] Jurist [pseud.], "De Landraden op Java en Madoera", 488-490. *"..klap aan het prestige van het BB." (...) "Gelijk het met zoovele zaken gaat, ging het ook hier; van een verlaging van het prestige van de bestuursmannen is niet gebleken en de justiciabelen zijn daarbij wel gevaren."*