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

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9 — A Rule of Lawyers

The introduction of the judicial landraad presidents in Java, leads to wondering what exactly changed in the practices of criminal justice after 1869. This chapter will address this question by first focussing on the experiences of the landraad judges with their new professional environment. Subsequently, I will determine how the jurists improved criminal law practice, by discussing the subjects of legal evidence and pre-trial detention. Although the jurists aimed at bringing the rule of law to Java, and introduced improvements, I finally argue that the colonial reality proved them to be less activist and progressive in their actions, than assumed so far in the historiography. I show this by looking at the positions of the jaksa, private attorneys and Javanese court members, and the convictions and actions of the jurists regarding these local actors in the pluralistic courts.

9.1 Entering the Colonial Courts

During the 1870s and 1880s, the arrival of the judicial landraad presidents was initially accompanied by a greater interest in the practice of the pluralistic courts among jurists in general. In the 1880s, several dissertations and handbooks focussing on the landraden and writing on criminal law procedure, the jaksas, and the penghulus were published.[1] As noted before, jurists would continue to criticise the residents' intervention in criminal law practice. Both Piepers and Immink would become Supreme Court judges, and as spokesmen of the jurists they continued expressing their criticism of the colonial civil service.

Piepers wrote in 1884 that there were still many deficiencies in the practice of criminal law in Java and he again pointed towards the civil service. He wrote a pamphlet with a title that immediately reflected the moral of the story: "Power against Law: The Prosecution of Justice in the Netherlands Indies." The biggest problem, he observed, was the police magistracy, which was still under the authority of the resident. According to Piepers, administrative officials were too inclined to abuse their powers and

[1] See for example: Grobbee, *De panghoeloe als adviseur in strafzaken* (1884); Gaijmans, *De Landraden op Java en Madura rechtsprekende in Zaken van Misdrijf* (1874).

they had too many instruments at hand to actually act on it. He gave examples of residents who had deployed convicts as gardeners, of administrative officials who had imprisoned persons arbitrarily, who had received all kinds of gifts from Javanese chiefs and Chinese, and who did not follow the instructions of the Supreme Court. "The longstanding situation of injustice and arbitrariness," he wrote, "has merely blunted notions of justice and morality among many administrative officials." Piepers emphasized the importance of the fact that "there is also a rule of law in the Indies."[2]

During the 1880s, the Indies Organisation for Jurists (*Indische Juristenvereeniging*) was established, in which possible reforms of the colonial legal system were discussed. In practice, however, most jurists did not display significant combativeness, except when it came to the protection of their own position regarding the aforementioned topics of remuneration and protection against impeachment. After only a few years, the organisation stopped actively meeting.[3] Through judicial journals such as the *Weekly Journal of Law* and the *Indies Journal of Law*, jurists would still share information in the form of verdicts and articles. Quite soon though, the *Weekly Journal* would lose most of its liberal fighting spirit. The emphasis in both journals was on reports in which the application of certain articles of the colonial law codes was discussed in great detail. There was also little interest in Javanese law, culture, or customs. It was only one of the columns in the *Weekly Journal*—"Miscellany" (*Mengelwerk*) —in which examples of

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[2] Piepers, *Macht tegen recht,* 132, 153. *"de sedert zoo lang voortdurende toestand van onrecht en willekeur heeft bij vele besturende ambtenaren de begrippen van recht en moraliteit ten deze zoo goed als verstompt..."* (…) "*..ook in Indie de staat een rechtstaat is*."; "Het atavisme der O.I. Compagnie en van het kultuurstelsel," 401-437. According to this anonymous review of Piepers' book (written by someone who identified himself as a politician) lawyers tended to be impatient, especially "honest, indulgent and just" lawyers like Piepers. Politicians, on the other hand, understood that reforms took time: "To us, it is unquestionable that the morals of the people will not immediately improve with better institutions. …That the governmental and economic development of an old society, the atavism—the sporadic appearance of the old, inherited disease—will only disappear after a number of generations. And, that also in the Indies eventually an internalized, civilized rule of law will appear. (*dat niet terstond het gehalte der menschen verbetert met de betere inrichtingen en dat vooral in de staatkundige en economische ontwikkeling van eene oude samenleving, het atavisme, dat is de sporadische verschijning der oude, overerfelijke ziektestof, eerst na opvolgende geslachten kan verdwijnen. En dat ook Indie een innerlijk beschaafden rechtstaat zal worde is voor ons niet twijfelachtig*)."

[3] The Indies Organisation for Jurists (Indische Juristenvereeniging) was re-established in 1913.

criminal cases were often described to show the nature and customs of the "natives," The aim of the column was the dissemination of knowledge, but it remained vague on how to proceed in these often complicated cases in which local customs, traditions, and Islamic legal traditions all played a role. The journals also had little room for sharing practical experiences among jurists, something that former landraad judge Boekhoudt regretted in 1916, when he wrote "the *Indies Journal of Law* includes little to nothing on the internal, the more intimate life of the judiciary."[4]

The jurists' writings in the journals were, in the eyes of the administrative officials, merely theoretical discussions, often time-consuming and irrelevant for colonial practice. An exception to this was the journal *Law and Adat* (*Wet en Adat*), which was published from 1897 to 1899 and paid more attention to the interpretation of cultural and local customs regarding legal practices. This journal was established by the jurist I. A. Nederburgh, who emphasized that—whereas the existing journals merely collected verdicts—*Law and Adat* would request input from administrative officials, notaries, prison directors, doctors, linguists, and clerics. Concerning criminal law, he intended to pay attention to old notions of criminal law in the archipelago, the current formal criminal law, criminal anthropology and sociology, police, and statistics.[5] However, despite these broad ambitions, the journal ceased publication after two years, according to Nederburgh because there were not enough people submitting articles. It is possible that Nederburgh's quite direct and cynical responses to submitted pieces were not very helpful in sustaining the journal, either.

It is important to note, that the tensions between Supreme Court and landraad judges were not a thing of the past once the independent judicial presidents arrived. The administrative officials had always been annoyed by all the rebukes and notes circulated by the Supreme Court. However, the Supreme Court did not stop doing this when the landraad presidents were judicially trained. Moreover, the Councils of Justice, which had taken over the review functions of the Supreme Court from 1901 onwards, still focused on the formal irregularities in legal procedures. The landraad judge M. J. A. Oostwoud Wijdenes asserted in his memoirs that once he had been obligated

[4] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 322. *"...bevat het Indisch Tijdschrift van het Recht met betrekking tot het interne, het meer intieme leven van de rechterlijke macht weinig of niets..."*
[5] Nederburgh, "Ter inleiding," 1-4.

to repeat an entire court session because one word in the Dutch translation of an oath taken by a witness in Javanese was incorrect, which meant the oath was technically invalid and the entire court case had to be annulled.[6] In 1915, Boekhoudt wrote that many young jurists refused to attend the yearly meeting of the *Indische Juristenvereniging*, which had been re-established in 1913, because they did not want to sit at the same table with those men who were constantly nagging them with all kinds of reproaches on the work they had done.[7] Thus, the annoyance of the non-judicial landraad presidents regarding the meddlesome Supreme Court consisting of older men inclined to follow the letter of the law, turned out to be partly an intergenerational conflict, and one that was inherited by the judicial landraad presidents.

Another question to be asked is whether justice as administered by the landraad became more independent from the administration. It is extremely difficult to provide a satisfactory answer to this question, because the judicial archives have not been preserved. Moreover, the residency archives include hardly any judicial information from the period after 1869. In the residency archive of Tangerang, only one case was found from the period after the introduction of a judicial president, something that only happened in 1891 for this particular landraad. This is a criminal case from 1893 in which the assistant resident, who had supervised the preliminary investigations, wanted to prosecute a suspect for attempting to bribe a policeman. However, the president of the landraad, J.L.T. Rhemrev,[8] decided that the case did not meet the "criteria of any crime or any offence" and the suspect was freed.[9] This case shows that the judicial president did function independently. However, it is not unthinkable that there must have been situations where it would be hard for the landraad judge to position themselves completely independent of the resident. He was, particularly in the more remote residencies, the only judicial official among several officials of the civil administration. This issue of isolation meant little contact with other jurists and made the Landraad judges susceptible to influence from the administrative sphere regarding local and regional issues.

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[6] UL, H1206, M.J.A.Oostwoud Wijdenes. "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 30.

[7] "Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 317-318.

[8] In the early twentieth century J.L.T. Rhemrev would write a report about the abuses at the plantations of Sumatra (Deli).

[9] ANRI, GS Tangerang, no.172.2. "*..criteria van eenig ander misdrijf of eenige andere overtrading."*

It is also questionable whether the training the jurists received in the Netherlands prepared them properly to the work environment they encountered in Java. In 1919, H. van Wageningen advised making the training in Leiden more practical, suggesting that "perhaps one could shift from the emphasis on state and *adat* law, towards the drawing up of indictments, the editing of verdicts, and the drawing of conclusions from preliminary evidence."[10] It seems that jurists did not acquire much directly applicable knowledge in Leiden:

> …One can be confident of having learned a multitude of important things about the Indies in Leiden. He has come far in both volumes of Kleintjes, he is capable of comparing the press regulations of Surinam and Curacao, he has studied the acclaimed Wilken until his hands turned green, the diseases of the Dayaks, and the secrets of the three limestone chains: he knows them, and he is also supposed to know the Shafi'i school like the back of his hand.[11]

However, his knowledge of languages was inadequate and he also did not know the criminal codes of the Netherlands Indies, although Van Wageningen was not very worried about this, because this could be learned by doing. "But these are details," he wrote, "since everyone in Hollands knows that Malay, as spoken in practice, is a language that one learns from

[10] Van Wageningen, "Opleiding tot Landraadsvoorzitter," 267. *"...zou misschien ten koste van het vele staats- en adatrecht, meer nadruk kunnen worden gelegd op het opstellen van acten van verwijzing, het redigeeren van vonnissen en het trekken van conclusies uit het voorloopig bewijsmateriaal."*

[11] Van Wageningen, "Opleiding tot Landraadsvoorzitter," 267. *"... men kan tegenwoordig gerust zeggen, dat men hem in Leiden een menigte belangrijke dingen over Indie heeft geleerd. Hij is ver in de beide deelen van Kleintjes, hij is in staat, een vergelijking te trekken tusschen de drukpersbepalingen in Suriname en in Curacao, hij heeft den nooit volprezen Wilken bestudeerd, totdat zijn handen er groen van werden, de ziekten der Dajaks en de geheimen der drie kalksteenketens: hij kent ze, en ook de Sjafiitische leer behoort hij als zijn zak te kennen."* Kleintjes wrote a handbook on constitutional law, the book by Wilken had green pages and the secrets of the three limestone chains refers to geographical knowledge of Java.

his cabin boy [*hutjongen*], whereas the knowledge of the Native Regulations will come with the years.[12]

Due their limited knowledge of local languages, landraad judges were, like the resident, depending on translators. During a gathering of the *Indische Genootschap* in 1900, D. Mounier recalled an anecdote about "a trained landraad judge who neither understood nor mastered the [Malay] language. [He] used Dutch expressions and made the jaksa translate them literally. This much to the amusement of the entire landraad and the accused."[13] When a new landraad judge arrived in the colony, they often first started working at the registry of the Supreme Court or a Council of Justice. After one year, they were appointed as landraad president. However, the work at the registry was not a very relevant preparation for the position of landraad judge. Van Wageningen acknowledged that it would have been better if the new judicial officials received a year's training from experienced landraad judges, but these simply lacked the time to provide such a training. Overall, he did not consider the system to be problematic, because it never caused any major mistakes, and because during the early twentieth century, young landraad judges were, for their first position, always appointed to busy landraden where two judges presided sessions, and consequently they worked alongside a more experienced judge.[14] That it was not easy for a new Dutch landraad judge to suddenly arrive in a completely new environment and work as a judge is evident from letters written by Cornelis "Kees" Star Nauta Carsten, a young jurist who arrived in Batavia in 1918, together with his wife Maria "Miek" Jacoba Kroeff.[15] Kees and Miek stayed in Batavia for two years, where Kees worked at the Supreme Court as

[12] Van Wageningen, "Opleiding tot Landraadsvoorzitter," 264. *"...maar dit zijn kleinigheden, daar toch iedereen in Holland weet, dat Maleisch, zooals het gesproken wordt, een taal is die men van zijn hutjongen leert, terwijl de kennis van het Inlandsch reglement met de jaren komt."*

[13] Mounier, "Iets over de Landraadvoorzitters op Java en Madoera," 154. *"Voor het geval van Maleisch was ik daarvan getuige als griffier van eenen Landraad in den oosthoek, toen een rechtsgeleerd Landraad-voorzitter, die zelfs die taal niet verstond of eenigszins verstaanbaar sprak, Hollandsche zegswijzen, niet gangbaar in het maleisch, bezigde en door den djaksa aan beklaagden deed overbrengen tot groot vermaak van den geheelen Landraad en de beklaagden."*

[14] Van Wageningen, "Opleiding tot Landraadsvoorzitter," 267.

[15] Cornelis (Kees) Star Nauta Carsten was born on September 14, 1890, in Sappermeer. He married Maria (Miek) Jacoba Kroeff on August 23, 1917. They arrived in the Netherlands Indies in 1918. In the 1920s, Star Nauta Carsten was appointed to research the communist protests.

a substitute secretary. Born in Sappermeer, Kees, and Miek as well, had a hard time adjusting, as shown from letters to Kees's parents. Miek wrote, "The format of the household here is ridiculous. The Van Dijk family for example, has no less than eight servants. I think we will have to start with three."[16] She was not only surprised by the high number of servants. She also complained that it had been hard to find a proper hotel "until we finally ended up in a filthy pension where we then just stayed, for God's sake." Kees was not very satisfied, either. Due to the tropical climate, his judicial gown was "unbearable"[17] and he was bored. The library was good, but "Batavia is an extended provincial town," he wrote. "The people here do not have much intellectual need. Not even the most developed ones, such as those of the judicial power. With the exception of some of the Supreme Court members, most of them are obedient followers of what is decided by Dutch case law."[18] Finally, he also had to act prudently regarding the "animosity" between two Supreme Court members.[19]

Apart from their three servants (a housekeeper, a cook and a *babu*), Kees and Miek had no contact with the local population. They went out for dinner with other former "Hebeanens," members of a student club of which Kees had been a member.[20] In 1920, Kees was appointed as vice landraad judge in Blitar, East Java. There, he presided over landraad court sessions. He started with the final preparations of the cases for the day at six o'clock in the morning, and the court was in session from eight until noon. After the lunch break he continued working until four to edit the case files of that morning and prepare cases for the next day. Kees had problems understanding the local languages—"nearly monotonous word sequences ... enunciated without any hand gestures"—and he was also puzzled by fact that

[16] Indisch Familiearchief, 8 Familie Hueting. Letter Miek to her parents-in-law. Weltevreden, May 2, 1918. *"Bespottelijk zoo'n hofhouding als de menschen er hier op na houden, hier bv bij Van Dijk zijn liefst 8 bedienden. Ik denk dat wij met 3 zullen moeten beginnen."*

[17] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Weltevreden, May 12, 1918. "*ondragelijk"*

[18] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Batavia, July 21, 1918. *"Batavia is een uitgebreide provinciestad. Veel geestelijke behoefte hebben de menschen hier niet. Zelfs niet de meest ontwikkelden, zooals bijv. de rechterlijke macht. Behalve eenige leden van het Hof hier, zijn het meest trouwe volgelingen van wat de Nederl. Jurisprudentie uitmaakt."*

[19] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Batavia, August 31, 1918.

[20] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Weltevreden, September 20, 1918.

the accused and witnesses rarely expressed any emotion: "the suspect and witnesses sit like statues. ... He has the same facial expression when being convicted as when being acquitted."[21] Moreover, he thought the Javanese tended to lie rather often.

The position of landraad judge was clearly not Kees's calling, and he soon decided to continue his career at the European law courts in Java. Yet, there certainly were men who felt at ease working at the landraad and who even considered it to be their vocation. Boekhoudt was one of these. In his farewell article in 1915, he explained how a landraad judge should act based on his own experience. He disagreed with colleagues who said that criminal cases were always the same boring theft cases. To the contrary, "a more fulfilling profession than that of landraad president is hard to imagine." A landraad president had to take an active role and should not take for granted whatever the priyayi put forward as evidence. "One should not investigate by following the preliminary investigations files literally, but, in a somewhat complicated criminal case, one should draft one's own scheme, make one's own plan ... of how the police gradually found the evidence to solve the case, because then, immediately, one will find weak spots in previously constructed [falsified] evidence against the suspect."[22] Thus, the landraad president had to assess whether the police had done a decent job. Only when the landraad president conducted his own investigations would he "not become the victim of an unreliable police, of the limited abilities of silly folks' to express themselves, of litigants in a conflict, or of cunning attorneys [*zaakwaarnemers;* probably referring to the local *pokrol bambu*]."[23]

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[21] Indisch Familiearchief, 8 Familie Hueting. Letter Kees to his parents. Blitar, April 7, 1920. "*..haast toonloze woordenreeksen ... gesproken zonder gebaren)* "*Beklaagde en getuigen zitten als een standbeeld... . Hij zet hetzelfde gezocht als je hem veroordeelt en als je hem vrijspreekt."*

[22] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 333-334. "*Schooner werkkring dan die van den Landraadvoorzitter laat zich haast niet denken." (...) "Men moet niet onderzoeken met den vinger bij de stukken van het voorloopig onderzoek, doch vorme zich bij eene eenigszins ingewikkelde stafzaak een geheel eigen schema, een eigen werkplan (...) hoe de politie geleidelijk de middelen heeft gevonden om de zaak zoogenaamd tot klaarheid te brengen, want daardoor valt al dadelijk licht op zwakke punten in het voorshands tegen den beklaagde gecontrueerd bewijs."*

[23] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 333-334. *"..wordt [hij] dan niet licht meer dupe van eene onbetrouwbare politie of van het gebrekkig voorstellings- of uitdrukkingsvermogen van domme lieden, de partijen van het geding, dan wel van geslepen zaakwaarnemers."*

Also, after 1869, the landraad was still the only public space in Java where direct collaboration and decision-making took place among European and Javanese officials. This often lead to more mutual contact, even in the private sphere, in the otherwise largely segregated society. J. de Loos-Haaxman, the art historian wife of a landraad judge, provides us with a picture of this. She and her husband arrived in the Netherlands Indies during the early twentieth century. In her memoirs, she described how their world at first was fairly European. Her husband was secretary at the Council of Justice in Padang (Sumatra) and he had as yet no Indonesian or Chinese colleagues. After a year, her husband became president of the landraad in Tulungagung, in Java. There, they lived next to the mother of the regent, but de Loos-Haaxman writes that she was unable to come into contact with her. She could hear the gamelan play, but had never visited the house. The actual contacts with the local administration were through the landraad: "The contact with the local administration was ceaseless." For the men, the working environment formed a common denominator: "During the evening visits, the conversation topics among the men were not too hard to find, since they knew each other from the landraad."[24] De Loos-Haaxman herself encountered more problems in her contact with Javanese women: "The views in the countryside were not broad, her daily routine, her daily work so completely different from mine. And I knew so little of the *desa*, of the indigenous life. My Malay was abominable, and the Dutch of my guest not fluent." Therefore, the ladies were often bound to conversations about the children, often their only common denominator.[25]

On balance, how one approached and carried out one's presidency of the landraad was to a significant degree determined by the personality and interests of the jurist. But the stance of the judicially-trained landraad judges in general was a combination of paternalism, a sense of distance, and even distrust regarding the priyayi, combined with daily interactions with the priyayi.

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[24] De Loos-Haaxman, *Dagwerk in Indië,* 20. De Loos-Haaxman wrote her memoires at a high age in 1972. "*In Toeloen Agoeng en Trenggalek was door de Landraad de aanraking met het inheemse binnenlandse bestuur onafgebroken."* (…) "*Bij de avondbezoeken was het gesprek onder de mannen niet moeilijk. Zij kenden elkaar minstens van de Landraad."*

[25] De Loos-Haaxman, *Dagwerk in Indië,* 25. *"De gezichtskring in het binnenland was niet groot, haar dagverdeling, haar belangstelling, haar werk van elke dag geheel anders dan de mijne. En ik wist zo heel weinig van de dessa, van het inheemse leven af. En mijn maleis was miserabel, het hollands van mijn gast niet vlot."*

9.2 Colonial Jurists and Reforms

Despite the numerous challenges when working as a landraad judge, and their lack of interest in local legal traditions, the jurists did strive for certain reforms in favour of the Javanese population. First, the judicial landraad presidents were more critical of legal evidence presented in court than their predecessors, the residents. As a result, the number of acquittals increased. Second, they also advocated better legal safeguards to decrease the lengthy periods of pre-trial detention. Suspects were often in pre-trial detention for months—even years—sometimes without even knowing what they were accused of. This improved somewhat, though not entirely, thanks to new regulations initiated by liberal jurists at the end of the nineteenth century. We will now take a closer look at these two issues.

Not-Enough-Evidence Courts

In 1848, it was decided to follow Dutch procedures regarding legal evidence in the pluralistic courts. At that time, reform committee president Whichers defended this on the grounds that this had been the practice before 1848: "Although the natives have their own principles regarding oral evidence and the value of witness accounts, it has not been shown that, before the introduction of the new legislation, these principles were applied in practice."[26] Moreover, Whichers argued that the Javanese evidence system was based entirely on the judges' "inner conviction," obtained after oral debates during court sessions during which suspects and witnesses were interrogated and confronted with each other's statements.[27] The Dutch legal system, in contrast, accepted a combination of a (broader) range of evidence, such as witness accounts, written documents, confessions, and clues. An account by one person was not enough to serve as legal evidence. One the other hand, one confession of a suspect "accompanied with a certain and precise description of the circumstances" served as a full proof of guilt in the

[26] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. July 4, 1850, no.9. Letter Minister for Colonial Affairs Pahud (after reading a report written by Whichers), in response to a complaint by J.C. Baud on some of the elements of the new Indies' law codes (complaint written on September 8, 1849). *"hoezeer de inlanders hunne eigene begrippen hebben omtrent het getuigenbewijs en de waarde van getuigenissen, het hem echter niet gebleken is, dat, vóór de invoering der nieuwe wetgeving, de begrippen in de praktijk werden opgevolgd."*

[27] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. August 12, 1850, no.17. Report written by Whichers. "Rapport van jonkheer Mr. H.L. Whichers omtrent eenige door den Raad van State geopperde bedenkingen enz. opzigtelijk de nieuwe wetgeving van Ned. Indie," January 1, 1850. "*innerlijke overtuiging."*

Dutch system. Consequently, the Dutch procedure of evidence included the presentation of pieces of evidence during court sessions; chickens and cows were brought inside the courtroom and displayed in front of the court members. And a suspect's confession was seen as very important. [28]

In the 1870s, when the administrative and judicial officials were challenging each other, administrative official A.J.W. Van Delden attempted to prove the inadequacies of the judicial officials by referring to a (Chinese-Javanese) theatre performance (*komedie stamboel*) in which the landraad had been mocked.[29] Piepers countered this by arguing that these performances antedated the introduction of the jurists, and that the plays were merely mocking the Dutch system of legal evidence in general, and particularly the emphasis on the confessions of the accused. In this particular Komedie Stamboel performance, a clearly guilty thief was acquitted because he denied guilt.[30] In any case, during the decades after this incident, performances in which the landraad was mocked continued. In 1890, the Peranakan Malay-language newspaper *Bintang Barat* reported that in East Java the performance of a Wayang Wong play had been prohibited by the resident because it parodied a court session of the landraad and was therefore considered insulting.[31]

During the second half of the nineteenth century, the colonial press reported disapprovingly about the frequent failure of finding *ketrangan* (evidence) and by the end of the nineteenth century the landraden, were even called *koerang-terang raden* ("not-enough-evidence courts").[32] That this was not an exaggeration is clear from an article written by Secretary W. L. M. van der Linden in 1910, who reported that in between January and March, in forty-eight of seventy criminal cases at the landraad of Sumenap ended with acquittals.[33]

Van der Linden blamed the so-called *toekang ketrangan* (*tukang katrangan*; information man) for this. He designated these characters as the

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[28] IR 1848, art.285-297.; Gaijmans, *De Landraden op Java*, 86-99. "*..vergezeld van eene bepaalde en nauwkeurige opgave van omstandigheden."*

[29] Van Delden, *Blik op Indische staatsbestuur*, 67.

[30] Piepers, "Een protest van mr. M.C. Piepers," 1-3.

[31] *Bintang Barat*, October 16, 1890. *"Pepereksaännja betoel seperti Landraad hinga pesakitannja poen di tiroe seperti betoel. Soedah tentoe banjak orang jang datang nonton, hinga dari itoe policie soedah larang tiada bolee lagi maen wajang wong, kerna lelakon begitoe roepa ada hinakan pada pengadilan."*

[32] See for example: "Koerang-Trang Raden," *Soerabaijasch handelsblad*, February 15, 1897.

[33] Van der Linden, "Getuigenbewijs in criminele zaken," 259.

"whips of the village" (*geesel der desa*) and said they had become influential for two reasons. First, the landraad consisted of "active members of the native administration." The ongoing lack of a separation of powers on the part of Javanese court members at the landraden had serious consequences. According to Van der Linden, the Javanese members could attempt to prevent defendants from being acquitted. "It happens regularly that they are behaving as an interested party, as plaintiffs, and in fact they are—due to the amalgamation of police and justice."[34] Second, Javanese policemen had an incredibly big workload and were pressured to solve all cases. During his early days at the landraad, in 1898, Van der Linden had been surprised by the major successes obtained by the Javanese police: "from reading the ... procès-verbal of the preliminary investigation, I got the impression that the native police had a particular talent for their duty, that they were all born Sherlock Holmes. ... I was stunned by the strong unanimity of the witness accounts." Soon, of course, it turned out this could impossibly be correct, and that many cases were based on false witness accounts and manufactured evidence. Since the European resident had a strong influence on the careers of Javanese officials, they put great pressure on them to introduce evidence as quickly as possible, "under the threat of a stagnation in promotion, demotion, suspension or dismissal."[35] European officials, in their turn, were also pressured from higher up to lead successful police investigations in order to maintain peace and order, and to preserve the superiority of the colonial government, the highest possible purpose. To find evidence, Javanese officials would first use their own private spies (*mata-mata).* However, this was expensive, because they had to pay them themselves. Van der Linden personally knew a jaksa who had been a wedono, and back then he often spent as much as 260 of his monthly remuneration of 300 guilders paying his spies. The solution for this was found in the *toekang ketrangan,* a shady character, who got paid to "prepare" offenders, witnesses, and pieces

[34] Van der Linden, "Getuigenbewijs in criminele zaken," 267. *"waardoor het meermalen voorkomt dat zij zich als partij, als belanghebbenden bij de poging tot veroordeling gedragen, wat zij door de vermenging van politie en justitie in één hand, in werkelijkheid, steeds zijn."*

[35] Van der Linden, "Getuigenbewijs in criminele zaken," 262-263. *"…kreeg ik aanstonds bij het lezen dier (..) processenverbaal van het voorlopige onderzoek den indruk dat de Inlandsche politie een bijzonder flair had voor hare taak, dat het allen geboren Sherlock Holmessen waren (..) stond ik versteld van de roerende eenstemmigheid der getuigenverklaringen." (…) "..onder bedreiging van stilstand in promotie, achteruitstelling, schorsing of ontslag*."

of evidence. This was clearly less expensive than hiring spies to do actual investigations. Suspects were found among people who were causing trouble anyway or who were disliked by the *lurah*, and witnesses were paid for their false statements.[36]

On a positive note, the high number of acquittals might also point towards an improvement in the judicial presidents' assessment of evidence at the landraden. The high number of acquittals was, on the one hand, a disturbing sign of unreliable preliminary investigations; but on the other hand, it was also a sign of a serious treatment of criminal cases by the landraad presidents. Therefore, Boekhoudt thought it unfair that newspapers wrote disdainfully about verdicts in criminal cases as pronounced by the landraden. He acknowledged the high number of acquittals, but he imputed this to the inexperience of the jurists that were sent to the Indies, and to the "flimsy preparation of criminal cases during the preliminary investigations" by the local police and priyayi. Boekhoudt also argued that in many instances, people who were actually innocent were acquitted and this, after all, should be considered a good thing: "Such verdicts—and these are high in number—should deliver honour to the landraad president whose leadership in the first place has to be thanked for this! Therefore, it is deplorable that the landraad court sessions attract such a small audience. It would certainly convince the press to express a greater appreciation for the utmost difficult work of the landraad president."[37]

Administrative official J. van Dissel disagreed. He wrote in 1913 that he feared that "due to the *koerang terang*, [the] natives will most certainly become overconfident," and he questioned the well-known expression that it was preferable to release one hundred guilty men than to jail one innocent one. According to him, it was impossible to discuss this with jurists, because they would simply respond by saying that he would not understand because he was "not judicially educated."[38]

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[36] Van der Linden, "Getuigenbewijs in criminele zaken," 263.

[37] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 351. "..*ondeugdelijke voorbereiding van de strafzaken gedurende het voorlopig onderzoek*." (…) *"Zulke uitspraken—en die zijn groot in aantal—strekken den Landraadvoorzitter, aan wiens leiding ze in de eerste plaats te danken zijn, tot eer! Daarom is het te betreuren, dat de Landraadszittingen zoo weinig publiek trekken. Gewis zoude dan ook de pers grootere waardeering toonen voor het inderdaad uiterst moeilijke werk van den Landraadvoorzitter."*

[38] Van Dissel, "Koerang Terang," 55. "…*inlanders door dat koerang terang beslist overmoedig worden."*

Pre-Trial Detention

Another issue that jurists attempted to change was the duration of pre-trial detention. As discussed in chapter 3, there was a separate procedural criminal code for 'Natives' with fewer legal guarantees; as a result suspects were often held in pre-trial detention for several months. As Van den Linden wrote, "it drove many women with their daughters into the arms of prostitution, and it brought the sons of the preventively imprisoned, often still boys, to theft and crime." From his own statistical analysis, he concluded that prisoners who were put in pre-trial detention and then released were often convicted for another crime within two years.[39]

In 1876, it was decided that pre-trial detention was only allowable on a "significant basis," but in practice such a basis was always found.[40] In 1882, the legal term for revision was set at a maximum of four weeks, but altogether the entire procedure—from preliminary investigation until revision—still took at least three to four months, according to the newspaper *De Locomotief*. The newspaper blamed the Javanese officials—the chief jaksa—who decided on pre-trial detention: "If he is, like so many native chiefs, an arch swindler (*aartsknoeier*), then each suspect would be sent to prison easily and kept there as long as possible, even if the evidence against him is marginal." The jaksas would be corrupt, because for example, Chinese suppliers of prisons had an interest in full prisons and would bribe them.[41] In 1885, it was decided that the landraad president had to mention in the "document of reference" (*acte van verwijzing*; the decision to refer a case to a certain law court) that the resident had called for preliminary custody. Also, suspects had to be informed of the contents of the indictment against them before the start of the court session.[42]

The changes in the regulations, however, did not significantly shorten the duration of the pre-trial detention, which, according to various jurists, remained a major problem. Generally, they blamed the Javanese officials for

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[39] Van der Linden, "Getuigenbewijs in criminele zaken," 259-260. *"..dat daardoor vele vrouwen met hare dochters in de armen der prostitutie geworpen waren, dat daardoor de zonen dier preventief gevangenen, knapen vaak nog, tot diefstal, tot misdaad waren gebracht."*

[40] Van der Kemp, "Waardeering van de grondwettige waarborgen tegen willekeurige inhechtenisneming in Indië," 24-27.; S 1876, no.25. "*gewichtige grond."*

[41] "Preventieve hechtenis in Indië," *De Locomotief*, May 19, 1884. *"..is hij, gelijk zoovele inlandsche hoofden, een aartsknoeier, dan wordt al spoedig iedere verdachte, hoe gering het bewijs tegen hem zij, naar de gevangenis gezonden en daar zoolang mogelijk gehouden."*

[42] S 1885, no.81.

this. In 1896, for example, a European man named Fransz, an employee of a "private land," was robbed. "The native police, working alongside the *demang*, was as usual under the impression that—in a case where a European was the victim—they had to immediately satisfy the needs of the higher-ranked, by instantly designating the alleged offenders. Even by despising the truth, by neglecting their duty. Yes, even by criminal means." Three suspected Javanese were placed in preliminary custody. The *demang* had convinced Fransz to provide him with goods identical to the stolen goods, and these were subsequently "found" in the house of the innocent accused. Eventually, Fransz had recanted his false statement. According to the newspaper, landraad president Oostwoud Wijdenes discovered the truth during a court session that lasted from eight in the morning until three in the afternoon. By then, however, the falsely accused had been in preliminary custody for over ten months: "Their family is impoverished, their income evaporated. That cries to heaven!"[43]

In 1898, it was finally decided (to the satisfaction of the landraad presidents) that the procedures had to be simplified. From then on, for example, if he was not authorized to administer a particular case the landraad president could send the files of the preliminary investigations directly to a higher judge without returning them to the resident, as was the practice formerly. Furthermore, the landraad president was authorized to release suspects from preliminary custody, and the indictment, previously drafted by the jaksa, was abolished. Subsequently, the document of reference drafted by the landraad president would be the formal indictment.[44] Even these reforms did not help much in practice, though. In 1908, the jurist C. Süthoff called pre-trial detention an "inevitable evil" in general, but he argued that in the Netherlands Indies it was applied too often and too long. He described how most criminal cases were minor theft cases: "Theft after sunset or before sunrise, of a coconut, a chicken or a worthless *baadje* at a fenced yard." Since suspects in even these cases were kept in pre-trial detention that could

[43] "Nederlandsch Oost Indie. Preventieve hechtenis in Indië," *Telegraaf* (reprinted from *Java Bode*), October 10, 1897. *"De inlandsche politie, met den demang aan het werk meende, zooals gewoonlijk naar het verlangen van hoogeren te handelen door, waar een Europeaan de benadeelde partij is, alles in het werk te moeten stellen om dadelijk de vermoedelijke daders te kunnen aanwijzen, al geschiedt dit ook met minachting voor de waarheid, met verzaking van plicht, ja door misdadige middelen. (...)"hun huisgezin is veramd, hun broodwinning verloopen. Dat schreit ten hemel!"*

[44] S 1898, no.66.

normally last for two or three months, and as much as six to twelve months, according to Süthoff these people were "done undeserved harm" Pre-trial detention was often much longer than the punishment imposed, and the judge had no flexibility, because there were minimum penalties. He therefore proposed to, just as in the Netherlands, make pre-trial detention facultative rather than imperative.[45] With an adjustment in the Native Regulations in 1912, pre-trial detention was indeed made facultative, but as late as in 1938, law professor Idema could write that the application of pre-trial detention remained standard procedure.[46]

Real changes *were* designed, in which, for example, the judge had to provide permission for a pre-trial detention, but these reforms were never introduced, because the revised Native Regulations of 1919 was never implemented. The new Native Regulations had been completely rewritten by a committee and even published when its promulgation was stopped due to protests raised by the resident of Surakarta, A. J. W. Hartloff, and other administrative officials, who argued that the new regulation was impossible to follow in the inner regions of Java. The Native Regulations promulgated in 1848,[47] would remain largely the same until it was eventually revised in 1926 and amended again in 1941 as the Revised Native Regulations (*Herziene Indisch Reglement*). In the end, however, procedures would always remain simpler compared to the European courts in the Netherlands Indies.[48]

9.3 The Rule of Lawyers

Even though Dutch judges in Java improved the legal position of the Javanese population somewhat by following the prescribed rules and procedures more closely, they also manoeuvred themselves into a more powerful position.[49] By doing this, they gave up their earlier reformative stance and at some point even disregarded the rule of law. A rule of lawyers emerged. First of all, the liberal jurists did little to nothing to change the

[45] Süthoff, "Eene opmerking over de regeling der preventieve hechtenis," 1. *"Diefstal na zonsondergang of voor zonsondergang van een klapper, van een kip, van een waardeloos baadje op een afgesloten erf."*
[46] Idema, *Leerboek van het landraad-strafprocesrecht*, 100.
[47] Several changes were made in the IR over the course of the nineteenth century. For the IR as it was in 1915 see: Hirsch, *Het Inlandsch Reglement,* 1915.
[48] Fasseur, "stumbling block," 46.
[49] Cribb, "Legal Pluralism and Criminal Law," 66.

ongoing lack of private attorneys in the native pluralistic courts. As discussed before, non-European suspects could be represented by a lawyer, but there were no Indonesian or Chinese lawyers during the nineteenth century because there was no system of higher education. At the end of the century, the so-called bambu attorneys, often former jaksas or clerks with practice-based legal knowledge, became active; but colonial judges disapproved of their activities and characterizing all of them as frauds (see also the Epilogue, below). Second, the colonial judges made themselves responsible for the indictment. The regulations that shortened the period of preliminary detention meant that—for the sake of efficiency—the landraad president took the indictment over from the jaksa. This was in direct opposition to the rule of law, since the landraad judges would from then on act simultaneously as both judge and prosecutor. Third, the colonial judges did not push for independent Javanese judges in the landraad; the Javanese court members were still priyayis. They were responsible for the police while at the same time they had a majority vote over the verdict in the landraad. Finally, this violation of the ideal of the separation of powers was hardly or not at all addressed by liberal colonial judges. We will now discuss the last two issues more thoroughly.

The Jaksa and the Indictment

It is important to realise that the decisions taken with regard to legal procedures were intended not to shorten the period of pre-trial detention. The reforms also had the consequence that the landraad presidents took over an important function of the jaksas, by replacing the jaksas in drawing up the indictments. In fact, this meant that the landraad president also started to fulfil the functions of the Public Prosecution Service, something that went against the earlier hard-won ideal of the separation of powers.

In 1884, jurist W. A. J. Van Davelaar wrote in a judicial handbook that it was impossible to give jaksas responsibilities comparable to those of European prosecutors. The Public Prosecution Service had to be independent, and the jaksas could not possibly meet this requirement. First, because they were often lower ranked than the Javanese members of the law court—if these were regent or patih—and they would therefore tend to follow their orders instead of acting independently. Second, the jaksas did not have the judicial knowledge necessary to be able to keep standing before

the European court president.[50] Thanks to these two criticisms, the position of the jaksa was increasingly stripped of its responsibilities over the course of the nineteenth century. Most tellingly, the jaksas were stripped of their responsibility for drafting indictments (*acte van beschuldiging*), which became the responsibility of the landraad judge.

A first step in this reform was that it was decided in 1885 that the document of reference would from then on be drafted by the landraad judge instead of the resident.[51] Until 1898, the division of labour was that the landraad judge would draft the document of reference whereas the jaksa drafted the indictment. The accusations made in the indictment had to be restricted to the boundaries set by the document of reference.[52] In practice, the landraad judge also checked the indictment written by the jaksa, because it was said the jaksas could not draft indictments on their own. According to the Native Regulations, the indictment had to include the facts that were seen as proven by the prosecutor and that were the basis of the accusation. Instead, the indictment quite often was more a summary of the statements given by the suspect and witnesses during interrogations, followed by the charge; thus the offence for which the defendant was being charged remained unclear, as was any determination, for example, of whether the crime had been committed was premeditated or not.[53] In 1898, indictments were completely taken away from the jaksa by abolishing the indictment altogether, and keeping the document of reference (drafted by the landraad judge) and formally introducing this document as the indictment.[54]

The road to these reforms was characterised by technical, judicial discussions, in which Piepers in particular took a very legalistic approach; the act of reference had to be correct, and would otherwise be declared illegitimate. He was opposed by Attorney General Gelder, who wanted to deal with this in a more lenient manner. Apart from this technical debate, all jurists generally agreed that the indictment had to be abolished and that the landraad judge had to continue writing the document of reference.[55] This

[50] Van Davelaar, *Het strafproces op Java en Madoera*, 39-40.
[51] S 1885, no.81.
[52] Heicop ten Ham, *Berechting van misdrijven door Landraden*, 82.
[53] Gaijmans, *De Landraden op Java*, 34-35.
[54] S 1898, no.66; Idema, *Leerboek van het landraad-strafprocesrecht*, 72.
[55] Idema, *Indische juristen Winckel, Piepers, Der Kinderen*, 195-203.

marginalised the role of the jaksa and the landraad judges essentially came to fulfil the positions of both judge and prosecutor.

The young landraad President Cornelis (Kees) Star Nauta Carsten noticed this and wrote about it to his father (himself a jurist) in 1920, not long after his first appointment to a landraad. He described how he received cases from the administrative government and decided whether they had been investigated sufficiently. If there was enough proof, he would immediately draft the indictment: "So, I am not only the president of a law court with two native members, but also at the same time more or less the Public Prosecution Service." He did not think very highly of the jaksa, of whom he wrote "there *is* a native with the title of 'native public prosecutor,' or jaksa, but his responsibility exists solely of interrogating the suspect, who has been brought to the capital of the residency, and is kept there in prison. Later, during the court session, he [the jaksa] is not much more than a translator."[56]

It is important to note that the role of the jaksa as translator was still undisputed. Kees described how he would shake hands with all law court members and officials—"impeccably dressed" and entering in order of importance. Thereafter, they sat down with the jaksa and penghulu at his left hand, and to his right the two landraad members. After the suspect was brought in and unchained, the president was supposed to start the interrogations: "However, since you can only speak Javanese fluently with a villager after a long time," wrote Kees, "the jaksa took over that task. If I want to ask a question, I first address the jaksa, with whom I speak sometimes in Malay, and at other moments in Dutch. I am already satisfied if I understand a little bit of the rapidly spoken answer of the accused."[57]

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[56] Indisch Familiearchief, 8 Familie Hueting. Letter from Cornelis Star Nauta Carsten to his father A.J. Carsten. Blitar, April 7, 1920. *"Ik ben dus niet alleen voorzitter van een rechtbank met twee inlandsche leden, maar tegelijk ook zoo'n beetje openbaar ministerie."* (..) *"Er is wel een inlander, die de titel van "inlandsche officier van justitie" draagt, d.i. dJaksa, maar diens taak is alleen om beklaagde die als verdachte naar de afdeelingshoofdplaats gestuurd worden in de "boei" (gevangenis) een verhoor af te nemen en later op de zitting is hij niet veel meer dan tolk."*

[57] Indisch Familiearchief, 8 Familie Hueting. Letter from Cornelis Star Nauta Carsten to his father A.J. Carsten. Blitar, April 7, 1920. *"Maar aangezien je eerst na lange tijd goed Javaansch te hebben vlot met een dessaman kunt spreken, neemt de djaksa die taak over. Moet er een vraag gesteld worden dan stel ik die aan de dJaksa, met wie ik dan eens in het Maleisch, dan eens in het Hollandsch converseer. Ik ben al heel blij als ik het vluggesproken antwoord van den beklaagde een beetje begrijp."*

The landraad judge still relied on the jaksas and were inclined to maintain a positive relationship with them. Wormser—who was generally not too generous with compliments towards the Javanese officials—gave a rather positive description of the jaksa:

> Then the Jaksa follows—he is dressed like the two Chiefs—with his friendly, keen eyes. ... The President—who had left a fair deal of the interrogation to the Jaksa and had only asked the usual questions of the suspect and the witnesses; after all, the case was crystal clear, an insignificant case in fact, and he was thinking of completely other issues—looked up from his documents. ... The Jaksa is a very friendly chap to get along with. For a native he is very cheerful, he likes to laugh, he is a friendly, supportive man. Truly not the dumbest of all Jaksas as well. He received his training at the School for Chiefs [*Hoofdenschool*], where he learned a good deal of Dutch. Thereafter, he had been working as a djoeroetoelis [*jurutulis;* clerk] for a couple of years, supervised by a competent chief jaksa at the residency capital. He has devoted his time well, has been very observant and has properly used his brain. This explains his knowledge of the Colonial Criminal Code and the Native Regulations.[58]

[58] Wormser, *Schetsen uit de Indische rechtzaal*, 2-8. *"Dan volgt de Djaksa,—gekleed als de twee hoofden—met z'n vriendelijke schrandere oogen. (...)De President—die de ondervraging voor een goed deel aan den djaksa had overgelaten en alleen de gebruikelijke vragen had gesteld uit gewoonte, aan beklaagde en getuigen; de zaak was immers glashelder, "n snertzaak feitelijk, en hij dacht aan heel andere dingen, kijkt op van z'n stukken. (...)De Djaksa is "n alleraardigste kerel om mee om te gaan. Hij is voor een inlander heel vroolijk, hij lacht wel graag, hij is een vriendelijke, behulpzame man. Waarlijk niet de domste van de djaksa's ook. Zijn opvoeding heeft hij gehad op de hoofdenschool, waar hij vrij aardig Hollandsch heeft geleerd. Daarna is hij eenige jaren als djoeroetoelis werkzaam geweest onder een bekwamen hoofd-djaksa van de hoofdplaats. Hij heeft zijn tijd goed besteed, zijn oogen flink de kost gegeven en zijn hersens behoorlijk gebruikt. Vandaar zijn kennis van het Wetboek van Strafrecht en het Inlandsch Reglement."*

Altogether, it is clear that the liberal jurists were not interested in advocating a more independent position for the Javanese prosecutors. The jaksas continued to be subordinated to the resident and regent, instead of the attorney general as was the practice in the Netherlands. Moreover, the landraad judges were now even fulfilling the position of prosecutor and judge. The aim was no longer rule of law—as it had been when striving for the independent landraad judges—but rather the establishment of a rule of lawyers, instead. Dutch jurists were so convinced of their moral superiority over the Javanese that they thought it defensible to unite several powers in their own position. This resulted partly from a desire for more influence than the residents; but it was also a paternalistic pursuit of better criminal justice for the Javanese. For a long time, it was deemed impossible that jaksas might be able to faithfully and sufficiently exercise the responsibilities of a public prosecutor, even if they had been educated in judicial procedures and drafting indictments.

After 1869, when the resident was no longer the landraad president and the regents left most court sessions to the lower priyayi, the struggle for power between regents and residents took place in other fields. One of the contested issues was about who could exercise control over the jaksa. The Native Regulations had established that the chief jaksa was subordinate to the resident and the jaksa was subordinate to the regent. The Brotodiningrat conspiracy of Madiun (described more fully in chapter 11, below) shows that this section in the regulations was not a dead letter. In this case, the chief jaksa had actively invoked article 56 of the Native Regulations, which stated that chief jaksas were subordinate to residents. By doing this, he was able to ignore the regent's orders and inform the resident about the criminal activities of local priyayi. However, according to article 57, the other jaksas and adjunct jaksas were subordinate to the regent. Finally, the regent of Madiun and the resident, Donner, even argued about who was in charge of the adjunct head jaksa, because this was not clear from the regulations:

> It was a thorn in his [the regent's] side, that it was explicitly stated in article 56 of the IR that the Chief Jaksa fell under the immediate orders of the Resident. When the Regent ... wanted to send the Adjunct Chief Jaksa to Ponorogo, I objected to this. During our next meeting, he [the regent] pointed out to me that

> according to article 57 the Jaksas were under his command and he therefore believed he held the right to give orders to an official ranked equal to a Jaksa. I simply responded that the Adjunct Chief Jaksa is a representative of the Chief Jaksa and therefore article 56 of the Native Regulations is in force.[59]

In spite of his efforts, the resident had to reluctantly acknowledge that the adjunct chief jaksa was entirely influenced by the regent. The chief jaksa on the other hand had—being loyal to the resident—turned into a pariah in the region. As Resident Donner related, "Everyone here knows that the Fiscaal [prosecutor] in Madiun has constantly been positioned as a pariah, already since the time of Resident Ravenswaay, who was hated by the regent, and whose loyal helper he was."[60]

Although it is beyond the scope of this research, it is interesting to note that after the introduction of the colonial policy of "empowerment" (*ontvoogding*) in 1918, the office of the jaksa was transferred to the regent's office making the regent more closely involved in judicial affairs. Wiranatakoesoemo was the first regent who would be "empowered" (*ontvoogd*) in 1919, in Cianjur. However, this reform was undone in 1929, when the regents lost all their rights to supervise the jaksas.[61] In 1931, the

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[59] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. October 26, 1900, no.23. Report Resident Donner. Madiun, March 20, 1900. *"Een doorn in zijn (de regent) oog was artikel 56 van het IR, waarin uitdrukkelijk verklaard wordt dat de Hoofddjaksa onder de onmiddellijke bevelen van den Resident staat. Toen de Regent op 27 October jl. de Adjunct-Hoofddjaksa naar Ponorogo wilde zenden, maakte ik daartegen bezwaar. Bij onze eerst daarop volgende ontmoeting op 28 October wees hij mij erop, dat in gevolge artikel 57 van het IR de Djkasa's onder den Regent stonden en hij dus wel het recht meende te hebben op den Adjunct HoofddJaksa als in rang gelijkstaande met een djaksa uit te zenden. Ik antwoordde hierop eenvoudig dat de Adjunct-Hoofddjaksa als representant van den HoofddJaksa mede in termen van artikel 56 van het Inlandsch Reglement viel."*

[60] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. October 26, 1900, no.23. Report Resident Donner. Madiun, March 20, 1900. *"Iedereen hier weet dat de Fiscaal te Madioen steeds de positie van een paria heeft ingenomen en wel sedert den tyd van den door den Regent van Madioen zoo gehaten Resident Ravenswaay, wiens trouwe helper hij was."*

[61] Van den Doel, *De Stille Macht*, 339, 402-405. In 1929, the empowerment (*ontvoogding*) was partly reversed. The residents were appointed again and the power of the assistant residents was increased. The assistant resident received the daily supervision of the *veldpolitie (*field police), whereas the regent remained to supervise the police. However, the assistant resident held the entire responsibility over the criminal investigations, so that the jaksas were now subjugated to the assistant resident, instead of the regent. This to the anger of Wiranatakoesoemo, who adressed this issue in the People's Council. After all, this was not

European branch of the civil service consolidated its more direct rule even more, with the decision that not only the chief jaksa, but all jaksas would be subordinate to the assistant resident.[62]

Javanese and Dutch Judges after 1869

Another point to discuss regarding the trained jurists after their arrival in the landraad courtrooms of Java is their stance towards the (in)dependence of the Javanese judges. The separation of the administrative and judicial powers had been advocated by jurists as an important reform, even though in fact, only one official had been replaced in an environment where no further separation of powers would take place. The colonial judges would not strive for independent Javanese judges in the landraad; the Javanese court members were still the priyayi members. After all, the landraad president was only one of the judges of the landraad. The other two were Javanese priyayi, who would remain in their administrative appointments and were involved in both the preliminary police investigations and the judicial administration. Moreover, the nomination of new Javanese court members to the landraad was still arranged by the resident and not by the landraad president.[63] It is therefore questionable whether a landraad president, often a young and inexperienced jurist, would be capable of clearing the decks and arranging an independent and less corrupt justice system in his region on his own. The number of jurists should not be overestimated as well; on 31 December 1905 there were still only 163 judicial officials in the entire archipelago.[64]

As discussed in part 1, the Asian Charter of 1803 had recommended the appointment of both independent Dutch and independent Javanese court members to the landraden. The advice had been of no avail. In 1869, with the introduction of the judicial landraad presidents, however, this was not even on the table. Remarkably enough, during the entire decision-making process in 1869, no one mentioned that the other members in the landraad, the Javanese judges, would still not meet the standards of what was then described as the ideal of a civilized nation; after all, the Javanese members—

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only an abolishment of the empowerment but led to an even more stripped role of the regent, since the jaksas before the empowerment always had been subjugated to the regent.

[62] Sutherland, *Pangreh Pradja*, 431.

[63] Piepers, *Macht tegen recht*, 355.

[64] NL-HaNA, 2.10.02 MvK 1850-1900, Vb. December 17, 1906, no. 19.

with the right to vote on the verdict and in the position of judge—executed administrative functions along with their judicial ones, as the resident did. However, *their* ponytails were left uncut. Although the Javanese members were mentioned obliquely in the discussions, and any proposals to abolish the Javanese members altogether and introduce a European single judge were firmly opposed, no one suggested even once that the Javanese members should be independent. Mirandolle was the only one who wrote about the relations between the Javanese members and the European president. Interestingly enough, he was convinced that the Javanese members would actually regain their independence once judicial officials were presiding over the landraad instead of the resident, since they had a more complex and submissive relationship with the latter. They would not consider the resident as being a "*primus inter pares* to whom they could and should disclose their views" but as the "almighty representative of the Dutch Indies' Government, whose direct orders had to be obeyed and on whom their fate was entirely dependent."[65]

Even if the Javanese members were themselves the target or victim of a crime, and were consequently personally involved in a case as one of the parties, they were not necessarily replaced as court members during the court session. After the revolt in Cilegon (Banten) in 1888, for example, the circuit court consisted of local priyayi who came from the region and were related to the victims. The Patih Mas Pennah had been a target and had escaped because he had not been at home during the outburst of violence. Nonetheless, he was appointed leader of the preliminary investigations *and* he was seated in the circuit court as a voting member.[66] Other members of the circuit court had also had also been closely involved, and the cousin of one of the court members, Entol Goenadaja, the wedono of Cilegon (and father of Achmad Djajadiningrat, see epilogue), had been one of the victims (see Figure 18).[67]

There are indications that when the (assistant) resident was no longer presiding the landraad sessions, the regents stopped attending the court

[65] Mirandolle, "De hervorming der rechtsbedeeling in Indie II. De Landraden," 163–174. "..*primus inter pares, aan wiens zij hun gevoelen mogen en moeten openbaren*) *"almachtigen vertegenwoordiger van het Nederlandsch Indisch Gouvernement, onder wiens directe bevelen zij staan en van wiens beschikking hun lot geheel afhankelijk is."*

[66] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 38.

[67] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 52.

sessions, too. In 1881, a circular stated that "the government has heard that currently the regents, albeit being members of a landraad, are rarely taking part [in court sessions]." The circular emphasized the importance of the regent's attending the landraad for at least one of the two or three sessions held each week.[68] Ten years later, a similar circular was issued, because the former one had "not, or barely, been followed sufficiently." Again, it was emphasized that the presence of the regent was desirable "partly because the justice administered will gain significance in the eyes of the Native." Then, a minimum of twice per month was set, because the obligations of the regent would not allow him to attend each week.[69] Eventually, it was stated in article 92 of the Court Regulations that the regent was a member of the landraad. Also appointed as members were patihs, wedonos, assistant wedonos, assistant administrators, assistant regent, and police assistant. During the early twentieth century, most active landraad members were lower-ranked or retired priyayi.[70]

The absence of the regent from the pluralistic courts demonstrates that the landraad was no longer the place where he could exercise his influence and cooperate with the resident. This might also prove that the judicial landraad presidents were less influenced by the Javanese members. However, some sources suggest otherwise. In 1882, for example, De Waal spoke out in favour of the single landraad judge, because the judicial officials exercised less control over the Javanese members than the resident: "As is known, the landraad is a council with voting members. When the Resident was presiding, this was merely a phrase given his influence over the chiefs. He was in fact a single judge." Now that the Javanese members were no longer dependent on the president, however, the regent could exercise an "inordinate influence" over the justice administration. According to De Waal, it was harder for the judicial landraad president to challenge the "usually incongruous opinions of the members" and convince them to vote along with him. Moreover, the Javanese members would simply represent the interests of their superiors, for example the regent, in the landraad.

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[68] Bijblad, no.4037. "Circulaire aan de hoofden van gewestelijk bestuur op Java en Madoera," Batavia, April 9, 1881. "*Naar de regering vernomen heeft, nemen tegenwoordig de regenten, ook al zijn zij leden van een Landraad, daarin zeldzaam zitting"*

[69] Bijblad 4708. "Circulaire aan de hoofden van gewestelijk bestuur op Java en Madoera," Batavia, November 14, 1891. "*..mede omdat daardoor de rechtspraak in de oogen van den Inlander in beteekenis slechts zal kunnen winnen."*

[70] S 1913, no.678.; S 1905, no.478.

Altogether, and this seems to be supported by most sources examined, the regent had become less prone to attend landraad sessions, because the prestige and political importance of landraad sessions had decreased due to the absence of the resident. In important cases, however, he would still show up or make sure that his interests were represented by the attending priyayi.[71]

Although De Waal pleaded for single European landraad judges, he considered it important that Javanese members remain seated in the pluralistic courts as advisors. They might not have been well suited to act as judges, but De Waal considered their knowledge of local circumstances of great importance: "The native is not developed enough to be able to accurately decide over somewhat complicated cases, and his character and his awe for authority make him unsuitable for the independent position of impartial judge. On the other hand, his advice on the assessment of factual or local circumstances are of immeasurable value."[72]

Almost twenty years later, when advocates of adat law entered on the scene, I. A. Nederburgh wrote that the Javanese members were not knowledgeable enough anymore on adat law, because many priyayi had become too westernized: "I have more often pointed out, that one should not primarily, and certainly not exclusively, consult the Native officials in order to learn about adat. They live too little alongside the people, acquire too many European influences, and are therefore too often inclined to observe adat as inferior to European law, instead of being a good source of adat knowledge."[73] During a general meeting of the *Indische Genootschap* around the same time, Mounier proposed removing the Javanese members from the landraad. He presented a number of arguments that incongruously veered

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[71] De Waal, *De invloed der kolonisatie op het inlandsche recht*, 104. "*..meestal ongerijmde meeningen der leden..*" *(...*) *"Zooals bekend is, is de Landraad een college met stemhebbende leden. Toen de Resident voorzat was dit niet meer dan eene phrase, feitelijk was hij door zijnen invloed op de aan hun ondergeschikte hoofden alleensprekend rechter."*

[72] De Waal, *De invloed der kolonisatie op het inlandsche recht*, 105–106. *"De inlander is niet genoeg ontwikkeld om in eenigzins ingewikkelde zaken een juist oordeel te vellen, terwijl zijn karakter en zijn eerbied voor het gezag hem voor de onafhankelijke positie van onpartijdig rechter ongeschikt maken. Daarentegen zijn zijne adviezen voor de beoordeeling van feitelijke of locale omstandigheden van onschatbare waarde."*

[73] Nederburgh, "Reactie op een ingezonden stuk van R.H. Kleyn," 360-361. "*Ik heb reeds meer er op gewezen, dat men om de adat te leren kennen niet bij voorkeur en zeker niet uitsluitend te rade moet gaan met de Inlandsche ambtenaren. Zij leven te weinig met het volk mee, ondervinden te veel den Europeschen invloed en zijn daardoor dikwijls te veel geneigd om de adat te beschouwen als inferieur aan het Europeesch recht, dan dat zij een goede bron zijn voor de kennis der adat"*

between their being too dependent on the president and oldest member, and their being inclined of oppose the judicial president without good reason.[74] He suggested temporarily removing the Javanese members from the courtroom, but he was also in favour of a proposal of the regent of Demak, Raden Mas Adipatih Ario Adiningrad, who advocated for an Javanese judicial corps that would function independently from the administrative Javanese officials.[75] Parliamentarian C. Th. Van Deventer, a leader of the ethical policy movement, responded by saying that it would be a "major political mistake" and a "dangerous experiment" to remove the Javanese members from the pluralistic courts. He blamed the colonial government for having neglected to bring the Javanese to a more "developed" level, and he wanted action to be taken on this matter as soon as possible.[76] Jurist Maclaine Pont also did not want to exclude the Javanese members from the court sessions, mainly because of their knowledge of the land: "They [the local members] are also useful, because the presidents—among whom are very skilful officials—are, especially at the start of their career, sometimes burdened by their embellished erudition, which can quite get in their way, and then it is often the common sense of the Landraad members that prevents them from curious verdicts." He also pleaded to educate the Javanese aristocratic sons: "Because law is not that difficult, and it is perfectly possible to be studied by a well-developed Javanese." [77] Earlier than these gentlemen probably would have expected, there would be such an Indonesian corps of jurists, after the first law school was established in 1908. Yet, by this time, the Dutch jurists would not all be that enthusiastic anymore (see Epilogue, below).

In any case, the Javanese administrative officials continued to be appointed as law court members. In 1916, Boekhoudt emphasized the importance of the views and knowledge of the Javanese members in criminal cases: "Without the forceful cooperation of their side, it is impossible for a

[74] Mounier, "Iets over de Landraadvoorzitters op Java en Madoera", *Indisch Genootschap, algemene vergadering* (27-3-1900): 146.
[75] Mounier, "Iets over de Landraadvoorzitters op Java en Madoera", *Indisch Genootschap, algemene vergadering* (27-3-1900): 153.
[76] Response to proposal Mounier by C. Th. Van Deventer. *Indisch Genootschap, algemene vergadering* (27-3-1900): 161.
[77] Response to proposal Mounier by Maclaine Pont. *Indisch Genootschap, algemene vergadering* (27-3-1900): 162-163. "*Want zoo moeielijk is het recht niet of het is best te leeren door een goed ontwikkelden Javaan."*

young jurist to successfully bring a case to a good end."[78] The Javanese court members were needed to find out whether the accused was telling the truth. As prominent Javanese, they could also "force" him or her to speak the truth, simply by being in the courtroom . If the Dutch landraad judge actually listened to them and urged them to share their views, then they would also be more active in doing so: "Only then can the native judicial administration rightfully be designated as a so-called collegiate one. With acknowledgment, I hereby testify that I have learned a good deal from the Landraad members, and that the verdicts announced under my presidency have gained value due to their cooperation. They took notes during the court session, and subsequently sometimes brought to the table remarkable, extensively reasoned advice, shedding new light on the case."[79]

J. Sibenius Trip similarly emphasized that Javanese members had prevented him, as a circuit court judge (1859–65), from wrong verdicts, as he wrote in the *Indies' Weekly Journal of Law* in 1905. He describes how the sentence "*Bagaimana toewan poenja soeka*" ("As you wish, Sir") articulated by Javanese members who followed the views of the Dutch judge during the deliberations, had to be understand as a sign that the priyayi knew more about the case and that it was best to follow their advice. He gave the example of a case in which he had seen what seemed to be convincing evidence, but the Javanese members disagreed. Sibenius Trip had attempted to convince them and a "*Bagaimana toewan poenja soeka"* followed. At first, he concluded that the difference in views came from their different perceptions of evidence: "At night, when I was sitting in the *pendopo* with the Pangeran, I asked him: "Toean Pangeran, is it true that the Native members do not understand a thing of evidence based on clues [*aanwijzingen*]?'" The regent started laughing and assured him that if the members of the circuit court were persistent in their *kurang terang*, it was

[78]Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 333-334. *"Zonder krachtige medewerking van hunne zijde is het voor een jong rechterlijk ambtenaar onmogelijk eene zaak ot een goed einde te brengen."*

[79] Boekhoudt, "Een afscheidsgroet aan de jongeren onder mijn oud-collega's," 333-334. *"Dan kan de Inlandsche rechtspraak pas met recht genoemd worden, zooals ze heet te zijn, eene collegiale. Met erkentelijkheid leg ik hier getuigenis af, dat ik van de Landraadsleden zeer veel heb geleerd, en dat de beslissingen, onder mijn voorzitterschap genomen, door hunne samenwerking aanmerkelijk in waarde hebben gewonnen. Met aanteekeningen vóór zich, door hen van het verhandelde ter terechtzitting gemaakt, brachten zij somwijlen merkwaardige breed gemotiveerde adviezen uit, waardoor een nieuw licht op de zaak werd geworpen."*

certain that they knew more. In this case, the wedono had falsified the evidence. Betraying another priyayi would not have been appropriate, but this was an indirect way of making something clear.[80]

In any case, the pluralistic law court continued to exist and clearly still represented dual colonial rule. In court, the European president wore a gown, while the Javanese members and officials wore a simplified version of their traditional costumes. This was still the case in the twentieth century when, on other occasions, both European and Javanese officials would wear a similar white costume. In 1920, the Association of Javanese Civil Servants requested that the government allow them to wear the white colonial costume they usually wore when on duty (*om in het wit te mogen verschijnen*) during landraad sessions. The request was turned down on the advice of the Supreme Court, which wrote to the director of justice: "The court finds that it is not advisable to allow the Javanese officials to appear in a court session dressed in white, especially not, because in that case some of the members of the Landraad would wear their official costume while other would wear white, which would harm the decorum."[81]

9.4 Conclusion: Liberal Rhetoric, Colonial Reality

The introduction of judicial landraad president positively changed certain aspects of criminal law practice regarding the Javanese population, but only to a certain extent. The number of acquittals by the landraden seems to have increased, pointing at a more critical assessment of legal evidence, and jurists also actively tried to shorten the period of pre-trial detentions. At the same time, however, jurists did not continue their pursuit of an entirely independent judiciary, and thereby actively contributed to an evolution towards a rule of lawyers rather than a rule of law in the pluralistic courtrooms. Colonial judges made themselves responsible for indictments,

[80] Sibenius Trip, "Herinneringen uit de Inlandsche Rechtspraak," 1. *"Des avonds, toen ik met den Pangeran in de pendopo zat, vroeg ik hem: Toean Pangeran, is het waar dat de Inlansche leden niets begrijpen van een bewijs op aanwijzingen?"*

[81] ANRI AS Bt. February 16, 1920, no.67. In 1909 it had been decided to allow Javanese officials to wear the white European costume except during court sessions of the Landraad during which the old (in 1870 modified and modernised with a black jacket) traditional costume had to be worn. (IB January 2, 1909, no.16). *"Het komt daarom den Hove voor dat het geene aanbeveling verdient den inlandschen bestuursambtenaren te verhunnen in het wit ter terechtzitting te verschijnen, te meer niet, omdat zoodoende enkele leden van den Landraad in ambtsgewaad, anderen in het wit aanwezig zouden zijn, hetgeen het decorum zou schaden."*

instead of the jaksa, and there was a severe lack of private attorneys in the pluralistic courts that they did not aim to improve. Moreover, colonial judges were not promoting the idea of having independent Javanese judges in the landraad; the Javanese members of the court were still drawn from the priyayi.

Historical and legal historical works have concluded that the liberal jurists during the second half of the nineteenth century sought a better legal position of the Javanese population. But we have to realise that although this might have been their intent, at least to some extent, the jurists strengthened their own position in the belief that they alone had the wisdom and knowledge to act as a sort of "strong father" over the population. In so doing, they left fundamental ideals about the rule of law behind. Consequently, liberal colonial judges increasingly adapted to the colonial values of their non-judicially trained predecessors, acting—and introducing reforms—antithetical to their initial ideals about the rule of law. So, while jurists in the Netherlands Indies increasingly criticized those features of the colonial state that went against the ideal of the rule of law, they were simultaneously essential to maintaining the unjust colonial state and giving legal grounds to the politics of difference.