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

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11 — Privileged Outlaws

The previous chapter showed how during the early nineteenth century a privilegium fori came into existence in Java to "protect" priyayi from getting involved in civil cases. It was also possible to keep the priyayi outside of court in criminal cases, for example in extortion cases, to prevent damage to the prestige of the colonial state. In this chapter, I argue that the circumvention of bringing priyayi to court, would have a second consequence. The privilegium fori—at first designed to protect the priyayi—over time got intertwined with a political measure in criminal cases; a way for the colonial administration to banish people who were considered controversial, dangerous, or potentially threatening to colonial rule, as I will show by analysing two big and complex 'priyayi cases' from the second half of the nineteenth century.

11.1 Privilegium Fori and the Political Measure Intertwined

As described before, the privilegium fori was initially introduced in 1829 to protect Javanese nobles from the humiliation of a public trial, which was seen as diminishing their status in the eyes of the population. Besides, it seemed difficult to agree on a system in which regents were judged by pluralistic courts in which often lower priyayi, such as wedonos, served as members and would decide over their fate. Thus, the privilegium fori simply allowed for the transfer of Javanese nobles from one jurisdiction to another. However, the resolution of 1829 included one sentence that would have considerable consequences: priyayi could only be prosecuted in a court of law on the approval of the governor general.[1] This mandatory approval of the governor general could instantly change the privilegium fori of the Javanese nobles—a favour—into a powerful tool of the colonial government.

The Origins of the Exorbitant Rights

Even before being affirmed in the regulations, the exercise of political measures had been a common practice of the colonial rulers. We have seen

[1] S 1829, no.98.

already how in the Borwater case the suspected regent was not prosecuted, but was banned from the regency nonetheless. In general, there was a longstanding tradition of political exile in the Netherlands Indies. During VOC times, unruly nobles were deported without trial for political reasons. For example, the Patih Raden Adipati Natakusuma and the brothers of Sultan Mangkubumi were banned to Ceylon for leading the pro-Chinese court faction.[2]

Banishment as political means, as distinct from banishment as the result of a criminal trial, was further consolidated in articles 45 to 48 of the Colonial Constitution of 1854. The decision to apply political measures was taken by the governor general, but in the case of a Dutchman, the minister of colonial affairs and the Dutch parliament had to be informed, whereas in the case of a person born in the Netherlands Indies, such as priyayi, it was considered sufficient to inform only the minister of colonial affairs. Also, a rationale for the decision to deport was obligatory for Dutchmen but not for Javanese.[3] Banishment as a measure of control could be imposed for a undefined period, and no proof was required. The legal system was not involved in the procedure. The political measure was a "measure" and not a "punishment." Formally, punishments had to be proportional to the committed offence, whereas in case of a "measure," the maintenance of peace and order in the colony was of foremost importance.[4] The governor general's license to arbitrarily deport people who had not necessarily committed a crime was referred to as "exorbitant rights."

The exorbitant rights were the result of the "regulation of the right of residence," which stated that people were only allowed to stay in the colonies with the permission of the king. If, after permission had been given, someone was deemed dangerous to peace and order—without necessarily being accused or found guilty of having committed a criminal act—he could be forced to leave the colonies.[5] Before deportation, the person could be held in custody.[6] People born in the Indies, such as common Indonesians and

[2] Ricklefs, *Jogjakarta under sultan Mangkubumi,* 155. Kerry Ward did research on the history of forced migration in the Indian Ocean world by the VOC: Ward, *Networks of Empire.*
[3] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 51.
[4] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 39.
[5] RR 1815, art.18.; RR 1818, art.29/3.; RR 1827 art.29.; RR1830, art.32.; RR 1836, art.24.; Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 5.
[6] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 9. "*Regeling of recht van verblijf."*

priyayi, whom the governor general considered to be a threat to peace and order, could also be deported. Exactly what was meant by "deemed dangerous" was not clarified in the regulations. This was completely up to the governor general to decide.[7]

Most relevant and interesting for this dissertation though, is the "amalgamation of a legal prosecution with the political measures." This was an extraordinary rule that was only allowed in the Netherlands Indies. It meant that the approval of the governor general was mandatory for the legal prosecution of people from certain strata of Javanese society such as high-ranked priyayi, as discussed in chapter 8. However, if he decided not to approve a legal prosecution, but nonetheless had a "moral conviction" that the person was guilty, he held the authority to impose a political measure.[8] In 1847, the influence of the governor general on the decision to prosecute Javanese officials would become part of article 4 of the Court Regulations, which would be the primary source for article 84 of the Colonial Constitution of 1854: if the governor general decided to withhold permission to prosecute, he could subsequently decide to use his exorbitant rights.[9]

During debates over the drafting of the Colonial Constitution, some members of the Dutch parliament expressed their concerns about the exorbitant rights regarding suspects in criminal cases. In particular, Van Hoëvell had serious objections to article 84 because it contradicted article 83, which stated that everyone had the right to be tried by a judge. Van Hoëvell explicated how article 84 appeared to be a privilege, since the governor general had to approve the prosecution of priyayi, but was in fact a "quasi-privilege which [can] put chiefs in a very deplorable position." He gave the example of the regent of the Kendal regency, who had been accused of extortion, but denied his guilt and requested a trial to prove his innocence.

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[7] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 5, 9 and 38. The exorbitant rights were first given this term in 1852. It was a neutral term and not meant as a critique or something negative.

[8] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 62. *"Samengaan van een rechtsvervolging en de politieke maatregelen*."

[9] RO 1847, art. 84: *"Het verlof van den Gouverneur-Generaal, of buiten Java en Madura van den hoogsten gewestelijken gezaghebber, is noodig tot het instellen van burgerlijke regtsvorderingen en van vervolgingen tot straf tegen inlandsche vorsten en hoofden, bij algemeene verordering aangeduid."*

However, the governor general withheld his permission and he was banned by political measure to Menado, "living there now on one guilder a day."[10]

J. C. Baud and Rochussen fiercely defended the use of political measures. Rochussen emphasized that the interests of the state were paramount. Baud, in his turn, argued that the article was intended primarily to protect people "of high birth" from the "humiliation" of a public trial. For the sake of argument, he neglected to mention that these particular courts cases were held behind closed doors. Furthermore, Baud argued, the article aimed to keep the and order. Legal procedures took time and during that period, influential relatives and followers of the accused could easily disturb the peace in the region. He could not imagine that the regent, in the example given by Van Hoëvell, had himself thought of requesting a judicial trial, and blamed the jurists for this: "I can very well imagine, that the native chief, confident that no decisive witness would testify against him, had given the advice from one or another European jurist to request a public trial." The consequence of such a trial would have been acquittal, and that would have damaged the colonial authorities."[11] Van Hoëvell agreed that Javanese did not dare to testify against a regent, but he blamed the policy of not adjudicating priyayi cases on the reluctance of the Javanese to testify against their chiefs. If, however, the population could rely on the colonial ruler to prosecute and adjudicate criminal and extorting chiefs, Van Hoëvell argued, then they would certainly be willing to testify.[12]

A few days later, the Minister of Justice D. Donker Curtius argued that the principle that everyone held the right be tried by a judge was only applicable after the prosecution had started. Article 83 did not provide rules for the right of prosecution before a prosecution had begun. He argued that

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[10] Handelingen Tweede Kamer, "Ontwerp van Wet tot vaststelling van het reglement op het beleid der regering van Nederlandsch Indië" July 27, 1854, 1236. www.statengeneraaldigitaal.nl (Last accessed: 20-5-2015) Van Hoëvell: *"…niemand kan tegen zijn wil worden afgetrokken van den rechter.* (…) *…quasi-voorregt die hoofden in een zeer beklagenswaardige positie [kan] brengen*) (*en leeft daar nu van één gulden daags."*

[11] Handelingen Tweede Kamer, "Ontwerp van Wet tot vaststelling van het reglement op het beleid der regering van Nederlandsch Indië" July 27, 1854, 1238. www.statengeneraaldigitaal.nl (Last accessed: 20-5-2015) J.C. Baud: *"Ik kan mij zeer goed voorstellen, dat het inlandsch hoofd, verzekerd dat geen beslissende getuige tegen hem zal optreden, van een of ander Europeesch regtsgeleerde den raad heeft gekregen, om openbare teregtstelling te vragen."*

[12] Handelingen Tweede Kamer, "Ontwerp van Wet tot vaststelling van het reglement op het beleid der regering van Nederlandsch Indië" July 27, 1854, 1239. www.statengeneraaldigitaal.nl (Last accessed: 20-5-2015)

this was also the case in the civil legislation of the Netherlands: "in some cases, certain persons require authorisation for filing legal proceedings, and if the authorisation is not provided, the lawsuit cannot be brought. However, once approval has been given, the legal proceedings should be conducted before the competent judge." Thorbecke subsequently wondered why the governor general had the "inordinate privilege" to decide over legal procedures to be held against local rulers or chiefs. The minister of colonies replied that the article was to protection Javanese rulers from being sued in civil cases concerning debts.[13] This had indeed been the reason why the regulations on privilegium fori had been introduced in 1829. However, the minister did not explain why criminal cases were also made part of this rule. Despite the critical questions asked, article 84 was implemented in the Colonial Constitution.

The Djojodiningrat Conspiracy

A few years after the debate in parliament, a major case appeared and the colonial government was faced with the dilemma of whether to intervene in a criminal case in which a regent was suspected by imposing a political measure: the Djojodiningrat conspiracy. The case had appeared to be a straightforward murder case in which a European was killed by a disgruntled Javanese worker, but soon it would prove to involve much more complicated.

On 26 December 1856, around eleven at night, Bernardus Reinierus Meulman, administrator and co-tenant of the Pesantren sugar factory in Kediri, was attacked on his way home. According to a newspaper article in *De Oostpost*, he was stabbed in his lower back with a lance and died from his injuries that night. The murderer had remained unnoticed in the dark.[14] The preliminary investigations, executed by the chief jaksa of Kediri, Mas Ngabehi Padmo Soediro, did not turn up the identity of the assassin, so Resident H. M. Le Roux decided to set up an investigative committee made up of several prominent priyayi from Kediri to solve the case. The president

[13] Handelingen Tweede Kamer, "Ontwerp van Wet tot vaststelling van het reglement op het beleid der regering van Nederlandsch Indië" August 3, 1854, 154. www.statengeneraaldigitaal.nl (Last accessed: 20-5-2015) Donker Curtius: *"…in somige gevallen hebben sommige personen autorisatie nodig om een proces te mogen voeren en wordt dat verlof niet gegeven, dan kan het proces niet begonnen worden, maar wordt het verlof gegeven dan moet het geding voor den competenten regter gevoerd worden."*

[14] *De Oostpost*, January 12, 1857, 2-3.

was the regent, Radhen Mas Adhipati Djoijo dhi Ningrat (hereafter Djojodiningrat), and also appointed were the patih of Kediri, the wedono of the Modjoreto district, the wedono of Godean district, the chief penghulu, a jaksa, and the aforementioned chief jaksa of Kediri.

This was similar to the action taken after the assassination attempt on Assistant Resident Borwater of Radjekwesi discussed in chapter 8, but this time the committee was composed entirely of Javanese priyayi instead of Dutch officials. That this was a less prestigious committee—from the viewpoint of the colonial government—might have been affected by the fact that the victim was not a direct representative of the colonial authorities, but the administrator of a sugar factory. Also, the assumption may have been that the culprit was a Javanese commoner and not a priyayi or European.

The committee began its work and four months later they had drafted a procès-verbal concluding that the European Merghart, a mechanic at the sugar factory of which Meulman had been the administrator, was the main suspect. The murder was adjudged a crime of passion (*minnenijd).* However, the procès-verbal was not signed by the chief jaksa, who was not convinced of Merghart's guilt. The "little" jaksa signed the relevant documents in his place.[15] Since the suspect was a European, the file was sent to the Council of Justice in Surabaya, where it soon became clear that Merghart could not be the perpetrator. Witnesses had swiftly withdrawn their statements and among the Council of Justice members suspicions arose that the investigation committee had made up the entire procès-verbal. Thereupon, they arrested one of the committee members, the wedono of Godean, for bribing witnesses. The experienced Public Prosecutor W. W. Scheltema[16] went to Kediri himself to gather more information. There, the chief jaksa informed him of the dubious role of the patih and wedono of Modjoreto.[17]

Little progress was made hereafter because Resident Le Roux of Kediri was still convinced of Merghart's guilt. Only in August, when the new Resident A.F.H. van der Poel arrived, did the discussion about whether

[15] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Ordinance (*Besluit*) governor general. Batavia July 1, 1858.

[16] W.W. Scheltema was public prosecutor at the Council of Justice in Surabaya since 1857. Before that, he has been the president of the Council of Justice in Makassar. Scheltema died in 1870, in Leiden, after an early retirement due to weak health conditions.

[17] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Report of investigations, by Public Prosecutor Scheltema, sent to the attorney general. Surabaya, January 7, 1858.

the priyayi should be prosecuted advance. If the falsely accused had not been a European, it might have been possible to keep the case quiet, but now that the prosecutor of the Council of Justice was involved, the genie was out of the bottle. Moreover, at the heart of the case there was a conspiracy of Javanese chiefs who had deliberately deceived the colonial government. Altogether, a severe case.

On 5 December 1857, almost a year after the assassination, charges were filed against the wedono of Godean. Later that month, the wedono of Modjoreto and the patih were ordered to temporarily leave Kediri in the interest of the investigations, and Public Prosecutor Scheltema returned to Kediri to undertake more extensive investigations. This time, he was cooperating with both the resident and the regent of neighbouring Tulungagung, who was trusted by the colonial government. It reflects the total distrust prevailing at that time regarding the priyayi of Kediri. In the meantime, Djojodiningrat, the regent of Kediri, was still in office, although accusations had been made against him as well. Securing incriminating witness accounts against the Javanese chiefs was hard, because of their great influence over the people, and Scheltema would later lament that "those well-versed in the character of the Javanese will be able to imagine the almost insurmountable difficulties of an investigation into truths, which are incriminating to six of the most superior heads of a regency, including the regent himself."[18] Scheltema wrote to the governor general that he suspected that the entire initial investigation committee, including the regent, had been part of the conspiracy to falsely accuse Merghart of Meulman's murder. The main suspects now included the wedono of Godean, the patih of Kediri, and the wedono of Modjoreto. Scheltema also found out that the "little" jaksa had initially conducted real investigations and decided that Tirtodjoijo and the coach driver Saijang were the main suspects. Thanks to the effort the committee put into misdirecting the first investigation and subsequently

[18] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. December 19, 1860, no.305. NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Overview and timeline of the Djojodiningrat case procedures by Public Prosecutor W.W. Scheltema (to proof that procedures could not have been organised faster). Surabaya, December 28, 1859. "*Men moet wel zeer bekend zijn met het karacter van den Javaan om zich een denkbeeld te vormen van de bijna onoverkomelijke moeijelijkheden van een onderzoek naar waarheden, die bezwarend zijn voor zes van de voornaamste hoofden van een Regentschap, waaronder de Regent zelf."*

inventing accusations levelled at Merghart, Scheltema deduced that these two must have been acting on the orders of the priyayi.[19]

As in the Borwater case, the European victim was blamed for not having behaved properly towards the Javanese chiefs, and Meulman's coarse character was offered as an explanation for the murder. Or, as Scheltema described it, "the victim [was] attacked as a consequence of his gruff character and his inability to deal with natives."[20] Meulman had "grossly insulted" the wedono of Modjoreto by throwing "rotten reed at his head ... using low curses."[21] Another source spoke of an indecent letter that Meulman had sent to the resident complaining about the lack of police in the area.[22]

Of major importance for the investigation was the observation that the family ties of the priyayi of Kediri—and within the investigation committee—were very tight. The patih was a brother of the regent, as was the wedono of Modjoreto. Furthermore, it turned out that the wedono of Godean had "for a long time aspired to marry the younger sister of the regent," and therefore he was a "diligent servant" of the regent "hoping to be rewarded with the marriage he had been hoping for, and to take the wind out of the sails of the chief jaksa ... in whose position he wanted to be." The chief jaksa, who had told the truth and refused to sign the procès-verbal, was not a direct relative, and Scheltema described him as "honest, but not strong enough against the dominant majority of the committee, which [had] even won over the resident." The other members of the committee were dismissed as "weak and accommodating to his superiors" (the wedono of Kota Kediri),

[19] On 7 January 1858. At first, the wedono of Modjoreto had attempted to falsely accuse two local men, but eventually it was decided to produce false evidence against Merghart, which was the responsibility of the patih.

[20] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. . Report of investigations, by Public Prosecutor Scheltema, sent to the attorney general. Surabaya, January 7, 1858. *"De gevallene [is] gevallen ten gevolge van zijn barsch karakter en ongeschiktheid om met inlanders om te gaan."*

[21] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. August 22, 1859, no.371/G1. Secret letter written by Resident Van dere Wijck at Governor General Pahud. Surabaya, June 8, 1859. *"..groovelijk beledigd." (...) "..verrot riet naar het hoofd.." (...*) "*…lage scheldwoorden te gebruiken."*

[22] Veth, "De woorden en daden tegenover de Inlandsche ambtenaren. Aantooning van hunnen tegenstrijdigheid," 377.

"crawling for the Regent" (the jaksa), and "old, sluggish and deceived" (the penghulu).[23]

Public Prosecutor Scheltema repeatedly consulted Attorney General Swart in Batavia and described to him how the judicial interest in a criminal prosecution went against the political interest. Because of the disloyalty of almost all the chiefs in Kediri, Scheltema concluded that a quick resolution was important and that the case had to be looked at from a political point of view. Therefore, in early 1858, he advised that the court case against the wedono of Godean be dropped and that the fate of the other suspected chiefs be decided in consultation with the government. Moreover, he warned against letting the patih and wedono of Modjoreto return to the area, because they could find out who had "betrayed" them by informing the government about the conspiracy or withdrawing witness accounts.[24] Attorney General Swart agreed and in May 1858 he advised the governor general to apply a political measure. "Generally, I am not a proponent of an administrative handling of criminal cases, which easily leads to arbitrariness," he wrote. "However, if—as in this case—there are decisive reasons to proceed as such, then the measures taken should be characterized by stern righteousness."[25]

Swart designated the conspiracy by the Javanese chiefs as a crime not "of the usual kind" and precisely for that reason advised using a political measure. There was a chance that the chiefs would be acquitted if the witnesses withdrew their statements out of fear. Moreover, a criminal trial would take up too much time, allowing the chiefs to remain in Kediri and preventing them from being "neutralized." The resident of Kediri was even

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[23] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Report of investigations, by Public Prosecutor Scheltema, sent to the attorney general. Surabaya, January 7, 1858. "*…lange tijd gedongen te hebben naar de hand van eene jongere zuster van den Regent." (…) "…*met uitzigt om beloond te worden door het huwelijk waarop hij zo lang had gehoopt, en om den loef af te steken aan den hoofddjaksa ... in wiens plaats hij wenschte te zitten." (…) "*..eerlijk, maar niet sterk genoeg tegen over de groote meerderheid van de commissie welke zelfs den Resident voor zich [had] weten te winnen." (…*) "*..zwak en toegevende aan zijn meerderen." (…*) "*..kruipend voor den Regent." (…) "…oud, suf en misleid."*

[24] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Report of investigations, by Public Prosecutor Scheltema, sent to Attorney General Swart. Surabaya, January 7, 1858.

[25] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Letter from Attorney General Swart to Governor General Pahud. Batavia, May 1, 1858. "*Over het algemeen ben ik geen voorstander van eene administratieve afdoening van strafzaken, welke zeer ligt tot willekeur aanleiding geeft, doch bij aldien daartoe zooals onderwerpelijk, om redenen van overwegend belang moet worden overgegaan, behooren de genomen maatregelen zich te kenmerken door strenge rechtvaardigheid."*

of the opinion that no political measure needed to be taken against the regent, and he proposed a honourable resignation and retirement instead, but this was a step too little for Swart. He was of the opinion that the regent should not be treated too harshly though, and proposed five years banishment to a place in Java but outside of Kediri. The patih and the two wedonos were to be banned for fifteen years, with a reimbursement of expenses, to an outer region.[26]

Thus, the Public Prosecution Service advised applying a political measure and it was in the line of expectations that this was entirely in the interests of the colonial government, which would therefore impose the measure. Then something remarkable occurred. The Council of the Indies, led by Vice President P. de Perez, was of the opinion that the public prosecutor and the resident had misunderstood articles 45 to 48 of the Colonial Constitution (the exorbitant rights). The Council dismissed the application of these articles as an "addition to the criminal legislation," in contradiction to article 26 of the General Rules of Legislation for the Netherlands Indies, that stated that everyone had the right to be tried by law.[27] The Council members considered deporting the patih and wedono of Modjoreto by political measure to be legitimate, because they had produced false evidences by bribing witnesses and their return could potentially be a danger to the witnesses who had "betrayed" them; but they felt this did not apply to the others. Governor General Pahud followed this advice from the Council of the Indies.[28] Remarkably enough, a few weeks later, Attorney General Swart requested permission to prosecute not only the wedono of Godean, but also the patih, the wedono of Modjoreto, and the regent. Approval was provided without any hindrance. All of a sudden, the way was

[26] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Letter from Attorney General Swart to Governor General Pahud. Batavia, May 1, 1858. "…van den gewonen stempel…" (…) "*..onschadelijk gemaakt worden."*

[27] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Advice Council of the Indies. Batavia, June 8, 1858.; Algemeene bepalingen van Wetgeving voor Nederlandsch-Indië, 1848, art. 26: *"Niemand mag tot straf vervolgd of daartoe veroordeeld worden, dan op de wijze en in de gevallen bij de Wet voorzien."*

[28] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Ordinance (*besluit)* Governor General. Buitenzorg, July 1, 1858.

open for a prominent regent to be prosecuted in a colonial court of law, an unprecedented phenomenon.[29]

Subsequently, the criminal procedure was executed in the manner prescribed in European colonial courts of law, with their more deliberate and precise procedures than was common at the pluralistic courts of law. All witnesses and suspects had to be interrogated again and new statements produced. By this time, however, all these people had been transferred to different places in Java, and it was only on 22 March 1859, more than two years after the crime had taken place, that the last person was transferred to Surabaya to be heard, and the investigations closed. By that time, more than 275 judicial documents had been collected. There were further delays, because some documents did not meet the formal requirements. Finally, in May the indictments were signed and it was decided that the court sessions would commence three months later, in August 1858, because for all eight sessions, the indictments and witness lists had to be produced eightfold, in Javanese and Dutch. Moreover, during the "native feasts" (Ramadan and Eid al-Fitr) no court sessions were held. Also, accused "from Batavia to Tebing-Tingga in the inner regions of Palembang" had been summoned.[30]

Everything was finally signed and sealed, and fully prepared for the sessions to start, when something happened that put everything up in the air again. From the moment on that the suspects had been apprehended, the newspapers had reported on the case; it had been impossible to conceal any longer that a regent was suspected of involvement in a murder case. It was also newsworthy that the regent was imprisoned in Surabaya together with commoners. According to a letter in a Dutch newspaper, the actions taken in Kediri were abominable, in particular because of the high birth of the regent, whose father had supported the Dutch during the Java War. At that time, Djojodiningrat himself had been a young man and had served as captain (*ritmeester*) in the cavalry of his father's army corps (*kleinlegerkorps*). "This man was not an average regent," wrote the anonymous author. "He was a man of influence and noble lineage, sincere and good, honest, not too proud

[29] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. April 16, 1859, no.52. Letter Attorney General Swart to Governor General. Batavia, July 27, 1858.; Advice Council of the Indies, August 20, 1858.; Ordinance (*besluit*) Governor General. Buitenzorg August 28, 1858.

[30] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Overview and timeline of the Djojodiningrat case procedures by Public Prosecutor W.W. Scheltema (to proof that procedures could not have been organised faster). Surabaya, December 28, 1859.

or too easily offended; he was a man who had been regent of Kediri for twenty-five years; he was a man, who in 1838, for services rendered, had been personally elevated to the rank of *adipati* by Governor General De Eerens, who visited him during an inspection tour."[31]

The letter focused on the imprisonment of the regent, arguing that there were other, less humiliating ways to prevent the regent from fleeing or intervening in the investigations. Moreover, the article suggested that the accusation against the regent was the consequence of intrigues amongst those Javanese officials in Kediri, who themselves originated from different regions. The author pressed for a fair trial to follow, in which the judges should be well-aware of the possibility of false witness accounts and priyayi intrigues.[32]

To make matters worse for all parties involved, the succession of Djojodiningrat had unfolded dramatically. After his dismissal, Djojodiningrat had been succeeded by Regent Radhen Mas Adhipati Rio Soemo dhi Ningrat (formerly regent of Tulungagung). He was the one who had helped Scheltema reveal the conspiracy by the investigation committee, and was rewarded for this with the position of regent of Kediri. Simultaneously, in order to not disturb the inheritance rights of a prestigious family, the son of Djojodiningrat, Raden Mas Pandjie Djoijoadmodjo, in his turn, had been appointed regent of Tulungagung. However, two months after Djojodiningrat's imprisonment, his son committed suicide, "out of shame and sadness, due to the humiliation done to his father," according to the Dutch newspaper *Nieuwe Rotterdamsche Courant*.[33] The colonial newspaper *De Oostpost* was less explicit—perhaps due to strict censorship—writing "The reason for this desperate deed, that has plunged an entire population into the deepest mourning, can be guessed at, but not determined with

[31] "Ingezonden stukken," *Nieuwe Rotterdamsche Courant,* February 8, 1859, 2. *"Die man was geen gewoon Regent; het was een man van invloed en geboorte, rondborstig en goed, eerlijk, een weinig trotsch of ligt geraakt; het was een man die sedert 25 jaren ... Regent van Kedirie was; het was een man, die, wegens bewezen diensten, in 1838 door den gouverneur-generaal De Eerens, tijdens zijne inspectiereis, op de plaatse zelve van Tommangung werd verheven tot Adipattie."*

[32] "Ingezonden stukken," *Nieuwe Rotterdamsche Courant,* February 8, 1859, 2.

[33] "Ingezonden stukken," *Nieuwe Rotterdamsche Courant,* February 8, 1859, 2. *"..uit schaamte en verdriet, wegens de vernedering zijnen vader aangedaan."*

certainty."[34] The newspaper did print a long appraisal of the young regent, who was described as a good person, intelligent, and westernized—the Europeans' ultimate compliment: "It is a pity, a loss, of a gifted youngster, who has recklessly put a bullet through his brave heart, that was so passionate for European civilization and thirsty for knowledge and enlightenment."[35] Moreover, he was known as a good tiger hunter and promising regent. The newspaper gave a detailed report of the events of Djoijoadmodjo's last hours:

> The recently appointed regent of this regency, the former lieutenant of the Prajurits of Kediri, Raden Mas Pandjie Djoijoadmodjo, took his own, still so young, life. He was the promising child of a prestigious family who, although only twenty years old, had already reached the highest position. A position to which he was entitled due to his lineage as well as the most brilliant accomplishments. ... His aged mother, who had made up excuses to stay in the *dalam* [palace] and had secretly observed his movements, saw how he took a pocket pistol from his chest and shot himself in the heart without any hesitation. For a moment, he staggered and then fell into the arms of the despairing, pitiable woman, who was now only holding a body. Horrific was the wailing, the heartbreaking lamentations of his relatives. His children, two sons and two daughters, are too little to comprehend the scope of their loss.[36]

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[34] "Surabaya den 1sten November 1858", *De Oostpost*, November 1, 1858, 4. *"Wat aanleiding gaf tot die wanhopige daad, die eene geheele bevolking in den diepsten rouw dompelde, zulks laat zich wel gissen maar niet met zekerheid bepalen."*

[35] "Eene tijgerjagt in de wouden van Kedirie", *De Oostpost*, April 11, 1859. *"Jammer, eeuwig jammer, van den rijk begaafden jongeling, toen hij met eene roekelooze hand een kogel joeg door zijn moedig hart, dat zoo warm sloeg voor Europesche beschaving en zoo vurig dorste naar kennis en verlichting."*

[36] "Surabaya den 1sten November 1858", *De Oostpost*, November 1, 1858, 4. *"De onlangs benoemde Regent dier plaatse, de gewezen Luitenant der Pradjoerits van Kedirie, Raden Mas Pandjie Djoijoadmodjo beroofde zich door middel van een pistoolschot van zijn nog zóó jeugdig leven. Hij was de hoopvolle telg eener talrijke aanzienlijke familie en alhoewel slechts 20 jaren oud, reeds opgeklommen tot den hoogsten post, waarop zoowel zijne*

The funeral cortege was long: "An immense crowd gathered who attended the ceremony. In Kediri, the deceased was awaited by the high authority, as well as numerous [Islamic] priests, who soon commenced singing their monotonous wailing dirge."[37]

The Minister of Colonial Affairs Rochussen, based in The Hague, got wind of the entire issue and was infuriated about the course of events, about which he had not even been informed. He asked Governor General Pahud why he had not been informed and pressed to keep the issue in administrative hands, because of the state interests at stake. He clearly did not trust this case to the judiciary: "I have to request Your Excellency to ensure that the higher state interest will not be sacrificed rashly to the presumably excessive diligence of the officials of the judiciary."[38] At first, the governor general held firm, even after the Rochussen's warning. In a response, he wrote that he had not decided rashly, as the minister had suggested. He had only decided that a criminal procedure was inevitable after "careful considerations" with the Council of Justice and the attorney general on the gravity of the case. After all, the case involved not only the assassination of a European, but also a conspiracy by Javanese chiefs and a false accusation against another European.[39] The governor general did not mention that during the "careful considerations," both Attorney General

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geboorte, alsmede de schitterendste hoedanigheden hem aanspraak gaven... . Zijne bejaarde moeder, die heimelijk zijne bewegingen bespied had en tot dat einde, onder allerlei voorwendsels zich nog steeds in den Dalem had opgehouden, zag hoe hij een zakpistool uit den boezem tevoorschijn haalde en zonder een oogenblik te dralen, zich een kogel joeg door het hart. Hij waggelde een oogenblik en viel toen in de armen der ongelukkige beklagenswaardige vrouw, die slechts een lijk omklemd hielden. Vreesselijk was het gejammer, het hartverscheurend geweeklaag der zijnen. Zijne kinderen, twee zonen en twee dochters, zijn nog te jong om de waarde van hun verlies te beseffen."

[37] "Surabaya den 1sten November 1858," *De Oostpost,* November 1, 1858, 4. *"Onafzienbaar was de toevloed van menschen die de plegtigheid vergezelden. Te Kedirie werd het lijk opgewacht door de hooge autoriteit, alsmede door eene talrijke schaar van priesters, die weldra hun eentoonig weeklagend grafgezang aanhieven."*

[38] NL-HaNA, 2.10.02 MvK 1850-1900. Kabinet Vb. April 19, 1859, no.W1. Letter from Governor General Pahud to Minister of Colonial Affairs Rochussen. Buitenzorg, December 23, 1858. *"Ik moet Uwe Excellentie verzoeken te zorgen dat hooger staatsbelang niet ligtvaardig aan welligt te groote ijver der ambtenaren van het regtswezen worde opgeofferd."*

[39] NL-HaNA, 2.10.02 MvK 1850-1900. Kabinet Vb. April 19, 1859, no.W1. Letter from Governor General Pahud to Minister of Colonial Affairs Rochussen. Buitenzorg, February 2, 1859.

Swart and Public Prosecutor Scheltema had advised applying a political measure rather than a legal procedure.

Resident H. C. van der Wijck of Surabaya wrote a letter on 8 June 1859 that would finally put all officials involved on the same page. He deemed the adjudication of the Javanese chiefs impolitic, pointing to the instable situation in the outer regions of the Netherlands Indies, the animosity of the Muslims who "were to be feared more than ever," and war threatening in Europe "that might seriously impede sending troops to the Indies." Moreover, one of the people involved in the case was the *Susuhunan* of Solo's grandson, whose brother had been grossly insulted by Meulman. Van der Wijck also invoked the Indian Mutiny of 1857, which had made quite an impression on the Dutch and increased their fear of anti-colonial revolts. Moreover, the regent's health had deteriorated in prison, and now his son had committed suicide. Van der Wijck wondered what kind of impression the prosecution of these distinguished chiefs would make on the population, "when he and his brothers are transported from prison to the court of law, for several days in a row; something that, even when behaving gingerly, cannot be concealed? And how shall this impression be augmented, when against all these persons death penalties are imposed and one has to wait even longer for the final decision about their fate?"[40]

Then, the Council of the Indies changed tack and advised using the governor general's right to employ a "political measure." They emphasized that the composition of the Council had changed in the meantime and that its members no longer agreed with the earlier recommendation. However, the judge had already ordered that the trial could proceed. The only possibility left was that the governor general would end the judicial prosecution by remission (*abolitie*). But this would lead to another problem, because after remission criminal records were fully erased, making enforcement of a political measure impossible. But, as the Council of Justice argued inventively, a political measure would be allowed nonetheless due to the

[40] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. August 22, 1859, no.371/G1. Secret letter written by Resident Van dere Wijck at Governor General Pahud. Surabaya, June 8, 1859. *"..die welligt het uitzenden van troepen naar Indie zeer zal bemoeijelijken.* (…) *wanneer zij hem en zijne broeders gedurende een aantal dagen van de boeijen naar de raadzaal en weder terug ziet brengen; hetgeen, al wordt daarbij nog zoo omzigtig te werk gegaan, niet voorhaar kan verborgen blijven? En hoe moet die indruk verhoogd worden, wanneer tegen die personen doodvonnissen worden uitgesproken en maanden lang op eene eindbeslissing omtrent hun lot moet gewacht worden?"*

ongoing danger caused by the Javanese headmen nursing vengeance for the way they had been treated by the Dutch:

> Even if a pardon is granted to all the native chiefs involved, the Council, taking into consideration the character of the Javanese, does not doubt that an indelible resentment will live on in their hearts against Europeans in general. To allow these chiefs—of a very prestigious family, related to the *Susuhunan* of Solo—to return with such a resentment in their hearts to one of the so-called new residencies, which have only been brought under Dutch rule in 1830, is without doubt politically dangerous in the eyes of the Council.[41]

And therefore, it was the bitter irony that the priyayi were banned after all. The higher priyayi were sent to Menado and those of lower ranks to Banda, where they had to perform paid labour on the spice plantations. Djojodiningrat and his immediate family were deported to Menado in July 1859, and received a stipend of one hundred guilders per month.

This was not the end of discussion, though, since the minister wondered whether it was just to ban the priyayi without any prospect of returning, as prescribed by the political measure. On 30 April 1860, Governor General Pahud wrote the minister that he had informed the resident of Menado to "treat him [Djojodiningrat] with all the honours to which he is entitled based on his former position and lineage."[42] He was not

[41] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. August 22, 1859, no.371/G1. Advice Council of the Indies to Governor General Pahud. Batavia, June 28, 1859. "*Dat, al wordt aan de in deze betrokken inlandsche hoofden abolitie verleend, een ontuiwischbare wrok tegen den Europeaan in het algemeen in hunnen boezem zal blijven voortleven, komt den Raad, met het oog op het karakter van den Javaan niet twijfelachtig voor deze hoofden van een zeer aanzienlijk geslacht, aan de Solosche keijzer familie vermaagschapt, met zoodanige stemming in het hart weder toe te laten in een der zoogenaamde nieuwe Residentien, welke eerste sedert 1830 onder het Nederlandsche gezag zijn gebragt, is in "s Raads oog onbetwistbaar staatkundig gevaarlijk."*

[42] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Letter from Governor General Pahud to Minister of Colonial Affairs Rochussen. Batavia, April 30, 1860. "*…hem met al die egards te behandelen waarop zijne vroegeren stelling en afkomst hem aanspraak geven."*

in favour of the minister's plan to give the regent the prospect of a return to Java though. The Council of Justice had also advised against this.[43]

The minister for colonial affairs also wondered why the criminal prosecution of Djojodiningrat had taken such a long time. Vexed and defensive, Attorney General Swart reminded the governor general that he had immediately proposed imposing a political measure, but that he had been overruled by the Council of the Indies and the governor general. That now, seventeen months later, a political measure had been applied after all he also considered insulting to Public Prosecutor Scheltema, who was now asked to present an overview of the judicial activities in this period: "It might be not entirely superfluous to note hereby, that in cases in which chiefs of the Native aristocracy are involved, it takes infinite efforts, time and care to find out the full truth," he wrote. "And the fact that the Public Prosecutor, due to his knowledgeable leadership, has succeeded in this, should have been rewarded with somewhat more recognition, instead of calling him to account."[44] Criticism was also expressed in the *Tijdschrift voor Nederlandsch Indië*, in an article written by Pieter Johannes Veth, professor Eastern languages. His informant was an anonymous regent who seemed well-informed about the events.[45] It is possible that the informant was Djojodiningrat himself or a close relative. The article is a general condemnation of the policies regarding the regent families in Java. The position of regents had been made hereditary, and their in-laws and relatives often held priyayi positions, causing the regencies to be dominated by one family. According to Veth, this tradition was increasingly less

[43] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. February 8, 1860, no.38/E. Letter from Minister of Colonial Affairs Rochussen to Governor General Pahud. The Hague, February 8, 1860.

[44] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Letter from Attorney General Swart to Minister of Colonial Affairs Rochussen. Batavia, January 5, 1860. "*Het is welligt niet geheel overbodig hierbij optemerken, dat het in zaken, waarin hoofden der Inlandsche aristocratie betrokken zijn, oneindig veel moeite, tijd en zorg kost om volledig achter de waarheid te komen, en dat den Officier van Justitie, die door de oordeelkundige leiding, welke hij aan de instructie gegeven heeft, daarin per slot naar wensch geslaagd is, mijn inziens billijker wijzer, wel eenige meerdere voldoening had mogen tebeurt vallen, dan terzake ter verantwoording te worden geroepen."*

[45] Criticism followed on the article written by Veth. See: [anonymus], *TNI* 23:2 (1861): 252.; "Aan P.J.V. insender van Java in 1858&1859, of fragmenen eener correspondentie in Tijdschrift van N.I. 1861," *Java Bode*, August 28, 1861, 7. In this last article the author stated that the information gathered by Veth found her source "in the dirty cavities of defamation" (*haren oorsprong heeft in de vuige holen des lasters*). However, the information presented by Veth matches with the information I found in the archives.

respected. regents were transferred, their advice on appointing lower-ranked chiefs were not followed, European officials did not treat them respectfully, the Javanese police were not paid sufficiently with corruption as a result, and if regents did something wrong, they were treated like commoners. This was dangerous, argued Veth, and to strengthen his argument he quoted his informant, the regent, who had told him:

> If one wants to retain the colony, one should honour the great families. Instead, one makes thousands of enemies, but does not have sufficient power to hold [firm] against them. One declares the regent's position to be hereditary, and thereby places them above the law; but with every shortcoming or crime committed in their regency, once equates them with coolies and villagers ... yes, even by imprisonment under one roof with assassins, counterfeiters, etc.[46]

The *Nieuwe Rotterdamsche Courant* saw a connection to the debate on the heritability of the office of regent that had been conducted prior to the introduction of the Colonial Constitution. Some had sought to turn the regents into hereditary princes of a sort, whereas other wished to increase colonial control over them. Now, the *Courant* concluded that the situation in Kediri had proved that exercising too much colonial control over a regent was very unwise: "The everlasting dismissal of regents and chiefs, the dethroning of rulers in the Indies, and, foremost, the judicial prosecutions are a calamity," wrote one correspondent. "It causes unrest, confusion, and opposition from the side of the relatives and followers of those dismissed, dethroned, or prosecuted."[47] Veth concluded from the Djojodiningrat case

[46] Veth, "De woorden en daden tegenover de Inlandsche ambtenaren. Aantooning van hunnen tegenstrijdigheid," 373. *"Zoo men de kolonie wil behouden, eere men de groote familiën. Men kweekt duizenden van vijanden, maar heeft geene voldoende magt om daartegen over te stellen. Men verklaart de Regenten erfelijk, en stelt hen daardoor als het ware boven de wet, maar bij ieder verzuim of misdrijf, in hun Regentschap gepleegd, stelt men hen gelijk door konfrontatie met koelies en dessa-bewoners ... ja, zelfs door gevangenzetting onder één dak met sluipmoordenaars, valsche munters enz."*

[47] "Ingezonden stukken," *Nieuwe Rotterdamsche Courant,* February 8, 1859, 2. "*Dat eeuwigdurend ontslaan van Regenten en hoofden, dat onttroonen van vorsten in Indië, en vooral het crimineel vervolgen derzelve, is eene calamiteit. Het verwerkt onrust, verwarring*

that all this had been the consequence of "characterless rule." In Baud's time, at least the government's point of view had been clear, wrote Veth: "When Baud was still minister, at least the deeds resembled the words. ... But now? The most gentle critic cannot suppress a smile filled with pity ."[48] It was clear that the attempt by the Council of the Indies and Governor General Pahud to take into account the criticism of "exorbitant rights" allowed for in article 84, by not applying a political measure, had failed seriously.

A dossier compiled by Pahud, who in 1862 had done some research to find out how the colonial government had dealt with this kind of cases in the past, shows that the Djojodiningrat case was exceptional above all, because it dealt with the prosecution of a regent. Pahud's dossier constitutes an overview of all persons against whom the approval for prosecution had been granted between 1828 and 1860. Djojodiningrat was the only regent on this list; the other criminal cases mainly involved lower-ranked priyayi. It did show that in those cases there had also been a lack of clarity about who had to be referred to which court, and about whose prosecution had to be approved by the governor general.[49] Scheltema wrote later that he had been preoccupied with two other big cases at the time of the Djojodiningrat investigations in which wedonos from other regions were adjudicated "which could both compete with the Kediri case." Thus, it was not usual that wedonos were judicially prosecuted at the European courts, and the attorney general also wrote about this as happening regularly.[50]

Finally, Veth also noted rightfully in his article on the Djojodiningrat conspiracy that loyalty was inadequately acknowledged. In chapter 6, on the role of the jaksas, we have seen the intermediary position

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en tegenwerking van de zijde der betrekkingen en der aanhangers van den ontslagene, onttroonde of vervolgde."

[48] Veth, "De woorden en daden tegenover de Inlandsche ambtenaren. Aantooning van hunnen tegenstrijdigheid," 373. *"Toen de heer Baud minister was, waren de daden althans in overeenstemming met de woorden. ... Maar nu? Een glimlach van medelijden plooit zich bij die vraag om de lippen van den zachtmoedigsten beoordeelaar."*

[49] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13 / 1384. Historical overview prosecution of priyayi by Pahud. Batavia, December 21, 1862. The overview does not mention when the prosecution was stopped by the governor general and a political measure was imposed instead.

[50] NL-HaNA, 2.10.02 MvK 1850-1900. Geheim Vb. December 19, 1860, no.305. Overview and timeline of the Djojodiningrat case procedures by Public Prosecutor W.W. Scheltema. Surabaya, December 28, 1859.

they often took. Veth rightfully pointed out that the chief jaksa had not been rewarded for his refusal to sign the falsified procès-verbal and informing the colonial administration, adding cynically, "Such a strong encouragement of the devotion to duty!" Instead of the chief jaksa, the regent of Tulungagung was asked to assist during the investigations and was thereafter rewarded for his help by being offered the position of regent of Kediri. After the suicide of Djojodiningrat's son, his grandson had become regent in Tulungagung. Having described the case extensively, Veth lamented, "Is there still anyone who is surprised about the regents in Java feeling deeply hurt?" He turned against the unscrupulous replacing of old regent families by other families, but he also thought it problematic that there was still no education for future regents. Hereafter, Veth voiced his ideals as an ethicist *avant la lettre*: "Why does the king's speech [*troonrede*] never speak of educating, raising, and civilizing the Javanese?"[51]

With this desire to civilize, Veth was several decades ahead in time. Moreover, with the publication of Multatuli's *Max Havelaar* one year earlier, the will to protect old regent families had diminished rather than increased. More than ever, it was not the character and institutions of colonial rule itself but the regents that were seen as responsible for the suppression of the common Javanese people. Although the Djojodiningrat case was not quickly forgotten—newspaper articles would still refer to it years later—*Max Havelaar* and the issue of extortion in general would have a greater influence on the stance taken by colonial rulers regarding the priyayi. Young administrative officials who came to the colony having read *Max Havelaar* often brought with them their idealistic intentions to protect the population against the Javanese priyayi.[52]

Moreover, Van Hoëvell was now fully targeting the Javanese chiefs. In 1862, he wrote an article that looked back on the introduction of article 84 in 1854. He emphasized that he and Thorbecke had opposed this article at the time because it gave special privileges to the Javanese chiefs.[53] However, as described above, their earlier argument in 1854 had rested on protection

[51] Veth, "De woorden en daden tegenover de Inlandsche ambtenaren. Aantooning van hunnen tegenstrijdigheid," 373. "*Krachtige aanmoediging tot plichtsbetrachting!" (...)* "Verwondert het nog iemand dat de Regenten op Java zich in hun hart gekwetst voelen?" (…) *"Waarom spreekt de troonrede nimmer van het onderwijzen, opvoeden, beschaven van Javanen?"*
[52] Van den Doel, *De Stille Macht,* 99.
[53] "Over den toestand van het regtswezen in Indië," 374-375.

of the priyayi, arguing that Article 84 gave free reign to the banishment of Javanese priyayi without trial. By 1862, the priyayi had fallen out of favour and Van Hoëvell changed his reasoning for opposing Article 84. The Djojodiningrat affair had not ended well because of the choice for prosecution—a choice that might even have been inspired by the arguments presented by Van Hoëvell and Thorbecke in 1854—so this was perhaps something Van Hoëvell preferred to not talk about anymore.

Instead, he gave two practical reasons for opposing article 84, both of them previously raised by Attorney-General Swart in a report against the privilegium fori. First, getting approval to prosecute a priyayi took a long time. Even when the approval was given, the investigations had to be completely redone, because the requirements for investigation were more stringent in European courts. Second, it was extremely difficult to get powerful suspects convicted. The attorney general quoted Public Prosecutor Scheltema, who had remarked that "many policy measures are necessary to simultaneously, on the one hand, preserve the European criminal procedures and, on the other hand, persevere in the battle against powerful suspects, who—being better acquainted with the people, language, and the area—know how to bear their influence, which leverage leaves one amazed."[54] Clearly two lessons were learned from the Djojodiningrat affair. And these lessons learned by the colonial government, led to a preference for the political measure over that of judicial adjudication of regents.

The 1867 Ordinance

The Djojodiningrat conspiracy had proven that the adjudication of a regent was all but impossible within the dual rule system. Regardless of the outcome, the damage done to the reputation of both the Javanese priyayi and Dutch rule was inevitable. However, regarding lower priyayi, the outcome was less clear and even more relevant because of the pressing extortion issue. In the last chapter, we saw how in 1866 a new extortion regulation was affirmed and also included in the Native Criminal Code in 1872. Yet, it was not clear who qualified for the privilegium fori. Article 84 was silent on

[54] "Over den toestand van het regtswezen in Indië," 374-375. *"dat er veel beleid noodig is, om aan de eene zijde de regelen te bewaren eer wijze van strafvordering van Europeschen oorsprong, en aan de andere zijde den kampstrijd vol te houden tegen magtige verdachten, welke, beter met het volk, de taal en het terrein bekend, invloeden weten aan te wenden, over welker werking men verbaasd staat."*

this, saying simply that the article was applicable to those "designated by general instructions." Some interpreted this as an assignment to draft such a general instruction, whereas others thought the sentence referred to article 4 of the Court Regulations.[55] However, article 4 of the Court Regulations itself was not explicit either, because it stated that "all native princes and chiefs" fell under the privilegium fori.

From 1855 forward, various people would attempt to clarify this matter. First, the Dutch official F.H.J. Netscher was assigned to create clarify the different ranks of local officials. A few years later, the residents were asked for their opinion, but Governor General Sloet van de Beele (1861–66) did not consider their advice to be of much help. On 14 February 1863, he wrote that over five years, all relevant authorities had been consulted, some "even more than once," and he concluded from this that the compilation of a new ordinance was "nearly impossible." And indeed, a quick glance at the advice provided shows that the circumstances were diverse and complicated. A broader provision would include an enormous number of people within the privilegium fori, whereas a more narrowly defined list of local "respectable people" (*aanzienlijken*) removed any possibility of the colonial authorities making their own considerations in each case.

Resident Vriesman of Tagal, for example, wondered how to proceed regarding the children of concubines (*bijwijven)* of Javanese chiefs. He proposed to make the selection according to aristocratic titles: the prosecution of a *raden* needed the approval of the governor general, whereas the prosecution of a *mas* could start without any delay.[56] Resident Potter of Semarang argued differently, and thought the selection had to be made based on formal positions. All local officials appointed by the governor general, as well as relatives of regents and princes up to the third grade, should be included in the privilegium fori. Other residents, however, preferred the uncertainty of the current situation, because they valued the freedom of the resident to decide based on the situation.[57]

[55] Eekhout, "Vraagpunten, mededeelingen en bemerkingen van verschillenden aard", 438.
[56] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Resident Vriesman. Tagal, February 18, 1857.
[57] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Resident Potter. Semarang, March 17, 1857.

The Director of Cultivation Schiff was one proponent of preserving the current flexible situation, which allowed the resident to pull someone out of the "arms of the law" for political reasons.[58] Attorney General Swart disagreed with this though. He found that article 4 of the Court Regulations, implemented at the insistence of J. C. Baud, was a regulation that "strangely contrasted" with the general principle to "gradually accustom the native to our Western understandings of law and justice." He thought it unwise that the Public Prosecution Service was currently kept in uncertainty about whether a criminal trial would be held. The consequence of this was that evidence of a crime could disappear in the meantime, and that "the preliminary custody of the accused was sometimes being stretched excessively."[59]

The Council of the Indies used the term "privilege" in their advice and believed that "the privilege has done more harm than good," because "a kind of immunity" had been given to the Javanese chiefs that was to the disadvantage of the population.[60] Others, however, considered the privilegium fori more of a Western measure to be used in the interest of the colonial government. It is not surprising that it was impossible to draw clear conclusions from a discussion based on such different starting points. Some emphasized civil cases, in which chiefs with debt were protected against their creditors, whereas others had in mind their experiences with criminal cases in which chiefs could directly be deported by the colonial government. Attorney General Rappard attached the greatest importance to the latter, and he also adverted to the problematic aspect of having lower priyayi being adjudicated before courts consisting of members of their own class.[61]

To further the confusion, the Council of State (*Raad van State*) in the Netherlands filed complaints against the privilegium fori in general. The Council of State was the only party to point out the fundamental problem behind the privilegium fori, that it violated the separation of powers. The

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[58] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Director of Cultivation Schiff. Batavia, September 24, 1857.

[59] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Attorney General Swart. October 20, 1857. "…den Inlander van lieverlede aan onze regtsvormen en onze Westersche begrippen van wet en regt te gewennen."(…) "*de praeventieve gevangenis van beklaagden somwijlen buitensporig wordt gerekt."*

[60] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Council of the Indies. Batavia, June 30, 1865.

[61] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. November 16, 1864, no.13/1384. Advice by Attorney General Rappard. Batavia, October 2, 1861.

Council of State questioned the interference of the governor general in the judicial prosecution of Javanese chiefs. The collision between the administrative and judicial authorities in particular was mentioned as one of the "evil consequences" of the privilegium fori. But the Council of State also denounced the resident's appointment of the two Javanese priyayi who attended the trial by the Council of Justice as an example of the government's exercising too much influence on the judiciary. Furthermore, the Council of State had problems with the court sessions held behind closed doors in cases involving privilegium fori. "Because of this secret adjudication," it advised, "the administration of justice loses one of its most prominent guarantees. It seems unnecessary to further elaborate on this, since by now it has been generally acknowledged that the public nature of justice is a main principle of an incorruptible administration of justice."[62]

With regard to criminal cases, the Council understood that the prestige of the chiefs could suffer from a public trial, but they argued that the prestige would have already been damaged by the prosecution anyway. And, in case of an acquittal, the prestige of the chiefs would only be restored if a public trial was held. In this, however, the Council overlooked the fact that although an acquittal was certainly to the advantage of the prestige of the chiefs, it did not enhance the prestige of colonial rule. The final advice of the Council of State, to leave the decision about whether to prosecute a prestigious Javanese chief to the judges, found no following in the colony.[63]

The colonial government was initially left in complete confusion, but the straightforward Minister of Colonial Affairs I. D. Fransen van de Putte decided that at the very least, article 84 had to be made somewhat clearer. He agreed with the Council of State's criticism of the system of privilegium fori in general, but pragmatically advised that its complete abolition would be unwise. Therefore, he aimed at strictly restricting the "privilege" of an approval by the governor general to incumbent princes, regents, and wedonos. After a final correspondence with the Council of the Indies, Attorney General Rappard brought further clarity by proposing a dual

[62] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. May 25, 1866, no.17. Advice by Council of State. The Hague, March 27, 1866. *"Door geheime behandeling toch verliest de regtspraak harer voorname waarborgen. Het schijnt onnoodig deze stelling thans nog te bewijzen, nu algemeen als onomstootelijk waar is aangenomen dat openbaarheid eene hoofdvoorwaarde van eene onkreukbare regtsbedeeling uitmaakt."*

[63] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. May 25, 1866, no.17. Advice by Council of State. The Hague, March 27, 1866.

division, in which a first group consisting of a fairly large number of prominent priyayi—including, for example, the jaksas and penghulus—were adjudicated before European colonial courts without prior approval from the governor general, whereas the second group consisted of a small number of prominent priyayi—only incumbent regents—for whose adjudication the governor general's approval was required.[64]

An agreement was finally reached in 1867.[65] Articles 4 and 131 were revised, which led to a considerable restriction of the privilegium fori regarding the approval of the governor general, explicitly mentioning that it was only applicable to incumbent "native princes, *rijksbestierders*, regents, and vice regents." Furthermore, the privilegium fori regarding the priyayi that were to be adjudicated in European colonial courts of law was also specified. Instead of the rather vague "prestigious chiefs," article 4 spoke of "native princes, *rijksbestierders*, regents, vice regents (also after resignation), wives, relatives, in-laws of those mentioned above up to the fourth grade, as well as active patihs, district heads (and other chiefs ranked higher than district heads), assistant collectors, chief priests, chief jaksas, jaksas, members of native courts [pluralistic courts] in service."[66] Altogether, the power of the governor general was curbed regarding the granting of approval for prosecution—probably also in order to quicken the procedures—and the rules regarding which priyayi could be prosecuted at European colonial courts of law were not curbed but certainly clarified.

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[64] NL-HaNA, 2.10.02 MvK 1850-1900. Vb. October 31, 1866, no.20. Advice by Attorney General Rappard. Batavia, October 23, 1865.

[65] S 1867, no.10.; RO, art.165.; Bijblad, no.2088. "Interpretatie van art. 4 en 5 van het Reglement op de rechterlijke organisatie enz voor zooveel betreft het instellen van burgerlijke of strafrechterlijke vervolgingen tegen fungeerende inlandsche vorsten, rijksbestuurders, Regenten en onderRegenten ivm Ind Stbld 1867 no.10."

[66] S 1867, no.10.; NL-HaNA, 2.10.02 MvK 1850-1900. Vb. October 31, 1866, no.20. *"Geene burgerlijke regtsvordering, noch vervolging tot straf kan worden ingesteld tegen inlandsche vorsten, rijksbestierders, Regenten en onder-Regenten, zoolang zij niet als zoodanig afgetreden of uit hun ambt ontslagen zijn, zonder daartoe verlof te hebben verkregen, indien het geding gevoerd moet worden op Java en Madura, van den Gouverneur Generaal."* ... *"inlandse vorsten, rijksbestierders, Regenten, onder-Regenten (ook als ze al afgetreden waren), vrouwen, bloedverwanten en aangehuwden van de hiervoor genoemden tot in de vierde graad, en ook in dienst zijnde patihs, districtshoofden (en andere hoofden hoger dan districtshoofden), onder-collecteurs, hoofdpriesters, hoofd-djaksa's, djaksa's, leden van inlandse regtbanken."*

11.2 Political Measure Extremes

Curbing the authority of the governor general regarding approvals for a criminal prosecution was a strengthening of the judiciary during the Liberal 1860s, at least on paper. However, whether it was so in reality is debatable. After all, the exorbitant rights still existed and, as we have seen, it was not very complicated to deport a person even after he had been acquitted, since a new fact could easily be found as a rationale to impose the political measure.[67] Finally, it is important to note that the political measure could be imposed not only on priyayi, but on anyone who constituted a possible threat to colonial rule. Fear of such people increased during the 1870s, especially as means of communicating new ideas among the local population and priyayi expanded.

Fear of Revolts

From the 1870s onwards, the fear of Islam, returning pilgrims from Mecca, and religiously inspired revolts grew. The colonial government expanded the use of the political measure for the deportation of potential insurgents. Even "to omit informing about a revolt" or "inappropriate behaviour threatening to the peace and order" could be given as a reason for deportation. Criticism of the colonial government in general was also not appreciated and often rewarded with a one-way ticket to an outer region. There are even examples of deportation because someone was "deemed" dangerous to peace and order or had performed "inappropriate behaviour" or someone who disturbed the peace without political character. Remarkably enough, the political measure was even applied in cases of opium smuggling or "omitting to inform" the police about a murder. Thus, among the political deportations there were cases that should have been dealt with through the criminal justice system but that were treated as political threats.[68]

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[67] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 122–123.; Bijblad, no.199. Missive by the first government secretary A. Loudon. Batavia, July 10, 1857. Referring to art. 47 of the RR: *"Door den regter vrijgesprokene personen kunnen niet ter zake van dezelfde feiten welke hun voordien regter werden ten laste gelegd, doch waaraan hunne schuld regtens niet is kunnen bewezen worden, bij politieken maatregel worden verwijderd."*

[68] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 85. Other reasons for deportation given were disturbance of the peace due to a power struggle among local rules and princes, "religious elements", illegally enforcing deeds of power, prohibited organisations and kongsis, extortion, murder, robbery, slave trade, smuggling opium, forgery, arson, not informing the government of a murder and releasing prisoners.

On 9 October 1887, Governor General Otto van Rees announced that from then on criminal interrogations could be conducted with the purpose of deciding whether a political deportation was "desirable." This was prevented by the jurist Keuchenius, who severely criticized this policy in the Dutch parliament. In particular, he denounced the paragraph of the ordinance which stated that someone who had been acquitted in a court of law could still be deported on political grounds at request of the resident. The Minister of Colonial Affairs J.P. Sprenger van Eyk responded to the criticism by saying that all this had been "a long-established custom" that had "never received any remarks, and does not appear to me as being illegitimate."[69]

That this did happen in practice was shown in Banten one year later. In 1888, a revolt in Cilegon caused the death of several Europeans and a wave of fear swept over the European citizens of Banten. Some of the people revolting had been shot dead during the army's intervention, and others were tried by the circuit court and convicted to hard labour or hanging. Ninety-four locals from Banten, some of whom had been acquitted by the circuit court, faced a political measure and were banned for unspecified periods.[70]

The religious elements of the revolt led to a distrust of the numerous hajis residing in Banten, traditionally a devout part of Java and former sultanate. According to Snouck Hurgronje, a real witch-hunt took place with the hajis as target: "The hajis, in Banten more numerous than in any other part of Java, were constantly subjected to severe molestations by soldiers, even if they belonged to the most obedient instruments of the [colonial] authorities." In Batavia, too, several hajis decided to stop wearing their Arab gowns temporarily out of fear for molestations.[71]

One of the captured Muslims was Moehamad Arsjad, a haji who Snouck Hurgronje had met a few years earlier in Mecca and who, according to Snouck Hurgronje, could not possibly have been guilty of taking part in the revolt because he had been the head penghulu of Serang in service of the government, which proved that he was "averse to narrow-minded

[69] "Politieke uitbanning," 1. ".. *die nimmer aanmerkingen heeft uitgelokt, en die mij ook niet onwettig voorkwam."*

[70] KV 1889, 4.; KV 1890, 2. A total number of 204 persons was tried by the circuit court. Of those, 94 were acquitted and 107 were sentenced to death. After review by the Supreme Court, 100 of those death sentences were confirmed by the Governer General. In 1899, the political measure was imposed on 88 persons who had been acquitted by the circuit court. One year later, in 1890, this number had increased to 94. .

[71] Snouck Hurgronje, "Vergeten jubiles, " 63.

fanaticism". Proving his innocence was impossible, because without any form of trial Moehamad Arsjad had been banished to Timur Kupang for an undefined period. Many decades later, Snouck Hurgronje told how Arsjad had received ten guilders in financial assistance for the first six months. Thereafter, he had to provide for his—and his wife's—sustenance. Fortunately, Arsjad's wife possessed "a certain skill in preparing cakes" and they could earn money from the "selling of these sweets."[72]

Snouck Hurgronje describes how Arsjad tried to use his many European contacts to get the banished family released, but to no avail. He was unable to convince influential officials that a "gross injustice" had been done. Only after twenty-nine years, in 1919, were Moehamad Arsjad, his wife, and their two adult sons allowed to return to Java.[73] Snouck Hurgronje was shocked about the insensitivity of the colonial Dutch, involved in these judicial processes, when talking about the Javanese and the little responsibility they felt for their actions:

> Apparently, they only thought about the Cilegon murderers, and they saw it as of little importance that many innocents had been shot or deported after the revolt, and that probably some had been hanged by mistake. They warmly applauded the rough measures taken to restore order. This is how an administrative system works that is built on the destruction of the will of the people, and on the long-lapsed fantasy of the utmost superiority of its own race.[74]

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[72] Snouck Hurgronje, "Vergeten jubiles, " 62. "*wars van bekrompen fanatisme" (...) "De hadjis nu, in Banten talrijker dan in eenig ander deel van Java, stonden voortdurend aan ernstige molestatie door hen ontmoetende soldaten bloot, ook al behoorden zij tot de gehoorzaamste werktuigen van het gezag."* (..) "*een zekere vaardigheid in de bereiding van gebakjes, en van den verkoop dier zoetigheden."*

[73] Snouck Hurgronje, "Vergeten jubiles, " 74-75.

[74] Snouck Hurgronje, "Vergeten jubiles, " 75-76. *"Zij dachten blijkbaar alleen aan de Tjilegonsche moordenaars en vonden de zekerheid, dat vele onschuldigen na den opstand neergeschoten of verbannen, de waarschijnlijkheid, dat enkelen bij vergissing opgehangen waren, van weinig gewicht en juichten de krasse en ruwe maatregelen tot herstel der orde hartelijk toe. Zoo werkt het contagium van een bestuurssysteem, dat op de wegcijfering van den wil der bevolking, op de lange verjaarde inbeelding der volstrekte superioriteit van het eigen ras, berust."*

Yet from the Netherlands, where the death penalty had been abolished in 1870, directly after the Banten trials some had pressed to reduce the number death penalties from the one hundred that were imposed. Opinions about this differed in the Netherlands Indies; there were both ardent opponents and proponents of granting pardons to those insurgents sentenced to death.[75] Eventually, eighty-nine people sentenced to death were pardoned.[76] The political measure could still be applied in Java, although the number of banishments would not be superseded in the years to come (see appendix 2, Table 7).

New Channels: The Brotodiningrat Affair

While the possible threat posed by political Islam was a recurring concern during the 1880s and 1890s, there were also developments regarding the position of the priyayi. Around 1900, the regents' power and income fell. The maintenance of a regent's court cost a lot of money, but regents were not allowed to engage in business. The Dutch increasingly intervened in the actions of regents, who were clearly not inviolable anymore.[77] Some regents from old lineages, in particular, often from traditional families with close contacts to the rulers of the princely lands, felt hard-pressed. We will now look into the Brotodiningrat affair to see the pressure that relations between the Dutch officials and priyayi were under in this period, and how this incident was handled by Brotodiningrat in particular, a course of action that would have been unimaginable a few decades earlier.

On the night of 6 October 1899, a burglary took place in the house of Resident Donner of Madiun. Other burglaries of European houses had taken place around the same time, but breaking into the house of the resident was considered as being of the utmost impertinence. Moreover, it was a strange burglary, since almost no items were missing except for a table cloth, a sun hat, and part of a green curtain. The resident was out of his mind, particularly because the piece of curtain that had been stolen was cut precisely from behind where the resident would usually enjoy his morning tea "in negligee." According to the resident, this proved to everyone who

[75] Kartordirdjo, *The peasants' revolt of Banten in 1888*, 265.
[76] KV 1890, 55. This made the total number of those condemned to death thirty-two in the year 1899.
[77] Sutherland, *Pangreh Pradja*, 161.

knew the "character of the Javanese" that this was clearly a personal attack to him.[78]

It was also immediately clear to the resident that only one person could possibly have targeted him: Regent Brotodiningrat. During the years following, Madiun would remain preoccupied with the Brotodiningrat affair. The entire affair is rather extraordinary and mainly a clash between two little nuanced personalities. The historian Onghokham conducted extensive research into the case and described the regent and the resident strikingly as "the inscrutable and the paranoid."[79] Yet, the issue also reveals much about power relations between resident and priyayi, and on the application of criminal law and the political measure.

On 23 November 1899, Resident Donner described the regent as being talented, but unreliable, and therefore a "highly dangerous person." Donner stated that the regent held a grudge against him because of some decisions taken by the government, such as the transfer of his uncle to a remote district and letting his thirty-year regency pass without appropriate acknowledgment. Moreover, the regent had been reprimanded by the government for having expressed himself rudely in a letter to the resident. When the resident asked him the reason for his tone, he had responded with: "*ja sebab saja boekan satoe nenek*" (because I am not an old grandma).[80] Although the regent had always behaved correctly, the resident expected him to soon express his animosity towards him. The theft was a first step in this direction, but he expected more to come: "Probably his mask has to be removed soon, and I will have to publicly stand out against the regent of Madiun. Then, his true nature will be revealed, and then I deem this insolent man to be capable of doing anything."[81]

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[78] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from Resident Donner to Governer General Rooseboom. Madiun, November 23, 1899.

[79] Onghokham, "The inscrutable and the paranoid: an investigation into the sources of the Brotodiningrat affair," 3-73.

[80] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from Resident Donner to Governer General Rooseboom. Madiun, November 23, 1899. "O*mdat ik geen oud wyf ben."*

[81] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from Resident Donner to Governer General Rooseboom. Madiun, November 23, 1899. *"Vermoedelijk zal echter eerstdaags het masker moeten worden afgeworpen en ik tegenover de Regent van Madioen openlijk als aanklager moeten optreden. Dan zal zyn ware natuur tevoorschyn komen en acht ik den insolenten man alsdan tot alles in staat."*

Donner had great troubles with the investigation into the thefts because, according to him, a number of police spies were siding with the regent. These spies accused the chief jaksa of having taken part in the thefts, but Donner trusted the chief jaksa and suspected that the regent was attempting to blacken the reputation of the jaksa: "Everyone here knows, that the jaksa of Madiun has constantly been in the position of a pariah."[82] Almost two weeks later, the resident wrote another secret letter to the governor general, in which he explained how much more he had learned about the "fabric of deceit and lies." He added that Brotodiningrat was not a scion of a Javanese regency family originating in Madiun, because before he had been the regent of Ngawi. Donner assumed that for this reason, if Brotodiningrat were impeached, his son would not necessarily succeed him.[83] On 7 January 1900, the governor general decided that Brotodiningrat would be suspended and had to reside in Padang while the resident conducted a "strict and impartial" investigation into the affair.[84]

The resident eagerly started these investigations and on 20 March, he delivered a report of no less than 125 pages. In the meantime, Mas Mangoenadmodjo, former tax collector (*ondercollecteur)* of Magetan, had temporarily replaced the regent. The chief jaksa, however, who had been loyal to the resident until that moment, was sidelined by Donner. He would not be able to conduct impartial investigations. Donner deemed himself capable of staying impartial though, and did not think it a problem that he was also personally involved in the case, whereas such objectivity could not be expected from "a native":

> Until now, I was solely assisted by the Chief Jaksa Raden Hadipoetro and this for the simple reason that he was the only native official who had constantly sided with me, referring to article 56 of the Native

[82] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from Resident Donner to Governer General Rooseboom. Madiun, November 23, 1899. *"Iedereen hier weet, dat de fiscaal te Madioen steeds de positie van een paria heeft ingenomen."*

[83] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter (*geheime missive*) from Resident Dooner to Governer General Rooseboom. Madiun, December 3, 1899. "*…weefsel van list en leugens."*

[84] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Decision letter Governor General W. Rooseboom. Batavia, July 7, 1900.

> Regulations.[85] Consequently, the chief jaksa had fallen into the disgrace of the regent for six years already, causing him to lead the life of a pariah within native society. Since we cannot expect a native to take a high moral position and sacrifice his own grievances to an impartial investigation, therefore, for my subsequent investigation I will be assisted by [Mas Mangoenadmodjo] a man who stands almost entirely outside of the case and is completely reliable.[86]

In chapter 6 or 9, we saw how the jaksas were more often the subject of controversy between the regents and resident, because they were not subordinate to the Public Prosecution Service.

In the meantime, Donner had also started with replacing the majority of the priyayi. The adjunct chief jaksa, the district clerk, and the regent's clerk were all transferred; the regent's guards were dismissed and the chief penghulu was no longer trusted, because he had been the close advisor of Brotodiningrat. The list of suspects presented by Donner was long. Village chiefs were involved and an Indo-European brothel owner was also identified as part of the conspiracy. Even an district administrator who had been completely charmed by the regent, was transferred at Donner's request. Donner also feared that Brotodiningrat had attempted to win over the

[85] Article 57 of the IR decided that the chief jaksa worked in service of the resident, whereas the jaksa fell under the regent. There was conflict in particular about the adjunct chief jaksa, since both the regent and the resident claimed to have the power to give orders to this official. See Chapter 6 and 9.

[86] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Investigations report Resident Donner. Madiun, March 20, 1900. "*Tot nog toe werd ik bij het onderzoek uitsluitend geassisteerd door den hoofd djaksa Raden Hadipoetro en wel om de eenvoudige reden dat hij de eenige inlandsche ambtenaar was die steeds aan de zijde van den Resident had gestaan, zich beroepende op artikel 56 van het Inlandsch Reglement. Dientengevolge stond de HoofddJaksa zes jaren in ongenade bij den Regent, waardoor hij in de inlandsche maatschappij feitelijk het leven van een paria leidde. Daar van een inlander moeilijk verwacht kan worden dat hij zich op het hooge morele standpunt weet te stellen om eigen grieven op te offeren aan een onpartijdig onderzoek, zoo hem ik mij bij mijne verdere onderzoekingen bijna uitsluitend doen bijstaan door den Patih, waarnemend Regent, een man die feitelijk geheel buiten de zaak staat en volkomen betrouwbaar is.*"

landraad president to his side.[87] To put it briefly, Donner soon stood all but alone in his battle, supported only by the Magetan-based family of the temporary regent of Madiun. Whether the choice of that particular regent's family was wise is questionable. A thirty-year regency easily accumulated many feuds and intrigues that were not easily forgotten. The animosities between the regents of Magetan and Brotodiningrat went back to the year 1889, when Brotodiningrat had accused the regent of Magetan of smuggling opium. The regent of Magetan had remained in his position; but relations between the two regents remained strained.[88]

Donner's report concluded that Brotodiningrat suffered from "obnoxious character flaws, complete unreliability, and narcissism."[89] The report was full of actions by the regent that Donner characterised as problematic. To name a few, the regent organized *tandak* parties where he would dance with an uncovered chest, and would make provocative comments to the European medical doctor on the resemblance between the doctor and regent's albino assistant.[90] Donner also mentioned somewhat more substantive accusations, but he did not seem to want a criminal prosecution. He explained how the regent had made the *mantri oeloe oeloe* (water management assistant) and the opium *mantri* responsible for police affairs rather than the assistant wedono. He noted that the regent had a gang of twenty-five "thugs" obeying him, commanded by brothel owner Kartoredjo. Donner argued that it was impossible that all these persons were "real" police spies, because in that case it would not have been *this* unsafe in Madiun. According to Donner, Kartoredjo's gang had committed the burglaries of Europeans' houses and also of the landraad courtroom, and that they would then arrest innocent people to be brought to the assistant wedono

[87] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Investigations report Resident Donner. Madiun, March 20, 1900.
[88] Zie Onghokham, *The residency of Madiun*, 296-302.
[89] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Investigations report Resident Donner. Madiun, March 20, 1900. "*..hinderlijke karaktergebreken, totale onbetrouwbaarheid en zelfvergoding*."
[90] Brotodiningrat was not only accompanied by a albino assistant, but also by a small person ("dwarf"). By this, Brotodiningrat followed a long Javanese tradition of power, where Javanese rulers surrounded themselves with objects and people with "extraordinary power" to increase the power available in the palace. For a discussion on the Javanese ideas and traditions of power, see: Anderson, *Language of Power*, 22-23, 27. In this case Brotodiningrat, however, made it into a comment referring to race, knowing that the Dutch were sensitive for such comments attacking their sense of superiority, partly based on their whiteness.

and convicted at the landraad. The houses of Chinese were spared, because Kartoredjo received money from Ong Hway Liem, leader of the Chinese quarter.

Altogether, there were sufficient grounds to start a criminal judicial inquiry, but Donner advised the government to do all they could to prevent Brotodiningrat from ending up in a courtroom, because incitement to crimes was hard to prove. But also because Brotodiningrat—"the sly regent of Madiun"—was well aware of this and would, according to Donner, "move heaven and earth" to "provoke" a court case at the Court of Council, where he would be acquitted due to a lack of evidence. According to Donner, Brotodiningrat had been in contact with people involved in the judicial system, and he would easily be able to silence witnesses through "intimidation, bribing and harassment." He advised that Brotodiningrat be dismissed honourably, retired, and forbidden to live in Madiun.[91] Brotodiningrat would be dismissed a few months later, but the governor general was of the opinion that it was not possible to prohibit him from returning to Madiun.[92] The minister of colonial affairs let it be known that he would have preferred an exertion of exorbitant rights and the regent's banishment as being more legitimate and more forceful.[93]

It is notable that Brotodiningrat was more aware of the judicial regulations than the other priyayi we have discussed, and he invoked them several times. First, he asked the governor general whether the case could be investigated impartially by a special committee. This was rejected, but Brotodiningrat did not give up and sent several formal requests to both the governor general and the parliament in The Hague. In doing so, he was advised by lawyers, an Indo-European *pokrol bambu* and his cousin Raden Mas Djokomono Tirto Adhi Soerjo (hereafter Tirtoadhisoerjo). He also filed a complaint against Donner with the attorney general, and wrote three pamphlets which he sent to parliament.[94] All these documents represent his side of the case. Brotodiningrat argued that Donner had fallen for the tricks of the regent's family of Magetan, who had turned him against

[91] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Investigations report Resident Donner. Madiun, March 20, 1900.
[92] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Decision letter Governor General W. Rooseboom. Batavia, July 7, 1900.
[93] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. October 7, 1901, no.49. Letter from the Minister for Colonial Affairs J.Th. Cremer. October 26, 1900.
[94] Broto di Ningrat, *Memorie van toelichting*, 10.

Brotodiningrat. The chief jaksa had also used the resident, at the expense of the regent, to further his own career.[95]

It is notable as well that Brotodiningrat was able to act on the legal knowledge he had procured. He explicitly mentioned a violation of the Colonial Constitution, because according to article 48 he should have been heard in his defence. He also requested a fair trial. Moreover, he also criticized that someone had attempted to prevent him from returning to Madiun by threatening that if he did return, he would be placed under police supervision.[96] When Snouck Hurgronje was sent to Madiun to look into the case, he described both Brotodiningrat and Donner as complicated personalities. He also noted that Brotodiningrat resided in Yogyakarta and was advised there by an Indo-European *pokrol bambu* named Kläring.[97] In The Hague, Brotodiningrat's complaints were investigated by a committee, who adviced in favour of Brotodingrat's request to return to Madiun, since he only had been dismissed from his office and not banned by article 47.[98]

In the end, Donner completely lost track of reality and published a pamphlet in which he depicted Brotodiningrat as being the centre of a pan-Islamic conspiracy against the Dutch.[99] This was not very plausible, but it is clear that Brotodiningrat could indeed use more channels to express his views than had been the case during the Djojodiningrat affair, for example. Although the press had played an important role then, too—something that would have been unimaginable at the time of the Borwater case in the 1820s—now, around 1900, Brotodiningrat's position could be strengthened by legal advice provided by *pokrol bambus* who did not refrain from advising against the colonial government in sensitive cases such as these, and Brotodiningrat's pamphlets also reached parliamentary discussions in The Hague.

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[95] Broto di Ningrat, *Na een een-en-dertig-jarig Regentschap*, 2-3.

[96] Broto di Ningrat, *Een bede om recht*, 13.; RR 1854, art.48: *"In de gevallen, bedoeld in artt. 45, 46 en 47 wordt door den Gouverneur-Generaal niet beslist dan nadat de betrokken persoon in zijne verdediging gehoord, of daartoe behoorlijk opgeroepen is. Van het verhoor wordt een proces-verbaal opgemaakt."*

[97] Gobee, *Ambtelijke adviezen van C. Snouck Hurgronje 1889-1936*, Part 1, 587. Advice Snouck Hurgronje regarding Brotodiningrat case. Batavia, March 5, 1902.

[98] Kamerstuk Tweede Kamer, May 11, 1905, no.96/3. "Adres van Raden Mas Adipati Broto di Ningrat, gepensionneerden regent van Madioen, te Djokjakarta, om onderzoek zijner zaak" www.statengeneraaldigitaal.nl (last accessed: 13-9-2017)

[99] Zie Onghokham, *The residency of Madiun*, 296-302.

11.3 Political Measure under Discussion

Opposition to the political measure grew in the early twentieth century. In some ways, there always had been resistance against it from the European side, as in 1865, when the European Hageman had attempted to help a regent, on the basis of friendship, obtain permission to return to Java after having been banned.[100] However, the early twentieth-century protests were louder and focused on the fundamental problems regarding the system of political measures, in part because they were also imposed on representatives of early nationalism, something that caused a stir.

Political protest arose in Parliament and, after 1918, in the People's Council (Volksraad). In 1921, Tjipto Mangoenkoesoemo described how complete "exile colonies" had come into existence, as on Ambon, where the descendants of Diponegoro still lived "in poverty" in the early twentieth century.[101] Willem Vliegen, a founder of the Sociaal Democratische Arbeiders Partij (SDAP) accurately assessed the rationale for the political measure in 1913: "that before the judge, against these people—Douwes Dekker, Tjipto Mangoenkoesoemo, and Soewardi—no verdict would have been announced. In other words, they have done nothing [on which] to base a successful prosecution. ... Where criminal justice will not adjudicate, the administration steps in and imposes a punishment that would have never been imposed by a judge."[102]

Two publications that did not hide their disapproval of the exorbitant rights came out as well. The authors, P.H.C. Jongmans and C.A. Wienecke wrote at a time when criticism of the colonial judicial system in general was unleashed. Jongmans for example, wrote his doctoral thesis when Snouck Hurgronje was rector magnificus of Leiden University, and he wrote in line with the viewpoint of Snouck Hurgronje. Wienecke, a jurist, wrote very disapprovingly about political banishment as well:

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[100] Hageman, "Historisch onderzoek naar de redenen tot ontslag van de Regent van Bezoeki," 444.

[101] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*,154. Handelingen Volksraad, first special session 1921 and first regular session 1921.

[102] Cited in: Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*,39. *"...dat men bij den rechter tegen die menschen (Douwes Dekker, Tjipto Mangoenkoesoemo en Soewardi) geen vonnis zou hebben gekregen, maw zij hebben niets gedaan waarop een strafvervolging success zou hebben gehad ... waar de strafrecht niet veroordelen zou, treedt de administratie op en past een straf toe, die van een rechter niet te krijgen zou zijn geweest."*

> The Indies' legislation should certainly reflect that the circumstances in the East are different from the Motherland. It should be taken into account that in the Indies, political and civil liberties are generally not developed to the extent of those in the Netherlands. However, political banishment does not fit into the Indies' legislation, since it is such a repudiation of this freedom that it only belongs in despotic or ultra-democratic states, but not in a community of law that is already touched, and increasingly submerged, by deeply anti-revolutionary and truly liberal principles.[103]

Wienecke recalled how during the debates on the introduction of the Colonial Constitution in 1854, both Thorbecke and Van Hoëvell had strongly disapproved of the political measure. Proponents of the measure had argued that the interest of the state was served. However, Wienecke says that the position of the Dutch in the Netherlands Indies had never given any proof of why such "despotic provisions" were necessary. Apparently, some people had argued that political banishment was only carried out in circumstances in which no criminal offenses were commissioned; but Wienecke pointed out that this was untrue.[104] Indeed, as we have seen in the cases of Yoedo Negoro, Djojodiningrat, and Brotodiningrat, several priyayi who were banned were suspected of having committed crimes. Wienecke also refuted the idea of the political measure as being an emergency law. First, he argued that the police and criminal procedural law should be able to function without an emergency law. Second, he maintained that article 43 of the Colonial Constitution already allowed for the announcement of a state of

[103] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 172. "*Hoewel er nu zeer zeker in de Indische wetgeving dient uit te komen, dat er in het Oosten andere toestanden zijn dan in het Moederland, en er rekening mede moet gehouden worden dat in Indië de politieke en burgerlijke vrijheid in "t algemeen niet die ontwikkeling heeft als in Nederland, past de politieke verbanning toch niet in het Indische recht, omdat zij zulke een miskenning dier vrijheid in zich houdt, dat zij alleen thuis behoort in een despotischen of ultra-democratische staat, maar niet in een rechtsgemeenschap, die toch door diep-antirevolutionaire en waarlijk liberale beginselen wordt aangeraakt en meer en meer dooraderd."*

[104] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 174.

war or siege. Wienecke thought it "indefensible" that a third measure existed for "a state of tumult, that might possibly be followed by troubles."[105] As an alternative, Wienecke suggested limiting political banishment to a maximum period of one year.[106] But it would be even better if banishment were imposed solely by judges. Wienecke concluded: "When legal provisions would lead to a quick, sharp, and not too humane legal administration, no single official of the Public Prosecution Service and no head of the administration, would lament that the exorbitant political banishment, with its slow procedure, no longer takes this responsibility out of the hands of the judge."[107]

Jongmans, however, disagreed with the solution; intervention by the judge had to be prevented. In cases where it would be completely transferred to the judge, then—due to a lack of proof—no punishment could be imposed. Jongmans was also critical of the political discussions about exorbitant rights in 1854. According to Jongmans, the politicians had been worried mainly about Dutch citizens being threatened by the exercise of exorbitant rights. Member of Parliament Sloet tot Oldhuis had said: "it is very well imaginable that a Dutch citizen falls under the provisions of this article." To which Jongmans sarcastically remarked: "Yes, but it will certainly be the rule that a native falls under the provisions and languishes." He condemned Parliament's reaction as reflecting of "the utmost indifference." The government preferred "certain banishments over the uncertain results of a criminal prosecution."[108]

In an overview, Jongmans showed that in many cases that had been punished by political measures, severe punishments would have been imposed according to criminal law as well. However, the government had

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[105] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 175-177. *"den toestand van gisting, die soms door troebelen kan gevolgd worden.*

[106] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 179.

[107] Wienecke, "Politieke verbanning en strafrechtelijke verbanning in de Nederlandsch-Indische wetgeving," 195. *"Wanneer aldus de wettelijke bepalingen een vlotte, scherpe, niet al te humane rechtspraak zouden in werking helpen, zou geen ambtenaar van het OM en geen hoofd van Bestuur het bejammeren als de exorbitante politieke verbanning met haar leemvoetige procedure den Rechter het werk niet langer uit handen neemt."*

[108] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk,* 58. "*..het zou wel zeer denkbaar zijn, dan een Nederlander onder de bepalingen van dit artikel viel." (...) "Ja, maar het zal wel regel zijn dat een inlander onder de bepalingen valt en verkwijnt.*"

been too frightened that acquittal would have followed in those cases: "Yet, what is the purpose of criminal laws that are not imposed! A banishment can easily be controlled by the administration, circumventing the stubborn jurists and law courts. If a judge is not convinced by the legality of a criminal conviction regarding certain facts, the administration—with its special investigation methods—has long been ready to impose deportation."[109]

From 1900 onwards, the number political deportations had increased exponentially, according to Jongmans. "That many and sometimes massive deportations take place without any explanation," he wrote, "is a deplorable indifference towards those who are deported, not because of criminal acts according to the rules of general criminal justice, but only in the interest of public order and peace according to a decision by the Indies' government—which is often based on nothing more than the opinion of one resident or assistant resident."[110]

During the early twentieth century, a new reason to deport someone was nationalistic activities or ideas, one victim being Soewardi, who had written the pamphlet "If I were Dutch" (*Als ik een Nederlander was*). In this case, in 1913, the Council of Justice had already approved adjudication of the case, for "press offences" (*persdelict*), but the criminal prosecution was halted on the orders of the attorney general and article 47 was imposed instead.[111]

In the meantime, the privilegium fori was also still used by the priyayi themselves as a true privilege in civil cases. It exceeds the scope of this research, but a quick glance at some reports on civil cases shows how Javanese elite families also made use of the colonial courts themselves. In

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[109] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 124. "*..zekere verbanning boven de ongewisse uitkomsten van een strafrechterlijke vervolging." (...) "Doch wat geven strafbepalingen, die niet worden opgelegd! Een verbanning heeft de administratie in haar hand en daarbij zijn geen eigenwijze juristen en rechtbanken nodig. Als de rechter niet lang overtuigd is van de strafoplegging wegens bepaalde feiten, staat de administratie, door haar bijzondere onderzoekingsorganen, al lang klaar met verbanning."*

[110] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 128. "*Dat vele en soms massale uitzettingen plaat hebben zonder eenige toelichting in het koloniaal verslag, is een niet genoeg te laken onverschilligheid tegenover hen, die verwijderd worden, niet om eigen strafbare daden volgens de regels van het gemeene strafrecht, doch in het belang der openbare orde en rust volgens het oordeel der Indische regering (dat in vele gevallen wel niet meer is dan het oordeel van de Resident of Assistant-Resident)."*

[111] Jongmans, *De exorbitante rechten van gouverneur-generaal in de praktijk*, 129. Fromberg, *Het geval Soewardi*, 11-12. Bt. August 18, 1913. Soewardi was banned to Banka for undetermined time.

1858, the woman Salima was accused by her deceased husband's family members of living in a house which was not legally hers but theirs. The question was whether the case had to be administered by the European Council of Justice, because the woman had been married to a son of a regent, or by the landraad because the woman herself was not from an elite family. It was decided that the case should be administered by the Council of Justice, because she was related by marriage to the regent's family.[112] These kinds of requests were also made in the twentieth century. In 1912, for example, Entjik Hadija asked the governor general whether she fell under the privilegium fori since she was related to the former sultan of Yogyakarta and appended a genealogy. This request was turned down with reference to the 1867 decree.[113]

In practice, however, Europeans' ideas of which Javanese could invoke the privilegium fori did not change much, especially in Batavia. Achmad Djajadiningrat depicts a telling example of this in his memoirs. One time, when he was a *Higher Burgerschool* (Higher Civiv School, HBS) student in Batavia, he visited—together with his Dutch friends—a boarding school for girls at night. The boys were caught by the police and sent to the assistant resident. However, the assistant resident sent Djajadiningrat to the jaksa for punishment because he was Javanese. Djajadiningrat felt extremely humiliated:

> One by one we were summoned by the assistant resident... However, when it was my turn and I mentioned my name, the assistant resident said: "Ah, so you are a native. Then you should go to the jaksa, who will refer you to the police law." Luckily, the family Meister had told me that the descendants of a regent in service, up to the fourth grade, cannot be adjudicated by the police magistrate. I told the jaksa that I was the son of the regent of Serang, with the effect that I received only a reprimand, but not from

[112] ANRI GS Surabaya, no.1436. Letter by assistant resident. Surabaya, July 20, 1858; Approval by Governnor General. Batavia, August 20, 1858.
[113] ANRI AS B. October 2, 1912, no.25. Request Entjik Hadija Benkulen, July 2, 1912.; Decision Governor General. Batavia, October 2, 1912.

> the assistant resident, but from the jaksa, something that severely hurt me.[114]

In practice, Djajadiningrat was culturally and socially part of the highest class of society. He lived with a Dutch host family and was a student at a Dutch school. He also formally fell under the jurisdiction of European law courts through the privilegium fori. Yet, when he encountered the legal system, what counted foremost to the European resident was his non-European background.

11.4 Conclusion: Double Standard

The exorbitant rights of the governor general to impose a political measure held consequences for the position of the priyayi. Although often described as local elites with an unlimited power, this image of the priyayi has to be somewhat nuanced. The priyayi were at risk of becoming privileged outlaws deported for an unspecified length of time, even in criminal cases that the colonial government not considered a political threat. The 'priyayi cases' assessed in this and the former chapter show that during the second half of the nineteenth century, in this, there was a different dynamic compared with that in the first half of the nineteenth century. The press was more intensely involved and some of the priyayi themselves now knew how to find and use the right colonial communication channels to disseminate their side of the story. However—and despite the limitations on the governor general's authority to decide on the prosecution of priyayi, as introduced in 1867—he could still exercise a considerable influence over the priyayi through his exorbitant rights. The possibility of a political measure made the position of priyayi vulnerable and even—in fact—opened them up to be declared outlaws.

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[114] Djajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 78. "*Één voor één moesten wij voor den Assistant-Resident komen. ... Doch toen ik aan de beurt kwam en mijn naam noemde, zeide de Assistant-Resident: "Zoo, dus jij bent een inlander. Dan moet je naar den Djaksa gaan, die zal je voor de politie-rol brengen.' Gelukkig had ik bij de familie Meiser gehoort, dat nabestaanden van een in hunctie zijnden Regent tot in den vierden graad niet voor den politie-rol mochten worden getrokken. Ik vertelde den Djaksa, dat ik een zoon was van den Regent van Serang, zoodat ik tenslotte ook maar een standje kreeg, doch niet van den Assistant-Resident, maar van den Djaksa, hetgeen mij erg griefde.*

EPILOGUE — New Actors and Shifting Paradigms

In 1903, the Dutch author Augusta de Wit wrote the *The Waiting Goddess* (*De Godin die wacht*), a novel that describes a judicial official's first year in Sumberbaru in Java. Although the story is fictitious, it touches on many of the issues related to the pluralistic courts discussed in this dissertation. Assessing the novel in the context of criminal law in colonial Java is relevant here because the book not only provides an extensive description of landraad practices, but also displays most nineteenth-century stereotypes of court officials *and* several of the changes that occurred around 1900.

The novel presents a very nineteenth-century stereotypical image of the landraad, as can be found in other colonial sources written by jurists. However, in this novel no one present in the courtroom was saved from criticism, including the Dutch. One scene, describing a landraad session, effectively encapsulates the developments discussed in the previous chapters. All existing stereotypes were included and the court session has the feeling of a theatrical farce. The landraad session was held on the front porch of the house of the regent, around

> a long table, with a green cloth spread out over it, and on it a bell, a carafe and glasses, and some books and piles of documents, a line of chairs and a large exuberantly decorated screen, in front of the entrance to the hidden interior of the house, gave a suggestion of European order and comfort, contrasting strangely with the darkening shadows of real native life behind the fences of the courtyard at the back.[1]

The jaksa was smart, but also vain and very much concerned with his appearance. "The attractive young native, with the black and golden *kopjah* on one ear, rose up in an elegant move that made the pleats of his sarong

[1] De Wit, *De Godin Die Wacht*, 79. *"…een lange, met een groen kleed bespreide tafel met een schel, een karaf en glazen en eenige boeken en stapels papieren er op, eene rij stoelen en een groot bont-beschilderd scherm voor den ingang naar het verborgen binnenhuis, een zweem van Europeesche orde en geroeg gaven, zonderling contrasterend met die opdonkering van echt Inlandsch leven over de schutting van het achtererf."*

glide down without getting creased, tossed back his head and started to read hurriedly in a whining-singing way." After reading the indictment, he sat down "stroking his sarong, the pleats of which had become slightly creased after all." [2] Besides, he was not using his intelligence to prosecute the real culprits, but to close as many cases as possible—regardless whether the right person was convicted—to satisfy the expectations of the assistant resident. During the interrogations of the witnesses, the jaksa was the translator from Malay to Sundanese, and it turned out that he had been rehearsing with the witnesses.

> "The president glanced over the documents and asked casually: "Did Pah-Djas know the contents of the document?" He looked up when he heard a clear "*Hanten*." This was one of the few Sundanese words he understood. He knew that Pah-Djas had answered "No."
>
> The jaksa stood there, indecisive for a moment. ... He was annoyed. Had he not instructed the suspect and witnesses to memorize all [their] answers and had he not made them say the answers out loud, over and over again, until it went as smoothly as a Quran chapter at school? He had tested them as recently as last night. And everything went fine. And everything fitted in such a way that all three of them could be sentenced the way it should be when Sir Assistant Resident gave the order to put people on trial. ... Now everything was ruined![3]

[2] De Wit, *De Godin Die Wacht*, 81. *"De knappe, jonge inlander, met de zwart en gouden kopjah op het eene oor, rees overeind met een sierlijke beweging, die de plooien van zijn sarong kreukelloos deed neerglijden, wierp het hoofd in den nek en begon op zeur-zingerigen toon haastig te lezen."*

[3] De Wit, *De Godin Die Wacht*, 89. "*De Djaksa stond een oogenblik besluiteloos. ... Hij ergerde zich. Had hij beschuldigde en getuigen al hun antwoorden niet van buiten laten leeren en laten opzeggen, altijd maar over nieuw, totdat het zoo glad ging als een hoofdstuk uit den Koran op school? Gisteravond nog had hij hen overhoord. En het ging goed. En alles klopte, zoo dat zij alle drie veroordeeld konden worden, zooals het behoorde wanneer de Heer Assistent-Resident beval menschen terecht te doen staan. Nu was alles bedorven!"*

In the meantime, the regent felt too important to attend something as irrelevant as a landraad session, where "people of low descent" were on trial. "Much against his will, he performed for this time only his duties as a judge, duties in charge of which he usually put one of his subordinates from the minor chiefs. ... And why should he deal with the affairs of these people of low descent?"[4] The wedono had only gotten his position because he was a cousin of the regent, but he held little talent for his function: "he belongs to the kind that people here describe as 'flower in a pot'—beautiful to look at but for the rest of no use."[5]

The novel displays a deeply rooted racism as well as Dutch jurists' ignorance of Javanese legal traditions. The main character, Van Heemsbergen, wondered whether the Javanese members' disinterest came from indifference or from the hasty introduction of the Dutch institutions to people who were not ready for them. The possibility that the Javanese members had been increasingly marginalized and that Javanese knowledge and institutions within the realm of criminal law had been torn down over time by the Dutch did not occur to them, or probably to the author.

The penghulu was described as a "lay figure" who was "dressed up as an Arab," and knew less than the 'real' Arab who was present "princely in his garb streaming down in long folds and atmosphere of sweet smell" as a witness in the case:

> He stood straight up in front of the penghulu, who on tiptoe and with stretched arms tried to put the Quran book on the [Arab's] head, while in mumbled words prompting him [in] the form of the Mohamedan oath. Said-Mohammad gazed in front of him indifferently. He waited for a moment, once the native priest had stopped his gibberish. Then he spoke loud and clear, emphasizing the holy words: "To God the Great! To God the Great! To God the Great! And to what is written in this Book, the Word of God!" In every

[4] De Wit, *De Godin Die Wacht*, 83. *"... Zeer tegen zijn zin vervulde hij voor deze enkele maal den rechter-plicht, waarmee hij gewoonlijk een zijner ondergeschikten uit de mindere hoofden belastte... . En wat had hij te doen met de aangelegenheden van die geringe lieden?"*

[5] De Wit, *De Godin Die Wacht*, 156. *"hij hoort tot het slag dat het volk hier 'bloem in de pot' noemt—mooi om te zien en verder van geen nut."*

> syllable, he expressed his pride in the language that was his mother tongue, his pride in the religion that was the religion of his people, the chosen people from whose midst the Prophet had arisen. In shy deference, the priest looked up to this man so well-educated in matters of religion, who so fluently pronounced the difficult maxim.[6]

Thereafter the penghulu fell asleep during the session, only to wake up to give his advice: "The penghulu gave his judgment, which was always asked but never executed, and which was based on the laws of the Prophet. 'I declare the suspect guilty and he should be punished by cutting off his hand,' he said solemnly."

It was a fully rehearsed play in which everyone knew his part. A play presided over by a Dutch judge, who, before the start of the court session, got dressed behind the Chinese screen and appeared again "broad, black, and solemn, in robe and beret." At the end of the table, an Indo-European clerk of the court sat "entrenched behind a pile of stools and writing a letter." The suspect was there, "with a soft face and something almost childishly naïve in his gaze." The session depicts a colonial society in which the Dutch jurists had firmly established their position, strangely enough without really being aware of what was going on.[7]

Simultaneously, the novel shows a conflict between the older landraad judge Oldenzeel and the younger Van Heemsbergen, that is, between a follower of European law and a believer in the adat school. The novel's protagonist, Van Heemsbergen, was engaged to the daughter of an ethical law professor from Leiden whom he wholeheartedly admires. Van

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[6] De Wit, *De Godin Die Wacht*, 88. *"Rechtop bleef hij voor den Panghoeloe staan die op de teenen en met opreikende armen hem het Koran-boek op het hoofd trachtte te leggen, hem de woorden voormompelend van het Mohammedaansche eedsformulier. Met minachtende onoplettendheid tuurde Said-Mohammad voor zich uit. Hij wachtte een oogenblijk nadat de Inlandsche priester zijn gebrabbel gestaakt had. Toen sprak hij overluid en met nadruk de heilige woorden: "Bij God den Groote! Bij God den Groote! En bij wat geschreven staat in dit Boek, het Woord Gods!." In elke syllabe liet hij zijn trots klinken op die taal die zijn moedertaal was, en op den godsdienst die de godsdienst was van zijn volk, het uitverkoren volk uit welks midden de Profeet was opgestaan. In verlegen eerbied keek de priester op naar den in zaken des geloofs wèl-onderwezene, die zoo vloeiend de moeilijke spreuk opzegde."*

[7] De Wit, *De Godin Die Wacht*, 79. *"..breed zwart en plechtig in toga en baret." (...)* "*iets bijna kinderlijk-argeloos in de oogen."*

Heemsbergen is highly motivated to bring justice to the inner regions of Java, in contrast to some of the other young civil servants he meets in Batavia. They were also recently arrived from Holland and one of them tells him: "'In the Indies you won't get anywhere without powerful connections,' he said in a tone of unshakable conviction. 'And the idea to be sent into the bush—ugh!'"[8] These ambitions quickly fade after some sobering months in Sumberbaru, where he is appointed as an assistant landraad judge. The landraad judge Oldenzeel—"sitting comfortably, in lounge pants and kebaya, closely perusing the *Java-Bode*, and with small nips and gurgles sipping his third cup of tea"—appears to have never heard of the famous professor from Leiden and is more interested in going to an auction where Europeans and "a fat Chinese" were outbidding each other for fun.[9]

Oldenzeel was an old-style jurist, Van Heemsbergen thought, and Oldenzeel in his turn was convinced that his new colleague had obtained useless knowledge during his studies, which followed "the new direction": "I can't say that I am enthusiastic about this new direction, comparative legal studies, and the development of law among primitive peoples, and the ethical basics of the idea of law, and so forth, and so forth, our dear Lord may know what else. ... That is what they are cramming these youngsters' brains with now. And when they arrive here, how will it be of use to them?" In practice, according to Oldenzeel, they would not gain much from that knowledge. "Right now, our friends are appearing for the landraad—Warten who illicitly traded in opium, and Djembar who has poked Sapin with his kris because of a dance girl, or Ardangi who has breached his cart contract—should I fix these small cases according to the comparative history of law, huh? No sir! I have to do this according to the Native Regulations! That is what I should know—what I call 'really know,' you understand!" The young jurists were capable of reciting the Native Regulations from back page to front, but they could not apply it.[10]

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[8] De Wit, *De Godin Die Wacht*, 29. *'In Indië kom je er niet zonder kruiwagens', zei hij op een toon van onwrikbare overtuiging. 'En het idee om de rimboe ingestuurd te worden – brrr!'*

[9] De Wit, *De Godin Die Wacht*, 52. "**...** *zat de President van den Landraad gemakkelijk, in slaapbroek en kabaai de "Java-boede" uit te spellen, met slokjes en gegorgel zijn derden kop thee slurpend."*

[10] De Wit, *De Godin Die Wacht*, 139. *"Daar komen nou onze vrinden voor den Landraad—Wartan die opium geslikt heeft, en Djembar die Sapin een por met zijn kris heeft gegeven om een dansmeid, of Ardangi die zijn karre-contract gebroken heeft—moet ik die zaakjes dan*

Clerks were playing card games and files of civil cases—to be decided according to adat law—were piling up because of the "colonial tradition" of giving priority to criminal cases. Van Heemsbergen: "All of them were civil cases lying waiting there for a decision based on native common law, exactly the job that he had longed for, as a training in that kind of law, and that he up to now was never or hardly ever asked to do. Mr. Oldenzeel was rigidly set in the habit of giving preference to criminal cases to be judged under Dutch law." Then, Van Heemsbergen meets the district administrator, who he knows from his time in Leiden as the son of the concierge. It appears that he *does* have knowledge of the local society and, moreover, he informs the jurists that the witness is a "a front man in the hands" of someone influential.[11]

Finally, the novel shows that the rule of lawyers (as discussed in Chapter 9) would be challenged from new emerging actors during the early twentieth century. In the case of the novel D*e Godin die Wacht* itself, by the author—a woman.[12] The real hero in the book is the wife of Van Heemsbergen, who guides him back on the right track just as he was about to lose his ethical ideals from a disappointment when faced with the reality of colonial judicial administration. During the years after 1900, there would be more and fiercer criticism from other corners as well. Indonesians started to criticize the legal system, or they became more entrenched in the colonial legal system itself. Thus, there was change from outside and from within.

First, the *pokrol bambu* had become active in the 1890s.[13] In his memoirs, landraad president Oostwoud Wijdenes presents the example of a

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opknappen volgens de vergelijkende geschiedenis van het recht? He? Nee meneer! Dat moet ik doen volgens mijn Inlandsch Reglement!"

[11] De Wit, *De Godin Die Wacht*, 76. *"…citeerde Hendriks. 'Niet dat het er veel toe doet – Singadikrama is maar een stroopop in de handen van u weet wel wie.'*

[12] Augusta de Wit (1864–1939) was the daughter of Jan Carel de Wit, who held a doctorate in Humanities and a Masters in Law. During the second half of the nineteenth century he worked as a colonial official in the Dutch East Indies and was the Resident of the Padangse Bovenlanden on Sumatra from 1865 until 1869. The family moved to the Netherlands in 1874, but Augusta de Wit herself returned to Java as an adult twice. She wrote travel accounts and novels inspired by her impressions. De Wit was a follower of the Ethical Policy. In 1916 she became a member of the SDP, a Dutch communist political party. In her travel account on Java (*facts and fancies*, 1898) she makes no account of attending a session of the Landraad. https://socialhistory.org/bwsa/biografie/wit.

[13] The word "*procureur-bamboe*" (or "*prokureur-bamboe*" or *"pokrol bamboe"*) appears in the Dutch colonial newspapers first at the end of the 1890s. The description of "*inlandse*

pokrol bambu who took advantage of the population. He was a retired jaksa, who wrote requests—2,50 guiders each—to the governor general for farmers whose land was being confiscated. He already knew that writing such a request would be of no avail, but it was money earned easily.[14] The *pokrols bambu* were described in a very negative way in the Dutch press and many priyayi were also not in favour of them. Achmad Djajadiningrat's memoirs describe how a village chief around 1900 hired a *pokrol bambu* in order to accuse Djajadiningrat—who was wedono of Bojonegara at that time—of physically abusing him. Djajadiningrat had visited the *djaro* (village chief) because he had threatened Djajadiningrat's authority by ordering someone to steal an egg. Because of this, Djajadiningrat wanted to propose to dismiss the village chief from his position. Before that, however, he went to his house to reprimand him and give him a "spanking like a little, naughty boy."[15] According to Djajadiningrat, he had accidently wounded the *djaro* on his head when he pushed open the door of the *djaro*'s house hard after he refused to open the door. Now, Djajadiningrat was accused for mishandling himself, which was made possible by the help of a *pokrol bambu*. Djajadiningrat thought this very unfair:

> These folks would do very little actual attorney work; their foremost activity would be to write anonymous complaints against native officials and village chiefs, in return for relatively coarse money. Therefore, village chiefs would refer to them as being *lintah darat* (land leeches). One of the most notorious *lintah darats* lived in my subdistrict. He wrote anonymous letters, not only to the assistant resident and the resident, but even to the governor general. He had belonged to the priyayi ranks before, but had sunk to the village because of misbehaviour.[16]

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procureurs" appears first around 1880. www.delpher.nl Database last accessed: August 1, 2016.

[14] UL, H922, M.J.A.Oostwoud Wijdenes. "Op en om de weegschaal. Voor leken en aspirant juristen," 63-65.

[15] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat,* 170. "*..als een kleinen jongen, stouten jongen een duchtig pak slaag geven."*

[16] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat,* 170. *"Procureurswerk deden die lieden echter weinig; hun voornaamste werk was tegen relatief*

Yet, Djajadiningrat admitted that the *pokrol bambu* were at that time the only way by which the population could be protected from abuse by officials: "A so-called native movement did not exist yet at the time when these events happened. Thus, there were no leaders of the people to control the actions of the native government time and time again in the interests of the large masses. Instead, the interests of these masses were protected by so-called *pokrol bambus*."[17]

In a less negative light and a more neutral sense, the *procureur bambu* were called *procureurs* (attorneys) or *zaakwaarnemers* (legal representatives). Mas Tirtohadisoerjo, cousin of the regent Brotodiningrat, was both a legal representative and a journalist. In chapter 11, we saw how Brotodiningrat was advised by *pokrols bambu*, among others by his cousin Tirto, but also by an Indo-European *pokrol bambu*, basing his defence against the resident partly on judicial grounds. Shortly after, Tirto—who would later be called a "pioneer" by Pramoedya Ananta Toer, a novelist who based the fictional character Minke on him—founded the magazine *Medan Priyayi* and later *Soenda Berita* (1903–10), which mainly advocated for the interest of lower priyayi. Legal aid was offered in *Medan Priyayi.*[18] He also translated laws and ordinances from Dutch to Malay, and published pamphlets about this.[19] His activities were not much appreciated by the Dutch, though, and he would be sentenced twice by the Council of Justice—as a priyayi he fell under the privilegium fori—for "press offences."

He continued writing and criticizing the colonial legal system while in exile. He firmly condemned the police magistracy and the fact that there

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grof geld voor de bevolking anonieme klachten tegen Inlandsche Bestuursambtenaren en desahoofden te schrijven. Daarom werden zij door desahooden genoemd: "lintah darat" (landbloedzuiger) Een der meest beruchte lintah-darats woonde in mijn onderdistrict. Hij schreef anonieme brieven, niet alleen aan den Assistent-Resident en den Resident, doch zelfs aan den Gouverneur-Generaal. Hij behoorde tot de priyayi-stand, doch was er door wangedrag afgedaald in de desa."

[17] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 170. *"Een zoogenaamde Inlandsche beweging bestond in den tijd, waarin deze gebeurtenissen plaats hadden, nog niet. Volksleiders, die te pas en te onpas in het belang van de groote massa der Inheemsche bevolking contrôle op de handelingen van het Inlandsch Bestuur uitoefenden, waren er dus no niet, doch in plaats van door hen werden de belangen dier massa tegen Bestuur beschermd door de zoogenaamde prokols-bamboe".*

[18] Toer, *De Pionier*, 71.

[19] Toer, *De Pionier*, 100.

were still landraden outside of Java that were presided over by administrative officials. He also denounced the privilegium fori:

> People here are divided into the following categories. First, full people or "heavenly" people: the Europeans and natives of aristocratic descent with a privilegium fori. Second, half people: priyayis and Chinese officers who fall under the privilegium fori for the duration of their office. Third, one-third people: priyayis without a forum, but who are exempted from doing unpaid services. Fourth, one-quarter people: all people without a forum and not exempted from performing unpaid services. Think about the following, readers, a native doctor who has studied for so long, and is respected—also by the Dutch—is a one-third person, equal to guards. They are exempted from unpaid services, but still fall under the police register [*politierol*, police magistracy].[20]

In 1909, Tirtohadisoerjo established the Sarekat Dagang Islam (Islamic Trading Union), the predecessor of the Sarekat Islam, in Buitenzorg.[21] The Sarekat Islam also took an active stance when it came to legal affairs. From 1912 onwards, when support in the countryside increased, the association represented the interests of the local commoners. For example, they negotiated over strict police measures in Besuki, where since 1904 in the event of a sugarcane fire, villagers had been obliged to guard the burned field until the culprit had been found. In Kediri, since 1905, the entire male population of adjacent villages had been summoned to be interrogated and reprimanded after a sugar cane fire. Both measures were in fact collective

[20] Toer, *De Pionier*, 218. *"De mensen hier kan men in de volgende categorieen verdelen: hele mensen of "hemelse" mensen: de europeanen en inladners van adel met een forum privilegiatum; ½ mensen: priyayi;s en officieren der chinezen die een forum genieten zolang ze hun ambt uitoefenen; 1/3 mensen: priyayi's zonder forum maar van herendiensten vrijgesteld; ¼ mensen: alle mensen zonder forum en niet van herendiensten vrijgesteld. Denkt u eens in, lezer, een dokter Djawa of inlands arts die zoveel gestudeerd heeft, zo gerespecteerd wordt- ook door de Nederlanders—is een 1/3 mens, precies zoals de oppassen die wel van herendiensten zijn vrijgesteld maar toch onder de politierol vallen!"*

[21] Dajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 281.

punishments of the local population for arson, which at that time was a common way of protesting local rule and elites. Such collective punishment, imposed without formal judicial interference, was criticized, yet approved, by the Dutch parliament. However, in 1917 the *strafbewaking*—literally, "punishment surveillance," guarding sugar cane plantations as a punishment—was abolished after negotiations by the Sarekat Islam in Besuki. The Sarekat Islam offered a new way for people to express their complaints. Support for the Sarekat Islam was already declining again 1916, however, so this success was short-lived; but it does show new actors interfering in the colonial state.[22]

The legal system was also discussed at congresses of the Sarekat Islam. For example, there was criticism on the still not unified criminal procedural law, which was responsible, for example, for long pre-trial detentions. During the second Sarekat Islam congress in 1917, O.S. Tjokroaminoto gave a speech on criminal procedural law. He used harsh words to condemn "rotten legislation" that was imposed by "people with bad character traits," by which he meant the priyayi and local police. On laws, he said, "The Colonial Constitution makes a very clear distinction between the races. It places Europeans in a high position and the natives in a low position." He denounced the pre-trial detention, because it gave lower police officials the power to lock up someone when on the slightest suspicion, because the Native Regulations mentioned that a "well-founded fear" that someone would flee was enough reason to apply pre-trial detention. Thus, in fact, this could always be the case.[23] Moreover, according to him, in practice much more effort was made in cases in which Europeans were robbed than for Indonesians: "When an administrator of a company has lost one spoon, how diligently the police (assistant wedono) works to solve the case and forces the entire police force to trace the lost object." But, when instead one or another haji has been robbed through a burglary, the efforts made were "not commensurate with the fuss made over the lost spoon of the wife of the administrator."[24] During the debate following the speech, Semaoen

[22] Bloembergen, *De Geschiedenis Van De Politie in Nederlands-Indië*, 123-132.
[23] Sarekat-Islam congres, *Sarekat-Islam congres (2e nationaal congres), 20-27 October 1917*, 20-23. *"..rotte wetgeving (...) menschen met slechte karaktertrekken." (...) "Het Regeerings-Reglement maakt zeer duidelijk onderscheid tusschen de rassen, stelt de Europeanen op een hoog standpunt en de Inlanders op een laag."*
[24] Sarekat-Islam congres, *Sarekat-Islam congres (2e nationaal congres), 20-27 October 1917*, 21. *"Wanneer een administrateur van eene onderneming ook maar slechts één lepel kwijt is,*

addressed the impact of the limited separation of powers: "As long as administrative officials [priyayi], who simultaneously exercise police affairs, remain judges, we cannot expect any protection of suspects. In the landraad, many retired administrative officials are seated as court member."[25] During the same debate, Soerjopranoto (brother of Soewardi) explained how hard it was for the "legal office" Adhi Darmo, which he had founded, to work, because they were not given access to the procedural documents from preliminary investigations.[26] During the fourth Sarekat Islam conference, in 1919, Tokroaminoto again spoke about pre-trial detention. Using explicit language, he said "it makes us nauseous," and he gave examples of preliminary custodies that lasted one and a half years, only to have the suspect acquitted.[27]

The protests were not directed exclusively at the Dutch colonial legal system. For example, *Medan Priyayi*, the magazine for lower priyayi, was also against *paseban* arrests, as imposed by higher priyayi, which were still in use. According to a critical article of 12 February 1910, the *paseban* arrest was imposed exclusively on lower priyayi and *desa* chiefs, for mistakes made in administrative duties or for disobeying the regent. In the case of the latter, it was often for neglecting his evening rounds or for not cleaning the *desa*. At first sight, the *paseban* arrest seemed a minor punishment, but the journalist argued that this was actually not true. People subject to the *paseban* arrest had to remain at the *paseban*, the courtyard of the regent's or wedono's house for up to a month, according to the ordinance of 1854. There was neither shelter nor bed, and the one under arrest had to arrange for his family to bring him meals, though he could bring along a servant. According to the article, the punished persons got sick easily when the weather was bad, and another important objection against the punishment

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hoe is dan niet de politie (assistent-wedana) in de weer om ter zake licht te krijgen en dwingt het geheele ondergeschikte politie-personeel om het verlorene op te sporen. Maar wanneer andersijzds een of andere Hadji middels braak bestolen is ... niet evenredig aan de drukte die gemaakt wordt om de verloren lepel van mevrouw de administrateur terug te vinden."

[25] Sarekat-Islam congres, *Sarekat-Islam congres (2e nationaal congres), 20-27 October 1917*, 25. *"...zoolang de bestuursambtenaren, die tevens de politie uitoefenen, tevens nog rechters zijn, zal er op bescherming van den persoon van beklaagden niet te rekenen vallen. In den Landraad hebben vele gepensionneerde bestuursambtenaren zitting als lid."*

[26] Sarekat-Islam congres, *Sarekat-Islam congres (2e nationaal congres), 20-27 October 1917*, 25. *"rechtskundig bureau"*

[27] Sarekat-Islam congres, *Sarekat-Islam congres (4e nationaal congres), 26 Oct.-2 Nov. 1919 te Soerabaja*, 49. "*Wij spugen ervan*."

was its humiliating character: "Sometimes the convict even has to partake in the guarding rounds through town. During the afternoon, people who know him will recognise him. Isn't that humiliating?"[28]

Moreover, a distant village chief—away from the village during the *paseban* arrest—was not conducive for the safety of the village. A village chief who was punished because he had been unable to arrest alleged criminals was away from the village and the criminals could still go about their way. A last criticism pointed towards the unreliability of the spies who reported on village chiefs. Spies could easily bribe the village chiefs, who would often feed, or pay, the spy to report to the regent that the village was clean and peaceful. A weak village chief, or one who refused to be bribed, could easily be punished by reporting otherwise to the regent.[29] As Djajadiningrat wrote about the *paseban* arrest:

> When I was young, I saw in Serang, where my uncle was regent, how a wedono was subjected to a *pantjaniti* [other word for paseban] arrest. From my perspective, this was so humiliating that I could not understand how it was possible that certain administrative punishments were applied to wedonos, who occupied quite high and important positions within the native administration.
>
> Dressed in black coat with office buttons, carrying a kris on his back and followed by a *paying* [umbrella] carrier, the wedono to whom the punishment had been imposed, arrived at the regent's. He laid down his *payung* and kris in front of the feet of the regent. Thereafter, he took off his coat and put it down next to the kris and *payung*. These objects were taken away by a guard and kept in the office of the *mantri kaboepaten* [regent's assistant], who would ensure that the convict had no other possessions with

[28] "Hoekoeman paseban." Medan Priyayi 6 (12-2-1910): 1-4. *"Terkadang orang jang terhoekoem tiap-tiap malem haroes toeroet mengideng dengen ronda kota. Boekoenkan sia namanja? Diwaktoe siang sekalian orang lalang kita taoe. Apa tida maloe orang dihoekoem sembarang orang bisa taoe? Apa tida boleh diseboet permaloekan?"*

[29] "Hoekoeman paseban." *Medan Priyayi* 6 (12-2-1910): 1-4.

> him than a thin mat to sleep, eat, and sit on. In this manner, the wedono had to stay at the *patjatini* for the duration of his punishment.[30]

In 1917, article 2 of the ordinance of 1854—in which the *paseban* arrest had been made official in the colonial regulations—was abolished. Carpentier Alting, at that moment director of the civil service, had proposed abolishing the *paseban* arrest altogether, and he had asked all residents for their advice. In Kedu the *paseban* arrest had already been done away with. The residents of Cirebon, Semarang, and Yogyakarta were in favour of a complete abolition. Other residents argued that the arrest should not be imposed on paid officials, but most wanted to maintain the punishment for unpaid village and *kampung* chiefs. However, Carpentier Alting was determined and argued for complete abolishment. He observed the punishment to be out of place in the modern times, too humiliating and he preferred a discrete reproach.[31]

On 21 September 1917, the Advisor of Native Affairs Hazeu wrote in his advice that "developed native officials" had told him more than once that they thought the punishment ridiculous and old-fashioned. The village chiefs would waste time chatting with the guards during their punishment. Altogether, according to Hazeu, the punishment was considered to have belonged to "an era, from which we are breaking free, and from which we have liberated ourselves partly already."[32] Acknowledging that European

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[30] Djajadiningrat, *Herinneringen van Pangeran Aria Achmad Djajadiningrat*, 170. *"In mijn jeugd heb ik te Serang, waar mijn oom Regent was, weleens gezien, hoe een Wedana een pantjaniti-arrest onderging. Het was in mijn ogen zo vernederend, dat ik niet begirjpen kon hoe het mogelijk was, dat dergelijke administratieve straffen op een Wedana, die in het Inlandsch Bestuur toch een vrij hooge en belangrijke positie inneemt, konden worden toegepast. Gekleed in een zwarte jas met ambtsknoopen met een kris aan zijn rug en een pajoengdrager achter zich, kwam de Wedana, wien de straf was opgelegd, bij den Regent. Hij begon met zijn pajoeng en kris voor de voeten van de Regent neer te leggen. Daarna trok hij ook zijn jas uit en legde die bij zijn pajoeng en kris neer. Die voorwerpen werden door een oppasser opgenomen en in het kantoor van den Mantri-Kabcoepaten, die zich ervan moest vergewissen, dat de gestrafte in de pantjaniti niets anders bij zich had dan een dun matje, waarop hij kon zitten, eten en slapen. Zoo moest de Wedana zoolang zijn straf duurde in de pantjaniti blijven."*

[31] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. May 6, 1920, no.6. Circulating letter from Carpentier Alting to the residents, Batavia, December 6, 1917.

[32] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. May 6, 1920, no.6. Advice written by the Advisor of Native Affairs Hazeu. Batavia, 21 September 1917. "…een beeld dat behoort tot een tijdperk, waaraan wij bezig zijn ons te ontworstelen, waarvan wij ons gedeeltelijk reeds hebben vrij gemaakt."

administrative officials were mostly in favour of the punishment, the Council of the Indies still advised otherwise. Carpentier Alting had prepared an alternative system of admonishments, but the council wanted to leave this open.[33]

Another new aspect of colonial policy in the early twentieth century was the increasing interest by Dutch Parliament in colonial affairs, which reflected the changing political climate in the Netherlands generally. Around 1900, the Ethical Policy was announced as the new Dutch approach to 'develop' and 'educate' the local population under Dutch rule. We have seen how during the 1860s various reforms to the colonial legal system were introduced. The first two decades of the twentieth century were a similar period of reform, although the tone now was fiercer and more public, and included Indonesian voices that had hardly been heard before in colonial discussions. By 1918, there was a strong conservative backlash to these voices for reform. A number of planned reforms were not put through, such as for example the abolition of the death penalty or reversed such as the unified criminal procedural law. Also, the exorbitant rights continued to exist. In 1930, Indonesian nationalist and future President Sukarno, was arrested and put on trial. However, after a passionate plea by Sukarno in front of the landraad, a speech that intensified nationalist fervour, he was given political exile and banned according to the governor general's exorbitant rights.

Until 1918, however, the Ethical Policy inspired some reforms that would (partly) last. For the first time, for example, there were extensive investigations into the workings of police and justice on a regional level, as part of an initiative published as the Diminishing Welfare Research reports between 1906 and 1910. Police and justice was one of the topics about which questions were sent to the residencies. Such inquiries had circulated during the nineteenth century, but then answers were expected only from the resident. Now, however, responses came from regional committees consisting of the regent and lesser Javanese officials including jaksas. The Diminishing Welfare Research (*Mindere Welvaartonderzoek*) initiative

[33] NL-HaNA, 2.10.36.04 MvK 1901-1953, Vb. May 6, 1920, no.6. Advice written by the Council of the Indies. Batavia, October 26, 1917.

confirmed the issues and problems discussed in previous chapters.[34] In 1914, the notorious police magistracy was abolished, replaced by a court presided over by a judge, the *landgerecht* (district court).

In 1908, the Law School for Indonesians was established, as discussed in chapter 7. The Law School, was on advice of a committee established after a request of Achmad Djajadiningrat, whose brother Husein Djajadiningrat wished to study law but knew that until then no non-European ever had been allowed to work for either the Civil Administration nor the Judicial Administration. The committee consisted of the advisor of Native and Arabic affairs Christiaan Snouck Hurgronje, attorney-general B.H.P. van der Zwaan and the secretary of the Department for Education and Religion M.S. Koster. The idea to establish a law school for non-European students met severe opposition from prominent jurists such as former Supreme Court president W.A.P.F.L. Winckel but also from I.A. Nederburgh, member of the Supreme Court, and lecturer at the OSVIA of Probolingo W.F. Haase who stated in a newspaper article that Indonesians were lacking the integrity a judge needed. Yet, the counter argument of Snouck Hurgonje that integrity was the result of upbringing and education, and not of race (*volksaard*), convinced the Minister of Colonial Affairs A.W.F. Idenburg. Referring to the success of Surinam lawyers and of Indian judges in British India, he also convinced the Senate in The Hague. In 1924 a Law College (*rechtshogeschool*) was opened in Batavia, making an academic education—including admission to the Bar—possible for Indonesians.[35] That same year, the first Indonesian landraad president Moehamad Hamid was appointed.[36]

The new requirement for educated officials changed the old landraad relations and balance of power. The Indo-European registrars—often only with a *klein-ambtenaarsexamen* (small official exam)—felt threatened by the arrival of Dutch and Indonesian jurists. Others, however, got more chances when certain legal ranks opened for Indonesians. The clerks—commoners

[34] Welvaartcommissie, "Onderzoek naar de oorzaken van de mindere welvaart der inlandsche bevolking op Java en Madoera."; Steinmetz, *Overzicht van de uitkomsten der gewestelijke onderzoekingen naar 't recht en de politie.*

[35] Massier, *Van recht naar hukum*, 67-72.

[36] Lev, "Colonial Law and the Genesis of the Indonesian State," 68. The percentage of local and Chinese advocates increased from 3.07 percent in 1925 to 37,10 percent in 1942.; Massier, *Van recht naar hukum*, 78, 105 (footnote 238). Moehamad Hamid (*rechtsschool*, no admission to the Bar) was appointed as president of the landraad in Kraksaän. From 1920 onwards he had been the adjunct landraad president at the landraden of Batavia and Tangerang.

without training at the OSVIA—previously had had no chance of pursuing a career. However, with the establishment of the *landgerecht* as the replacement of the police magistrate in 1914, many registrars were suddenly needed. De Loos-Haaxman described how one of the clerks of the landraad of Tulungagung then had the chance to become registrar. The Supreme Court assessed a number of his procès-verbaux and decided that they were of the required quality: "We were sitting on the grass in front of the house, drinking tea, when Saleh arrived speechless with gratitude and offering us an antique copper kettle. ... Within a year he owned his own house, his first financial certainty for the future."[37]

The solidly established position of the Dutch landraad president would start to be questioned after the advent of the *pokrol bambu*, the efforts of the Sarekat Islam, and Indonesian jurists. Or at least, this is how one experienced this, as landraad President Oostwoud Wijdenes noticed when he became the assistant president to the Indonesian landraad president Soenario during the 1920s: "And even though he was not lesser as a jurist or as a human being, compared to his predecessor, and had done ... his entire training in Leiden, still 'one' thought it to be—even openly in the Surabaya press, if I remember correctly—'too strange,' that I, as a Dutchman, had become the subordinate of a Javanese."[38]

A change is also evident from the extensive dossier of the so-called Karanggasem case of 1914, in which a leader of the Sarekat Islam and Gonggrijp (resident of Rembang, pseudonym Opheffer) accused the landraad President Milius of abusing witnesses. It was a court case in which Sarekat Islam members were accused of having attacked priyayi. A resident accusing a landraad president of illegal behaviour was a remarkable situation. Van Deventer asked questions about the case in Dutch Parliament and further

[37] De Loos-Haaxman, *Dagwerk in Indië*, 23-24. *"Wij zaten op het grasveld voor het huis thee te drinken, toen Saleh sprakeloos van erkentelijkheid een antieke koperen ketel bracht… binnen een jaar had hij een eigen huis, de eerste zekerheid voor de toekomst."*

[38] UL, H 922, Oostwoud Wijdenes, "Op en om de weegschaal," 3. *"En al was hij noch als jurist, noch als mens de mindere van zijn voorganger, terwijl hij (..) zijn hele studie in Leiden had genoten, toch vond "men"—ik meen zelfs openlijk in de Soerabaia-pers—'te gek," dat ik, als Hollander, van een Javaan de ondergeschikte was geworden."*

investigations commenced, but the incident eventually fizzled out without any consequences.[39]

Although with some positive effects, the Ethical Policy was a rather broad and general aim that was only supported by all political parties due to its ambivalent character. In practice, the contradictions between colonial policies remained to exist, as the debate on adat versus unification shows. The Ethical Policy was based on the idea of the development of the local population according to Western model, and therefore, as historian Elsbeth Locher-Scholten has argued, represented both the opposing adat and unification ideologies. The Ethical Policy: "….encapsulated the tension between adat studies (originating in the idea of development) and the unification of law (Western model)."[40]

It is also important to realize that reforms that fit the aims of ethical policy did not necessarily lead to a more independent legal system, either. Nor were they any less paternalistic. Adat law actually had the potential of being simply reactionary. Therefore, Conrad Theodor van Deventer pleaded in parliament in 1906 for a unification of laws because, he felt, applying local laws had led to significant uncertainty: "The judge who can speak about adat subjects can ultimately decide whatever is in his interest, and if such a judge is *le bon juge* or King Salomo in person, one can easily say that the fate of the suspects is not always safe."[41] At the same time, Van Deventer argued that the dual legal system nonetheless had to remain intact, in order to make it possible that Indonesians would be adjudicated by Indonesian judges. He did not think it realistic for Europeans to be tried by Indonesian judges, in particular in criminal cases: "If one wants to come to the unification of the judiciary, then there can be no other solution than bringing European litigants to the native courts as well. If one does not dare face this

[39] NL-HaNA, 2.02.22 Tweede Kamer der Staten-Generaal, no.938. "Stukken betreffende het onderzoek naar de houding van de Landraadvoorzitter Mr. J.G. Milius bij de behandeling van de zogenaamde Karangasem-zaak voor de Landraad te Toeban, 1913-1915."

[40] Locher-Scholten, *Ethiek in fragmenten*, 202.

[41] "Handelingen Tweede Kamer", October 10, 1906, 35. Accessed through www.statengeneraaldigitaal.nl C.T. van Deventer: *"De rechter, die over adat-onderwerpen heeft echt te spreken, kan per slot van rekening uitmaken, wat hem goeddunkt en tenware zulk een rechter le bon juge of Koining Salomo in eigen persoon is, kan men gerust zeggen dat de toestand voor de justitiabelen niet altijd zonder gevaar is."*

consequence—and I would not recommend this at this moment—then the dual judiciary has to be maintained."[42]

Addressing parliament in 1906, Henri van Kol of the SDAP (Social Democratic Workers' Party) cited the ill-functioning system of legal evidence at the landraden as one of the reasons why he was a proponent of the application of adat law. According to him, the introduction of European laws and the method of presenting legal evidence had led to a situation in which "our justice system regarding criminal law is despised by the Native."[43] He even doubted the separation of the powers: "It may sound somewhat reactionary to some dogmatists," he said, "but in the still primitive circumstances in the Indies, one needs less witness proof and more moral certainty of a superior judge. Although I do not have a fixed opinion on this subject, I even believe, that in the outer regions the far-reaching separation of the judicial and administrative powers deserves less appraisal than most might think." Van Kol argued that adat courts—he gave the example of Bali—could certainly work well. He argued Van Deventer to be wrong on this, noting that "this speaks of an unfamiliarity with adat, something not rare among jurists."[44]

In fact, both Van Kol and Van Deventer were making valid arguments. Deventer was correct that the possibility of applying adat alongside colonial laws could lead to arbitrariness because (European) judges could shop in different legal traditions and pick the one that suited him best in a given case. Van Kol, however, was correct in that most European jurists looked down on adat from a sense of superiority about

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[42] "Handelingen Tweede Kamer", October 10, 1906, 34. Accessed through www.statengeneraaldigitaal.nl C.T. van Deventer: *"Wil men dan komen tot unificatie van den magistratuur, dan kan er geen andere oplossing zijn, dan dat men Europeesche justitiabelen ook brengt voor inlandsche rechtbanken. Durft men deze consequentie niet aan—en ik zou haar vooralsnog niet durven aanbevelen, dan moet de dubbele magistratuur behouden blijven."*

[43] "Handelingen Tweede Kamer", October 10, 1906, 40. Accessed through www.statengeneraaldigitaal.nl Henri van Kol: *"Onze rechtspraak op het gebied van het strafrecht door den inlander wordt geminacht."*

[44] "Handelingen Tweede Kamer", October 10, 1906, 40-41. Accessed through www.statengeneraaldigitaal.nl Henri van Kol: *"Het klinkt misschien wat reactionair in de ooren van sommige dogmatici, maar bij de nog primitieve toestanden in Indië heeft men minder getuigenbewijs nodig dan wel de moreele zekerheid van een hoogstaanden rechter. Ofschoon ik op dit gebied geen vaste opinie heb, geloof ik zelfs, dat, althans in de Buitenbezittingen, de doorgedreven scheiding van rechterlijke macht en administratieve macht minder toejuiching verdient dan de meesten wel meenen." (...)"Hieruit spreekt onbekendheid met de adat, die niet zeldzaam is onder juristen."*

Western law and did not have enough knowledge about how adat worked, and that adat courts in general did not necessarily executed inferior justice. However, reality in Java did not meet this last ideal, because the landraden were no longer set up as adat courts. The actors in the landraad had changed, and their responsibilities and interests had been altered by the colonial government's interventions. The disruptions to the Javanese legal systems mean that, as Van Deventer had noted, adat law had become a means for European judges to go their own way and circumvent written laws.

Thus, the interest in adat law caused landraad presidents possibly to administer justice by "circumventing the laws" under the guise of accommodating differences in civilization, race, and culture. In articles and memoirs produced by landraad judges, a paternalistic writing style is apparent, filled with anecdotes belittling the local population in an almost comical way, even when their stories dealt with criminal cases and matters of life and death. Publications from this period are also characterized by a strong conviction that one simply had to adjust to the "Eastern" world and that they—as judges—had the freedom to do this. It is a very stark difference from the tone of the liberal jurists of the second half of the nineteenth century, although paternalism was also evident then.

A telling example are the memoirs of landraad Judge C. W. Wormser, written in 1941: "If the relation between the administration and the judicial power is as it should be, then both will cooperate, support each other, and share advice." Wormser gives the example of *tebusan* (ransom) cases in which a cow was stolen, and the owner only received back the stolen cow if he paid ransom to the thieves. Wormser and the district administrator decided to use police magistracy to penalize a village for failing to prevent the theft. Therefore, villagers slept on top of their cows and the number of *tebusan* cases quickly decreased:

> The method worked remarkably well. All the villagers were sitting by their buffalo at night, and it even happened once that an owner had fallen asleep and woke up two *paal* [i.e., three kilometres] away from his house, after his buffalo had been stolen with him on top. Buffalo thefts decreased by fifty percent within one week. The villagers were armed with *patjols* (pickaxes) and sabres, and when one of them

> caught two thieves creeping up the front porch, he approached them immediately and wounded both of them quite seriously. The jaksa prosecuted both notorious thieves for attempt of theft, but *toetoepte* (closed) the wounding case; he did not prosecute the villager.[45]

Wormser openly described in his memoirs how he sometimes did not stick to the legal regulations because he thought that he should adapt to the Eastern situation and "the Oriental," and because he wanted to protect the villagers, or because he was determined to get a certain culprit convicted. On the one hand, he tried to carry out the principles of Western law. He wrote how during one important case, the regent attended the court session to be seated as a landraad member: "There was indeed a very unscrupulous villager who was on trial for *rampok* [robbery]*."* In that instance, the Javanese members and the jaksa were very keen on getting the suspect convicted. However, Wormser did not see any legal evidence and did not want to agree with the regent and wedono who wanted to impose a heavy punishment. He eventually convinced the Javanese members that acquittal was the appropriate verdict: "I was relieved that the *desa* thug became so overconfident after the acquittal that we could firmly catch him half a year later after all."[46]

On the other hand, the memoirs are full of anecdotes lead one to seriously doubt Wormser's judicial independence. He describes, for

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[45] Wormser, *Drie en dertig jaren op Java. Deel 1: In de rechterlijke macht,* 37. *"Indien de verhouding tusschen bestuur en rechterlijken macht is zooals zij wezen moet, zullen beide samenwerken, elkaar steunen en elkaar van advies dienen." (...) "Het middel werkte wonderbaarlijk snel en goed. Alle desalieden zaten 's nachts boven op hun karbouw, en het is zelfs een keer voorgekomen, dat een ingeslapen eigenaar wakker werd op twee paal afstand van zijn woning, nadat hij met zijn karbouw was meegestolen en er onderweg was afgevallen. De karbouw-diefstallen verminderden binnen een week met vijftig procent. De desalieden hadden zich gewapend met patjols (houweelen) en sabels, en toen een bewaker twee karbouwen-dieven zijn erf zag opsluipen, ging hij, gedachtig aan de waarheid dat de eerste klap één daalder waard is, onvervaard op hen af, en verwondde beiden vrij ernstig. De jaksa vervolgde de twee beruchte dieven wegens poging tot diefstal, maar "toetoepte" de verwondingszaak, hij vervolgde den desaman niet."*

[46] Wormser, *Drie en dertig jaren op Java. Deel 1: In de rechterlijke macht,* 36. *"Er stond inderdaad een zeer lastige desaman terecht voor "rampok."" "Het deed mij goed, dat de desaboef door dit vrijsprekend vonnis zoo brutaal was geworden, dat wij hem een half jaar later stevig in zijn kraag konden pakken."*

example, without hesitation how he acquitted the murderers of "desa thug Mas Boesoek." A number of *desa* chiefs had decided to kill this criminal, because he caused too much trouble. During his interrogation of the suspects, Wormser deliberately suggested that they might have acted in self-defence. The chiefs took the hint and confirmed this. They were acquitted. Wormser decided in this case that to not strictly follow the colonial legislation and adjudicate justice in a society where, according to adat, it was important that villages be kept safe by their village chiefs and an *omo* (translated by Wormser as "dangerous creature') had to be "destroyed."[47] The memoirs of Wormser present a somewhat exaggerated version of reality, since he vividly described only his most enervating court cases and reality was most likely less enthralling.

Oostwoud Wijdenes' memoir—written around 1972 and looking back on his career as landraad judge from 1924 until 1942—emphasizes the importance of the landraad judge' thorough interrogations during the court session in order to detect false statements made during the jaksa's earlier interrogations. He described how suspects were hit and kicked; in one case a European policeman had held a suspect under water during an interrogation, after which the suspect confessed, even though he was innocent. An assistant wedono present as a landraad member solved the same case—proven with two cut-off cows' tongues presented as evidence—through clever interrogation during the court session. It turned out that the owner of the cows had maimed them himself so he could slaughter them for his daughter's wedding without a license. Therefore, Oostwoud Wijdenes emphasized the necessity of cooperating with the Javanese court members.[48]

It was certain that the Javanese members were still voting court members who had to be approached diplomatically. Oostwoud Wijdenes remembered how the deliberations behind closed doors proceeded during a theft case:

> Then the "courtroom" is being emptied by the guard who uses many "Hush! Hushes!" The judicial part of the landraad, and the clerk, remain seated as if "entering the deliberation room." Although the

[47] Wormser, *Drie en dertig jaren op Java. Deel 1: In de rechterlijke macht,* 61.
[48] UL, H 922, Oostwoud Wijdenes, "In en om de Rechtszaal," 162–173.

> deliberations are strictly secret, behind each bamboo wall one can overhear the discussions. ... The eldest member of the landraad gives his (fully judicially valid) layman's vote and declares Pa Asoep guilty, accompanied by a few—possibly for Orientals—pressing grounds for evidence: One, the suspect had an unfavourable appearance. Two, the suspect had been married to the person robbed. ... The youngest voting member brought up a somewhat unusual mitigating circumstance: the suspect had been a good customer of his textile shop(!). The eldest members agreed on the jaksa's recommendation of eight months, whereas the youngest members were of the opinion that four months was enough.[49]

Subsequently, Oostwoud Wijdenes had to vote himself and had to adjust to the members in order to get a conviction. He had some doubts about the suspect's guilt, but six witnesses declared against the suspect under oath: "And no single case was ever possible to be completely *terang* (clear), due to the limited time and possibilities for investigations."[50] According to the law, a punishment was allowed of between one day and nine years of imprisonment. Then commenced, as Oostwoud Wijdenes calls it, the "game with the scales of Lady Justice":

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[49] UL, H 1206, Oostwoud Wijdenes, "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 22. *"Hierna wordt de "zaal" met vele "hush!husch!s" door de oppas ontruimd en blijft het*
rechterlijk gedeelte van de Landraad met de griffier zitten, "gaande in de raadkamer." Wel is de raadkamer diep geheim, maar elk oor achter de nabije zijwand-van-bamboe kan de beraadslaging opvangen. ... Het oudse lid van de Landraad staaft zijn (volledige rechtsgeldige lekestem) vóór eenschuldig-verklaring van Pa Asoep met een paar—voor Oosterlingen mogelijk—klemmende bewijsgronden: 1. Beklaagde heeft een ongunstig uiterlijk. 2. Beklaagde is met de bestolene getrouwd geweest, (dus bekend met haar bezittingen? Of is de diefstal een logisch gevolg van de echtscheiding? Dat vemeldt het Lid niet). De jongste stemmer brengt een wat ongewone verzachtende omstandigheid te berde: beklaagde is steeds een goede klant van "s lids textielzaak geweest (!)" Het oudste lid sloot zich aan bij de eis van de Djaksa van acht maanden, terwijl het jongste lid vier maanden genoeg vond."

[50] UL, H 1206, Oostwoud Wijdenes, "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 22. *"Helemaal terang (zonneklaar) was trouwens bij de beperkte tijd en mogelijkheid van onderzoek geen enkele zaak ooit te krijgen*."

> The door to imprisonment on the one scale has to weigh as heavily (preferably not as lightly) as the small pile of puzzling factors, such as denial of guilt, age, social position, antecedents, value of the loot, an article of general and special prevention, a scoop of revenge, a doses improvement aim, and finally some tradition…. plus all other arguments that had come up. The result of this landraad-penalty-lottery was six months of imprisonment for Pa Asoep.[51]

Despite the romanticized stories, the memoirs show that the landraad judges moved between two worlds. On the one hand, they were proud of their knowledge of Western legal traditions and "civilized" justice. On the other hand, they emphasized that they had to adjust to local circumstances, in which they had to deal with situations that were not comparable to Dutch criminal cases and in which they depended on the cooperation of Javanese officials. The character of the landraad judge was deemed very important, because he had to adjudicate justice as a morally superior father, and had to decide himself whether it was better to let go of Western legal principles in a given case. As Jonkers wrote in 1942, "And even though on certain points the laws are not as perfect as we are, raised in a Western spirit, would wish them to be, then still, with the right insight, using the limited means available, the judge will be able to bring justice. In an Oriental society, this insight of the judge matters more than exorbitant Western formalism."[52] He thought it the duty of the judge to discover intrigues and to not be misled by

[51] UL, H 1206, Collectie M.J.A. Oostwoud Wijdenes, "Belevenissen van een rechter in voormalig Nederlands-Oost-Indië," 22. *"de deur van een gevangenisstraf of de ene schaal moet even 'zwaar' gaan wegen (liefst nooit even 'licht') als een bij mekaar gepuzzeld stapeltje factoren, bijvoorbeeld: ontkentenis van schuld, leeftijd van de beklaagde, maatschappelijke positie, antecedenten, waarde van het gestolene, een partikeltje algemene en speciale preventie, een schepje vergelding, een dosis verbeteringsoogmerk en dan nog een beetje traditie en ongeschreven tarief plus wat het moment nog aan andere argumenten oplevert. Als resultaat komt dan voor Pa Asoep uit de Landraads-strafmaat-tombola rollen: zes maanden gevangenisstraf."*

[52] Jonkers, *Vrouwe Justitia in de Tropen*, 73. *"En al zijn dan op bepaalde punten de wetten onder den invloed van begrensde mogelijkheden niet zoo volmaakt als wij, opgegroeid in Westerschen geest, wel zouden willen, dan nog zal de werker (gebruikt hij dit woord echt? rechter?) met het juiste inzicht, al zijn middelen, welke hem ten dienste staan, beperkt, in staat zijn gerechtigheid te brengen. Op dit laatste komt het in de Oostersche samenleving meer aan dan op overdreven Westersch formalisme."*

false witness statements. He mentions that Javanese officials mainly sought to solve cases without caring for the actual truth, out of a "desire for status and promotion." Yet, he still thought the priyayi administration to be irreplaceable, because of their "many branches reaching deep into the *desa*," making them well-informed.

The power of the landraad judge was extensive, the punishments were still heavy, the legal position of the local population uncertain, and there were few legal guarantees. Oostwoud Wijdenes himself only realized years later how heavy the punishments he had imposed actually were, when he was imprisoned himself during World War II. The prisoner-of-war camp in Cilatap where he was imprisoned was situated across the island of Nusa Kembangan, to which were sent colonial-era convicts who had been sentenced to up to twenty years in prison. It was only when he ran into a group of Indonesian prisoners—while marching with his fellow prisoners of war—and they greeted them "sneeringly as colleagues" (he even thought he recognised one of them), that he fully realised the heavy punishments to which he had condemned people:

> Many times I had announced a prison sentence of twenty years, especially at the start of my career. ... How young and stupid I had been back then towards the field of crime! How careless had I been when imposing punishments. ... My God! How insanely long twenty years was now came to my understanding! ... How long had the eleven months being deprived of freedom in the camp felt already! (And how endlessly long would be the 3,5 years behind barbed wire later on).[53]

[53] UL, H 922, Oostwoud Wijdenes, "Op en om de weegschaal," 97-98. "..*honend als collega's." (...*) *"Vele malen had ik 20 jaar gevangenisstraf uitgedeeld vooral in "t begin van mijn loopbaan (...) Hoe jong en dom stond ik toen nog tegenover het gebied van de misdaad! Hoe gemakkelijk en royaal was ik nog met strafopleggingen. (...) Mijn God! Wat werd "20 jaar" een krankzinnig lange straf voor mijn begrip! (...)Hoe lang waren mij de elf máánden van vrijheidsberoving in "t kamp al gevallen! (en hoe eindeloos lang zouden mij later de 3,5 jaar achter prikkeldraad duren)."*

Conclusions

Colonial officials and jurists in the Netherlands Indies found pride in the narrative of the Dutch having brought "enlightened Western justice" to "the East." The facade of the city hall of Batavia was even ornamented with a statue of the blinfolded Lady Justice with her scales. However, according to Christaan Snouck Hurgronje in 1924, the "common Native-Arabic explanation" of the blindfolded lady was not that of justice without partiality or bias, but of "judges often purposely closing their eyes to the truth." Snouck Hurgronje followed this anecdote by offering fierce criticism of the colonial legal system: "…our criminal codes are a fallible human creation, and the judges applying them are fallible humans. This combination has created a practice of criminal procedures and criminal law for natives, to which no-one wants to be subjected. It is even seen as a privilege to be withdrawn from it. Is it a miracle then, that natives speak of racial justice?"[1]

Even though it is unclear who Snouck Hurgronje's local interlocutors were—and the anecdote might even be invented for rhetorical purposes to support his argument—the criticism on an *unequal* legal system stands. Indeed, the separate courts and codes offered ample space for an unequal legal system designed for the enforcement of colonial rule over the local population. Whereas the Councils of Justice that tried Europeans were presided by trained judges, until 1869 the landraad was presided by an (assistant) resident with no legal training and executive powers in the region. Furthermore, the separate criminal law code for the Javanese (and Chinese) population resulted in different punishments for the same crimes. In the case of theft, Europeans faced imprisonment, while Javanese convicts were usually sentenced to several years of forced labour.

[1] Snouck Hurgronje, "Vergeten jubile's", 69. *"Eene gangbare Inlandsche-Arabische verklaring dezer voorstelling, als zou zij beteekenen, dat de rechters vaak de oogen moedwillig sluiten voor de werkelijkheid, heb ik meermalen in gesprekken trachten te vervangen door die er rechtspraak zonder aanzien des persoons." (...)"Intusschen zijn en blijven onze strafwetboeken feilbaar menschenwerk, en de rechters, die ze toepassen, feilbare menschen. De samenwerking van al die feilen heeft de practijk van strafvordering en strafrecht voor Inlanders zoo gemaakt, dat het als en privilege voor hooggeplaatsten onder hen geldt, eraan onttrokken te zijn, en dat niemand onzer zich eraan onderworpen zou willen zien, Is het dan wonder, dat Inlanders wel eens van rassenjustitie spreken?"*

Only in 1918 a unified criminal code was introduced for all the inhabitants. However, even that did not bring much change, since certain punishments, such as the death penalty, were in practice only imposed to non-Europeans. Moreover, the criminal procedural codes still differed, with one procedural code for Europeans and another for non-Europeans. The Native Regulations were simpler, contained fewer guarantees for accused persons and did not provide for a lawyer.

The aim of this dissertation, however, has not only been to point out the stark inequalities of segregated criminal justice in Java. It tried to understand this unequal system in practice, shown by an actor-focused approach and through a framework of legal pluralities. I started from the courtroom and searched for the conflicts occurring around the green table. The pluralistic courts, the only places in Java where all regional power structures met and actively worked together, were courtrooms of many conflicts. The courts were also in interaction, and conflict, with other state institutions, together all furthering the project of colonial state formation. By taking this approach, I have shown how it was not only *inequality*, but also *uncertainty* and *injustice*, that were central to colonial criminal justice imposed on the local population.

Uncertainty: Powerful Pluralities

A long Javanese history of legal pluralities continued, though substantively transformed, with the arrival of the Dutch and the establishment of colonial rule. Beginning during VOC times, pre-colonial judges—the jaksas and penghulus—were incorporated in pluralistic colonial courts as advisors, sharing Javanese customary and Javanese-Islamic legal traditions. Prominent Javanese priyayi were appointed as judges. The pivotal belief was to try the Javanese, and other population groups, according to their own laws, although all this under the supervision of a Dutch court president. The rapidly expanding number of pluralistic courts throughout Java, made colonial rule visible, tangible and practical on a regional level, making them the anchors of colonial rule in the eighteenth and early nineteenth century.

Later in the nineteenth century, however, the pluralistic courts were often mocked, seen as insignificant sites dealing with minor cases and unimportant classes of the Javanese people. The Dutch landraad president was presented as the most knowledgeable in the courtroom,

while the local actors were imagined to be sleeping in their chairs at the green table. The Javanese judges, prosecutor, and advisors were often described as mere puppets, who did not make any decisions on their own and were of not much influence on the verdict. The jaksa was described as the real artist, but he would play the court session exactly as his stage director, the European judge, ordered him to do. In newspaper articles, the other Javanese actors were often not even mentioned, as in the 'mail coach murder case' described at the beginning of this dissertation. Memoirs of colonial judges also caricatured them as indifferent and superfluous: a wedono who fell asleep during interrogations, the penghulu who always advised cutting off criminals' hands. Landraad court sessions seem to have been completely organized and rehearsed; nothing new or unexpected was supposed to happen during a court session.

The colonial caricatures of the local officials were neither factual nor justified, but even caricatures tell us something. It points at an actual decrease in the legal pluralities actively applied, causing a marginalised role for local actors. Especially with regard to the application of Javanese-Islamic laws, soon in the nineteenth century these laws were not applied anymore. Dutch jurists and scholars, in particular the Supreme Court driven by a codification fever and a strong belief in the superiority of Western law, overlooked old Javanese traditions of Islamic and customary laws. Even if attempts were made to take the laws of Java seriously, the question asked was what *the* Javanese' "own" customs and laws *were*. This was not only an erroneous question to ask about such a diverse legal landscape, it also proved a tricky endeavour to undertake. Over time, a different group of informants on Javanese laws were consulted, which caused a shift in perceptions about the assumed origins of Javanese legal traditions. The (negative) ideas and expectations of the Dutch regarding Islam and the knowledge of Islamic law among the Javanese were also decisive for this process of law-making. The advice by the penghulus on Javanese-Islamic laws was ignored from the start, and criminal law in particular became increasingly Dutch. The jaksas experienced a similar marginalisation. Their advisory role was taken away from them altogether, and their responsibilities as prosecutor were diminished over time as well.

A sense of superiority, racial prejudices, and suspicion about Islam, led to ignorance and distrust regarding local actors. By

marginalising the penghulus and jaksas and underestimating the knowledge and expertise of the court members, the Dutch administrators might have undermined the power of the pluralistic courts. It is hard to prove whether the Javanese population regarded the pluralistic courts as less powerful or legitimate, because Islamic laws were not followed and the penghulu was ignored. It certainly led to less knowledge on the side of the Dutch though, by not acknowledging the potential of the local knowledge and powerholders present in the courtroom. That the jaksa transformed from an influential prosecutor into a lowly official from the nineteenth into the twentieth century, has most likely not only undermined his power, but also that of the colonial state relying on his network and expertise. It is remarkable that, even though these intermediaries were essential to the information gathering during the investigations in big cases, especially in 'priyayi conspiracy cases', they were generally not treated all too well.

From this decrease in legal pluralities at the landraden and circuit courts, at first sight it seems as if the pluralistic character of the courts, after the first stage of state formation, was not relevant anymore for the legitimization of the colonial state. Why then were the pluralistic courts maintained? I have argued that there are some strong indications that the pluralities in criminal law practice nonetheless led to powerful courts important for the colonial state. First of all, the legitimization of the colonial state continued to be an important project throughout the nineteenth century (and the twentieth century), even when colonial rule was more firmly established. The legal pluralities in the laws applied might have disappeared over time, but the legal pluralities in the form of the local court members and officials continued to exist. All local actors continued to be present in the courtroom, continuously representing local power structures, and by being present in the courtroom—wearing their 'traditional' costumes—legitimizing the colonial state.

Moreover, and this is an important argument to stress, the continued existence of legal pluralities offered the possibility to maintain a level of uncertainty, giving the pluralistic courts considerable amount of freedom to exercise their power in criminal cases. Even though the Javanese-Islamic and customary laws were not taken seriously, until 1872 the Colonial Constitution still stated explicitly to judge population groups according their "own" laws and customs.

However, without the obligation to follow the penghulu's advice and thus providing space to manoeuvre. After the introduction of the Native Criminal Code of 1872, based on Dutch laws, this possibility disappeared, but a certain level of uncertainty still existed because a mixture of cultural, religious and racial arguments was still used as mitigating circumstances. The uncertainties in the legal administration and laws, did not always originate from deliberately creating possibilities of oppression; there were sincere attempts to adjust the criminal law system to local interests of the Javanese people. However, in the long run, the uncertainty created could be used to reinforce rule. Therefore, emerging legal pluralities were pragmatically used to advance the colonial agenda. As I have argued in this dissertation, it was by keeping laws undefined, procedures vague, and networks informal—by institutionalising uncertainty—that space was created to exercise colonial rule. Finally the suggestion that pluralistic courts were relying on the local officials and judges for their advice and votes, offered the possibility for Dutch colonial rule to keep their hands clean. Dutch judges blamed the Javanese court members or officials—instead of themselves or the colonial legal system—for certain verdicts announced if something went wrong. By doing this, the Dutch presented themselves as the representatives of enlightened Western justice, while simultaneously maintaining colonial domination.

At the beginning of this dissertation I defined the term pluralistic courts as courts where (1) several actors fulfilled a role originating from more than one legal tradition and (2) the laws and regulations applied originated in more than one legal tradition. I conclude that, in practice, the various actors were indeed present; but, regarding criminal law, there was not so much legal plurality. Although the procedures show some traces of it, for example regarding the Islamic character of the oath, an application of Javanese-Islamic laws and customs did not ensue. The character of the pluralistic courts, therefore, depended not so much on legislative pluralities as on the internal political dynamics amongst a plurality of court's actors.

Injustice: A Dual State

Pluralistic courts in colonial Java were legal spaces within the segregated dual system in which colonial and Javanese (administrative and legal) elites met, administered justice, and exercised control over the Javanese

population. The pluralistic courts, the landraad in particular, not fitting neatly in the framework of divided dual rule, proved a site where imperial justice was mediated, and where the interests and agendas of regional elites dominated. Dutch officials could assess what was going on in the local society only at a very superficial level, and they were therefore merely dependent on the willingness of the priyayi to share information.

Generally, this was not a problem since the priyayi and Dutch officials often had the same interests. Until 1869, the Dutch (assistant) residents were landraad presidents, and they shared the responsibilities with the priyayi to maintain 'peace and order' in the Javanese cities and countryside. The landraden judged over most crimes—often theft or robbery at the public roads—and held the power to impose harsh punishments such as chain labour. The freedom to manoeuvre offered by the vague laws and procedures was used, but also certain ordinances, to punish vagrancy for example, were designed to meet these administrative ends. The police magistracy was a notorious instrument in this regard, but the partiality of the landraden could also easily lead to injustice.

The priyayi were responsible for police affairs and they were much pressured by Dutch administrators to keep the peace among the Javanese. If this meant that abuse of power by the priyayi happened, or that false evidence in criminal cases was produced, the Dutch residents could accept this and look the other way. In the period of the Java war, and shortly after, the Dutch moreover appointed 'new' priyayi, elevated commoners in rank, in return for loyalty, even if they were clearly guilty of misconduct. Loyalty to the colonial state was deemed more important than a universal notion of proper governance. During the cultivation system, this pact between the priyayi and the Dutch grew even stronger, due to the common (and financial) interests in high results from the cultivation system, and the oppressing of protest against the cultivation services through criminal law and the landraad. Due to this entanglement of administrative and financial interests with judicial powers, the impartiality of law was far away, with injustices as result. Review by the Supreme Court was the only supervision of the procedure, but witnesses could not be interrogated again, nor could the evidence presented in the case file be re-checked.

Dual rule in colonial Java inhabited a tension between trust and distrust. Dutch administrators relied heavily on the priyayi, because they lacked the knowledge and information networks themselves, but this also caused 'zones of ignorance' to come into existence, leading to distrust when the limits to dual rule were reached. As concluded above already, the first zone of ignorance from the Dutch side was related to the contents of local laws, leading to false and negative prejudices about Javanese-Islamic laws, and an eventual overruling of these legal traditions. The second zone of ignorance was related to political information of events occurring in the regions. Both zones led to fear within the colonial government, and in times of crisis this fear caused the panic-stricken colonial government to be confused and to act rashly. Extortion by priyayi clearly shows how this mechanism worked in practice. As long as the priyayi maintained peace and order, and the cultivation system worked, they would not be punished for extortion. Only if the extortion was so severe, or if the priyayi were not asserting their control well enough, that it almost erupted in revolt, then the Dutch would interfere. After a first panicked response, however, regents were usually still protected, or given relatively light measures such as transfer of office or (honourable) retirement.

At first sight, it might seem that the priyayi were also better protected from the unequal legal system through the *privilegium fori*, which gave them access to the European courts. This has to be nuanced though. I do not deny that ideas about class, education, culture, and local circumstances were influential, just as race was, but even though a privilegium fori for the higher Javanese class had been introduced, this privilege mainly served the colonial ruler. Most priyayi would fall out of the privileged position once they were no longer in office. Moreover, in criminal cases, the forum was mainly used by the colonial ruler to be able to efficiently apply the political measure, and by doing this the colonial ruler denied also the highest Javanese class a fair trial. The Council of Justice was avoided in priyayi cases, because this would lead to acquittal in most priyayi cases. This fear of acquittal at the Councils of Justice also proofs the independence and higher quality of the European branch of the legal system. Instead of a fair trial at the Council of Justice, priyayi were banned for an unlimited time through the political measure.

But the persons most vulnerable to the partial colonial law system, were of course the vast majority of the local population, who had no chance at all to extricate themselves from the label of "native". Too much emphasis on the possibilities for individuals to ascend in social rank—breaking through racial boundaries - discounts the strict segregation between Europeans and most Javanese in an unequal world legitimized by a segregated legal system.

Rhetoric and Reality

The intertwined dual rule and criminal justice was not undisputed, but colonial administrators generally put off or rejected certain reforms under the guise of the supposed 'lower stage of civilisation' of the Javanese people. The introduction of independent judges as presidents of the landraad, in particular, was expected to make the colonial state too vulnerable in court cases. Liberal jurists strongly advocated this reform though, arguing that the rule of law belonged in Java. Although the fear of losing colonial control was often stronger than the liberating mission, trained jurists were introduced as presidents of the landraad, from 1869 onwards. After their arrival to the pluralistic courtroom the jurists professionalised landraad sessions, and an increase in acquittals shows an improvement in the assesment of legal evidence by the landraden. The jurists also advocated reforms regarding the length and procedures of pre-trial detention. However, most of the abovementioned issues of inequality, uncertainty and injustice would not be solved, and not only because the jurists were not allowed to, but often also because they were not willing to advocate certain reforms, being convinced that solving these problems was impossible in the colonial context.

First of all, even though the judicial landraad presidents confirmed the importance of the jaksa for preliminary investigations, they were dissatisfied by their written indictments. Instead of advocating better training for jaksas, they gradually took over writing the indictment, and became prosecutor and judge in one, thereby furthering the partiality of law, in contrast to their rule of law ideals and earlier so determint crusade for impartial landraad judges. With the introduction of more liberal or "enlightened" measures in the colonial legal system, the distrust vis-à-vis Javanese officials within the legal system seems to have increased. They were seen as unqualified to participate in a modern legal

system. Ironically, western education for Javanese officials was not introduced until the early twentieth century. The jaksas were for a long time not legally trained in the Western tradition because this was considered dangerous, as it would be threatening to colonial rule to give them too much information. The transfer of several of the jaksas' responsibilities to the landraad judge led to the establishment of a rule of lawyers in the courtroom, rather than of a rule of law, at the end of the nineteenth century. In order to strengthen their own position, the Dutch jurists undermined the separation of powers for which they themselves had fought in the 1860s.

In a similar vein, the Dutch jurists also did not invest in striving for educating local attorneys, leaving local suspects deprived of any legal defence. The unofficial *pokrol-bambu* were not taken seriously and even deemed to be dangerous for the local population in the eyes of Dutch jurists and officials alike. The jurists would also not fight for furthering the impartiality of the pluralistic courts, by generally not observing independent *local* court members a necessity. Although after 1869, the landraad president was an independent judicial official, the Javanese priyayi court members—still with the right to vote over the verdict—were still local priyayi with police responsibilities, political interest and a considerable influence in the region.

Regarding the nineteenth century, I conclude that Javanese members and the resident, and later the landraad judge—all found their own space to manoeuvre in the landraad. This dissertation showed how priyayi and colonial administrative officials used the pluralistic courts in order to maintain their rule. With the arrival of judicial landraad presidents, also these jurists found space to act—if they deemed this necessary—in a contingent and open-ended manner. Therefore, administrative colonial officials were not the only ones who deemed the rule of law impossible for Java. Colonial jurists established a rule of lawyers, and they were partly responsible for maintaining colonial legal practices modelled according to the supposed 'uncivilized nature' of the Javanese. Jurists in the Dutch East Indies were often the most strident critics of those features of the colonial state that violated the ideal of the rule of law, but they also gave legal ground to the politics of difference.

Understanding Courtrooms

Javanese men and women entering the pluralistic courtroom, as suspects or witnesses, were confronted with a green table at which men of power in regalia were seated on chairs. While sitting on the ground themselves, their chains released during the court session, the suspect looked up at the court judges, the colonial law books on the table, the writing registrar, the Quran in the hands of the penghulu, a portrait of a Dutch majesty on the wall, and could only wait for the decision over his or her fate. In order to understand, and to do justice to, the histories of the local people subjugated to the pluralistic colonial courts, the conflicts between all these actors and objects are important, because these conflicts were decisive for how they were tried and what punishment they would get—for how their lives would continue after the trial.

The regional colonial courtroom in Java can be regarded as a site where court proceedings were performed as if they were a theatre play, a farce, but also as a place of force where—behind closed doors—imperial justice was mediated. At the same time, it was an arena in which the power of the colonial state was gradually consolidated over the course of the nineteenth century. The pluralistic courts—based on early-modern legal pluralistic practices—existed until the end of the colonial era in 1942, despite many modern reforms in the legal system. The answer to the question why pluralistic colonial courts were maintained has much to do with the channelling of influences within dual rule. The explanation points towards the power of information as a crucial factor in the practice of maintaining law and order in the colonial state. Javanese intermediaries like the jaksas, and local informants such as the penghulu, but also the regent, were distrusted and therefore their influence and status declined over time. Yet, the pluralistic courts would continue to exist because they were the only way in which a relatively effective execution of criminal law was possible within the dual rule structure of Java.

Pluralistic courts fitted within many, seemingly incompatible, Western ideologies floating around in nineteenth-century Java, adjusting to the colonial context. At the start of the century, jurists from the conservative *and* the more liberal stream advocated the incorporation of local legal traditions in criminal justice "for as long as necessary" until the Javanese would be "enlightened enough" for Western laws. At the end of the century, conservatives still vividly advocated these ideas—although the emphasis had

shifted more to the assumed racial and religious difference of the local population—this time accompanied by advocates of the upcoming ethical ideas about 'discovering' adat law and the importance of customary law. The only ones who at some point had serious doubts about the pluralistic character of the landraden and circuit courts, were the liberal jurists of the 1860s and 1870s. Yet, they also realised in practice that they could not administer justice without the local officials, and even though they successfully removed local laws from the codes, the institutional pluralistic character of the courts continued.

The twentieth-century landraad presidents and their practical execution of the adat school ideas in the courtroom, is only one of the issues still open to be assessed after my research was done. And also for the nineteenth century the conclusions of this dissertation lead to more questions to be asked, more research to be done. An analysis of civil cases administered by the landraden, would reveal more about the penghulus and the application of Javanese-Islamic laws. Moreover, the religious courts (*priesterraden*) deserve to be the subject of archival research, in order to understand the practices of these courts and test the validity of the claims made by nineteenth-century orientalists about these courts and the penghulus. As suggested long ago by Cees Fasseur, a comparative study of the racial stratification in the legal system of the Netherlands Indies and South Africa in the context of *apartheid* would also be an important study.[2] Furthermore, the 'Javanese model' of the legal system was applied at other islands as well, although everywhere in a different way. This led to colonial courtrooms all over the archipelago, where (just as in Java) the independence and certainty of law was seriously damaged, for example—and perhaps worst—at the East coast of Sumatra where plantation administrators were seated in the landraad as court members.[3] I also think of the possibilities of studying more in-depth the continuities of colonial law practices in post-colonial Indonesia. Legal anthropologists have already pointed at continuities in the distinctive position of the Supreme Court in Indonesia—regarding

[2] Fasseur, "Hoeksteen en struikelblok," 218-219. In this article, Fasseur called for a comparative research into the common roots of racial stratification in the Netherlands Indies and *apartheid* in South Africa.

[3] See for example: ANRI AS Bt. March 30, 1893, no.18. Administrator D.E.K. Richelmann of the firm Eekels & Co, appointed as court member at the Landraad of Medan.

review and circulating legal advice to lower courts—and also at the current Islamic codes having their origins in VOC compilations of Javanese-Islamic laws. The current Criminal Code of Indonesia continues to be the Criminal Code as introduced by the Dutch.[4]

Finally, this research travelled through the entire nineteenth century, and many of the themes of this dissertation—state formation, legal pluralism, colonial liberalism, uses of justice, the material culture of courts and legal professionals engage with wider debates in history and allied discplines. The purpose of this dissertation was to explore a less travelled field of study, that of the practices of law in colonial Java, and to better understand how a focus on courtroom interactions gives important insights on these larger themes. Bringing together the work of Lauren Benton and others on legal pluralism, and scholars such as Chris Bayly on local intermediairies and colonial knowledge, I draw from both these lines of thought in order to craft a new approach to research the interaction between state and society in colonial Java. I argue that the local context of colonial spaces, and their actors as a focal point is crucial in understanding the process of colonial state formation.

I used the lens of the pluralistic courtroom, to identify the conflicts of the courtroom. Not the conflicts one would expect in a courtroom—those between suspect and victim, between state and suspect—but the jurisdictional and political conflicts between local and colonial laws, between Javanese and Islamic legal traditions, between Supreme Court and regional interests, between conservatives and liberals, between jaksas and penghulus, between residents and jurists, between colonial courts and local attorneys, and between priyayi and Dutch officials. Conflicts that were central to daily criminal practice in colonial Java and central to the formation and maintenance of a multi-layered and complex colonial state based on precariously balanced dual rule.

[4] See for example: Termorshuizen-Arts, "Revisie en Herziening"; Van Huis, *Islamic courts and women's divorce rights in Indonesia.*