Courtrooms of conflict. Criminal law, local elites and legal pluralities in colonial Java
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Citation
Ravensbergen, S. (2018, February 27). *Courtrooms of conflict. Criminal law, local elites and legal pluralities in colonial Java*. Retrieved from https://hdl.handle.net/1887/61039

Version:	Not Applicable (or Unknown)
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Note: To cite this publication please use the final published version (if applicable).

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Title: Courtrooms of conflict. Criminal law, local elites and legal pluralities in colonial Java
Issue Date: 2018-02-27

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 It is even seen as a privilege to be withdrawn from it.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.

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[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

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[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.*