

SUBJECTS, LAWMAKING AND LAND RIGHTS:
AGRARIAN REGIME AND STATE FORMATION IN LATE-COLONIAL
NETHERLANDS EAST INDIES

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by
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In this dissertation I interrogate colonial state formation in the Netherlands East Indies between 1870 and 1939, using the lens of land appropriation sanctioned by colonial laws. Drawing on archival sources from the Netherlands and Indonesia, I dissect the constitution of the colonial agrarian regime as a distinctive project of state-making in which the colonizer and the colonized actively participated. My key objective is to foreground the role of the colonized subjects and the autonomy of their enunciations and strategies in the everyday making of “the state,” a contrast with many accounts of state-making in the Netherlands East Indies.

I argue that the constitution of the colonial agrarian regime involved not only lawmaking, but also, and perhaps more importantly, the making of subjects. I also argue that it was human agents having myriad forms of association with state institutions who carried out these practices, such that they blur the boundary between “the state” and “subjects.” Drawing on Abrams and Foucault, I focus on a number of critical subject—Native intellectuals, Dutch planters, and Native and Indo-European politicians among others—and their discursive battles to showcase how the complex relations of state formation and practices unfold.

This focus, away from the state as a reified object of study and into the various processes of state-making, offers an understanding of the tensions and convergences

between the colonizers and the colonial subjects. Training the gaze upon colonial subjects renders visible a process of colonial state formation that was not consisted of a continuous stream of one-way domination. Rather, colonial state formation emerges as pulsations of power—one moment contracting, the next expanding—and as interplays of power rife with ambivalence and contestations in which a wide spectrum of the colonized subjects played indispensable roles.

BIOGRAPHICAL SKETCH

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For Sidi Yaseen Samara Chitre

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LIST OF ABBREVIATIONS

AMS	Algemene Middelbare School
ANRI	Arsip Nasional Republik Indonesia
BB	Binnenlands Bestuur
CSP	Christelijk Staatkundige Partij
ELS	Europeesche Lagere School
HBS	Hogere Burger School
IEV	Indo-Europeesche Verbond
IPO	Overzicht van de Inlandsche en Maleisch Chineesche Pers (Survey of the Native and Malay-Chinese Pers)
ITR	Indisch Tijdschrift van het Recht
KITLV	Koninklijk Instituut voor Taal-, Land- en Volkenkunde
MULO	Meer Uitgebreid Lager Onderwijs
NHM	Nederlandsche Handel-Maatschappij
OSVIA	Opleiding School Voor Inlandsche Ambtenaren
PI	Perhimpunan Indonesia
PNI	Partai Nasional Indonesia
SI	Sarekat Islam
STOVIA	School tot Opleiding van Inlandsche Artsen
VOC	Vereenigde Oost-Indische Compagnie

INTRODUCTION

At the dawn of the twentieth century, optimism blanketed the Netherlands East Indies. The war in Aceh was largely quelled, and a relatively peaceful atmosphere had made possible prospecting for natural resources in the Outer Islands (Tagliacozzo 2010), the flourishing of inter-island transportation (Campo 2002), the spreading of new technologies that promised modernity (Mrazek 2002), and the booming of agricultural commodities as a result of the agrarian policy introduced in the previous century (Lindblad 2002). The optimistic outlook was amplified by the Dutch pledge to implement Ethical Policy as outlined in Queen Wilhelmina's opening speech of the Dutch Parliament in May 1901.¹

The exhilarating development notwithstanding, the agrarian issues in Java remained a central interest of the colonial administrators. The Agrarian Law of 1870 had transformed the Javanese landscape into agricultural estates that dotted the terrain. To expand agricultural estates further, the government enacted laws to facilitate the renting of land under native usufruct rights with an amended version decreed in 1900. Alongside this ruling, the government issued a 177-page guidebook that explained the regulations in careful detail, complete with samples of contracts for easy reference in Dutch and Malay. The guidebook was an essential roadmap for any enterprising Dutch persons who aspired to establish an agricultural estate in the face of the agrarian legal maze.

¹ C. Th. van Deventer, a Dutch parliament member, wrote in *De Gids* in 1899 reminding the Dutch of their moral and financial obligations to the colony's native population after reaping spectacular profit from the Cultivation System in Java. As a response, in her 1901 annual speech Queen Wilhelmina endorsed the Ethical Policy to improve the welfare of the natives. The policy comprised three areas of activity—immigration, irrigation, and education—to be implemented by the newly installed liberal cabinet of Abraham Kuyper (Fasseur 1992).

Carried by the optimistic spirit of the new century, in a remote area of East Java, a Dutchman began to prospect for land to start his agricultural estate. Bernard Ledebøer (b. 1875) came to the Indies as a young man to work in an agricultural venture made possible by the Agrarian Law of 1870. Having gained experience as an administrator of a rubber plantation in Banjoewangi, East Java, he was ready to build his own estate. By this time, most virgin lands under government control had thinned out, grabbed by early entrants to the area. His best chance was to rent land available under Native usufruct rights directly from the landholders. Armed with the guidebook and facilitated by the Banjoewangi *controleur*, he managed to secure 150 *bouws* (106.4 hectares) of land in 1912, which he planted with coffee. But owning and managing an agricultural estate in East Java was not easy. He had to fend off competitors who were lurking to take over his rent. Fueled by frustration with the allegedly incompetent officials, Ledebøer soon found himself in a passionate, one-sided war of words with the authorities.

Around the same time as Ledebøer's search for land, the government carried out preparatory work to establish the first vocational school for native law clerks, the Training School for Native Jurists (*Opleiding School Voor Indisch Recht*, henceforth the *Rechtsschool*). In 1909 the Batavia Rechtsschool admitted its first pupils, sons of Native elites from all around Java, Madura, and the Outer Islands. The school administrators' ambition was to train native law clerks who embodied "independence, impartiality and integrity," law clerks who had the moral courage to stand up against powerful Native and European officials (Gedenkboek 1929).² The curriculum included Malay, customary law, native forms of contract, and—significantly—laws regarding native land rights, apparently to guarantee continued familiarity with the legal milieu

² I capitalize the word "Native" when it refers to a particular group, but use non-capitalized native when it refers to the population in general. At the end of the introduction, I provide a detailed note on this.

the pupils were prepared for. Many graduates continued their education in the Netherlands. Some became intellectual anchors for various movements in the colony, while others returned to work in the colonial judicial system. Among this latter group were a number of scholars who left an imprint on the colonial agrarian legal discourse.

While people in the colony went about their daily lives, colonial agencies gained ground as authoritative institutions in managing people's lives. They projected as concrete a colonial state that was the legitimate ruler in the Indies through various means: by building a network of railways, by consolidating the territory through postal services, or by establishing a colony-wide judicial system. In the agrarian arena, colonial state formation assumed various expressions, the legislation of legal codes to regulate land and property rights, implementation of agrarian reorganization in Java, and collection of native's tenure regime information, among others. Eventually these ensembles of law and legal practices gained purchase as a superior means to resolve land conflicts to which the colonized population frequently resorted.

The colonial agrarian laws and legal practices quickly entangled the lives and daily reality of peasants and aristocracies, agricultural estate managers and their laborers, Indo-Europeans, Dutch *controleurs*, Residents and Assistant Residents, *bupati*, *wedono*, students of law, and Native politicians and lawyers. These were individuals who made and remade aspects of the colonial agrarian regime through practical and discursive means. They demanded rights, fought depictions of rights sanctioned by law, attempted to change laws and legal codes, and challenged the premises that underlined certain legal arguments. Coming from extremely diverse backgrounds, playing different roles and exercising distinct expressions of agencies in their involvements, these individuals nevertheless shared the same stage in shaping the agrarian regime in small and large ways. They did not always succeed, but their ventures remained as imprints of social actors' autonomy in the complex maze of legal

discourse. Even though each one of them was a subject constituted through relations of power, they were devoid of neither autonomy nor agency in the constitution of the agrarian regime.

About the Dissertation

In my research, I aim to interrogate colonial state formation using the lens of land appropriation legally sanctioned by colonial law in the Dutch East Indies between 1870 and 1939. More specifically, drawing on historical sources and deploying qualitative methods, I dissect the constitution of the agrarian regime as a distinctive colonial project³ of state-making in which the whole spectrum of the colony's population actively participated.

The term *colonial agrarian regime* as used in this work refers to the complex ensemble of laws, legal practices, and specific enterprises such as agrarian reorganization that underpin the rearranging of social relations and property rights in the colony. For the Dutch, the end goal was to achieve two contradictory objectives: to provide land for commercial agriculture and to prevent the native population from losing their use rights.⁴ For the colonial subjects who intervened in this massive project, the end goal was less straightforward, and most likely clashed with that of the official line.

My key objective in this research is to foreground the colonized subjects and the autonomy of their enunciations and strategies in the everyday making of “the

³ I borrow the term “colonial project,” a conceptual framework that reconciles the seemingly incompatible theoretical genealogy of discourse versus praxis, from Nicholas Thomas (1994). This reconciliation enables a “productive analytical tension,” resulting in a more creative reading situated between the abstract “regimes of truth” and the concrete, practical moments of reformulation and contestation in practice (Thomas 1994, 58). By paying close attention to the “colonial project,” Thomas diverts our focus to “a socially transformative endeavor that is localized, politicized and partial, yet also engendered by longer historical developments and ways of narrating them” (1994, 105).

⁴ See Fasseur (1993) for a partial account of how these contradictory objectives—however absurd they sound as a pair—came to materialize.

state,” which I do by privileging micro-history. I argue that the constitution of the colonial agrarian regime involved not only lawmaking, but more importantly subject-making. I also argue that it was human agents—subjects constituted through power relations—having myriad forms of association with state institutions who carried out these two practices, such that framing a boundary between “state” and “subjects” was no longer tenable. Colonial state formation, thus, is not a uniform process administered by a single entity, but a project in which the whole spectrum of colonial subjects and citizens took part.

This dissertation is in conversation with and in contrast to a body of literature about colonial state formation that has revolved almost exclusively around macro-processes, which tends to downplay interventions by colonial subjects.⁵ It focuses on individuals who had the capacity to engage the colonial legal discourse. In this dissertation, I address three central questions. First, to untangle how colonized subjects were constituted by power relations, I ask what the pedagogical strategy was in implementing colonial legal education and how it shaped the ways Native scholars made sense of the world. I answer the question by examining the development of legal education in the Dutch East Indies and the ways in which the philosophy underlining the pedagogical strategy shaped Native lawyers in particular ways.

Second, I ask how colonial subjects, native and non-native, negotiated land laws in everyday forms of agency and what it meant to the notion of lawmaking in colonial conditions. This question is concerned less with lawmaking in the strict sense of the term than with how colonial subjects understood, interpreted, and then presented law back to society.

⁵ Counted in this literature are works by Berman and Lonsdale (1992), Young (1994), Day (2003), and Steinmetz (2008), among others.

Last, I ask about the ways in which the reciprocal formation of subject and law inextricably influenced the constitution of colonial agrarian regime. This question infuses five of the six chapters in the dissertation.

This dissertation is built around a series of vignettes that explore specific events at various times, places, and scales. Each vignette aims to illuminate the complex interlacing between subjects and lawmaking in the constitution of the colonial agrarian regime; each vignette employs a specific theoretical approach inspired by the Foucauldian line of inquiry. In their entirety, they offer layered insights into colonial state formation that emerged via discursive and practical struggles over land rights.

The dissertation is divided thematically into three parts, but chapters are laid out in chronological order to demonstrate the interconnection of events as they move forward in time. The first theme, explored in chapter 1 and chapter 3, is concerned with subject formation. Colonial subjects were products of power relations; they were shaped by particular discursive and sociocultural conditions at a given historical location such that their subjectivity, their being-and-knowing in the world, was bounded by the existing universe of reference. However, being embedded in and constituted by power relations does not negate their capacity for critical deliberation and intervention. The subjects manifested these capacities in acts of taking up existing relations of power and subjection in a transformative way.

The next theme, dealt in chapter 2 and 5, probes lawmaking regarding land and property rights. Lawmaking in a colonial setting involved a more intricate process than the imposition of colonial masters: subjects and citizens engaged with law at various levels of contact, from directly challenging a rule and demanding execution of legal decisions, to questioning a particular reading of a legal code at a highly abstract level. Conceptualizing lawmaking as such pushes the probe beyond the subjects' legal

consciousness into the actual act of taking ownership of and engaging with law in everyday life, both practically and discursively. In turn, this active process of taking ownership of law and practicing it shaped the colonial subjects.

The last theme examines the reciprocal constitution of subjects and lawmaking in the evolution of the colonial agrarian regime, which I present in chapters 4 and 6. Colonial historiography tends to impose a rigid boundary between colonial subjects and colonial law, imposing the idea that the former were mainly a product of the latter through legally sanctioned bio-power. The core of my argument, this last thematic focus helps me to depart from the presumed unidirectional effects of colonial conditions.

Through these six chapters, I demonstrate that the constitution of a colonial agrarian regime involved not only lawmaking, but—equally importantly—subject-making. These two colonial practices were carried out by human agents having a variety of forms of association with state forms and institutions, such that assigning a boundary between “state” and “society” is no longer tenable.

Theoretical Anchor

I build my dissertation on the intersection of various themes of inquiry: state and state formation, coloniality and postcoloniality, law and colonialism, subjectivity and agency, and knowledge production. In building my analytical framework, I draw from the repository of many disciplines. Starting my journey from historical sociology, I benefit from explorations of the above themes in anthropology, history, colonial and postcolonial studies, and feminist and gender studies. With cues from these disciplines, I examine the densely intertwined processes of colonial state formation as materialized in the agrarian regime and the reciprocally formed subjects and law that bring it into practice. In so doing, I expand the analysis of colonial state

formation by privileging the vantage point of the Natives who were engaged in practices not as subalterns, but as members of the bureaucratic elite. By investigating their role in colonial state-making, my research illuminates the obscure space where state-making takes its concrete form through everyday practices exercised not only by Europeans, but, equally importantly, by Native intellectuals. This is by no means an attempt to downplay the role of non-Natives in colonial state-making. In fact, I pay close attention to the intricate web of relations among three groups in the Dutch East Indies—Europeans, Foreign Orientals,⁶ and Natives—and the oft-forgotten orphan of the colonial society, the Indo-Europeans.

Studying the Elusive State

As an object of study in social science, the state has made a steady comeback since the 1970s.⁷ During the same period, the rise of colonial discourse theory, pioneered by Edward Said, has brought forth thriving explorations of colonial and postcolonial predicaments.⁸ These parallel developments heightened interest in rethinking the colonial state using concepts borrowed from, but not limited to, the tropes of the two areas of study, bringing forth new and exciting explorations of colonial state formation.⁹ The rising influence of Michel Foucault that began in the

⁶ Foreign Orientals, from Dutch word *Vreemde Oosterlingen*, refers to Chinese, Arab and other Asian population in the Indies.

⁷ Much has been explored on this topic. For a succinct narrative of the revival of the state as an object of study, see Aronowitz and Bratsis (2002) and Aretxaga (2003). On the gradual dismantling of state power and the remarkable resilience of state forms, see Harvey (2005) and Jessop (2002), and the transformed role and functions of state forms in Aretxaga (2003) and Kapferer (2005).

⁸ Among the influential works on this topic are those by Cohn (1989), Young (1990), Thomas (1994), and Cooper and Stoler (1997).

⁹ A pioneering work on the colonial state was offered by Cohn and Dirks (1988). For works in historical sociology, see Go (2008) and Steinmetz (2003, 2008).

1980s and intensified in the 1990s added a new strand to the study of the state.¹⁰ Foucault conceives power as a web of relations with multiple forces, a conception that liberates analysis of power from a focus on a fixed, singular, concrete institution.¹¹ Foucault's concept of "technologies of domination" and "technologies of the self," respectively manifested through governmentality and bio-power, invigorated rethinking of the state as a "contradictory ensemble of practices and processes" (Mitchell 1991, 1999). By the last decade of the 20th century, the idea of dispersed power had permeated deep enough into scholarly debates that it became much harder to consider "the state" as a coherent and unitary concentration of power.

Scholars who reject reified states as proposed by grand theories owe their theoretical scaffolding not only to Foucault but also to Philip Abrams, who traces his theoretical genealogy differently from Foucault. In his seminal paper, Abrams (1988) points out that the state is not a reality behind political practices; rather, the state is itself the mask that hides political practices as they actually are. In place of studying the elusive state, Abrams urges examination of the "state system," the institutional structures and practices centered around government, which are interconnected in a complex web of networks and which compete against one another to dominate the exercise of power. The state system is complemented by the "state idea," the ideology about the state, projected in order to lend legitimacy and an aura of unity to the said institutional structures. It is the "state system" and the "state idea" and the

¹⁰ For much of the 1970s and 1980s, study of the state was largely dominated by the perception that the state existed as a concrete entity capable of exerting forms of agency. For detailed discussions on the state as a capitalist instrument, see the famous debate between Poulantzas and Miliband, and added to by Laclau in the *New Left Review* between 1969 and 1977. For a classic neo-Weberian argument on the state as a strictly administrative and bureaucratic system the objective of which was to regulate relationships within civil society, see Evans, Rueschmeyer and Skocpol (1985).

¹¹ Foucault never carried out a focused study of "the state," and writes only one paper that directly touches the subject, titled "Governmentality." To embark upon a Foucauldian study of state power, scholars draw from Foucault's *mélange* of studies, with the most frequently cited being his explorations of the dyad of Power/Knowledge in *The Archeology of Knowledge* and bio-power in *The History of Sexuality*.

relationships that linked the two to other forms of power that should be the subject of investigation.

Although seemingly coming from different traditions, Foucault's and Abrams's views of the state overlap on many fronts. Foucault's oeuvre on governmentality and bio-power has continued to influence a wide array of scholars in thinking about the state, as exemplified in the works of Timothy Mitchell (1991, 1999), Akhil Gupta (2001), and Michel-Rolph Trouillot (2001), to name a few.

Mitchell rejects the perception that the state is a coherent and distinct entity with clearly drawn boundaries vis-à-vis society. He argues that

The state should be addressed as an effect of detailed processes of spatial organization, temporal arrangement, functional specification, and supervision and surveillance, which create the appearance of a world fundamentally divided into state and society. The essence of modern politics is not policies formed on one side of this division being applied to or shaped by the other, but the producing and reproducing of this line of difference. (Mitchell 1991, 95; emphasis added)

Thus, to Mitchell, in studying "the state" the gaze should be cast upon the construction and maintenance of ideology that sustains the distinction between the conceptual and the empirical. In asking how power is produced and in downplaying the concept of the state as an entity, Mitchell underlines Abrams's and Foucault's key message to pay close attention to practices and processes that shape both the appearances of "the state" and the subjectivities of the subject, which create the illusory boundary between state and society, an illusion that Mitchell coins "state effects."¹²

If frameworks inspired by grand theories and the Foucauldian lines of inquiry are too distinct for reconciliation, they are not necessarily incompatible: the tension

¹² For an expanded theorization on state effects, see Trouillot (2001). He identified four effects that create the illusory presence of "a state," effects that are not caused by any fixed institutions: isolation or individualizing effects, identification or totalizing effects, legibility effects, and spatialisation effects (2001, 126).

between them allows a broader perspective in grappling with ambiguities of the state. This in-between-ness in the theoretical realm allows the paradoxes constitutive of the state in the postcolonial world to become discernible. Hansen and Stepputat deftly amalgamate the variety of approaches when they encourage studying,

. . . the state, or discourses of the state, from “the field” [cf Thomas 1994] in the sense of localized ethnographic sites [cf Thomas 1994], whether “inside” or “outside” of the evanescent boundary between society and the state [cf Mitchell 1991, 1999] that usually crumbles when subjected to empirical scrutiny [cf Abrams 1988 (1977)].” (Hansen and Stepputat 2001, 5; quotation marks and information in brackets added)

As an analytical tool for their tenet, Hansen and Stepputat propose analyzing the “language of stateness,” understood as various practical and symbolic techniques of governance and authority deployed to project the state as the ultimate arbiter of justice. Through symbols, texts, iconography, and significations, “the state” materializes itself as concrete and tangible. One expression the language of stateness is symbolic, expressed among other ways in the institutionalization of law and legal discourse. This is a strategic means to assert the presence of the illusory state, because law and legal discourse render the state as having a discursive presence and as the ultimate arbiter of justice.

Theorizing Colonial State

While literature about the state continues to flourish, the colonial state as a conceptual category remains under-theorized. Several studies have attempted to expand an understanding of the colonial state (Steinmetz 2008; Day 2003; Young 1994; Berman and Lonsdale 1992), but remain in transporting conditions particular for the metropole into the colony and extrapolate theorizing colonial state from those conditions. State theories emerging from the metropole are a poor lens for theorizing the colony because conditions that constitute the bases for theorizing in the former

were often absent in the latter: sovereignty, nation, and presence in the international arena as an actor, to mention a few (Young 1994).¹³ Most particularly, the assumed attempt of the state forms to create an appearance of equality and to conjure the appearance of the hyphenated “nation-state” is not applicable in the colony. As civil society blossomed in Europe and the population struggled for citizenship, the colonized population remained as subjects; the colonial state is a state without a nation, and this is the fundamental difference between metropolitan and colonial governance. If metropolitan governance is driven by the “ideological work of manufacturing sameness” and encouraging a sense of horizontal identity, colonial governance, in contrast, was concerned “with the production of difference,” which led to the contradictory project of “doubling” (Comaroff 1998, 329). On the one hand, colonial state forms were occupied with producing “civilized” subjects who could assume a role in capitalist relations of production. They introduced and administered proprietary rights to land, mobilized laborers for factories and plantations, and maintained some form of legal supremacy. On the other hand, colonial state forms were also engrossed in upholding racial inequality, translated for example in the constitution of a racially based agrarian regime.

The absence of nation in a colonial state, however, does not address the question of what is “the colonial state,” how it works, and whether it deserves the definite article. We can, however, start from the fact that colonial state defies essentializing. Practices across colonial societies demonstrate considerable possible permutations with concrete political, material, and cultural forms constantly made and remade along a historical timeline. A colonial state is many things at once,

¹³ Despite a promising beginning, Young’s attempt eventually wobbles. His focus on the comparative perspective seemed to have diverted his focus away from formulating a succinct theorization.

less [a] singular definite article than an indefinite, variably integrated ensemble of sites, institutions, narratives, and material processes, it was the political frame (i) in which power, *qua* human agency, sought to authorize itself, against resistance sometimes, thus to speak and act for a politic *community*, for its past and its future; (ii) in which executive and bureaucratic cadres ruled with differing degrees of autonomy, entering into common cause at times with various social fractions, usually defined by (if not named in the language) class, race, and/or gender; (iii) in which taken-for-granted cultural conventions, their coercive aspect camouflaged in the habits of everyday life, were posited as a precondition of collective being-in-the-world” (Comaroff 1998, 341; emphasis added).

Comaroff argues for the necessity of understanding the colonial state as an ideological project. In agreement with Corrigan and Sayer (1985)¹⁴ and anticipating Hansen and Stepputat (2001), Comaroff posits that, using the language of the law, the colonial state “gives voice to an authoritative worldview” (1998, 342). Cultural revolution in colonial states took place via the widespread institution of the language of law and legal provisions. And it was the hegemonic ascent of this language of the law that projected the coherence of colonial states; it lends colonial state legitimacy and justifies its presence as the source of social order and stability.

The role of law in colonial state notwithstanding, questions remain open about how colonial state forged its endurance despite the dissociation between “the state” and “the nation”; about the particularities of colonial state formation; and whether there were substantial differences between state formation in the Metropole and in the colony. Comaroff is surprisingly silent on these questions except for a line acknowledging Corrigan and Sayer’s contention that modern state formation is a “cultural revolution.” In a similar disposition, numerous studies of colonial state formation in the Dutch East Indies and its immediate surroundings take the term for

¹⁴ Compare Comaroff with Corrigan and Sayer (1985), who concluded that state formation is cultural revolution, a deep, profound shift in the ways in which people altered their assigned meanings to events into ones that are more amenable to “cultural forms . . . of particular centrality to bourgeois civilization” (1985, 3).

granted (Zanden 2010; Ravesteijn 2004, 2007; Tagliacozzo 2005, 2000; a Campo 2002).¹⁵ Others who attempted to theorize colonial state formation only manage to offer a tentative construction. Berman and Lonsdale (1992), of Marxist tradition, for example, define colonial state formation as a “largely unconscious and contradictory process of conflicts, negotiations, and compromises [which] constitute the ‘vulgarization’ of power” (5).¹⁶ What they mean by “vulgarization of power” remains vague. Young (1994) begins promisingly but falters in theorizing colonial state formation as he becomes occupied with expansive comparisons of African colonial states’ experiences. Day (2003) undertakes an adventurous exploration of state formation in precolonial Southeast Asia and focuses less on the colonial period and its impacts.

Here, I tentatively propose a sketch on colonial state formation. I begin from Corrigan and Sayer’s classic argument that state formation is essentially a process of cultural revolution, understood as a deep, profound shift in the ways in which people assign meanings to events (1985). From here, I follow Comaroff’s suggestion that colonial state formation was concerned with the production of “difference,” that is, turning subjects into modern citizens while at once constructing and maintaining racial difference (1998). I thus propose that the process producing difference in the colony was shaped by newly introduced cultural practices that defined, determined, and regulated what was considered normal. They rendered natural social forms that were in fact derived from particular ontological and epistemological premises. As a result,

¹⁵ This literature is from the discipline of history and science and technology studies (STS). Sociology, anthropology, and political studies on state formation focus mainly on modern and postcolonial states. Literature dealing with colonial states tends to be in discipline less inclined to deal with theorization (Sewell 2005). The articles quoted above take state formation as a presumably understood concept, that is, as a process of colonial state having a more increased presence and unifying the colonial territory. Further, they tend to be silent on the agency of the colonized subjects.

¹⁶ This definition is markedly different from colonial state building, defined as the “conscious effort [by planners and state-builders] at creating an apparatus of control” (5).

these new cultural practices constituted the subjects' very subjectivity in ways that would presumably be useful to the colonizers' need to consolidate power, exploit resources, and legitimize their rule.¹⁷ What's missing from this tentative sketch, as is the case with the literature cited above, is a space for the agency of the colonized and other population groups in colonial society.

I refrain from fully theorizing colonial state formation at this stage and will revisit the topic in the conclusion after I lay out the cases and experiences of the Dutch East Indies through the constitution of the colonial agrarian regime. For now, we shall focus our attention on what Comaroff coins "the vernacular language" of the colonial state forms: the law.

Law and Colonialism

Scholars have generally agreed that law and legal discourse lie at the heart of the colonial project of domination (Cohn 1989; Moore 1986; Channock 1985). In its early development, the study of law and colonialism took as its primary concern the importance of legalities in European conquest over Europe's various "others" (Cohn 1989; Channock 1985). As the discipline evolved, scholars began to train their gaze on a more complex form of engagement between subordinated people and colonial law (Comaroff and Comaroff 1991; Starr and Collier 1989). Recent inquiries have moved beyond the linear assumption that colonial law was imposed on the subjects with straightforward effects (Lazarus-Black 2008; Merry 2000; Hirsch 1998; Comaroff and Comaroff 1997; Mamdani 1996; Merry 1994a, 1994b; Comaroff 1994; Lazarus-Black and Hirsch 1994) and investigate how the newly introduced legal regimes were responded to through processes of accommodation and appropriation in various

¹⁷ In the Netherlands East Indies, for example, the first education institutions founded for the natives were medical, technical, and legal schools designed to supply workers with rudimentary knowledge to serve the native population who, in turn, labored at recently established plantations.

colonial societies: British India (Benton 1999), British Borneo (Doolittle 2001), Hawaii (Banner 2005), and South Africa (Karekwaivanane 2011), among others. Subjected people such as those in colonial conditions actively engaged with law, even though asymmetrical power relations limited their maneuvers. The engagement with law, thus, summons a more nuanced analysis of the relationship between the colonized and colonial law, where law took a role as a “common discursive framework” (Roseberry 1994). Colonial law eventually became the shared episteme, the universe of reference, for the colony’s population, through which all parties struggled to further their interests. This was what took place in the arena of the colonial agrarian regime in the Netherlands East Indies.

Colonial Legal Provisions on Land

Colonial authorities introduced agrarian regimes not only through legal provisions regarding land rights but also through regulations regarding the body. Laws on land were introduced for myriad reasons, not least as a means to legitimize the colonizers’ presence and their appropriation of resources. It was through law that landscape was transformed into territory and real estate. Legal provisions re-categorized land previously managed under native regimes of property ownership into plots prime for agricultural estates and other forms of exploitation.

Colonial law also extended its reach to the body (Stoler 2002). New categories of persons based on racial delineation defined entitlement and deprivation such that it forged new relationships between subjects and land, and altered colonial societies’ way of seeing and being in the world. In other words, colonial law introduced a reordering of relations between race and property ownership.

On the flipside of the coin, newly introduced proprietary rights and the “sanctity of ownership” made it possible for the subordinated population to envision a

long-term relationship between man and land, even though they were the last to benefit from it. Yet, the provisions of law which facilitated conquest and control at once offered the colonized the possibility of resisting land appropriation based on law's emphasis on rights, and of challenging colonial and village authorities (Merry 2004).

Law in colonial societies cemented the presence of “the state.” As diverse parties in the colonial society invoked legal provisions and used them as a means to advance their interests, the image of law as an extension of “the state” became reinforced, if only indirectly, and state authority appeared very visible, real, and concrete. Through both straightforward interactions and conflicts over cultural, racial, and ethnic boundaries, “the ‘rules about rule’ that had always formed the subtext of the colonial legal order were simultaneously challenged and reified as part of a state-centered institutional structure” (Benton 1999, 587). As a consequence, a network of state forms and institutions and their practices emerged as a concrete “colonial state” with ultimate authority to arbitrate justice and political identity. Yet, far from stable, the “colonial state” remained challenged and contested, most ironically in the colonial courts themselves. Indeed, the process and dynamics of invoking colonial law at once confirmed and questioned the law as a legitimating narrative of the colonial powers. It is under this theoretical construct that I situate my inquiry of the constitution of an agrarian regime in the late-colonial Dutch East Indies.

Moving more specifically into research on law and land rights in late colonial Indonesia, a quick survey brings into focus interesting facts: First, the study of law and land rights in late-colonial Indonesia lags behind research on the same topic in postcolonial Indonesia. Most studies—excepting those produced during the colonial period itself—were carried out in the 1980s and early 1990s. Second, available literature has mainly focused on a limited, albeit interconnected, number of issues:

Adat law and land rights (Burns 2004, 1989; Benda-Beckman 1979), cultivation systems (Clarence Smith 1994; Elson 1994; Fasseur 1992; Boomgaard 1989; Niel 1964) the village (Breman 1983, 1980; Kano 1970) or plantations and peasant struggle (Stoler 1985, 1988). An attempt to analyze the constitution of *adat* law in the former Dutch East Indies (Burns 2004) falls silent on the agency of the Native intellectuals. Ben White's (2005) treatment of a booklet by S. Dingley (a pseudonym of Iwa Kusuma Sumantri) about the agrarian struggle in the colony is perhaps an exception, although his argument that Dingley's was the only worthwhile venture of such can easily be contested.¹⁸

One can also detect similar silence on the role of Native intellectuals in the construction of *adat* law, the topic of law and colonialism in Indonesia in the recent waves of literature on the history of *adat*, *adat* law, and *adat* land rights (Davidson and Henley 2007; Burns 2004; Zerner 2003; Li 2001, 2000).¹⁹ The case of Supomo is illustrative: Well studied for his role in drafting the Indonesian constitution of 1945 and in legal developments in Indonesia (Bourchier 1999; Drooglever 1997; Simanjuntak 1994; Lev 1985, 1965), Supomo leaves an intellectual legacy on *adat* land rights that remains largely unexplored.²⁰ Earlier dismissal of his position on and

¹⁸ At least two Indonesians wrote PhD dissertations at Leiden touching upon the subject of law and land rights, namely Soepomo and Gondokoesomo. Perhaps White uses a much narrower definition of "agrarian studies."

¹⁹ Resink (1974) writes about personal relations between the professors at the *Bataviasche Rechtshoogeschool*—who belonged to the progressive group "De Stuw"—and their Indonesian students. In this article, Resink speculates on the influence of "De Stuw" professors over their students. However, there is no account of how the students might have influenced their professors in return. This implies an assumption that influence is only unidirectional: it flows from European scholars to the native intellectuals and not vice versa.

²⁰ White's (2005) essay on the history of agrarian studies in Indonesia laments the lack of interest in agrarian issues among Indonesian intellectuals in the colonial period. He nominates only two works worth discussing: one by S. Dingley (pseudonym of Iwa Kusumasumantri) written on commission in 1923 by the Soviet government, and another by Sukarno on Marhaenism. There is no mention of Supomo's dissertation (1927), which critically addresses agrarian reorganization in Surakarta, or Gondokusumo's dissertation (1922, praised by van Vollenhoven as original), on the *de jure* legislation of village autonomy that was not followed by actual empowerment.

role in the constitution of adat law as a discipline may have dampened interest in pursuing his (possibly) wider contribution to colonial knowledge production. He has been charged with being a “conservative . . . [with views] . . . rooted deeply in colonial Indonesian side establishment” (Lev 1985: 26), a “turncoat” (Lev 1985), and “Hegelian” (Simanjuntak 1994), and with being “inspired by fascist ideas” (Bourchier 1999; Simanjuntak 1994). Upon the last label, Drooglever (1997) casts a skeptical observation—which I share—noting that Supomo’s other works on indigenous land tenure contradict this characterization.

Engagement between a subordinated population and colonial law took many forms, not the least of which was the production of law and legal knowledge. Although colonial law had its roots in European legal tradition, it was never isolated from open contestations. In the Indies, the law was continuously shaped and reshaped by various social actors in the colony, by Natives, Foreign Orientals, and even Eurasians, who frequently found themselves marginalized from both European and Native society. Various media took the role as a platform for knowledge-making in law and lawmaking: *Indisch Tijdschrift van het Recht*, *Koloniaal tijdschrift*, Malay-Chinese newspapers, internal bulletins of civic organizations, and many others. There was enthusiasm and excitement in voicing one’s point of view regarding land rights, and it included members of a women’s association on the West Coast of Sumatra, who voiced their disapproval of the plan to grant Indo-Europeans a form of rights to land. In this light, the “success” or “failure” of remaking law and legal knowledge are less compelling than exploring the imprints colonial subjects left on the sedimented legal discourse.

Subjectivity and Agency

The recognition of law as the vernacular of the colonial state signals an acknowledgement of colonial subjects' capacity to intervene in colonial discourse. Studies have demonstrated how the colonized engaged with colonial discourse and intervened in the proceedings of legal discourse of property (Merry 2000, 2003; Benton 1999, 2002), and this was not limited to the elite, educated colonized (Djalins 2007; White 2005) but also included peasants (Doolittle 2005) and pastoralists (Cederlof 2005, 2006). However, the process of how subjectivity of the colonized was constituted, subjectivity here understood as the capacity to deliberate and to reflect critically that undergirds the capacity to exert intervention, is still in need of theorization.

Frantz Fanon—and to some extent Aimee Cesaire—has largely been referred to as an important theorist of the colonized subject. However, I find questionable the extrapolation of his experience as the global experience of other colonized subjects. Fanon's treatise on colonial subjectivity is heavily tinged with spatial and temporal contexts: his being a Martiniquan-French transplant in Algeria, his being black, his era of struggle in the second half of the 20th century, among others, all defined his experience of colonialism that does not quite work when transported to other colonial settings such as the early-20th-century Dutch East Indies. Cesaire's situatedness is not that much different. Fanon should not be read as a global icon, but should be understood as a product of "his own historical particularity" (Gates 1991, 470).

The lack of fit illustrated above means that analysis of colonized subjects needs to come from a more deductive base, that is, by taking into account how the self emerges. And for this, I rely on Foucault. Foucault's subject is constituted in and through his or her historical, cultural, and social particularity, forces that can be analyzed empirically by dissecting power/knowledge regimes (Foucault 1982a). But

Foucault's conception of the immersion of the subject in power relations has been misunderstood as proclaiming the death of the subject (Benhabib et al 1995). A scholar adopting the Foucauldian notion of the subject is often taken for as agreeing to relinquish the subjects' autonomy.

A careful heeding of Foucault's statement that his project is about the subject and not about power, and an even more careful reading of his project as a conversation with Kant instead of anti-Kantian, reveals that what Foucault meant as the "death of man" is actually a rejection of the Kantian transcendental subject (Allen 2008, 36). To Foucault, the subject is thoroughly immersed in a shared universe of reference, established by and through power relations, which defines the being-and-knowing capacity of the subject (Foucault 1980, 1982a). But this is no denial of the subject's autonomy, which Foucault conceives as a dual capacity: the capacity for critical reflection and for deliberate self-transformation, capacities that are always embedded in a network of power.

Foucault understood power as a strategic relation, that is, as strategies by which "individuals try to direct and control the conduct of others" (Foucault in Allen 2008, 50), implemented through technologies of domination (as manifested in disciplinary power) and technologies of the self (as expressed in ethical subjectivation). Further, power is neither centered in an entity of the sovereign or the state nor do individuals control it; power is spread throughout the social body, all the way to the extremities, where it becomes "capillary." If disciplinary power and ethical subjectivation are so inherent in the shaping of subjectivity, then how does a subject resist power when his or her very constitution depends on the very power itself? The way out, in this particular construction of subjectivity, is that resistance "has to take the form of taking up existing relations of power and subjection in a transformative way" (Allen 2008, 63). Autonomy manifested in questioning and challenging the

universe of reference presented to us as the only possibility of thinking-knowing-and-being, thus making possible subversive transformation of those limits that, in reality, are contingent. The glaring flaw in this construction of the Foucauldian subject, according to Allen, lies in Foucault's impoverished reading of social interaction. Foucault acknowledged relations only as strategic, thus missing the possibility of social relations that are nurturing, reciprocal, and based on mutual recognition. Turning to a Habermasian intersubjective account of subjectivity and autonomy can complement this limitation.

It is beyond the scope of this section to dig deeper than the sketch offered above. Suffice it to say that I agree with Allen that taking a position on subject as constituted by relations of power and subjection does not deny us subjectivity, agency, or autonomy. With regard to colonial conditions, it acknowledges that for colonial subjects, there is "no outside to power," that their capacity for practical reason and for autonomy were inescapably shaped by their historical and spatial situatedness, which was at once entrenched in power relations. It means that the colonizer, the colonized, and those equated with them were capable of critique, that their critique was not futile, and that their autonomy was not impossible.

Training the Gaze in Two Regions of Java

Of the entire East Indies that it ruled after the British interregnum, the Dutch maintained its longest continuous presence in Java. The uninterrupted presence resulted in a deep penetration of Java in terms of governance and legal administration. As soon as the Dutch took over Java from the British, they implemented a dual system of governance consisting of the Dutch-staffed *Binnenlands Bestuur*, the powerful and influential Department of the Interior, and the Native-run *pangreh praja* (Sutherland 1979, Fasseur 1993). The administration of justice took longer to implement, but by

the early 1900s a relatively developed plural judicial system was in place (Lev 1985). Three courts existed for the Javanese in the directly ruled areas: the district courts for minor cases, the regency courts for more important cases, and the *Landraad*, situated in each regency, which tried criminal and civil cases for the Natives and those assimilated to the Native legal status. Appeals were addressed to the *Raad van Justitie*, the appellate court for both Dutch and Native subjects, located in six major cities. The final appeals went to the Supreme Court, the *HooggerECHsthof*.

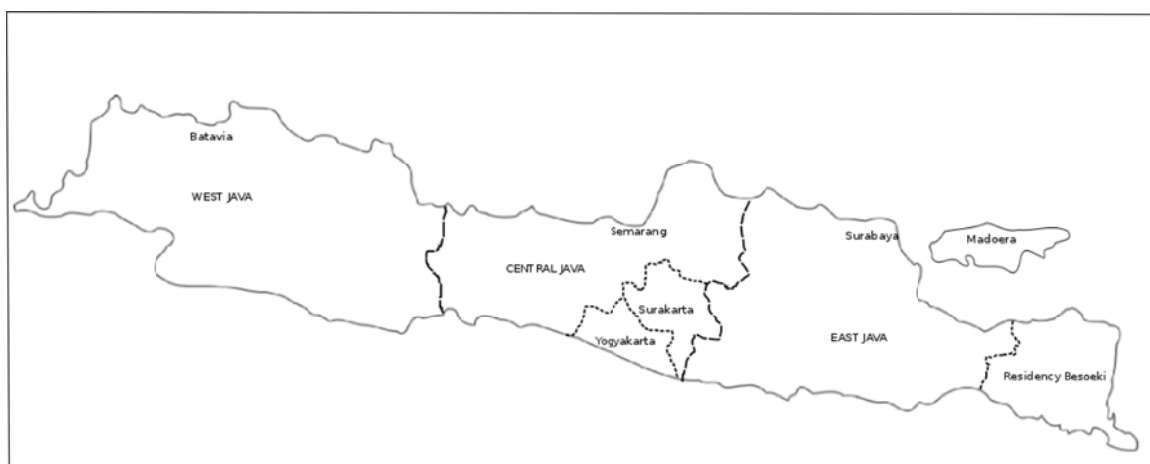
Thoroughly under Dutch control, Java became a virtual laboratory for testing laws and legal codes regarding land rights before they were decreed for the Outer Islands. Java (and Madoera), for example, was the first to be enclosed under the state territorial domain in 1870, while other regions followed suit a couple of years after.²¹ Sediments of regulations, early institutionalization of the administration of justice, and deep governance penetration made Java a particularly attractive case to interrogate lawmaking on land rights.

The Principalities in Central Java and the Banjoewangi division in the Residency of Besoeki, East Java, were two of the numerous regions with a large presence of Dutch agricultural estates. Both hosted immensely successful sugar and tobacco plantations, but the similarities ended there. Historically, geographically, and socio-culturally, the two regions were quite distinct.

Surakarta and Yogyakarta Principalities descended from the Sultanate of Mataram. After the death of Sultan Agung, the last king of unified Mataram, decades of bloody conflicts and rebellions plagued the central Javanese landscape. They lasted for more than fifty years, until the Javanese princes invited the Dutch East Indies

²¹ The government decreed domain declaration for the Outer Islands in 1875. Three special domain declarations were also issued for the government's areas in Sumatra in 1874, Manado in 1877, and the South and East division of Borneo in 1888. Domain declaration was not valid in areas where self-governed area existed, such as regions under the jurisdiction of the Principalities in Central Java and of the Sultanate of Riau in East Sumatra (Regeerings Almanak 1938).

Company (VOC) to mediate a peace treaty in 1755. VOC's solution consisted of carving the territory of Mataram into what are now Kasunanan of Surakarta and Kasultanan of Yogyakarta (see Map 1).²² Each was further divided with the creation of a junior royal house. The split caused a haphazard allocation of landholdings; Surakarta and Yogyakarta ended up having enclaves in each other's jurisdictions, creating a massive cadastral confusion and headaches in land administration.



Map 1. Java in 1900.

The Principalities inherited the feudalistic apauage system from Mataram. The monarchs granted parcels of land to their princes and royal officials, who could tax and procure labor services from the peasants living in their apauages. In return, the apauage holders—known locally as *patuh*—paid taxes to the Principalities twice a year after two Islamic religious festivals. *Patuh* were expected to reside in the capital. To carry out day-to-day management of the land, they hired middlemen, called *bekel*, whose responsibility included recruiting peasants, allocating land, and assigning

²² The Dutch East Indies Company (VOC) allowed the principalities to govern themselves while maintaining influence among the princes. This arrangement changed as the Dutch monarchy took over after VOC's collapse and after the British interregnum. The Principalities had a semi-autonomous status. The rest of Java was directly under Dutch governance, including East Java.

various obligatory services and corvee labor to them. The apanage system granted barely any rights to the peasants over the land they cultivated except a share of the crop (Soepomo 1927).



Map 2. Besoeki Residency and Its Divisions (*Afdeeling*) 1900.

In contrast to the prominence of the Principalities for the central Javanese agrarian economy, until the early 19th century the region that became Besoeki residency was a periphery to which defeated dynasties and crushed rebels retreated. Located in the easternmost tip of Java, Besoeki bordered to the north and east with the Java Sea and the Bali Strait, to the South with the Indian Ocean, and to the West with the Pasoeroean residency. A chain of volcanic mountains stretched from East to West in the middle section of Besoeki, which for centuries defined the native pattern of migration and cultivation (Tennekes 1930). To the north of these mountains, the land was relatively developed and well populated due to easy access to the gently sloped terrain. To the south, the terrain was challenging; the natives' rudimentary technology

prevented them from intensively exploiting the landscape. The altitude, however, was ideal for highlands crops like tea, coffee, and rubber, and the relative abundance of virgin lands meant that the peasants could still reclaim land, while the local customary law acknowledged their individual rights (Vollenhoven 1931, 625–626). It also meant that after the Agrarian Law of 1870 was implemented, these lands came under the Government jurisdiction as free state land leasable to investors. By the early 1900s, Besoeki had four divisions (*afdeeling*): Bondowoso, Sitoebondo, Djember and Banjoewangi (see Map 2).

Large agricultural enterprises began their long history in the Principalities quite early, thanks to the then Resident who pioneered large-scale land leases between several Indo-European families and the *patuh* in 1820 (Bosma 2007).²³ Sugar contracts from the Dutch trading company NHM (*Nederlandsche Handel-Maatschappij*) brought immense wealth to these families, who maintained a lavish lifestyle not unlike the Javanese kings and princes with whom they kept intimate relations.²⁴ The business grew so fast that by the early 1880s they produced seventeen percent of the Javanese supply of sugar from twenty-seven factories. Coffee, tobacco and, decreasingly, indigo were also widely planted. In contrast, in Besoeki few estates existed in the 1850s. In the Djember division, some Dutch entrepreneurs began planting sugarcane only in the mid-19th century, renting land from the Native peasants in a rolling system. Sugarcane planting practices in Djember frequently imposed delays on the natives' paddy planting season that resulted in failed harvests and caused

²³ Bosma and Raben (2008) examined the role of Indo-European families in the Principalities in maintaining large agricultural enterprises. These families descended from around 113 European men who had settled in the Principalities beginning in the early 19th century. Many had children with local women, and their descendants made up the influential estate families who intermarried, ensuring tight control over the extended family fortunes.

²⁴ One patriarch, Johannes Augustines Dezentjé, was married to a close family member of the Sultan of Yogyakarta (Bosma 2007).

deep resentment among the native population. Cane burning was frequent. In the Bondowoso division, Dutch planters began cultivating tobacco also in the 1850s. They expanded to the southern slope in 1859 (Padmo 1994).

Despite these pioneering cultivations, agricultural enterprises boomed in the region only after the government enacted the Agrarian Law of 1870. Virgin lands on the southern slope of the mountains were auctioned off for seventy-five-year leases, and by the turn of the century the supply had dried up (Schagen van Soelen 1918). Of the ten rubber and coffee estates in Banjoewangi in 1910, nine had leases beginning between 1875 and 1898, and only one in 1900 (Swart 1911). Latecomers who tried to acquire land after 1900 were out of luck (Schagen van Soelen 1918). Some had to resort to short-term rent of land under Native usufruct rights for up to twenty years. These lands were by no means insignificant, but the complexity of getting contracts from each individual owner, exacerbated by the legal maze one had to navigate, was enough to deter less adventurous investors.²⁵

In terms of population, the Principalities were one of the densest regions in Java. In 1917 they were home to 3,450,000 residents: 2,070,000 in Surakarta and 1,380,000 in Yogyakarta. The population consisted of Javanese—all of whom were the legal subjects of the Principalities—as well as Chinese, Arabs, and Europeans, including Indo-Europeans. Surakarta had around 4,000 Europeans, and 14,000 Chinese, Arabs, and other foreign orientals (Encyclopaedie van het Nederlands Indie 1921). These latter groups were the legal subjects of the Dutch government. In contrast, the Besoeki residency was much sparser than the Principalities. In 1905, total residents amounted to 966,472 souls, consisting mainly of Madoerese and East

²⁵ Land on short-term rent was usually planted with annual crops like tobacco or sugarcane. The Besoeki Plantations Limited controlled Native land under these lease terms. They planted the land with tobacco, and apparently allowed the natives to plant paddy in between crops. They also owned a rice mill in Djember, established to purchase and husk the paddy produced by the natives (Swart 1911, 49-50).

Javanese; around 4,000 Chinese and Arabs; and around 3,000 Europeans (Tennekes 1930, 335). By the 1920s, however, the number had jumped to almost 1.5 million people. The Banjoewangi division had 84,398 in 1895, which grew to a whopping 269,599 in the 1920s (Tennekes 1930, 335). The structure of native society in the Besoeki residency was relatively simple: On top of the pyramid were the *wedono* and *assistant wedono*, native officials who were appointed and salaried by the Dutch to assist the *controleur*, the lowest bureaucrat in the Dutch service. Next were the village headman and his staff, the village scribe (*carik*), village messenger (*kabayan*), and village imam (*modin*). At the bottom of the pyramid were the common folk (Padmo 1994).

Agricultural-related industry in the Principalities and Besoeki mainly concentrated on sugar refineries and low-technology but labor-intensive tobacco factories. In Banjoewangi, the most advanced industry was rice-milling, owned and operated by the Arabs, Chinese, and to some limited extent, Europeans. The Resident complained that rice-milling factories impoverished the local population: rice-mill owners bought paddies well before harvesting season at very low prices and then sold husked rice back to the peasants at inflated prices (Schagen van Soelen 1918).

During the years in which agricultural estates began to reap the fruit of their investments through a phenomenal spike in exports (Lindblad 1994, Lindbad et al 2002), nationalist awakening simmered in Java. Surakarta was the birth place of Sarekat Islam (SI), an organization founded in February 1912 by batik traders and manufacturers. Initially set up to provide security and protection against skirmishes with Chinese batik traders, SI quickly transformed into a modern organization of Muslim traders (Kahin 1952). Tensions and conflicts frequently flared between SI members and Chinese thugs. In the rural areas, emboldened peasant members refused to do corvee and carried out strikes on sugar plantations. Nervous about the SI's

growing influence, the Resident of Surakarta refused to ratify SI's statute, which ended up limiting SI's maneuvers in Surakarta (Shiraishi 1990, 47). But it didn't stop the organization's expansion in the rest of Java, such as in Soerabaja and other towns in East Java.

Soerabaja at the time was a bustling trading center that served the mushrooming agricultural estates in East Java. It was the largest city in the entire East Indies, even larger than Batavia, equipped with a major seaport to export agricultural commodities. European, Chinese, Arab, and Native traders rubbed shoulders in the downtown area, selling sugar factory machines and parts and buying commodities for exports. As was the nature of a cosmopolitan city, Soerabaja was susceptible to new ideas. When Sarekat Islam in Surakarta needed to bypass the Resident's constraining imposition, the central committee looked to the head of the SI branch in East Java, H.O.S. Tjokroaminoto, to register a new SI statute in Soerabaja. It was easily ratified in September 1912 and enabled branches outside Surakarta to continue their activities legally (Shiraishi 1990).

H.O.S Tjokroaminoto, a graduate of the school for *pangreh praja*, (*Opleiding School Voor Inlandsche Ambtenaren*, OSVIA), in Magelang, quit his government job and reinvented himself as a sugar factory engineer. He led SI from Soerabaja and assisted its transformation into a Java-wide organization. Branches continued to open in towns and cities across Java, including one in the Residency of Probolinggo in 1913, which bordered with Besoeki. In 1915 the Probolinggo branch elected as president a 21-year old young man, R.P. Soeroso, a teaching-school dropout who worked as a journalist. We will hear more about Soeroso in chapter 5.

A more radical movement than Sarekat Islam, Surakarta *Insulinde* also called Surakarta its birthplace. Revived from an inactive *Insulinde* branch in December 1918

by a circle of Dr. Tjipto Mangoenkoesoemo's friends,²⁶ Surakarta *Insulinde* quickly attracted Haji Mohammad Misbach, a Muslim preacher turned *Insulinde*'s key propagandist. Misbach assisted Surakarta's peasants in addressing their grievances against unjust Dutch plantation operators and native officials who became more involved with the peasants' daily life after an important agrarian reorganization took place in the Kasunanan. After a strike in April 1919 Misbach was arrested by the government (Shiraishi 1990). This event launched Mangoenkoesoemo's bitter protests against the government and the Surakarta Principality. An unprecedented open challenge to the monarch, Mangoenkoesoemo's crusade inspired many young Javanese with its elegant defiance.

Even though Besoeki was quite a distance away from Soerabaja, it was not isolated from the rising nationalist sentiment that Sarekat Islam incited. Resident Schagen van Soelen warned Batavia in his 1918 Memorandum of Transfer of the danger that SI posed to the peasants in Besoeki. One way to curb SI influence, he suggested, was to contain the expansive planting of cash crops in the natives' lands, and to curb the illegal land occupation that prevented them from cultivating the land. These policies would allow the peasants to provide themselves with enough food crops and hence neutralized potential radical influence (Schagen van Soelen 1918).

²⁶ Tjipto Mangoenkoesoemo was a decorated native doctor who co-founded Budi Utomo with Dr. Soetomo in 1908. By now, he was a member of Indies' parliament *Volksraad*, and a seasoned nationalist, having been exiled between 1913 and 1914 to the Netherlands for his activities with Suwardi Suryaningrat and E.F.E Douwes Dekker. The Dutch selected him to be a member of the *Volksraad* in order to convince skeptics that the *Volksraad* was not populated by politically impotent native figures. See Shiraishi (1990) for a detailed study of Tjipto Mangoenkoesoemo's and Surakarta's *Insulinde* activities in the late teens to mid-1920s.

The Volksraad and Colonial Lawmaking²⁷

World War I brought a sweeping change to the colony. Although the Netherlands escaped unscathed, the war severely halted transportation and communication with the Indies, causing reduced intensity in monitoring and control. For a brief period, the Indies entered a state of semi-autonomy. The severed connection, intensified by the lurking Japanese military in the North, triggered an anxious conversation in the Indies about the need for autonomy.

In the meantime, observing the increased nationalist sentiments among his subjects, the Governor General van Limburg Stirum proactively sought a means to neutralize the explosive trend. He lobbied for a representative body to the Minister of the Colonies, Idenburg, who persuaded the parliament to discuss the matter. After a long deliberation, the parliament finally passed a law in November 1916 creating an advisory body in the Indies, the *Volksraad* (the People's Council), which held its opening session in May 21, 1918. The Indies population welcomed the Volksraad with some reservation: The Europeans, whose interest in colonial policy was sparked by the period of isolation, considered the Volksraad to be an avenue to participation in colonial affairs. The expanding nationalist organizations took the Volksraad as an opportunity to exert pressure, however limited, on the government. Several sent their representatives, such as Sarekat Islam (Agus Salim), Insulinde (Tjipto Mangoenkoesomo), and Boedi Oetomo (Radjiman Wedyodiningrat). The honeymoon did not last long. Sarekat Islam and Insulinde pulled out in 1920, while the more moderate Boedi Oetomo maintained their presence and gained the nickname of “*ko*” organization as a result of being cooperative with the government.

²⁷ Materials for this section are taken from a combination of sources: Helsdingen (1928, 1938), Furnivall (1944), and the Indonesian Department of Education and Culture research paper led by Drs. Ibrahim Ambong, MA (1985).

The Volksraad's initial authority was limited to advising the Governor General, who was obliged to seek advice only on matters regarding the state budget and the state's need for loans. The new 1925 Indies Constitution (*Indische Staatsregeling*) expanded the Volksraad's authority to include an extended budgetary role and the rights to advise, to public deliberation, to freely express opinions, and to petition, and of interpellation, initiative, and amendment. Despite the acknowledged legislative rights, because the Volksraad was heavily populated with individuals having a close connection to the government, it was very difficult for independent members to sway the Volksraad to introduce more substantial changes to governance.²⁸ Meanwhile, radicalism was on the rise. Led by the conservative Governor General Dick Fock, the government hardened against Indonesian nationalist movements after the disastrous Communist Party rebellion in 1926.²⁹ Crackdowns were widespread. Many *non-ko* leaders were rounded up and exiled to remote corners of the Indies; surveillance and monitoring were increased; and permits for public events were severely restricted. The extremely limited room to maneuver made nationalist leaders appreciate more the strategic value of maintaining a presence in the Volksraad. The sentiment resulted in a slight ascendance of its prestige by the turn of the decade.

²⁸ In the sixty-member Volksraad post 1927, eleven of nineteen elected Indonesian members were active or retired-and-pensioned government officials. Throughout the Volksraad's existence, seventy percent of the members had worked at a government institution, two thirds of them with the *Binnenlands Bestuur* and the remaining one third with the *Inlands Bestuur* (Native bureaucracy). A smaller proportion hailed from political parties or had independent occupations. This proportion changed little over the years.

²⁹ This rebellion led to a crackdown on an Indonesian student organization in the Netherlands, Perhimpunan Indonesia, in 1927. Student leaders such as Ali Sastroamidjojo, Nazir Pamoentjak, and Achmad Soebardjo were detained and tried, but were finally acquitted of all charges.

Table 1. Composition of the Volksraad Members Based on Political Orientation

Years	Right	Center Right	Center Left	Left	Total
1918–1921	8 (21%)	12 (31%)	10 (26%)	8 (21%)	38
1921–1924	2 (4%)	27 (56%)	14 (29%)	5 (10%)	48
1924–1927	5 (10%)	28 (58%)	10 (21%)	5 (10%)	48
1927–1931	6 (12.5%)	36 (75%)	9 (19%)	9 (19%)	48
1931–1935	10 (17%)	24 (40%)	14 (23%)	12 (20%)	60
1935–1939	10 (17%)	27 (45%)	13 (22%)	10 (17%)	60

Source: Helsdingen 1938.

Prior to the expanded authority of the Volksraad introduced in 1925, lawmaking in the Dutch Indies took place mostly in the Netherlands. The introduction of the Fundamental Law in 1848 transformed the Netherlands into a parliamentary democracy. The new system of governance had an impact on the colony with the introduction of Constitutional Regulation (*Regeringsreglement*) in 1854, a landmark for the Netherlands Indies because it recognized the supremacy of law (Furnivall 1944). Detailed rules and legal codes for the Constitutional Regulation of 1854 were laid out in what the Dutch called “General Regulations” (*Algemeene Verordeningen*), and herein lies the conventional lawmaking. General Regulations could manifest in the form of laws, legal enactments by the Dutch Parliament, royal decrees, acts of the Crown, ordinances, or acts of the Governor General with or without the Council of Indies (Furnivall 1944). Only after the 1925 constitutional reform in the Indies could the Volksraad have a say in lawmaking. It was allowed to issue lower-level ordinances with the Governor General, particularly for laws not already in existence in the Constitutional Regulation or other bodies of law. Revisions to budgets and work to prepare proposed laws would be effected through a new organ, the College of Delegates (*College van Gedelegeerden*), consisting of 20 individuals, each voted in by three Volksraad members. The Volksraad was never a fully legislative body

because the Governor General and the department heads were never accountable to it. Nevertheless, it retained an undeniable role in increasing the awareness of the Indies population with respect to colonial politics and the dynamics of “statehood.”³⁰

Outline of Dissertation

My dissertation consists of six chapters, an introduction, and a conclusion. The first two chapters lay out for the remaining four my foundational argument that posits subject-formation and lawmaking as two essential pillars, equally important to the constitution of the colonial agrarian regime. Chapter 1 lays out the mechanics of legal education for the children of the Native elites as a part of colonial subject formation. The chapter covers the period from 1909, when the vocational school for native legal clerks was founded in Batavia, through the late 1930s, when legal training in higher institutions took place at Leiden University and the Batavia College of Law, founded in 1924. Chapter 2 examines the colonial agrarian regime and the ways in which a vast array of colonial actors negotiated the laws and legal practices of everyday forms of agency. The chapter does so by zooming in on a conflict over land under the control of Wadoeng West Agricultural Estate in Banjoewangi Residency, East Java Province, a control made possible by the law. The dispute involved numerous social actors who took ownership of the law, executed creative maneuvers, and negotiated their way around the law, such that they practically “remade” it. In this reading, lawmaking was not solely the occupation of colonial officials; rather, lawmaking was a fragmented, dispersed, and unpredictable process, yet it offered forms of engagement to the colonized who quite confidently grabbed the opportunity.

³⁰ *Neratja*, an Indonesian language newspaper published during this period, regularly featured debates in the *Volksraad*, usually taking the materials verbatim from the stenographic records.

While the first two chapters present subject-making and lawmaking almost as two separate events, the remaining four chapters observe how the two were reciprocally formed and how they in turn shaped the colonial Agrarian Regime. In my interrogation of the colonial Agrarian Regime as a manifestation of colonial state formation, I pay close attention to individuals who were associated with a variety of state systems and civil groups, individuals whose very subjectivity was formed by power relations entrenched in colonial conditions. Chapter 3 dissects a dissertation, an intellectual product of a Native subject, to offer a glimpse of the overlapping connection between a subject, his hybrid episteme, and his role in the production of colonial legal knowledge. It considers a colonized subject as constituted by power relations, but nevertheless possessing a capacity for critical deliberation. Chapter 4 interrogates the projected boundary between “the colonial state” and Native subjects. It does so by examining the role of Native scholars *cum* colonial judges in creating legal knowledge in their own vision by extending particular forms of property relations while contesting others. It brings to the foreground the porosity of the so-called boundary between colonial state-system and native subjects. Actively contributing to colonial state formation, Native scholars at once extended and contested the force of the colonial state-system. Chapter 5 focuses on the struggle for land rights waged by Indo-Europeans, who claimed they had an “inherent right” to land just like the Natives since they, too, were *landskinderen* (children of the land). The ensuing discursive battles with Indonesian leaders and intellectuals demonstrate contestations of practices that propagated isolation and identification effects, the effects through which the presence of the illusory state is both constituted and felt. By advocating for their own vision of identity and by challenging existing legal codes on identity and property, Indo-Europeans attempted to “make the law” that was more in tune with their reality. The battles render visible how state effects are created not by a

fixed entity or a stable site, but by overlapping processes committed by various actors. The final chapter, chapter 6, surveys a debate about the Alienation Prohibition decreed in Staatsblad 1875 No. 179 that took place in the mid-1930s. It examines Native agency in a cacophonous discourse on native land rights by zooming in on an academic essay presented at the prestigious Indies Lawyers Associations' Congress in 1936 by Soepomo, a legal scholar and colonial official of native origin. In a meticulous analysis of legal jurisprudence regarding the prohibition to alienate natives' land, Soepomo contested the government's claim that it aimed to protect the natives from being deprived of their land rights. This chapter brings the argument full circle: A native, whose subjectivity was constituted in colonial power relations, exercised his autonomy in re-making the Agrarian Regime and, in turn, attempted to shape colonial state formation in ways he deemed fit. Yet, he was a part of a network of institutions that make up the colonial state system.

In the concluding chapter, I wrap up the dissertation with a modest attempt to theorize colonial state formation.

A Note on the Terms Used

My usage of "Native" is an English translation of Dutch words widely used at the time: *inlandsch*, *inheemsch*, and sometimes *autochthonous*. These words acquired their pejorative connotation only in the late-colonial period. For a long time, they were perfectly acceptable terms, used to distinguish the indigenous Indonesians from other inhabitants in the colony who were Europeans or Foreign Orientals. I use the term in this historical sense, and with a capital "N" when it refers to particular groups or individuals. It is important to note, however, that Indonesian nationalists who studied at Leiden University would eventually use the word "Indonesian" while still retaining *inlandsch* and *inheemsche* in academic conversation. As my period of analysis moves

towards the last years of the Dutch Indies, I use the terms Native and Indonesian interchangeably.

CHAPTER 1:
Legal Education in Late-Colonial Indonesia:
Subject Formation, But Not Quite

Above all, we will put on record,
that the *Rechtsschool* has not missed its target:
the creation of independent (native) lawyers,
who are aware of their position as independent judicial officers
in the indigenous social relations.

—C.C. van Helsdingen,
Gedenkboek Rechtsschool 1929

Introduction

In 1928 a school that had trained a hundred and eighty-nine Native jurists in Batavia closed its doors. A photograph printed in the event's commemorative booklet freezes a moment in that fateful day: It was a sunny day in May, a tropical dry season. Despite the heat and humidity, European and Native men dressed themselves in suits and ties, and populated rows of carefully arranged seats in a medium-sized hall. Several women were also in attendance. Except for two empty seats, the hall was packed; a number of younger participants had to stand at the back, almost spilling outside. Everyone seemed to be in a reflective mood. After twenty years the Training School for Native jurists (*Opleiding School Voor Indisch Recht*, henceforth the *Rechtsschool*) would cease to operate. C.C. van Helsdingen, the longest-serving teacher and the acting director, gave a passionate speech recalling the school's most important achievement: an army of Native jurists capable of delivering impartial decisions in the court of justice. As the school closed down, its role was to be taken over by the newly founded Batavia College of Law (Batavia Rechtshoogeschool), established four years earlier.

In this chapter, I explore legal education in the Netherlands East Indies as a project of subject formation, understood here as the constitution of subjectivity through power relations that defines the being-and-knowing capacity of the subject (Foucault 1982a). I survey legal education for the Indies natives between 1909 and 1939, which included the Rechtsschool, Leiden University United Faculty of Law and Letters in the 1920s, and Batavia Rechtshoogeschool. I argue that the rationale behind the pedagogical strategy and the curriculum design in colonial legal education aimed at more complicated objectives than conventionally accepted, such as colonizing the minds or creating docile bodies. Moreover, I argue that the shaping of subjectivity through colonial legal education submerged neither the capacity for reflection nor the ability of the colonized for critical deliberation. In building my argument, I focus on the colonial authorities' vision of ideal subjectivity to be embodied by Native lawyers and the technology employed to achieve this objective. This focus provides the stage for the subsequent chapters, in which I document how Native jurists and intellectuals "talked back" to colonial discourse. The term "talk back" refers to the ways in which jurists and intellectuals demonstrated agency and critical capacity to respond to colonial agrarian discourse through their engagement in land-related issues.

To construct my narrative, I rely on the archives of the Ministry of the Colonies and the colonial government, records of the Netherlands parliament sessions, reports and essays written by administrators and teachers of the schools, personal archives of prominent individuals, and memoirs by Indonesians educated in these schools. I also include official publications such as school yearbooks, commemorative publications, and texts of ordinances related to the schools. To garner the reactions of the indigenous societies, I examine newspaper articles and, to a limited extent, published private letters. With this range of data, I hope to allow the overlooked subjective experience of individual actors to emerge.

I conclude the chapter by suggesting that far from colonizing their minds, colonial legal education provided Native jurists with intellectual capacities that allowed them to participate and engage in and shape colonial legal discourse.

The Rechtsschool, the Rechtshoogeschool and Leiden University United Faculty of Law and Letters were the triad that trained practically every Native jurist in the Netherlands East Indies. Although they were colonial institutions, their role in constituting Native students' subjectivity carries a complexity that defies monolithic categorization, because in the very act of subjection through teaching and training they also instilled the capacity for critical reflection and self-transformation.

Earlier studies on colonial education largely adopted a structuralist-economistic approach in their analysis. This strand of literature considers colonial education as perpetuating the colonized's subordinate status. The colonizers educated the natives primarily to fill lowly administrative positions in capitalist enterprises or government offices (Amin 1976; Carnoy 1974; Rodney 1972); educational policy in the colonies was designed to preserve European hegemony (Carnoy 1974). Rodney (1972), for example, posits that colonial education alienated Africans from their authentic life and prevented them from thinking outside the frame of colonial relations they were trained under. Although this economistic approach captures the general characteristics of colonial education (Altbach and Kelly 1978), it fails to recognize the specificity of varied colonial situations and dismisses agency that diverges from the prescribed grand narrative.

More recent scholarship has departed from this mechanistic approach, embracing cultural aspects that allow complex dynamics of engagements to emerge (Massier 2008; Seth 2007; Govaars-Tjia 2005; Kumar 2005; Wagoner 2003; Summers 2002; Naregal 2001; Groeneboer 1998; Cohn 1996; Kuster 1994). Rejecting mechanistic explanations, this body of scholarship perceives colonial education as a

mutually constitutive process where the forging of new identity involved the colonizers and the colonized, and where the colonized actively engaged in forms of agency more diverse than just resistance (Seth 2007; Govaars-Tjia 2005; Naregal 2001). In this tradition the binaries of the colonized and the colonizers are challenged (Kumar 2005); ruptures within the colonized society are made visible (Dash 2009; Naregal 2001); the reordering of the cognitive map is laid out (Massier 2008; Seth 2007); and the aspiration to acquire Western knowledge is made explicit (Govaars-Tjia 2005; Groeneboer 1998). The surge of this scholarly tradition notwithstanding, surprisingly little has been explored on the colonial legal education considering its critical role in the reordering of cognitive categories of the colonized (Merry 2004, 2003). While certain studies offer interesting insights into the process of subject formation (Massier 2008), others scarcely dig into it (Lazarus-Black 2008; Wignjosobroto 1994).

As the Dutch solidified their territorial grip throughout the archipelago in the early 20th century, the era began where colonial officialdom considered peace and order to be the main condition for establishing a modern colonial state. Law and legal discourse emerged as the arsenals with which to project an image of authority and as the ultimate arbiter of justice (Hansen and Stepputat 2001; Comaroff 1998). The networks of colonial institutions that centered around governance needed to present themselves as the legitimate “state,” unified and coherent in their operation. They needed a contingent of lawyers who embodied specific forms of subjectivity to effectively maintain the projected authority via legal infrastructure. The need to produce a mass of lawyers by the most economical means possible made educating the natives a viable option. It meant introducing them to the world of European legal thought, its concept of justice, and its ideas about the constitutional state, as well as educating them on indigenous legal knowledge from the perspective of the European

tradition in order to govern the natives (Merry 2004, 2003). This new cognitive order transformed the educated natives' way of recognizing structures, power, and the promising potential of the colonial legal order as a means the arbiter of justice. Ironically, it also made them acutely aware of the discrepancy between the theoretical concept of justice and the reality of colonial practices.

The Beginning: The Rechtsschool 1909–1928

On July 26, 1909, the Rechtsschool opened its doors in Batavia to seventeen Javanese and Madurese students (Rechtsschool 1929).¹ At the Rechtsschool, these 12- and 13-year-old students would undergo a three-year preparatory education followed by a three-year legal education. Upon graduating with the title of *inlandsch rechtskundige* (Native jurist), they would serve as registrars to assist the Dutch chairman in the court for the natives, the *landraad*.

The impetus to open the school began in 1903 when the Regent of Serang, Achmad Djajadiningrat, inquired about the possibility of qualified natives serving in the Netherlands-Indies judiciary institutions.² His inquiry prompted the government to create a committee to explore the possibility. Chaired by the influential advisor for native affairs, C. Snouck Hurgronje, the committee recommended opening a vocational school to train Native legal personnel to relieve the increasing burden of the *landraad* chairmen, especially after the circuit court (*rechtbank van ommegang*) was abolished in 1901 (Massier 2008). The recommendation was attractive to the government for a number of reasons: First, it would be easier, faster and cheaper to fill

¹ By 1915, the Rechtsschool began to admit students from the Outer Islands, and by 1922 it admitted Europeans and Foreign Orientals.

² Djajadiningrat ended up sending his younger brother, Hoesein, to Leiden to study Eastern Languages under the guardianship of Snouck Hurgronje. Later, Hoesein Djajadiningrat became a prominent professor at the Rechtshoogeschool.

the landraad's staff shortage with Native law clerks than with the trickle of Dutch lawyers willing to relocate to the Indies. Second, Native law clerks would understand the intricacies of native legal systems, languages, and thought processes and the dynamics between litigants and defendants. Third, educating the natives to fill these posts would reflect well on the government's standing among the native elites. And finally, the lower salary of Native law clerks provided the government with substantial savings compared with employing Dutch lawyers (Massier 2008, Helsdingen 1929a, 35). The Javanese society, determined to gain access to European education, enthusiastically welcomed the recommendation (Groeneboer 1998).³

Between Intellectual and Moral Responsibility

The colonial government founded the Rechtsschool in order to staff the increasingly busy landraad with legally trained Native personnel. They were to act as interlocutors between the Dutch legal officers and the native subjects in the court of law. Despite the support of the colonial government, skeptics dampened early excitement in the founding of the school. A teacher at the School for the Training of Native Officials (*Opleiding School Voor Inlandsche Ambtenaren*, OSVIA) in Probolinggo, Mr. Haase,⁴ wrote an essay in 1907 in *De Locomotief*,⁵ a newspaper published in Semarang, Central Java, about the natives' readiness to serve in the colonial judicial institution. Born and raised in the Indies among native children, and

³ Dr. G.A.J Hazeu, Snouck Hurgronje's successor, traveled around Java to introduce this new opportunity. A Javanese noblewoman, a sister of Indonesia's famous feminist, Kartini, reported this news to her friends in the Netherlands of Dr. Hazeu's travel in 1909 as intended "to give Native officials opportunity to get the correct information about the latest plans for the establishment of a Native law school. . . ." (Cote 2008, 146). In August 1910, she wrote again, mentioning her and her husband's plan to send their son to the Rechtsschool (Cote 2008, 151).

⁴ Mr. is an acronym of Meester in de Rechten, the Dutch title for Master in Law.

⁵ *De Locomotief* was considered to be a progressive newspaper. Its founder and editor, P. Brooshooff, was a supporter of the Ethical Policy (Locher-Scholten 1996).

having taught at OSVIA in Probolinggo, Haase presented himself as a credible judge of the natives' capacity to implement a European-oriented administration of law. He doubted that the natives possessed the essential character traits to serve in the judiciary, characteristics such as integrity, independence, autonomy, and ethical courage, that would prevent "their own belief and conviction to come to the surface" (Rechtsschool 1929, 10).

A supporter of the school in the Lower Chamber of the Netherlands parliament and a well-known Ethicist, Theodore van Deventer, argued that these alleged weaknesses could be overcome by "setting a student dormitory for the Rechtschool, with a good Dormitory Master and a pedagogue, who genuinely loves the Native students and who must win their trust" (Rechtsschool 1929, 43). The formative influence of a European woman, preferably the wife of the dorm master, would help nurture these values further. Van Deventer and his colleague Henri van Kol were convinced that the Rechtschool offered a win-win solution to the colonial government, but members of the Upper Chamber were not easily convinced. Echoing Haase, they were worried that the "peculiarities of native character" would prevent the natives from ensuring an "impartial and independent administration of law" (Rechtsschool 1929, 45). They were also worried that this opening would eventually lead to the natives attaining higher and more influential positions such as that of landraad chairman.

Despite the debates, the Netherlands' parliament eventually approved the establishment of the Rechtschool, but the widespread skepticism about the natives' "defective character" had already haunted the school's educators. By the beginning of the school year, the Rechtschool's pedagogical mission had crystallized not only to produce intellectual jurists, but more importantly to nurture the young Natives to develop character traits compatible with the modern administration of law. In the case

of the Indies, it included the ability to maintain autonomy and independence when confronted by intimidating powers in the hands of the Binnenlands Bestuur and the Native Regents and “soft power” such as familial obligations and requests (Helsdingen 1929a, 11). The Rechtsschool staff had a very clear idea of what a Native Lawyer should embody: He should be independent and capable of making autonomous legal decisions despite the presence of powerful entities (Helsdingen 1929a, 15); he should be critical, but not too critical that he would disrupt accepted and stable norms, especially norms beneficial to sustain colonial rule (Helsdingen 1929b, 63); and he should not be morally corrupt like the natives in general (Helsdingen 1929a, 12).

The conservative circle in the Binnenlands Bestuur hardly made things easier for the Native jurists. Van Helsdingen observed intimidating pressures from officials, who pounded on the Native jurists “that the desire of some European judicial officials to put themselves above the Assistant Resident was outrageous and condemnable,” creating doubts about their rightful position (Helsdingen 1929a, 18). Native jurists should be constant when confronting the powerful Binnenlands Bestuur officials such as the Residents, Assistant Residents, and Controller. They had on their shoulder an extremely challenging responsibility:⁶

. . . the judicial officer was certainly one of the direct Government bodies, and with regard to the Binnenlands Bestuur, has to take a completely independent position. He has to maintain that the Binnenlands Bestuur never interfere in the administration of justice other than what is adjudicated by the law as [its] distinguished function. [The Native jurist] has to recognize first that in the whole social interaction, the Binnenlands Bestuur is the direct representative of the Government, the Governor-General and therefore the Crown, but not as the boss. That is [the position] he [should] represent. Any disrespect as far as he is

⁶ These concerns were not unfounded. Many autobiographies by educated natives of that generation underlined the humiliation they had to endure in various levels of educational institutions, humiliation that strengthen their resolve to prove themselves (Algadri 1999, Djojohadikusumo 1973 Sastroamidjojo 1979, Djajadiningrat 1936).

concerned, could weaken his position and apart from that should not be tolerated by a judicial official!⁷ (Helsdingen 1929a, 15)

With these character traits, Native jurists should be able to understand and adopt the practice of modern state formation that separates legal and executive authority; they should gain the “courage” to avoid conflicts of interest between their profession as a part of the colonial administration of law and as the subject of the Native Regent.⁸ With such ambitious objectives for their young protégés, the Rechtsschool staff needed to implement effective pedagogical strategies. As it turned out, they were extremely well prepared for the endeavor.

Technologies of Subject Formation

The future Native lawyers would have to stand up to the skepticism and deeply rooted arrogance of the Binnenlands Bestuur officials and the Native Regents. Culturally rooted asymmetrical power relations between the younger generation and the already established Native officials further raised these hurdles. Understandably, the task of the Rechtsschool teachers and educators was challenging, a fact they were acutely aware of. Their reflections, recorded in the Rechtsschool Commemorative Booklet of 1929, revealed two pedagogical objectives they aimed to attain: to train highly intellectual Native jurists who were familiar with European legal epistemology and who could adopt it as their own, and to train Native jurists who were capable of maintaining autonomy and independence in their legal decision making, a trait that

⁷ Van Helsdingen mentioned one strategy of never allowing Native jurists to make courtesy calls to the Native rulers in an outfit other than European so that they could avoid having to perform Native forms of curtsy, such as “djongkok,” that is, dragging oneself in a sitting position when approaching native rulers (Rechtsschool 1929, 14-15).

⁸ Eventually the colonial government decreed that government officials of native descent were legally subjects of the colonial government. This decree was especially relevant for semi-autonomous areas in the colony, such as the Javanese Principalities. I expand this in Chapter 3.

necessitated the capacity to be critical. To achieve these objectives, the Rechtsschool staff implemented a three-pronged approach: a stringent admission process to garner only the upper crust of native society, a rigorous curriculum and high-quality teachers, and assimilative conditions to encourage adoption of “European values” (Rechtsschool 1929).

The Rechtsschool admitted only those students who had successfully finished the European primary school (*Europeese Lagere School*, ELS), or whose cognitive development of Dutch was equivalent to that of ELS graduates (Rechtsschool Statute 1909, Art. 10 clause 3). Such stringent criteria guaranteed that students came from families of high birth, a requirement for a native to attend ELS. To ensure that students attained a strong intellectual foundation and sound theoretical knowledge in law, the Rechtsschool divided its curriculum into two sections: three years of preparatory education followed by three years of legal studies. The latter admitted students from other secondary schools such as the five-year *Meer Uitgebreid Lagere Onderwijs* (MULO) if they passed the entrance examination.⁹

Advised by the Hurgronje commission, it was the government that regulated the subjects to be taught at the school. The director of the Department of Education, Religious Affairs and Trade determined the final curriculum and teaching plan based on a proposal prepared by the Rechtsschool Supervisory Board, in consultation with the school’s director and the head of the colonial administration’s department where applicable (Rechtsschool Statute, Art 4, Clause 2). In the preparatory program, the subjects included Dutch and Dutch literature, French, general history, mathematics, and natural history. In the first year of the three-year legal program, students learned four subjects: introduction to jurisprudence, overview of the Dutch constitution,

⁹ The exam was to prove that the MULO graduates had “acquired at least an equivalent body of knowledge and reached at least the same level of mental development and had been judged suitable following an assessment of their ‘ethical progress’” (Rechtsschool Statute, Art. 10 clause 4).

constitutional law of the Netherlands East Indies, and Netherlands East Indies criminal law. In the second year, they learned the civil code and a part of the commercial code; native law (*volksrecht*), particularly native family law and inheritance law; the forms of contracts among native societies (*Inlandsche contracten*); and the native concepts of rights to land (*Inlandsche rechten op den grond*). In the third year, students focused more on native law (*volksrecht*), native rules and regulations (*inlandsch reglement*) in relation to civil and criminal law, and the Malay language. It is significant that as soon as students started their law program, they were introduced to the native concepts of law, forms of legal transactions and, surprisingly, rights to land. These courses reflected the harbinger of adat law as a legitimate discipline which, at the time, was being developed in the Netherlands.¹⁰ Aside from these specific courses, Dutch language and literature continued to be taught throughout the three years of the law program (Rechtsschool Statute 1909, Art. 4, Clause 1).

The Rechtsschool administrators considered assimilation to be an answer to the natives' "character defects." Students stayed in the school dormitory or lodged with carefully selected European families who would ensure their assimilation into European habits, customs, values, and norms. They attended numerous extracurricular activities, ensuring close continuous contacts with school staff. The 1929 Commemorative Booklet of the Rechtsschool explicitly stated the civilizing mission of the school as follows:

The instruction at the Law School is meant to secure the necessary general education and the indispensable legal knowledge, while the instruction in the dormitory—in cases where students cannot be lodged with a European family—(ensures) the cultivation of integrity, independence and impartiality. (Rechtsschool 1929, 40)

¹⁰ During this time, Leiden academics established the Adat Law Foundation (*Adatrechtstichting*) in 1909, and Cornelis van Vollenhoven had recently published his magnum opus "Adat Law of the Netherlands Indies" in 1905.

An Indonesian student, Sunario, confirmed this policy in his biography. Thirteen years old when he started, he lodged with a Dutch family for three years, an experience he found to have helped him overcome his inferiority complex as a colonized person (Sunario 1982, 12).

With these three-pronged strategies—a stringent admission process, a rigorous curriculum, and assimilative conditions to encourage adoption of “European values”—the staff and supporters of the Rechtsschool felt they were fully equipped to produce Native jurists who could live up to the “high standard” of European ethics and values, and who would be able to perform their duties in the landraad as individuals autonomous and independent in their legal decision-making.¹¹

The Paradox of Moral Education

When the Rechtsschool graduated its last Native jurists in 1928, the teachers and staff were very pleased with the quality of their protégés. The good names of the Native jurists burnished the reputation of the Rechtsschool both in the colony and in the Netherlands. In the Indies, landraad chairmen reported their satisfaction with the quality of the graduates seconded to them (Helsdingen 1929a, 21). In the Netherlands, where they continued their education to master’s and doctoral degrees, the graduates gained the respect of their professors (Laman Trip-de Beaufort 1954). Well prepared to pursue further study, seven of the Native jurists finished their doctoral degrees at Leiden University. Indeed, the Rechtsschool prepared their students extremely well.

The school commitment to nurture independent thinkers resulted in several endearing anecdotes that C.C. van Helsdingen quoted in his passionate farewell speech. He was impressed by the defiance demonstrated by a Native jurist when he

¹¹ The Indonesian student, Sunario, reported that he felt he was extremely well trained by the Rechtsschool staff, and that the school’s educational quality was acknowledged by Leiden University, where he continued for his master’s degree (Sunario 1982, 14).

was requested to perform *djongkok* before a native Regent. Also known in Javanese as *mlaku dhodhok*, *djongkok* was a native form of curtsy whereby one dragged oneself on the floor in a sitting position as one approached a Regent who sat in a chair. The young *rechtskundige* rebuked the request, saying, “We have not learned that in the Rechtsschool” (Helsdingen 1929a, 14). Van Helsdingen observed,

So [the need to humiliate oneself] is not felt by the chairman in waiting.¹² He realized that his position as a *rechtskundige*, as a jurist who served an independent court, was separate from the government official. It was here [that he needs to] maintain his independence against the highest native official. It was here that his independence counts against the highest native officials. (1929a, 14)

The vision of a quintessential Native jurist was generally projected in juxtaposition with the feudal lords and “degenerate” native customs, putting the ethically oriented mentoring and training philosophy at the Rechtsschool as an answer to the “character question.” The rationale was based on the principle that any education should “focus on the development of the intellectual capacity of the pupils . . . strive to sharpen their power of judgment, form their wisdom, expand their horizon,” with the desired objective to “gradually replace the authority of the master with students’ own insight,” replace “a certain timidity” with “a proper sense of independence,” and nurture the students’ desire “to continuously develop to ‘stretch one’s legs,’ continuously advance further in the society, wherein he is placed.” Education should fight “all sense of complacency” and educate a spirit of “healthy critique” yet ensure that “this spirit of criticism does not degenerate into a mad desire to break all that exists” (Helsdingen 1929b, 63). However, the school staff also understood too well the paradox, and the danger, of nurturing Native jurists’ strong

¹² With the term “chairman in waiting,” Van Helsdingen was practically playing with the Dutch fear of the Natives’ gaining an influential position in the administration of justice.

taste for justice. Van Helsdingen underlined this paradox in his retrospective look on the Rechtsschool:

If the accuracy of the above statements is acknowledged, then one can easily imagine that particularly in the teaching of constitutional and administrative law, history, etc., [it] would have been simply impossible and undesirable to prevent [the students from] judging the policy of the Government: impossible, because this [capacity to judge] arose entirely from the pursued teaching method; undesirable because it would not only build a wall of mutual distrust between teachers and students, which would poison the moral influence of the former to the latter, but also because it would appear as though the Government should be ashamed for what they do for the people of this region. (Helsdingen 1929b, 63)

Nevertheless, Van Helsdingen attempted to defend the educational philosophy embraced by the Rechtsschool by stressing that its teachings were based on principles of loyalty,

that whatever mistakes and failure may be attributed to the Government or its officials, the Netherlands' leadership for the people of this country has been and still is a blessing; that once the students developed into young men in society, as might be expected, they will support the Government in its efforts for the country to gain greater prosperity and development; that the indigenous society is yet to have sufficient intellectual force and yet to be morally equipped to propel herself into the way of harmonious development. In short, [it has] yet to stand on its own legs and thus still needs the guardianship of "the oppressor" (*overheerser*), whose government is the only one that can protect the people from the selfishness of half-developed careerists (*strebers*). (Helsdingen 1929b, 63)

Van Helsdingen's ambivalent statements echoed his political stance on the relations between the East Indies and the Netherlands. A politician for the CSP and a member of the Volksraad since 1924, he was known to have supported a stronger Indies government—a position that explains his enthusiasm for a body of independent Native jurists—as greater independence was granted to its population (Schmutzer 1979). But this was a treacherous position for a state-sponsored educational institution. It required constant delicate juggling between enough enlightenment to foster capacity

for independent thinking and enough subjection for the students to want to nurture ties with the Motherland. As illustrated in the case of two illustrious graduates, Sunario and Iwa Kusuma Sumantri, who eventually played key roles in the Indonesian independence movement, the juggling was not always successful.

Sunario, a graduate of the Rechtsschool, looked back on these principles in his biography and remembered how—more than five decades after—many of van Helsdingen’s recollections were indeed implemented. He said,

Rechtsschool was known to be the school for Dutch’s pets, different from STOVIA (School to Train Native Doctors). We were taught colonial law, and it was always vexing, equally vexing to keep listening to the argument that Indonesia “is not mature enough to be independent.” But the benefit of the Rechtsschool education is that we came to understand the meaning of colonialism. [There were] those who were politically advanced, such as Iwa [Kusuma Sumantri] and Budiarto. . . . What was important and immensely interesting was that we were also taught the Netherlands Constitutional Law, so it was very clear to us when we compared that with the East Indies colonial law. It was radically different: the Netherlands was a constitutional state, while here [the East Indies] the principles of constitutional state were largely ignored. . . . (Sunario 1982, 15, emphasis added)

Sunario eventually finished his master’s of law education at Leiden.

After Kusuma Sumantri graduated from the Rechtsschool in 1921, the government assigned him as an official seconded to the chairman of the landraad in Bandung, and then to the Raad van Justitie in Surabaya. After a short stint, he requested a transfer to Batavia, where he worked in the Raad van Justitie (Kusuma Sumantri 2002, 26). At the time an incident in Sarekat Islam had rattled the Indies. The incident involved communist infiltrators’ attempt to radicalize Sarekat Islam, and the Raad van Justitie were busy handling the case attention. Kusuma Sumantri, closely involved in the process, was outraged at the injustices imposed on Sarekat Islam’s chairman, H.O.S Tjokroaminoto. He was also deeply affected by a massacre committed by the Dutch in Ciamis in 1919, known as the Haji Hasan incident. Unable

to contain his frustration, Kusuma Sumantri resigned after two months of service. He eventually went to finish his master's degree in Indies Law at Leiden University, during which he was active in the Perhimpunan Indonesia, the Netherlands East Indies students' organization. After a one-and-a-half-year involvement with Comintern in Moscow that left him disillusioned, Kusuma Sumantri returned to the East Indies in the late 1920s. He opened a law firm in Medan and, together with Sunario, defended many coolies trapped under the harsh and oppressive coolie ordinance.¹³

Sunario's recollection and Kusuma Sumantri's life trajectory illustrate a process of subjection that failed to muffle the capacity for self-reflection. Learning European law awakened the recognition of the discrepancy between the constitutional state in the Netherlands and the colonial state in the Indies. Kusuma Sumantri, by then equipped with a law degree from a prestigious Dutch university and disillusioned by both capitalism and communism, was capable of turning himself into a lawyer ready to defend the coolies in Sumatra. This sense of justice, nurtured and sharpened at the *Rechtsschool* and Leiden, undoubtedly had shaped Kusuma Sumantri and Sunario into individuals capable of self-reflection.

Although paternalism still infused the general atmosphere of the *Rechtsschool* education, its pedagogical philosophy was progressive for its time, noted by the ways in which the educators encouraged students to acquire independent character traits amid the powerful domination of colonial bureaucratic institutions such as *Binnenlands Bestuur* and *Inlands Bestuur*. The progressive commitment notwithstanding, the school could not escape the engulfing colonial conditions: the school's administrators felt the need to defend and justify its philosophy by summoning the loyalty of its graduates to preserve the existence of the colonial state.

¹³ See more in Kusuma Sumantri (2002). See also Stoler (1995) on capitalism's confrontation with labor in North Sumatra, and Breman et al. (1987) on colonial politics with respect to coolies and plantations.

This ambivalence aside, the graduates of the Rechtsschool proved they were highly trained jurists and intellectuals ready to take on the challenging tasks ahead.

Studying Law in the Metropole:

Leiden University United Faculty of Law and Letters

The Rechtsschool might have been a secondary school with graduates entitled only to a humble “*Rechtskundige*” title compared with the prestigious *Meester in de Rechten* from a proper law college, yet the school was successful in preparing their students for advanced intellectual endeavor: forty-three *rechtskundigen* continued on to Leiden University for master’s degrees, and seven of them finished with doctorates.

In 1919, after intense lobbying by Cornelis van Vollenhoven,¹⁴ the Ministry of the Colonies and the Ministry of Education allowed Leiden University to waive *candidaatsexamen* for Rechtsschool graduates studying at Leiden (Poeze 1986).

Candidaatsexamen, an equivalent of the modern examination for a bachelor’s degree in law, or LLB, was part of a two-phase examination system to attain the title *Meester in de Rechten* (Mr). A student usually took this exam after a year and a half of study.

The second exam is the *doctoraalexamen*, taken two years after the *candidaatsexamen*, which, upon passing, granted an examinee with the Mr. degree.

Along with scholarships from the colonial government, this ruling enabled many *rechtskundigen* to pursue a master’s degree in the Netherlands. The opportunity to obtain a prestigious Dutch degree proved to be so attractive that by 1921, fourteen of seventy-two Indonesian students in the Netherlands studied law at Leiden, and only three were on government scholarship (Poeze 1986). With the waived *candidaatsexamen*, students were expected to finish their studies after only a year and

¹⁴ This lobby was endorsed by the *Indische Vereeniging* and the Indies *Chung Hwa Hui* Association in the Netherlands.

a half to two years of study, providing the government with substantial savings in the scholarship budget. One brilliant *rechtskundige*, Soepomo, finished his master's degree in Leiden within two years and took an extra year to crown it with a doctoral degree in 1927.

A continued reform that culminated in the new Academic Statute of 1921 streamlined further legal education in Leiden for those intending to serve in the Netherlands East Indies. It was in this decade that Leiden hosted most Indonesian law students.¹⁵

Academic Statuut 1921: The Foundation for the Netherlands East Indies Law Study

In 1919 the Minister of the Colonies and the Minister of Education, Arts and Sciences established a commission with the grand title of “The Commission for the Reform of Training for East Indies Judicial Staff.”¹⁶ Chaired by C. Snouck Hurgronje, the Netherlands Commission consisted of three Leiden law professors, among them a rising star, Cornelis van Vollenhoven. The Ministers assigned the Commission several objectives: 1) to reform the training for lawyers who intended to serve in the East Indies; 2) to advise whether there was merit in establishing academic training specifically for the practices of law in the East Indies, training that would admit students without a Latin school certificate (a requirement for the study of Netherlands law); and, upon answering these inquiries, 3) to design a curriculum and examination program for the Netherlands East Indies law study (Verslag 1920, 3).

¹⁵ The *Almanak van het Leidsch Studenten Corps*, various years, listed all Indonesians who registered in that year to study at Leiden University. Towards the end of the 1920s, their number had shrunk significantly from earlier in the decade, because by then students could study at the Batavia Rechtshoogeschool.

¹⁶ The commission's official name was *Commissie voor de Hervorming van de Opleiding van Indische Rechterlijke Ambtenaar*. At the same time, the Commission also worked on the reform for the study of Indology. See Warmenhoeven (1977) for a detailed narrative of this part of their work.

In their report, the Commission confirmed the pressing need to establish an academic training entirely directed at the study of the Netherlands East Indies law. The existing training forced students wishing to serve in the Indies to study either Netherlands law or Indology, which hardly prepared them for the Indies' specific conditions. The Commission recommended admission of students with no classical training as well as Indies graduates from *Hogere Burger School* (HBS, equal to high school) and *Algemeene Middelbare School* (AMS, also equal to high school) section A1 (Eastern literature), A2 (Western Classics), and even section B (mathematics and physics). The recommendation reflected the race-based educational structure in the Indies: Classical education, or Latin school, a requirement for Netherlands law study, was available only in the Netherlands. There was *Hogere Burger Schools*, an education accessible only to Europeans and to the crème of native society; and then there was *Algemene Middelbare Schools*, a recent initiative to provide secondary education to a wider native elite circle. By allowing students from these institutions to be admitted, the Commission was trying to help more Indies students study law in the Netherlands (Groeneboer 1998; Wal, 1963). The commission considered each school adequately prepared students for higher education and equipped them for independent pursuit of knowledge. A deficiency in certain required courses could be complemented independently prior to university matriculation.

Snouck Hurgronje and Cornelis van Vollenhoven insisted on including the study of local languages and ethnology in the curriculum because they considered staff of colonial judicial offices unfit to serve without these skills. They were adamant about hosting studies of the Netherlands East Indies law together with studies of Indology, and separately from the University's Faculty of Law. Their position challenged that of the Ministers, who wished the training to focus on practical governing skills under the Faculty of Law (Warmenhoeven 1977). When the Ministers

eventually gave in, the United Faculty of Law and Letters in Leiden University was born, in 1921. The duo's coup granted them wider authority in directing the new faculty. Many of the policies they enacted facilitated the process for Native students pursuing higher degrees in Leiden.

To assist Native students, the Commission recommended “relaxing” the admission criteria, streamlining the examination structure, and allowing more elective courses to suit the students' interests, all of which made the study more pleasant.¹⁷ The recommendation reflected Snouck Hurgronje's and many Ethici professors' policy of association to “elevate” the people in the East Indies; as Otterspeer puts it, “They acted in the conviction that the university was the conscience of the nation. . . . What they wanted to give to the Indies was some sort of Dutch civil service, based on Western education. What they wanted to share was a liberal sense of responsibility, based on rational training” (1989, 218). The recommendations spelled out in the Academic Statuut 1921 and its actual implementation at Leiden United Faculty of Law and Letters largely demonstrated their sympathetic gestures to Indonesian students.

The Netherlands Indies Law Curriculum at Leiden

In 1921, the United Faculty of Law and Letters started their academic year offering three majors: Law studies for the East Indies (*Nederlandsch Indisch Recht*), Eastern Languages, and Indology (Jaarboekje 1928). All majors followed the format of the two-stage exams of the Netherlands law, the *candidaatsexamen* and the *doctoraalexamen*.

Adopting the Academic Statuut of 1921, the United Faculty decided to examine three courses at the *candidaatsexamen*: the historical formation of

¹⁷ This decision continued to be ridiculed in certain Dutch circles as creating second-rate lawyers for the Indies. *Jong Java* pointed this out in an article published in 1924 that welcomed the opening of the Batavia *Rechtshoogeschool*.

contemporary legal procedure (*rechtsinstellingen*), both public and private including introduction to jurisprudence, ancient law (*oudvaderlands recht*), and Roman law; the constitutional law (*staatsrecht*) of the Netherlands Indies, notably taught by Cornelis van Vollenhoven; and comparative ethnology of the Netherlands Indies (Jaarboekje 1928, 35–38). These courses were complemented with a laboratory (*practicum*) of the Netherlands Indies Law, usually taught by a former resident in the Indies, meant to help students gain familiarity with real cases as published in official publications. For the *doctoraalexamen*, the United Faculty required students to prepare four courses: Adat law of the Netherlands Indies, usually taught by Van Vollenhoven; the Civil Codes of the Netherlands East Indies, in which students were encouraged to acquaint themselves with various court decisions and decrees published in the Indies Journal of Law (*Indisch Tijdschrift van het Recht*, ITR); Javanese; and finally one elective subject from thirteen options (Jaarboekje 1928, 39–41).¹⁸ In this curriculum, the study for the Netherlands Indies Law differed markedly from the Netherlands law in that it taught students adat law and cases specific to Indies experience.¹⁹

The Commission’s explanation of their proposed curriculum reveals their philosophy and their vision of an ideal lawyer for the East Indies. The Commission deemed that a Native jurist needed an in-depth knowledge of law in the Indies and its European genealogy. The required overview course of Roman and Germanic law for the *candidaatsexamen* would “provide the students with the opportunity to gain

¹⁸ These included Philosophy of Law, Private International Law, International Law, Constitutional Law of the Netherlands, Administration Law of Netherlands Indies, Colonial law for Outer Areas, Tropical or General Political Economy, Theory and History of Statistics, another Indonesian language aside from the required, Institutions of Islam, Archaeology of the Netherlands Indies or the History the Netherlands Indies, Comparative Colonial History, and finally any other courses picked by the candidate with the approval of the Faculty.

¹⁹ Van Vollenhoven’s reading list for Adat Law included sections from his book *Adat Law of the Netherlands Indies*, sections from Wilkens’s *Essays on Adat Law*, sections from Ph. Kleintjes’ *Constitutional Bodies of the Netherlands Indies*, Snouck Hurgronje’s *The Acehnese, Adat Law of Bali and Lombok* by Liefrinck, *Adat Law of Toeloeng Agoeng* and *Adat Land Rights of Ambon*, both by J.F. Holleman (Jaarboekje 1928, 37).

insight into a legal system and its historical development” (Verslag 1920, 10). The study of Roman and Germanic law, however, “must be contextualized within the contemporary Netherlands East Indies civil law” (Verslag 1920, 10), which derived its content entirely from those laws, because it fostered students’ interest more than if the ancient laws were studied purely for their own sake. Practical skills were also important: the Commission placed the Netherlands Indies Constitution at the beginning of the studies instead of examining it at the *doctoraalexamen* because they believed that towards the end of their training, students needed to familiarize themselves with practical legal issues as addressed by the civil law and criminal law examined in the *doctoraalexamen*. Re-examination on the Netherlands Constitutional Law in the *doctoraalexamen* was considered an unnecessary burden (Verslag 1920, 10). The Commission recommended inclusion of comparative ethnology for the Netherlands Indies in the curriculum but dropped economics (*staathoudhuiskunde*) entirely. As a compromise, students were allowed to take economics as an elective.

For the *doctoraalexamen*, the Commission structured courses according to major subjects that included adat law, civil law and criminal law, obligatory subjects, for example, Javanese, and an elective minor subject. Javanese, and not Malay, was obligatory, because

the combination would make the already overflowing examinations much too heavy. Malay has to give in to Javanese because for the European society and the judicial officer serving in the Indies, it is easy to learn [it] without academic preparation through the practice of the language itself, while this is not the case with Javanese. Considered in terms of literature and the history of civilization, Javanese by far surpasses in importance all other languages of the Archipelago. While Malay is the mother tongue of a small minority population in Indonesia, Javanese is spoken by about half of the population. Finally, familiarity with the Javanese language facilitates acquiring several other Indonesian languages, such as Madurese, Balinese, Sundaneese, Batak etc. Those who would appreciate being scientifically literate in Malay can learn this language as an elective subject. (Verslag 1920, 13–14)

In retrospect, the Commission perhaps was right in their decision to make Javanese instead of Malay an obligatory course, because even without academic endorsements, the students eventually picked up Malay as the official language of their organization, Perhimpunan Indonesia. The growth of nationalist sentiment among the Perhimpunan Indonesia members might have accelerated much faster had they learned Malay instead of Javanese.

Both the suggested and the actual curriculum implemented at Leiden strongly indicated an interest in nurturing intellectual growth in understanding larger and abstract processes. But the curriculum was certainly not innocent. The studies of law in colonial conditions were undeniably an imposition of European epistemology. The overarching umbrella of the colonial legal system traced its genealogy to Roman and Germanic law. By demanding that Native students acquire proficiency in this knowledge, Leiden professors might have wanted to lead them to the impression that ancient European law, particular and contingent at the core, possessed a universal character. Moreover, directing the students to focus on ethnology instead of economics was a curious decision. A charitable view of this decision may assign the bias to the expertise of the law professors. However, this decision led to an enormous void of Native intellectuals who had a grasp of economics, scholars and thinkers who could think about the Indies as an economic entity. It should not have been a surprise that postcolonial Indonesia limped for decades due to a lack of clear economic planning. Last, making Javanese an examined language signaled a cunning move. Javanese was a highly hierarchical language and strongly attached to Javanese ethnicity. Malay was radically different: by this time, vernacular newspapers in the Indies relied on Malay to reach a more diverse audience. Malay had also gained a reputation as the lingua franca of the Indies. Substituting Javanese for Malay as a language to be examined perhaps was a calculated attempt to put the brakes on what is now widely known as

“imagined community.” These strategic moves notwithstanding, with such curriculum the education could hardly be categorized as promoting a mechanistic and legalistic implementation of law as widely suggested by several researchers (Juwana 2006; Wignjosoebroto 1994). A Native student who undertook this curriculum would have gained a grasp of European and Dutch epistemology of law and the ways in which they related to the development of law in the Netherlands East Indies.

Subject Formation or Self-Constitution?

Despite the empathic gestures to Indonesian law students at Leiden, one is hard pressed to find reminiscence of warm student-professor relationships as is the case with *Rechtsschool* and later *Rechtshoogeschool* graduates and professors.²⁰ Perhaps the charismatic reputation conditioned Snouck Hurgronje and van Vollenhoven to keep the students at bay. Different expectations for social relations between students and professors in the 1920s could partially be the reason, as was the heightened nationalist sentiments among Indonesian students. Van Vollenhoven reportedly stopped attending *Indische Vereeniging* gatherings once it changed its name to *Indonesische Vereeniging* and then *Perhimpoeanan Indonesia* (Laman Trip-de Beaufort 1956).

²⁰ One rare note from van Vollenhoven about his Indonesian students was about the doctoral defense of Gondokoesoemo, the first Indonesian to earn a doctoral degree in law in Leiden. Van Vollenhoven wrote,

Two weeks ago our first *Rechtsschool*- Javanese (Gondo) had his promotion (. . .). His book is very good with everything thought out by himself. As a surprise he came with both his *panakawans* to the promotion with headdresses, sarong, no shoes, one of his *paranimfen* [ceremonial supporters] even wore a kris. I had expected ten Javanese friends (. . .) instead the place was filled to overflowing, about fifty to sixty people I should say; girls, ladies, all kinds of students, some *controleurs* studying here, Mr. Abendanon, *etc.* (. . .) It was quite an event. After the promotion Snouck as *rector* said a few words about this first promotion. (Personal letter of Van Vollenhoven, cited in Laman Trip-de Beaufort, *Cornelis van Vollenhoven 1874-1933* [Haarlem: Tjeenk Willink, 1954] p. 180, cited in Pompe 193, f.16, p. 71)

The pedagogical approach used by Leiden professors appeared to be more hands-off than the passionate nurturing at the Rechtsschool. The heavy study load indicated the professors' greater interest in nurturing exponential intellectual growth than in building cozy relationships. Students coming to Leiden were considered mature adults capable of taking care of themselves, an attitude in line with the nature of college education in the Netherlands at the time: attendance at lectures was not mandatory; students could read assigned textbooks on their own with an occasional office appointment for clarification with the professor; examinations were held whenever students felt they were ready (Hatta 2002; Hasan 1999; Djojoadisuryo 1978). Several memoirs of Indonesian nationalists studying at Leiden described how they navigated their way in the new place with help mainly from those who had arrived earlier (Kusuma Sumantri 2002; Hasan 1999; Djojoadisuryo 1978). Seniors helped new students find lodging, settle in, deal with the school administration, meet former colonial officials who lodged Indonesian students, even find teachers to tutor them in Greek and Latin. Students benefited greatly from the collegial help of fellow members of Perhimpunan Indonesia, which in the 1920s arose to become a prominent association of increasingly "radicalized" students belligerent towards colonial politics.²¹ As an organization, Perhimpunan Indonesia was exemplary in caring for its members. Relatively better-off members would assist those in straitened financial situations with food and lodging, even cash. Sick students were attended to. In the case of illness and death, which happened to one student in Switzerland, Perhimpunan Indonesia would arrange the visitation and funeral (Hatta 2002; Rivai 2000). For students receiving a government scholarship or whose parents were government

²¹ As they firmed their stance on a non-cooperative position, Cornelis van Vollenhoven stopped attending the association's meetings (Laman Trip-de Beaufort 1956). This, however, did not prevent him from maintaining a professional attitude towards his students. Leiden professors allowed Ali Sastroamidjojo to take his *doctoralexamen* at the time he was under arrest for alleged cooperation with the communist leader Semaoen (Sastroamidjojo 1979).

officials, the room to maneuver was more limited. The advisor for Netherlands East Indies students (*Raadsman van Studeerende*) monitored and controlled their activities; they were prevented from actively participating in Perhimpunan Indonesia at the risk of losing their scholarship funding; such hard-handed ways of dealing with students garnered protests (Rivai 2000).

The hands-off approach in fact also reflected the status of Indonesian students in the Netherlands at the time. Indonesians coming to the Netherlands were considered citizens of the Motherland, subjects of the Queen, and shared the same rights and obligations as any local Dutch persons, including the right to run for office.²² Several Indonesians noted the friendly and respectful treatment they received from the Dutch persons in the Netherlands, a stark contrast to the generally racist attitude and treatment as second-class citizens that was the norm in the Indies (Djojoadisuryo 1978, 95, 106). After all, they were more sympathizers of the Indies' cause in the Netherlands, ranging from the more association-oriented Ethicists to socialists to radical communist elements in the Netherlands that demanded a free Indonesia. Compared with the choking and increasingly oppressive rule of the colonial government in the Indies, the Netherlands clearly offered a freer atmosphere for the Native students.

In a nutshell, by the time they attended law school in Leiden, students from the Indies had developed a strong sense of independence, autonomy, and justice richly nurtured at the *Rechtsschool* and other educational institutions they attended in the Indies. Thus, in contrast to the emphasis on character development at the *Rechtsschool*, at Leiden the professors' focus was more on encouraging intellectual growth. This focus bore fruit in the intellectual staying power of Leiden graduates:

²² An Indonesian in the Netherlands, Roestam Effendi, ran for and won a seat in the Netherlands Lower Chamber (Hasan 1999), and <http://www.iisg.nl/bwsa/bios/effendi.html> (accessed January 19, 2011).

Most of the Indonesian scholars who contributed to the prestigious *Indies Journal of Law* (*Indisch Tijdschrift van het Recht*), such as Soepomo, Soesanto Tirtoprodjo, and Wirjono Prodjodikoro, graduated from Leiden. The intellectual push extended by Leiden professors also materialized in the graduation of native doctors in law. Throughout the years, seven Indonesians obtained doctoral degrees. Of the seven, four wrote their dissertations on topics related to land issues: Gondokoesomo on the annulment of village decisions by colonial government (1922), Soebroto on the mortgaging of paddy fields (1925), Alinoeddin Enda Boemi on land rights in Batak land (North Sumatra) (1925), and Soepomo on the reorganization of land rights in Surakarta (1927). Cornelis van Vollenhoven promoted all four. The push for intellectual growth was also promoted through two prizes for the best master's exam for Native students: the Kanaka Prize and the Gadjah Mada Prize. Soesanto Tirtoprodjo and Wirjono Prodjodikoro, who happened to be brothers, won the Kanaka Prize in 1925 and 1927, and Soepomo, who was the only person ever to win the Gadjah Mada prize, in 1927 (Poeze 1986). These three continued their intellectual journey in Indonesia for many years. Soesanto Tirtoprodjo wrote articles for various journals such as *De Stuw*, while Wirjono Prodjodikoro and Soepomo contributed numerous essays to the *Indies Journal of Law* long after they returned to the East Indies.

As narrated above, tensions and struggles between the ethical-policy oriented professors and the Dutch government richly infused the foundation of the Faculty of Law and Letters in Leiden. The professors' aim to equip Indies students with a well-rounded knowledge of law clashed with the government's pragmatic wishes, which was propelled by the need to man the administration of justice in the most economical way possible. Eventually the Leiden professors won the upper hand. The revamping of curriculum to balance intellectual enrichment and practical skills in governance, the

laissez faire attitude towards the students' political activism, the push for students' excellence and intellectual advancement all suggest the professors' encouragement of independent thinking among Native students. The increasingly defiant Perhimpunan Indonesia, whose membership was heavily populated by law students, attested to this. Thus, in contrast to the economic argument on colonial education, law study in the Netherlands did not fit the stereotype of a hegemonic education.

Dawn in the Colony: Batavia Rechtshoogeschool

While the two ministries and the Netherlands Commission were busy revamping training for colonial administrative and legal officials, several initiatives began to take root in the Netherlands East Indies to establish an institution of higher education. In 1917 a number of private citizens initiated the foundation of a technical college, and by 1920 they launched the *Technische Hoogeschool* Bandung, West Java. The initiative inspired the colonial government to modernize the Rechtsschool. The government appointed J.H. Carpentier Alting, the president of the East Indies Supreme Court, to chair the Commission to Reform the Native Rechtsschool²³ (henceforth referred to as the Indies Commission).

Starting their work in 1919, the Commission was charged with investigating ways to reform the Rechtsschool to adapt to the changing conditions in the colony. Several attempts to unify the plural legal system had given the colony a vision of such a future.²⁴ In this light, the Rechtsschool's curriculum and the limited admission of Native students had become obsolete because it focused too much on the segregated administration of justice (Massier 2008; Rechtsschool 1929). After going through

²³ In Dutch: *Commissie tot Hervorming der Inlandsche Rechtsschool*.

²⁴ Cornelis van Vollenhoven thwarted this attempt. He argued that a unified legal system would put the indigenous population at a severe disadvantage with respect to the Europeans (Burns 2004).

several exercises, the Commission recommended a full-fledged, college-level law school open to all segments of Indies society, Natives, Europeans, and Foreign Orientals. The college presumably would relieve the chronic shortage of jurists despite the presence of the Rechtsschool and returning lawyers from Leiden (Massier 2008; Fasseur 1993).

In formulating the founding principles of the future law college, the Indies Commission was very critical of legal education in the Netherlands that mainly catered to the practices of law in the Netherlands. They decided that the Indies law college not only must be on a par with higher education institutions in the Netherlands, but also must be kept away from the “pitfalls” that had “tainted” the university system in the Netherlands.²⁵ That is, it must persist in prioritizing the specific needs of the Indies society in its curriculum and teaching method, lest it uncritically adopt the Motherland’s weaknesses. More so than in the Netherlands, the study should be connected to and focus on the practice of law without the handicap of those coming from a narrow vocational training (Neitzell de Wilde, 1929).

Although the Indies Commission members carried out their task concurrently with the Netherlands Commission, they were unaware of the Netherlands Commission’s existence until they were almost done with their report. Understandably, they were dismayed. As a matter of fact, they were unsettled by the Netherlands’ presumed authority in determining education policy that would deeply affect the colony:²⁶

²⁵ NL-HaNA, Scholten, 2.21.319, inv.nr. 62 *Beschouwingen Naar Aanleiding van het Rapport der Commissie voor de Hervorming van de Opleiding van Indisch Rechterlijke Ambtenaren*. The Commission did not specify exactly what it meant by “pitfalls” and “tainted.” I speculate that they are referring to what the commission members considered to be courses “irrelevant” to the practice of law, such as comparative ethnology and languages.

²⁶ Carpentier Alting, the chair of the Indies commission, was a member of a commission that Snouck Hurgronje chaired in 1911 to reform the study of Indology in the Netherlands (Fasseur 1993). This fact makes the “rift” even more interesting to dissect.

. . . the commission in the Netherlands have not weighed the question of whether higher education legal study in the colony [itself] should be useful and necessary, but immediately assumed that the formation of higher legal study must be acquired in the Netherlands.²⁷

Divergence between the two commissions emerged on several issues, but in this section I focus on the formation of the curriculum for the future law college.²⁸

Curriculum for the college would affect a much larger society in the colony because Europeans and Foreign Orientals could also matriculate. What would be taught at the school would define the future legal discourse in the colony. Unsurprisingly, Europeans in the Indies felt they had a stake in the direction of the college.

Teach Them No Latin

In the 1920 recommendation for the training reform for the Indies' judiciary officers, the Netherlands Commission proposed dropping Latin from the compulsory subjects and replacing it with Javanese. The United Faculty of Law and Letters at Leiden University adopted this proposal, and included Javanese as one of the examined subjects (*geexamineerde leervakken*) at either *candidaats-* or *doctoraalexamen*.²⁹ The position of the Netherlands Commission reflected the recommendation for higher education given by the second Colonial Education Congress in 1916. Well attended by both Dutch and Indonesian educators, the Congress was concerned with education in the colony (Poeze 1986). As a group, the

²⁷ NL-HaNA, Scholten, 2.21.319, inv.nr. 62 *Beschouwingen Naar Aanleiding van het Rapport der Commissie voor de Hervorming van de Opleiding van Indisch Rechterlijke Ambtenaren*, p. 1.

²⁸ The discipline would be known specifically as the Netherlands-Indies Law, following the recently established United Faculty of Law and Letters in Leiden University mandated by the Academic Statute 1921.

²⁹ Examined subjects (*Geexamineerd vakken*) covered essential subjects that required masterly proficiency and had to be examined with either oral or written exams. Compulsory subjects (*Verplichte vakken*), on the other hand, were not part of *candidaats-* or *doctoraalexamen*. A review with a designated professor would be sufficient.

Congress believed that higher education in the Indies should cater to the local population and culture. To fulfill this ideal, they proposed two principles: the university should be open to all population groups in the Indies, and the quality of education and scholarly level had to be on a par with the Netherlands. The curriculum had to fit the Indies sociocultural condition; thus, in place of the teaching of Latin and Greek, the Congress urged the study of four main subjects: Hindu culture of the archipelago, comparative anthropology of the Dutch Indies, the history of the archipelago (mainly European presence), and Javanese. Hence, the Indies culture here was a code word for the Indic-influenced part of Javanese culture (Otterspeer 1989).

The Indies Commission rejected these recommendations. They rejected making Javanese a compulsory subject since there were other ethnic groups whose mother tongue was not Javanese.³⁰ Instead, because everyday Malay was a *brabbeltaaltje*, a “gibberish, low Malay” that was insufficient for academic work or a professional career, they insisted that a systematic study of Malay was absolutely necessary. With regard to abolishing Latin from the curriculum, the Indies Commission reacted with mixed feelings. Some members felt vindicated that their opinion of Latin in the East Indies was justified, but the majority felt it would deteriorate the quality of the education. Nevertheless, the Indies Commission was resigned to going along with the Netherlands, but not without lamenting, “[We] thought that, since the Netherlands is going in this direction, the Indies cannot remain behind, and thus the demand for knowledge of Latin for proper legal study—regardless of how urgently it is needed—must be abandoned.”³¹

³⁰ This opinion resonated in the ongoing debate in the Netherlands and in the Indies about the role of Javanese versus Malay in colonial education (Groeneboer 1998: 212).

³¹ NL-HaNA, Scholten, 2.21.319, inv.nr. 62 *Beschouwingen Naar Aanleiding van het Rapport der Commissie voor de Hervorming van de Opleiding van Indisch Rechterlijke Ambtenaren*, pp. 18-19.

The news about dropping Latin from the future law school curriculum created an uproar in the Dutch conservative circle in the colony. In an article published in the January 31, 1924, edition of *De Nieuwe Courant*, an author protested the lack of classical education in the Indies that had forced many families to send their offspring to the Netherlands at a tender age so as to be raised in “a classical upbringing.”³² The Netherlands should not shirk its responsibility to the European population in the Indies to provide “material and spiritual development in the interest of the Netherlands.” To maintain European dominance, the government had to ensure a steady influx of Europeans to the Indies by providing good income and pensions, and to encourage those already in the Indies to remain by ensuring a good education for their children. Since classical education was nonexistent in the Netherlands Indies, the author argued, establishing a law college was pointless. Law graduates without a classical education would only be inferior lawyers incapable of competing with graduates from the Netherlands.³³ The author insisted that a law college was not necessary and was not demanded by Europeans because there was no need for more full-fledged jurists and certainly not of second-rate masters-in-law. Instead, the author demanded that the government

install classical preparatory education by means of lycea! By proving the desirability [of a law college] and only after considering the probable viability

³² The tradition of sending offspring, especially male, away to the Netherlands traces back to the 18th and the 19th century East Indies. The intensity was such that the families who remained in the colony were essentially of matrilineal lines with a more entangled connection with their Asian roots (Taylor 1983). They became “Indisch.” Education in Europe ensured the authenticity of Europeaness. Hollander (2008) observes a similar phenomenon in late-colonial Indonesia in her book *Silenced Voices*. What was meant by a classical education was the presence of a Latin school, popularly known as a “Gymnasium,” which trained its students in Latin and Greek. As mentioned in the earlier section, a gymnasium education was a requirement for legal study in the Netherlands until Snouck Hurgronje’s committee made an exception for the study of Netherlands Indies Law, as stated in the Academic Statuut of 1921.

³³ NL-HaNA, Scholten, 2.21.319, inv.nr. 77, newspaper clippings.

can a law college be founded, [even then it] must give provide a competence completely similar to the universities in the Netherlands.³⁴

The *Nieuwe Courant* article made transparent the undercurrent desire for a particular sense of authenticity among the European population of the Indies. They were concerned about being diluted by the ever-encroaching Indies culture. An Indies-oriented law school would erode the authenticity and would have positioned them with a footing much inferior to fresh-blooded Europeans from the Netherlands.³⁵ On the surface, the debate over Latin appeared to be a pragmatic deliberation about an “irrelevant” subject, but upon deeper scrutiny it emerges as a pondering—even if only subconscious—of the value of European epistemology and universality.

Paul Scholten and the Curriculum Development for the Batavia

Rechtshoogeschool

To establish the new law college, the Netherlands assigned as the coordinating expert Paul Scholten, a well-known professor of law from the University of Amsterdam. In executing his task, Scholten had access to the report of the Netherlands Commission, the Indies Commission, and the colony’s reaction of the law school establishment plan as published in local newspapers. These reports seemed to have prepared him to understand the dynamics within the East Indies and between the East Indies and the Netherlands, which he demonstrated in his diplomatic gestures to the various pressures in the colony. Paul Scholten came to the East Indies twice in 1924,

³⁴ NL-HaNA, Scholten, 2.21.319, inv.nr. 77, newspaper clippings. As a matter of fact, it was convenient for the article to forget that the only gymnasium ever opened in Batavia, the Koning Willem III School, in 1867, had to shut down its classical education section within 4 years due to low enrollment. Even though it continued to be called a “gymnasium,” it was never a proper Latin school after that (Nasution 1995, Fasseur 1993).

³⁵ Drawing from Taylor (1983), Stoler (2002) explored this anxiety further through her interrogation of racial relations and dynamics in the East Indies. Fasseur (1995: 61) made a note of the same anxiety in the closing of a government training school in 1913 in Batavia after 50 years of service because “a candidate for European civil service—thus ran the argument—should study exclusively in Europe.”

totaling five months. He used his first visit starting in February 1924 to meet various officials, finalize his report, and present it to relevant parties in the Indies. By his second visit in September, he was ready to launch the law college.

Indies residents met Paul Scholten's assignment with mixed feelings. If the author of the *Nieuwe Courant* article was upset about the plan to establish a law college without a classical education, the Malay-speaking *Neratja*³⁶ vehemently disputed the claim that there was no need for more jurists in the Indies, while the progressive *De Locomotief* defended the choice of an outsider to help founding the law college. Someone like Scholten who was not directly connected to Leiden University or any feuding parties in the colony was well suited for the task.³⁷ If Scholten was disconcerted by the feuding noises, he kept it to himself. The report he submitted to the Governor General exuded confidence, and he tackled skepticism with diplomatic ease as recorded in the transcript of his meeting with the Indies high-ranking officials.

In setting the curriculum for the Rechtschool, Scholten departed from the guidelines set by the Netherlands 1921 Academic Statute developed by the Netherlands Commission that defined the United Faculty of Law and Letters in Leiden.³⁸ He found the statute too much of a compromise of various trends. The Netherlands Indies' curriculum had to be developed independently of the Netherlands and with the Indies' own unique conditions in mind, thus resonating the Indies Commission's proposed principles. He laid out several principles informing his

³⁶ *Neratja* was a Malay-speaking newspaper founded in 1917 with Abdul Muis and later Agus Salim acting as its editor-in-chief. Both were prominent leaders in Indonesia's pre-independence movement. *Neratja* was critical of the colonial policy. Mohammad Hatta, later Indonesia's first vice-president, frequently wrote for *Neratja* during his years in the Netherlands.

³⁷ NL-HaNA, Scholten, 2.21.319, inv.nr. 77, newspaper clippings. The attempt of Leiden's progressive line, brought home by their graduates, to reform the Binnenlands Bestuur was not well received by Binnenlands Bestuur's diehard conservatives (Benda 1966).

³⁸ This statute was revised in 1921 following the advice of Hurgronje's Netherlands Commission on reform of legal training for the Netherlands Indies (Fasseur 1993).

curriculum draft that marked the difference between the future law college and Leiden United Faculty of Law and Letters.

First, in range and depth, the legal study in the colony must be equivalent in quality to those in the Netherlands. It must focus on educating jurists for the practice of law in a scholarly and scientific manner. On this, Scholten was on the same page as Snouck Hurgronje when the latter resisted the Minister of Colonies and the Minister of Education, who demanded strictly practical training for Indies lawyers. Second, unlike the sprawling courses offered in Leiden, legal-oriented courses should dominate the college's teaching, because focus is acutely necessary for the formation of young minds.³⁹ This was in juxtaposition with Leiden, since they considered language and anthropology to be essential elements of legal studies. Third, the dichotomy between Western- and Eastern-oriented subjects was irrelevant for the Rechtshoogeschool. In this, Scholten was alluding to the Congress for Colonial Education's recommendation in 1919 for more "Eastern-oriented" courses. Instead, the Rechtshoogeschool must focus on the presently applied law in the Netherlands Indies regardless of its origin. Fourth, the pedagogical approach of the Rechtsschool should balance freedom of mind and structured discipline. This was a nod to the Rechtsschool pedagogical philosophy.⁴⁰

Scholten's statement "Concentration is urgently necessary for the formation of young minds (*jeugdigen geest*)"⁴¹ is of particular interest here. This principle cleared the way for Scholten to reject a sprawl of courses that discouraged the "focus" or "concentration" that he deemed pressingly urgent to shape young minds. To ensure

³⁹ In Dutch: *Concentratie is voor de vorming van den jeugdigen geest dringend noodzakelijk*.

⁴⁰ NL-HaNA, Scholten, 2.21.319, inv.nr. 70, Report on Proposals for Batavia Rechtshoogeschool.

⁴¹ NL-HaNA, Scholten, 2.21.319, inv.nr. 70, Report on Proposals for Batavia Rechtshoogeschool. *Geest* in Dutch can mean consciousness, awareness, mind, spirit, soul, and character, even ghost. It signifies the inner subjectivity of the self.

focus, Scholten not only introduced study specialization, a move that was later adopted in the Netherlands, but also proposed abolishing Latin altogether, implying his lack of conviction about Latin's relevance in the Indies practice of law. In other words, Latin was a distraction. He suggested Javanese or Malay or another ethnic language as a compulsory subject to be examined at *candidaats-* or *doctoralexamen*. If Scholten's idea to teach Malay or Javanese in the curriculum was not new, his reasoning was radically different from the earlier arguments, such as the one made by the General Dutch League that deemed Dutch too difficult to become the lingua franca in the Indies (Groeneboer 1998). Of his reasoning, Scholten wrote,

The students of indigenous origin must learn to think scientifically (*wetenschappelijk*) in their own language. For the others, at least the language is necessary for an adequate knowledge for anthropological study. . . . It is important for students to understand the structure of the society in which the law is applied. Thus the choice of anthropology (*volkenkunde*) as a theoretical subject is because it is fundamental, not [simply] out of curiosity but (to provide) the bases of the study of society.⁴² (emphasis added)

In this statement Scholten made explicit his view that a mastery of language was essential to the acquisition of a certain universe of reference. The requirement to study Malay was not intended simply to help future (native) officials communicate with their fellow compatriots, but, more importantly, to encourage them to think scientifically on their own terms, using their own subjectivity, and sourcing their own universe of reference. By association, eliminating Latin from the curriculum implied that the European thought world was less relevant for law education in the colony. Scholten defended his position by arguing that Roman law was “only relevant in the context of world history.” Although he acknowledged that in civil law there would be repeated reference to Roman law, Latin still “lies too far from the sphere of thoughts

⁴² NL-HaNA, Scholten, 2.21.319, inv.nr. 70, Report on Proposals for Batavia Rechtshoogeschool.

of the Indies society for them to make use of it.”⁴³ To him, the opinion that Roman law was law par excellence was no longer valid.

Paul Scholten’s progressive stance on the curriculum captured the attention of high-ranking officials in the colony. In a meeting with them on March 19, 1924, Scholten faced their skepticism.⁴⁴ The president of the Supreme Court, P.W. Filet, argued that since indigenous students were naturally familiar with their mother tongue, there was no need to provide academic training in Malay. On the contrary, he continued, a lack of Latin would be a handicap for those who later decided to pursue a career in criminal law. Filet was concerned that future judiciary leaders would be reluctant to appoint to the higher court “a criminal lawyer (who lacks Latin).”⁴⁵ Scholten countered Filet’s argument, proposing two criteria for judging Latin’s relevance to the Indies: by assessing the value of the classical upbringing that Latin would provide,⁴⁶ and by assessing the practical usefulness of studying Latin. On the basis of both criteria, Latin failed the test. Latin was necessary only for an advanced study of Roman law; it was irrelevant for the study of criminal or private law. To require students to study Latin for the sake of appearance to Scholten was a “questionable wisdom.”

⁴³ This statement lies in the interstices between practical and racist arguments. On the one side, it was indeed impractical to force students to study a language that would hardly benefit their practice of law in the Indies. This was the case especially in European commercial law—which he seemed to suspect would not be chosen by many of the students—that was closely linked to Latin and Roman concepts. On the other hand, Scholten alluded to the natives’ inability to grasp foreign concepts simply because their cultural reference was not that of Europeans.

⁴⁴ Among those present were the Governor General, M. Fock; Prof. Scholten himself; a member of Raad van Indie, Creutzberg; the president of the Supreme Court (Hoogerechtshof), Mr. P.W. Filet; the General Secretary, Ch.J.I.M. Welter; the director of the Binnenlands Bestuur, L.J. Schippers; the director Department of Justice, Mr. F.J.H. Cowan; the director of the Department of Education and Religion, J.F.W. van der Meulen; the chief official seconded to the director of Education and Religion, J. Hardeman; and Mr. Ed. Broens, Senior Official of the General Secretary.

⁴⁵ NL-HaNA, Scholten, 2.21.319, inv.nr. 70, *Notulen van de vergadering ten Paleize Ryswyk gehouden op 19 Maart 1924 ter bespreking van de oprichting van de Juridische Hoogeschool*.

⁴⁶ Scholten did not mention it explicitly here, but I suggest what he meant by “value of upbringing” was its impact on the worldview of the student.

The public enthusiastically followed the debates and discussions about the Rechtshoogeschool. Articles in local newspapers were well informed of the preparatory works' inner working. They were either made openly accessible or deliberately leaked to journalists to inform the public. Paul Scholten was informed of the public reaction to the Rechtshoogeschool initiative, proven by the newspaper clippings preserved in his personal archive at the National Archive in The Hague. One clipping in particular stands out, as it is the only one written in Malay. Along with this clipping is a typed translation in Dutch.

Reactions in the Local Newspapers

The article in *Neratja* appeared on March 1, 1924, more than two weeks before the important meeting took place between Scholten and the East Indies high-ranking officials.⁴⁷ The author of the article was reacting to an earlier proposal prepared by the Indies Commission because Scholten's report had yet to be finalized and presented to the Indies audience. Although supportive in general, the article criticized the rules for admission to the Rechtshoogeschool and the role of Latin in this admission and in the curriculum. He considered the admission rule discriminatory because it practically neglected the aim of establishing a law college in the Indies; the requirement for prospective students to have taken Latin would disqualify the *Hogere Burger School* (HBS) graduates unless they took an additional state exam to certify their fluency.⁴⁸

The author made his objection about Latin crystal clear:

⁴⁷ Creutzberg, a member of the Directors of the Indies (*Raad van Indie*), suspected that the criminal law students would end up teaching themselves Latin. He deemed that facultative placement of Latin for criminal jurists was a good way to judge whether the practice was feasible. Scholten agreed that a facultative placement of Latin might initially be a priority for the students of criminal law, but still insisted that it should be gradually let go.

⁴⁸ To understand the nuances of the discrimination here, one needs to understand the two-track system of primary education in the Netherlands and the East Indies: one track for vocational training and the other to prepare for intellectual, university education. Classical training was considered to be the only legitimate track towards a legal degree (Nasution 1995) until the Hurgronje commission made it

In terms of fluency in Malay, Javanese, Sundanese, etc., masters (of law) from the Indies are much better than Europeans. Even if the Europeans are indeed fluent in the local languages, they still need interpreters. (With the stress on Latin fluency) does it mean the Indies population needs to study Latin because the judges speak in Latin, or does it mean the judges need to have fluency in the plaintiff's native tongue?⁴⁹

For the author, Latin was irrelevant and useless for the Indies. This highly selective admission criterion was especially upsetting because of the acute shortage of jurists, the ineffective service of retired European officials at *landraden*, and the cosmopolitan nature of the East Indies that required legal training specific to the East Indies situation, which hardly needed fluency in Latin. Compared to the waiver policy at Leiden University, the *Rechtshoogeschool* requirement seemed absurd. With these facts on hand, the author pleaded to the government to admit the Native *rechstkundigen*, and to waive them from *candidaatsexamen*, as was the case in Leiden, thus saving them two years of duplicate study.⁵⁰ Moreover, the author argued, unless the *Rechtshoogeschool* revised its admission policy to include graduates of the *Algemeene Middlebare School* (AMS) of both Western and Eastern classical languages divisions, it could hardly get enough students to populate the classes.

The article in *Neratja* was clearly written by someone well versed in the nuts and bolts of *Rechtsschool* education and in the policy of higher education in the East Indies and in the Netherlands. The author's suggestions were almost verbatim copies of the Academic Statuut 1921 and of the Leiden United Faculty of Law and Letters' admission policy. He or she was aware of the exam waiver for native *rechstkundige* at

possible for HBS graduate to study Netherlands-Indies law at Leiden after they had the Academic Statute revised in 1921 (Fasseur 1993, 1995).

⁴⁹ NL-HaNA, Scholten, 2.21.319, inv.nr. 77, newspaper clippings.

⁵⁰ The author nevertheless tried to appease the general anxiety about a possible flood of Native students in the *Rechtshoogeschool* by saying that even if the *candidaatsexamen* were waived, not every *rechstkundige* could afford to continue their study, for lack of funding.

Leiden University, of proposed rules of admission to the Rechtshoogeschool, and of the state of legal uncertainty in the landraad. Even though it is difficult to identify the author, the tone of the essay strongly suggests an educated Indonesian. *Neratja* published the article on March 1, 1924, well ahead of Scholten's meeting with the East Indies luminaries on March 19; Scholten must have read a translation of this article before the meeting, and would have felt vindicated by the indigenous voice on the irrelevance of Latin in the East Indies.

A Dutch-speaking newspaper published in Semarang, *De Locomotief*, printed a series of three articles a month later, between 12 and 14 April in 1924. By this time, a more refined draft of the Rechtshoogeschool bylaws must have been circulated among elite residents in the East Indies, hence the curiously detailed article that quoted some of the proposed draft. In this draft, it was clear that Latin was not going to be a compulsory subject for admission. The article lauded the innovative proposal of law specialization that was ahead of its time and was adopted only much later by the Netherlands. Students could specialize in criminal law, private law, constitutional law, or sociology/economy. Agreeing that the East Indies should be more independent from the Netherlands, and in this case in the direction of its higher education system, *De Locomotief* supported the idea that Latin should not be obligatory for admission.

Latin as an object of study symbolized the classical European education that was absent in the Indies. The tentative proposal to abolish it from the Indies legal education evoked strong reactions from the European circle in the colony. Scholten, to his credit, never officially withdrew his position on the irrelevance of Latin for the Indies. I suggest that this was the influence of the Indies in deciding what knowledge was imperative for the Indies.

The Rechtshoogeschool in Action

Scholten came back to the East Indies in September 1924 to finalize the launching of the Rechtshoogeschool. Between his first and second visit, discussions continued in the East Indies to finalize the school's bylaws. In October 21, 1924, the colonial state gazette, *De Javasche Courant*, officially published the government's regulation for the Rechtshoogeschool. It laid out regulations for admission, the calendar of study, costs, vacation time, and the courses and examinations to be taken by students. Although the final bylaws were officiated by the government, the Rechtshoogeschool was a relatively independent institution, having been put under the supervision of a board of directors, two of whom were professors of the school.

In the 1924 bylaws, Latin was still a prerequisite for students with no classical background who opted for a specialty in private law (Art. 21). An entrance exam to demonstrate basic understanding in reading Latin prose was required but was gradually eased, so that by 1930 it became optional for students who wished to have their competence certified (Massier 2008, 134). At the *candidaatsexamen* Javanese and Malay became the language of choice as well as subjects to be examined for all students regardless of their specialty. The Rechtshoogeschool decision to introduce Malay as an academically acknowledged language led to an unexpected consequence. In 1928, students from the *Rechtschoogeschool*, along with students from other colleges, proclaimed the historical "Youth Oath," where for the first time in history, ethnic identity was superseded by a national identity: they pledged to be one nation, Indonesia; to speak one language, Indonesian; and to consider one motherland, Indonesia. Learning Malay in an academic setting must have spurred the sense of nationalism among them.

As an institution for legal education, the Rechtshoogeschool was decidedly different from the Rechtsschool. The Rechtshoogeschool was a college-level legal

education that admitted all segments of the Indies societies. As a college, the curriculum offered at the Rechtshoogeschool was far more advanced than at the Rechtsschool, and catered more to a modern state that had anticipated a unified legal system. The Rechtshoogeschool admitted older students of 17 to 18 years old, while the Rechtsschool admitted tender, malleable boys of 13 years for the preparatory section and of 16 for the legal education section. At the Rechtshoogeschool students were considered mature adults, capable of behaving responsibly, and were addressed as “Mister.” As a matter of fact, they basked in the respectful treatment they received from the professors, director of the dorm, and fellow students (Algadri 1999; Agung 1993). A number of students in the mid- and late-1930s matured during their years at the Rechtshoogeschool, such as Hamid Algadri, Oei Tjoe Tat, and Anak Agung Gde Agung.⁵¹ Agung, a scion of the Gianyar Royal House in Bali, felt thoroughly at home in the dormitory because it allowed him to meet and interact with students from various backgrounds, races, and ethnic groups. He felt that the atmosphere nurtured his character and intellectual growth (Agung 1993, 93). Oei, Agung’s contemporary, felt the same (Beynon 1995). Both met and benefited from students who were far more advanced in their political education.

One aspect that the Rechtshoogeschool retained from the Rechtsschool was its commitment to nurturing independent minds. The Rechtshoogeschool and the dormitory retained their progressive leaning until the end of the Dutch colonial period. Oei noted the extensive selections of newspapers available for students in the school such as *Nieuws van de Dag*, *het Bataviaasch Nieuwsblad*, *de Java Bode*, *De Locomotief*, and *Sin Po en Matahari van Semarang*, including newspapers with a nationalist leaning. Oei’s sense of nationalism was awakened by a piece written by

⁵¹ Algadri, Oei, and Agung became involved in the Indonesian independence movement and in post-independence Indonesian politics as ministers and high-ranking officials.

Sam Ratulangi, a member of the Nationalist Faction in the Volksraad, which was published in a nationalistic periodical the dormitory subscribed to, *Nationale Commentaren*. Students were encouraged to attend Volksraad sessions, an opportunity many like Agung and Oei took seriously. In Agung's two years at the School—his education was disrupted by the Japanese occupation that began in 1942—he attended the Volksraad sessions regularly and was impressed by the nationalist members such as Sukarjo Wirjopranoto, Soeangkoepon, and Mohammad Hoesni Thamrin, Oei's hero. The professors at the school were quite progressive. Oei remembered Prof. Scheper, whose article in the newspaper supported Soekarno when he was tried and convicted in the Landraad in Bandung. Other professors assigned Scheper's article to students as study material. Prof. Logemann allowed Hamid Algadri to prioritize his party activity over his oral exam on Constitutional Law (Algadri 1999).

The narrative I presented above demonstrates how curriculum formation was a battleground for control of what can be known and how to know in the colony. The revealing fact here was the involvement of Indonesians in the discourse of language politics for the Rechtsschool. Paul Scholten and the native voice as represented by the author in *Neratja* shared the belief that students of indigenous origin must learn to think scientifically in their own language. Indeed, a mastery of language was essential to epistemic knowledge, and a mastery of one's own language in the least would retain one's cognitive order and one's connection with one's own culture. The government's endorsement of Paul Scholten's proposal to include Malay as one of the examined courses in the Rechtsschool could also be seen as pragmatic colonial technologies of rule. Nevertheless, I suggest that this official inclusion of Malay demonstrates that the rationale behind the curriculum design implied pedagogical objectives more complicated than simply shaping subjectivities to be fully submissive to European epistemology.

Discursive Spillover: Legal Discourse among the Native Population

Even though legal education was available only to a small section of Indonesian elites, the idea of modern administration of law eventually spilled over to the nsociety, especially the reading masses. From the early 20th century on, the vernacular press enjoyed a robust growth with an increasing number of readers (Adam 1995). In this new age of motion and progress (Mrazek 2002; Shiraishi 1990), the press enthusiastically amplified what the editors deemed signs and opportunities for progress. Law particularly symbolizes this sign, and the vernacular press diligently published articles that touched upon law, rights, and the administration of justice. I suggest that the ubiquitous publication of law-related articles was prompted by the fact that during this period Rechtsschool graduates had immersed themselves in society at large since the first graduation in 1912, Leiden graduates had begun to return home, and the Batavia Rechtshoogeschool was fully operating and had graduated its first *Meesters in de Rechten* by 1929. During this period, the Rechtshoogeschool students were active in political parties and were intensely involved in various nationalistic events, most decisively in the Youth Oath of 1928.

The 1920s were electric and pulsating years for Indonesian legal scholars. The vernacular press printed articles addressing legal issues that awakened an awareness of law throughout the native society. The native's cognitive categories of law and justice now included European-rooted law, rights, and justice. In this section, I aim to offer only a sketch of the articles and essays printed in selected publications between 1920 and 1929. These are by no means representative of the full spectrum of legal discourse in the vernacular press; nevertheless, they give us a sense of the intimate connection between legal education and the spread of legal consciousness among the general population that promises an opportunity for further research.

In 1924, a Malay-speaking weekly, *Bintang Hindia*, published a series of articles about the administration of justice. It was published weekly between March 29 and April 19 and titled “Our Administration of Justice” (*Onze Rechtspleging*). *Jong Java*, the newspaper published by the organization of the same name, Javanese Youth, and run from the dormitory of the Rechtshoogeschool, published articles about natives’ land rights on April 1, 1923, titled “*Inlandsch bezitsrecht op gronden op Java en Madoera*” and on September 15, 1924, titled “*Inlander en zijn grond*,” authored by one Pati Soemirat. In 1928, *Bintang Timoer*, a well-read Malay-speaking newspaper, printed articles that went on at length about the native land-rights issue. Published on 21 January 1928, an article titled “*Erfpacht yang akan habis*” (Expiring *Erfpacht*) discussed the long-term land leases offered to Dutch agricultural enterprises that were expiring and identified opportunities to wrest them away from those private hands. This article responded to articles in Dutch-language newspapers—*Java Bode*, *De Sumatra Post*, and *Het Nieuwe*—and the discussion at the Volksraad. In that year, *Bintang Timoer* continued to publish articles discussing *erfpacht*, long-term land leases to Dutch agricultural enterprises. On 18 September 1928, it published a report about a gathering of Indonesian political parties to discuss the *erfpacht* issue. PSI, PNI, Boedi Oetomo, Pasoendan, Serikat Soematra, and Kaoem Betawi were well represented in the gathering. A couple of days later, on 25 September 1928, *Bintang Timoer* published another article about a gathering to propose a motion about *erfpacht* in the Volksraad. Three thousand people attended the gathering where Mr. Sunario, a graduate of the Rechtsschool and Leiden United Faculty of Law and Letters, who by then worked as an advocate for Iwa Kusuma Sumantri’s law office in Medan, explained the concept of Domain Right at length.⁵² The newspaper published separate

⁵² Domain Right, or *Domeinrecht*, was a fundamental concept in the Netherlands East Indies legalese that “justified” the colonial claim to land in the Archipelago. This concept will be discussed at length in

articles on 25 and 26 September 1928, again about *erfpacht*. The year after, in its July 1–5, 1929, edition, the Jong Java bulletin reprinted Cornelis van Vollenhoven's famous and decisive piece "Indonesians and Their Land" (*Indonesier en zijn Grond*), which was originally published in 1917. This was the essay that stopped the parliament in the Netherlands from approving a proposed amendment to the Agrarian Law 1870 that would have excluded land in Sumatra from the prohibition of alienation to non-natives.

The vernacular press was equally enthusiastic about Indonesian jurists. Graduation and success in attaining a degree was always considered a piece of good news. For example, *Bintang Hindia* in 1924 announced a graduation of Rechtsschool students complete with well wishes. *Jong Java* on 15 November 1924 published an essay on the launching of the Rechtshoogeschool with a critical eye on the rumors of the training inadequacy of the "Masters" trained in the Rechtsschool and the United Faculty in Leiden. Based on the speed and seriousness with which the Law College was established, and the budget allocated to enable this, the author judged that the colonial government was serious about helping the political development of the country. In its 17 March 1928 edition, *Bintang Timoer* announced Soepomo's graduation from Leiden with flying colors, which earned him the first and only award ever granted, the *Gadjah Mada Prijs*.

These selections are but a small sample of a wider conversation within native communities with regard to law, and the administration of justice, especially related to land rights. It goes without saying that other forms of engagement with the colonial administration on land exist (Kahn 1993). Although the selective articles above are inadequate to establish a clear and undisputable relationship between legal education and rising awareness of law and the administration of justice, all indications suggest

the coming chapters.

that legal education, despite being enjoyed by a tiny slice of native elites, helped spreading colonial legal discourse within native societies, who in turn adopted and reworked them as their own.

Conclusion

Legal education in the Netherlands East Indies was a project of subject formation, which was simultaneously a dyad to colonial state formation. In this chapter, I define colonial state formation as the historical processes by which the colonizing power consolidates its grip on the colonized in a way that ensures their acceptance of the former through subject formation. Subject formation here, in turn, refers to the constitution of subjectivity through power relations, in this particular case by a network of colonial actors through legal education practices. One exists through the other. As the Dutch stabilized their territorial grip on the Archipelago, they needed to gain legitimacy through means other than military power, such as by institutionalizing law and legal discourse through which the network of government institutions projected the presence of a unified “state” as the ultimate arbiter of justice. This symbolic language of stateness required an army of lawyers and law clerks to run the mundane tasks of administering justice. In the Indies, a corps of Native lawyers economically provided this service.

To law school educators, Netherlands parliament members, and the Minister of the Colonies, Native lawyers needed to acquire a specific form of subjectivity in order to uphold the impression of the projected authority as the guarantor of justice: Highly intellectual with a full grasp of both European and Native legal thought worlds; possessing the capacity to make independent legal decisions even in the face of menacing colonial bureaucracy such as the *Binnenlands Bestuur* and the *Inlands Bestuur*; competent to think scientifically in their own native language; and

empowered to challenge a feudal structure to bring the country forward to modernity, among others. This particular form of subjectivity was imperative for the colonial regime to sustain acceptance by the native population.

In my narrative I demonstrate how the pedagogical strategy and the design of the curriculum in colonial legal education carried objectives more complicated than simply colonizing minds or creating docile bodies. From the Rechtsschool, to the Leiden University United Faculty of Law and Letters, to the Rechtshoogeschool, students' autonomy and independence continued to be nurtured. Adat law remained not only an important discipline to master, proven by its status as one of the four examined courses for the *doctoralexamen*, but also a major link in maintaining the connection of Native jurists to their culture (or the culture of their compatriots, since the adat law taught was not necessarily that of one's own). Continued study of Constitutional Law of the Netherlands and the Netherlands Indies both at the United Faculty in Leiden and in the Rechtshoogeschool in Batavia, for example, allowed for critical comparison of the stature of law and citizenship in the Netherlands and in the colonies, freely provoking various forms of self-reflection.

These particular pedagogical strategies and curriculum designs were complemented by the practical knowledge of the everyday machinations of the state system as exemplified in Roestam Effendi's successful run for the Lower Chamber in the Netherlands and in the Rechtshoogeschool's students' attendance at the Volksraad sessions. Language politics that materialized in Leiden and the Rechtshoogeschool introduced to Native students a new sense of and perspective on community. The decision to include Malay as one of the examined courses in the Rechtshoogeschool (in contrast to only Javanese in the United Faculty) and the debate around the relevance of Latin for a law study in the Netherlands East Indies diluted the primary

role of Dutch as the High Language. It also instilled in these students a healthy dose of skepticism of European culture as the ultimate reference point.

As demonstrated by Sunario's recollection, the career track of Iwa Kusuma Sumantri, Hamid Algadri's brushes with his Rechtshoogeschool professor Logemann, merely three of many illustrious graduates from the educational institution triad, the shaping of subjectivity through colonial legal education submerged neither the capacity for critical reflection nor the ability to deliberate, an argument I will expand further in my next chapters. On the contrary, legal education equipped students with discursive arsenals to engage in and to shape colonial legal discourse.

By my two arguments above, I acknowledge that the reordering of cognitive structure and hierarchies of the Native students did take place; however, I suggest that this reordering did not replace the structure gained through earlier indigenous rearing. Rather, there are sediments of cognitive orders with porous boundaries, reciprocally penetrating one another in a way that generated a unique form of subjectivity, a form that brought forth unconventional expressions of agency, especially in the discursive arena. Such cognitive order transformed the educated Natives' way of recognizing structures, power, and the promise of the colonial legal order as the ultimate arbiter of justice. Ironically, it also made them more aware of the discrepancy between theoretical concepts of justice and the reality of colonial practices, a rising consciousness that I explore in more detail in the next chapters. With such conditions, it thus becomes imperative to understand the agencies of Native intellectuals as agencies bound in cultural processes, which, in themselves, are constituted in complex power relations, and to analyze them within their own historical context and specific colonial conditions. Accepting the subject as constituted through relations of power “. . . does not commit us to a denial of subjectivity, agency, or autonomy” (Allen

2008, 177). Rather, it forces us to acknowledge that autonomy and reflexivity are historically and culturally constructed and inescapably shaped by power relations.

CHAPTER 2:
Becoming Wadoeng West:
A Short, Entangled Biography of Land in Banjoewangi, East Java

Introduction

In the 1938–1939 session of the Volksraad, R.P. Soeroso,¹ a Native member from East Java, spoke passionately about the fate of land illegally occupied by the Wadoeng West Agricultural Estate in Genteng district, Banjoewangi division, Besoeki Residency, East Java. This was the fifth time in as many years that he had demanded concrete measures be taken in response to the case, but:

To my regret I must now put on record that after five years the Government is still at an utter loss with this illegal land occupation. It is said that difficulties have arisen in connection with the case. In the Memorandum of Response the Government said that . . . [the case] still needs a further verification of whether to wait for a more opportune moment, and then[to decide] whether an administrative solution is possible and desirable. This statement can not appease me because this issue has already been pending for five years. . . . (Volksraad Handelingen 1938/1939, 540)

The speech offers us a glimpse into the concrete process of colonial state formation through the constitution of the colonial agrarian regime. In this speech, we observe a Native member of the colonial proto-parliament who, by appropriating the colonizer's legitimating instrument, challenged the government's slow response to the case. By deploying the words "illegally occupied," Soeroso implicitly referred to a particular concept of justice absent in the precolonial times but by then widely shared between the colonized and the colonizer. He delivered his speech under the watchful gaze of peasants sitting in the public gallery, peasants whose lands the Wadoeng West

¹ R.P. Soeroso was a member of the Volksraad from East Java who served beginning in 1924, first as an appointed member, and from 1927 as an elected member. He was member of the *College van de Geleedegerden* during the period 1930-1931 and during the period 1935-1936. Prior to serving in Volksraad, Soeroso had been a seasoned advocate for the Native population in East Java through his works in *Sarekat Islam* (Soeroso 1984).

Estate occupied. In this spectacle, together they evoked the “colonial state’s” presence and participated in the everyday making of its existence. Yet, at the same time, Soeroso signaled the “state’s” impotence when confronted with a legally sanctioned demand for native rights. After five years, the fight seemed to be quixotic and futile, but I suggest that its significance lay less in the success of wresting the land back for the peasants than in the way it kept their struggle in the public view.

This chapter narrates the life story of the land that became the Wadoeng West Estate. Using agrarian law and policy as a lens, I aim to underscore the pivotal role of land commodification in colonial state formation. It is the second part of my two-pronged theoretical explorations on the topic. In chapter 1, I explore colonial state formation through the ways that education shaped and made the colonial subject. In this chapter, I examine the way colonial law determined the character of land as a commodity ripe for the market. Together, these chapters provide a stage from which to interrogate the reciprocally formed subject and law, and how the two sustained colonial state formation.

Examining the impact of laws on landscape, I analyze the ways in which colonial subjects mediated everyday encounters between land and law and the twists and turns the mediation required. I begin in 1854, when the Dutch enacted the first law to regulate property relations in the colony and ends in 1938 when R.P. Soeroso delivered his final protest. Using texts of colonial agrarian laws, a protest manifesto written by a Dutch planter, records of the Volksraad sessions, and newspaper articles, I reconstruct the life story of plots of lands, which—by virtue of the laws—transformed into the Wadoeng West Estate. I bring to the foreground the peculiar ways that law determined the entangled relationships between man and land and their intertwined roles as co-contributors to colonial state-making. Elevating everyday struggles over land waged by private citizens, state agents, judicial institutions, Native

peasants, and Native “politicians” to eye level, I argue that law “made” landscape into land, but its making was always tentative. The constant friction of all actors among themselves and against agrarian laws spurred the process into unexpected directions, effectively swerving colonial state formation from any predestined trajectory.

The Law Made the Land

In 1938, the last year Soeroso expressed his protest, the Wadoeng West Estate had become a prosperous agricultural enterprise. Pioneered by the high-spirited Bernard and Adriaan Ledeboer, the Estate cultivated coffee traded in the Amsterdam commodity exchange. The *Comprehensive Atlas of the Netherlands East Indies* (Diessen 2003) situates the Wadoeng West Estate in the village of Soember Salak and Soember Gajam, 44 kilometers southwest of Banjoewangi. The exact location, however, is not specified. At this location the Wadoeng West Estate managed 877 hectares of land.²

The Wadoeng West Estate was situated at the foot of a volcanic mountain chain: Gunung Raung, Gunung Kukusan, and Gunung Merapi. These mountains formed a south-facing crescent that cradles a swath of fertile lands. On his famous expedition of Java mountains, Junghuhn recorded the magnificent diversity of this mountainous region: at the highest altitude, bare sands from frequent volcanic eruptions covered the mountain top until at a lower inclination it was suddenly met by highland vegetation such as *Casuarina*, *Acacia montana*, and *Antennaria javanica* (Junghuhn 1844, 495). Further down, luxuriant forest vegetation covered the highland with valuable timber trees such as *Tectona grandis* (teak) for house and ships’ bows; *pellet*, *segawi*, *laban*, and *suran* for timber; *pronosodo* and *sono* for furniture; *keppo*

² Wadoeng West Estate also controlled other plots of land in Soember Mangis (Diessen 2003, 334) and Jang Plateau that remained a conservation area for Javanese deer (Volksraad Handelingen 1931/1932).

and *bayur* for firewood; and many more endemic species. The local population logged wood, but they lacked the skills to saw wood properly so they wasted much of the logs (Aa 1857). A fear of tigers, the difficult terrain during monsoon seasons, a lack of water, and diseases had also prevented the locals from fully exploiting the forested areas.

Banjoewangi was the easternmost division (*afdeeling*) in Java, bordering to the north with Soemberwaroe district, to the west with Djember division, to the south with South Java Sea, and to the east with the strait of Bali. Coffee was widely planted in Banjoewangi and neighboring divisions during the forced cultivation system between 1820 and 1870. Under the supervision of the Native headmen, the local population planted and tended coffee gardens, producing substantial profit for the Dutch. Banjoewangi was famous in the Netherlands and was highly sought after (Aa 1857, 593).

The fame of Banjoewangi coffee must have captured the attention of aspiring entrepreneurs who dotted the East Java region, especially those knowledgeable in agronomy and agricultural enterprises such as the Ledeboers.³ Bernard Ledeboer (b. 1875) and Adriaan Johan Marie Ledeboer (b. 1877) were the fourth and fifth children of Johan Marie Ledeboer and Anna Willemina van Meerten.⁴ Born and raised in Borne, the Netherlands, the two came to the East Indies in the late 19th century after graduating from the local *Hogere Burger School*. Bernard worked for a while at Kali Sepandjang Estate, acquiring skills and know-how to set up his own estate. He also managed a rubber estate in Banjoewangi for a time. Adriaan started his career at Koch and Suermond Agricultural Estate in Soember Bokor, Malang, between 1897 and

³ Adriaan Ledeboer had contributed at least one article to the journal of Indies agronomy, *Cultuur Gids* Volume 1907-1908. Bernard Ledeboer served as an estate manager of the Kali Sepandjang plantation in Kempit, Banjoewangi.

⁴ Internet data <http://www.chabot.demon.nl/genealog/chabot04/218.htm> (accessed July 20, 2011).

1899 (Anon, 1931). He moved on to manage an estate in Soember Tengah, Besoeki, between 1900 and 1915 before joining Bernard, who started the Wadoeng West Estate in 1912. By the second decade of the 20th century, the two brothers had gained enough experience to start their own venture.

Bernard and Adriaan Ledeboer were intellectually active. Adriaan wrote articles for academic journals, collected plant samples for Herbarium Bogoriense, and contributed animal specimens to the Zoological Museum in Bogor. Bernard, on the other hand, published an engaging, if passionate, personal manifesto about clandestine estates in the Besoeki Residency. This manifesto offers remarkable insights into the challenge of running an estate in the midst of ambiguous land policy and legal pluralism; it preserves the experience of an estate owner/manager and his encounters with state agents, lawyers, land brokers, and clandestine European landholders, in his effort to secure the survival of his estate.

Bernard Ledeboer would not have had a chance to establish Wadoeng West had the Dutch not introduced an agrarian regime in the colony. I define the colonial agrarian regime as the complex ensemble of laws, legal practices, and specific enterprises that underpin the rearranging of social relations and property rights in the colony. As was the nature of colonial projects, this particular project was never a one-way intervention: The whole spectrum of the colonial society—Europeans and Natives, colonizer and colonized—took part in the constitution of the agrarian regime with diverse objectives. For the government, the objectives were to provide land for commercial agriculture and to prevent the native population from losing their use rights. For the colonial subjects and citizens who intervened, it was less straightforward and most likely clashed with the official line.

In the first half of the 19th century, the government-run forced cultivation system was the only “legal” agricultural initiative in the Indies. The Dutch tasked

Native headmen with leading the population to produce an allotted quota for the Netherlands Trading Company (*Nederland Handels Matschappij*, NHM). Although the Dutch left adat law to regulate property relations, the pressure to meet production and tax quotas forced the Native headmen to reallocate and reorganize land in a way that led to the demise of the native private property regime. The disarray misled many Dutch persons to believe that no private ownership existed in the native legal realm (Vollenhoven 1931, 620).⁵

In reality, the indigenous population of Banjoewangi, and in East Java in general, acknowledged varied forms of property rights. They ranged from full ownership comparable to the Dutch *eigendom*, right of enjoyment (*genotrecht*), rights to crops and plants separated from rights to land (*recht van gewassenen*), to temporary rights to residential plots within village boundaries (Vollenhoven 1931).⁶ The reclaiming (*ontginning*) of virgin lands might lead a native to full ownership rights to land. Everyone had the right to reclaim land in areas outside the village boundaries. Within the boundaries, however, the village exercised rights of allocation (*beschikkingsrecht*) and distributed rights to reclaim only to village members. Those who permanently maintained the land could eventually gain full ownership. Non-village members who cultivated land within village boundaries retained only usufruct rights (Vollenhoven 1931, 625–626).⁷ All usufruct rights were non-alienable and non-inheritable; the rights dissolved as soon as crops were harvested.

⁵ See Breman (1983) for a narrative on how colonial pressures almost erased forms of private land ownership in 19th-century Cirebon, West Java.

⁶ In agrarian law and legal documents, the Dutch were careful not to pass these rights over to the Dutch legal realm in order to maintain a separate system between the Native property rights regime and the Dutch one, a practice van Vollenhoven condemned as an injustice (1919). This section draws mainly from Cornelis van Vollenhoven's (1933) treatise on adat law in East Java that includes Banjoewangi.

⁷ As van Vollenhoven noted, turning the right to reclaim (*ontginningsrecht*) to the right of disposal/right of allocation was supported by law introduced in the Staatsblad 1916 No. 420 (on timber rights in Palembang) Article 2, paragraph 1A under I and Article 3 paragraph 2 sub b.

The indigenous property system seems straightforward at first, but the peasant's habit of pawning land (Javanese: *gade*) as a means to raise cash complicated land administration. A typical pawning transaction would take place as an agreement to transfer land into another's control while the original landholder retained the right to buy it back. The Dutch termed this transaction a *koop en wederinkoop*, a sale with a right to buy back. European leaseholders deeply disliked this native practice because they lasted many years without periodical recompense. The new Native landholder could re-pawn the land to others, even if the land was already leased, so many times that the original landholder could no longer be identified. Although pawning required the cooperation of the village elders, the lack of transfer documents created headaches in land administration. Van Vollenhoven even suggested that nullifying land registration for pawned land might be the only solution to the problem (1933, 627).

Agrarian Laws in the East Indies

After the forced cultivation system lost its luster, the Dutch parliament struggled to come up with a law to encourage private agricultural investments in the colony.⁸ Legal reforms in the Netherlands in 1848 and the increasing power of the liberal faction in the parliament brought about profound changes to the colony. The tug-of-war between the conservatives and the liberals colonial land policy was clearly reflected in the emerging laws. On the one hand, the liberals pushed for new laws that would promote private agricultural investment while reducing the role of the government in agricultural enterprises. On the other hand, the conservatives insisted that government-run plantations were still the best option to protect the natives from

⁸ Fasseur (1992) details the long struggle in the Dutch Parliament regarding the forced cultivation policy.

massive land transfer (Fasseur 1992; Furnivall 1944). As a result, the laws introduced in the colony contained inherent instability.

A quick glance at the Indies *Regeeringsalmanak* 1938 (Annual Report of the Dutch East Indies) reveals the extent and complexity of land laws in the Indies. Laws for the directly governed areas (*gouvernementsstreken*) were different from laws for the semi-autonomous areas (*zelfbestuur*).⁹ The laws narrated here were applicable only in the directly governed areas.

Three basic laws provided the foundation for agrarian regulations: Article 62 of the *Regeeringsreglement* (Constitutional Regulation)¹⁰ 1854, the Agrarian Law of 1870, and the Alienation Prohibition decreed in *Staatsblad* 1875 No. 179. Three clauses in article 62 of the *Regeeringsreglement* 1854 provided the legal basis for granting land leases. The first prohibited the Governor General from selling land, except small plots of land intended to expand towns and villages or to establish facilities for manufacturing. The second allowed the Governor General to issue land leases according to rules set by a general regulation.¹¹ The third excluded from being leased land cultivated by the natives, land designated for public use or some other uses for the villages, and land belonging to villages (Nederburgh 1882). This early law was restrictive: the lease could not exceed twenty years, the leasehold was not eligible for loans, and land available for this lease was located in remote areas with limited labor supply. Understandably, it failed to attract investors' interests.

⁹ Sem-autonomous regions included the Javanese Principalities and Native sultanates—most important being the Sultanate of Riau on the east coast of Sumatra.

¹⁰ The *Regeeringsreglement* (Constitutional Regulation) set a new era in the Netherlands Indies with its “clear recognition of the supremacy of law” (Furnivall 1944, 158). It replaced the old system that was based on authority as had been exercised, for example, by Governor General van den Bosch, who established the Forced Cultivation system in 1820. In 1925 the *Indisch Staatsregeling* 1925 replaced the *Regeelingreglements* 1854.

¹¹ Known in Dutch as *algemene verordeningen*, general regulations could be issued in the form of laws or legal enactments by the Dutch Parliament, royal decrees or acts of the Crown by the King, and ordinances or acts of the Governor General with or without the Council of Indies (Furnivall 1944).

The Agrarian Law of 1870 offered more attractive possibilities than the laws in the Regeeringsreglement 1854. Land could now be leased for up to seventy-five years; the Governor General ensured that land transactions would not infringe on the rights of the native population; land cultivated by the native population for their own use, common pasture, or land belonging to the village was to be disposed of only with adequate compensation; land belonging to the natives under heritable usufruct rights could be transferred to the Dutch form of ownership, eigendom, with certain restrictions; and lease or transfer of use from natives to non-natives was to be ruled by a general regulation. This last ruling was popularly known as the Alienation Prohibition (*het vervreemdingsverbod*).

The Alienation Prohibition was redacted rather vaguely: “That land use right is not susceptible to alienation by natives to non-natives, so that all agreements, such as alienation, directly or indirectly intended, are legally void” (Staatsblad 1875 No. 179). The decree gave legal form to the tradition of Dutch rule against the alienation of native land to foreigners. With a limited exception, the Alienation Prohibition practically ruled out any form of land alienation from the natives to non-natives, making leases from the government or rent from the natives the only ways to establish an agricultural enterprise in the Indies.

The framework that ruled property relationships among the natives changed overnight after the government introduced the Agrarian Law of 1870: land in Java and Madura passed over into the realm of Dutch-oriented law and the realm of capitalist factors of production. If previously natives’ relationships with land were largely short term, noted by the expiration of usufruct rights when land was no longer cultivated or when vegetation had ceased to exist, relationships with land now acquired a permanent character that reached beyond an individual’s lifetime.

To implement the Agrarian Law of 1870, the government issued an agrarian decree (*agrarische besluit*) registered in St. 1870 No. 118. The government amended this decree extensively between 1870 and 1912.¹² To legitimize disposing of land to lessors, the colonial authorities proclaimed a domain declaration (*domeinverklaring*) over Java and Madoera in the first article of the decree.¹³ The domain declaration stipulated that all land not under the Dutch eigendom was state land. Consequently, all land in Java and Madura passed over into the realm of “the state,” including forests, unclaimed and uncultivated areas, land governed under adat law, land under village rights of disposal, land belonging to individual farming households, and land under native usufruct rights. The government differentiated these lands into free (*vrije*) and non-free state land (*unvrije staatsdomein*).

Free state lands included virgin lands (*woeste gronden*) and lands not already subject to native rights. The government could lease these lands under *erfpacht* leasehold for up to 75 years and in plots of no more than 500 *bouw* (354.8 hectares). This lease was limited to large agricultural estates for commercial crops such as rubber, tea, and coffee, although impoverished Europeans and charity organizations might lease smaller plots. Understandably, the *erfpacht* was the most coveted form of lease.

Non-free state lands encompassed lands already cultivated by the natives or lands belonging to the village or under village rights of allocation. The government allowed short-term rent between Native landholders and Dutch entrepreneurs on a rotation system. The latter usually grew annual crops such as sugarcane or tobacco, while the former grew the native’s main crops such as rice, peanuts, maize, or cassava.

¹² Between those years, the government introduced eleven amendments, including St. 1872 No. 116, St. 1874 No. 78, St. 1877 No. 196 and 270, St. 1888 No. 78, St. 1893 No. 151, St. 1895 No. 199, St. 1896 No. 140, St. 1904 No. 325, St. 1910 No. 185, and St. 1912 No. 235.

¹³ Domain declaration for the rest of the colony came gradually over the next five years.

The length of the lease varied from one year for paddy fields to twenty-five years in cases where lands were used for railways or public purposes. For highland plant cultivation, the maximum lease was twelve years.¹⁴ The renting process involved the natives themselves with help from their local headmen and most frequently assisted by government officials such as the *controleur* or assistant resident.

After proclaiming domain declaration in the first article of the agrarian decree, the government divided the remainder of the decree into three sections: the first regulated native land rights; the second, the acquisition of land for leases; and the third, miscellaneous issues of little relevance here. The first section contained six articles that regulated native rights to land, set in accordance with the newly established domain declaration. It promised a lease regulation that would take into consideration advice from the highest native officials and concerns of the local population (article 2). While the general regulation was being developed, the Governor General had the authority to establish temporary rulings (article 2). It assured the native population of a mechanism to acquire a written title of their inheritable right of use from the Governor General (article 3). It is significant that the form of property rights allowed for the natives was only “inheritable usufruct rights” (*erfelijk gebruiksrecht*) and not the Dutch form of full property ownership *eigendom*. A regulation would be established to transfer native use rights to the Dutch *eigendom* (article 4), to lease land to non-natives (article 5), and to encourage natives to cultivate land outside the original village boundaries (article 7). The Governor General was also authorized to grant landed property for each municipality (article 6). The colonial government amended these rulings only twice, in 1872 and in 1874.

¹⁴ Highland crops included quinine and coffee. The rulings for land lease between Natives and non-Natives were decreed in St. 1900 No. 240, and later replaced by St. 1918 No. 88.

In 1872, the government amended Articles 3 and 4 in St. 1872 No. 116. The amendment to Article 3 introduced the court of law as a mediating body in settling conflicts over land compensation in cases where an amicable settlement could not be reached. The amendment to Article 4 guaranteed the natives who acquired eigendom to be protected by law, to have the free enjoyment of the land, and to be able to dispose of it freely within the limitation set by law. Although this ruling appeared as a guarantee of equal treatment for every eigendom holder, only natives who had acquired the legal status of Europeans were allowed the full benefit of eigendom. This ruling underlines the legal reality in the colony, that a subject's legal identity determined the kinds of rights to land he or she could acquire. In 1874, articles 2, 6, and 7 were amended as decreed in St. 1874 No. 78. The government withdrew the promise of a participatory process in establishing legal codes for native land rights and replaced it with a ruling that put the authority fully under the Governor General.¹⁵ No further amendments for native rights took place after 1874.

If the first section of the Agrarian Decree 1870 laid out regulations for native rights to land, the second section regulated the *erfpacht* lease available only to Dutch subjects, residents, or citizens of the Netherlands or Netherlands Indies; or companies registered in the Netherlands or Netherlands Indies as stated in article 11. Two articles, 8 and 17, amended rulings in Article 62 Regeringsreglement 1854. Article 9 mandated that land eligible for *erfpacht* lease be mapped and divided into parcels of around 500 *bouws* each, for lease for up to seventy-five years. Seven categories of lands were excluded from *erfpacht* eligibility, among them were land under native use rights or under a village's disposal rights, lands considered sacred by the native population, land used for public service, teak and other wood forests, and government coffee

¹⁵ St. 1874 No. 196 amended article 2, 6, and 7 as follows: General regulations are to be established by the Governor General regarding the rights of the Natives to cultivate land, not on common pasture or some other account of land belonging to the village.

plantations. Article 10 outlined the mechanism for public tender for erfpacht lease rights. Article 12 prohibited erfpacht land to be used for farming, cattle breeding, or opium planting, effectively guaranteeing their use for commercial agricultural commodities such as tea, coffee, and quinine. Article 13 and 14 ruled that erfpacht lands were subject to tax, and that the persons on the leased land were also to pay tax. Article 15, 16, and 18 provided room to regulate lands that did not strictly meet the criteria for erfpacht lease.

Between 1870 and 1912, the Dutch amended the regulations for native land rights only twice and the regulations for land lease ten times, signaling that the agrarian decree was indeed designed to serve the need of private enterprises. The rosy promise to consult native officials regarding lease regulations that might have concerned the local population was quickly withdrawn, with the authority set fully under the Governor General. The guarantee for the native population of full enjoyment of eigendom was applicable only to natives who were assimilated to Europeans.

The Dutch claim of domain rights over the archipelago did not go unchallenged. In his 1909 book *Miskenningen van het Adatrecht*, Cornelis van Vollenhoven laid out the argument for native rights of allocation (*beschikkingsrecht*), a right that had no place in the colonial agrarian law. He contended that lands without eigendom rights were not necessarily free lands to be summarily transferred to the government as free state lands; rather they were lands under the right of allocation of native villages. Van Vollenhoven's challenge of the domain declaration solidified in 1919, when he wrote the famous essay *Indonesier en zijn Grond*¹⁶ as a reaction to a legal maneuver by G.J. Nolst Trenite. A legal adviser to the agricultural department in

¹⁶ This essay was widely quoted, reprinted, and reproduced by the vernacular press in the Indies decades after it was first published. It was reprinted in full in the Jong Java newspaper on July 1, 1929. Mohammad Hoesni Thamrin, a member of the Volksraad, cited this essay in his rejection of the Indo-European request for land rights in the colony. See chapter 5.

the Indies, Nolst Trenite promoted an amendment to article 62 of the Regeringsreglement 1854 for Sumatra. If approved, the amendment would have effectively revoked legal protection for native land rights granted by the article. In the essay, van Vollenhoven reasserted his argument that the Dutch government could not—and should not—deploy domain theory to ensure legal certainty over land rights because the native population had already exercised *beschikkingsrecht* (rights of allocation) on virgin lands (Vollenhoven 1919). This negated the government's claim of free state land and the authority to lease it out. Van Vollenhoven's argument was so compelling that the parliament dropped the amendment in November 1920. Although van Vollenhoven won this one battle, it was not the last he waged against Nolst Trenite, who eventually became his arch nemesis.

Studies of colonial land policy in Indonesia have widely castigated the colonial agrarian laws as a blatant territorial takeover to facilitate capitalist agricultural estates. This is accurate on many fronts. However, the laws also introduced a new concept of land as property protected by formal law. As van Vollenhoven noted, the greed of the administrators during the forced cultivation era had forced village headmen to alter land allocation and land entitlement to fulfill the allotted commodity and tax quota they had to meet, a process that van Vollenhoven argued destroyed the fabric of private land ownership among the native population (Vollenhoven 1931, 619; Breman 1983).¹⁷ In many villages, property ownership depended on the whim or wisdom of Native chiefs or village headmen, such that the peasants had no recourse but accepted the allocation of land stipulated by them.¹⁸ The Agrarian Law 1870 and its derivative

¹⁷ Breman provides a meticulous account using primary resources of the process of depriving Javanese landholders in Cirebon from their private property that, within a generation, created an image of a property regime that lacks private ownership.

¹⁸ See also Soepomo 1927 for an account of the same issues in the Surakarta Principality, one of a few self-governing territories in the Dutch East Indies.

decrees introduced into the natives a sense that—within the limited colonial conditions—use rights and property rights were now regulated by law and that there were institutions to mediate conflicts regarding land, however partial they might have been. The Indies Journal of Law (*Indisch Tijdschrift van het Recht, ITR*) records numerous native land conflicts that were brought to the court of law, a testimonial to the colonial legal system.¹⁹ Granted, the Agrarian Law 1870 was deployed mainly to address fostering private initiatives in the colony, which filled the state coffer with taxes and rents.²⁰ Nevertheless, its role in introducing a new, modern sense of property relations protected by formal state structures cannot be denied.

Becoming Wadoeng West

On January 20, 1912, Bernard Ledebøer sent a letter to the assistant resident of Malang. He requested information on land he could lease for a coffee plantation. Fortunately for him, an enclosed complex of 150 *bouw* of land (106.44 ha) under usufruct rights in Banjoewangi was available. However, since these lands were categorized as non-free state land, Ledebøer could only acquire a short-term lease directly from the Native landholders. Undeterred, he moved quickly to acquire twelve years lease. By mid February, the *Controleur*²¹ of Banjoewangi, a certain Nieuwenhuijs, was ready to assist him (Ledebøer 1924). *Controleur* Nieuwenhuijs sent Ledebøer a letter explaining in detail the steps to acquire the lease: Ledebøer was to send him the completed form of lease contract with the related land survey; within two months, the *Controleur* would summon the Native landholders and Ledebøer to

¹⁹ See chapter 6.

²⁰ Agrarian Decree St. 1870 No. 118 Article 13 addressed taxes that land-lease holders had to pay the state. It included taxes on the land leased, taxes on buildings or factories built on the land, and taxes on the fruit of the land or the product of the factory built on the land.

²¹ *Controleur* is the lowest level official in the Binnenlands Bestuur hierarchy, serving the assistant resident for tasks needed at the level of sub-district.

sign (*verlijden*) the contract at the closest village to the land, Soember Gondo; once drawn, and after the *Controleur's* approval of its viability, the contract would be presented to the Assistant Resident for ratification (*bekrachtiging*) (Ledeboer 1924, 2).

In the same letter, the *Controleur* advised Ledeboer to educate himself on the rules and regulations of land lease and the various prescriptions regarding lease payment, because “there are many prescriptions which cannot be violated unpunished” (Ledeboer 1924, 2). Ledeboer should acquire and read carefully a guide book titled “Explanation of the rules regarding the leasing of land by natives to non-natives in Java and Madura,”²² which meticulously explained in ninety-six pages the ordinance decreed in St. 1900 No. 240. The guidebook explained the ordinance in detail and gave samples of lease contracts and lease registers in Dutch and Malay. It was essentially a bible for anyone wishing to navigate the legal maze in order to rent native usufruct lands. Nieuwenhuijs assured Ledeboer that “if you read carefully you will find it worth knowing” (Ledeboer 1924, 2). Convinced, Ledeboer claimed that he read the booklet carefully to make sure “the character and spirit of the lease ordinance was followed” (Ledeboer 1924, 3).

Carried out in small, discrete steps by individuals, these small exchanges of information and the subsequent attempts to follow rules and regulations illustrate the everyday making of the colonial state through the institutionalization of law and legal discourse. They were undeniably pervasive practices such that the networks of institutions centered on governance achieved a discursive presence as a state and as an authority in the arbitration of justice. It was through these numerous exchanges that citizens, in this case a state agent and a private individual, exercised their agency in a conscious submission to rules and regulation set by the state system; it was these acts

²² In Dutch: *Toelichting der regelen omtrent de verhuuring van grond door Inlanders aan niet-inlanders op Java en Madoera.*

that made the state appear real and legitimate. Yet, at the same time, the legitimacy was never stable.

Despite the promise of the Agrarian Decree 1872 and the Land Lease Ordinance of 1900, acquiring land was no easy matter for Bernard Ledebøer. Confident in the outcome of his proposed lease, Ledebøer ordered his supervisors to speed up the planting of nursery beds. By June, four hundred thousand seeds were already laid out. In July, after submitting the necessary documents, Ledebøer received notice of a planned hearing with the local population. In August, he was informed that the lease ratification could not take place due to objections raised by a new district *Controleur* (Ledebøer 1924, 4). The delay caused him to miss a targeted planting, and he lost 18,000 guilders. Understandably, Ledebøer was upset:

[I] only managed to learn that since August, a new *Controleur* had taken an action, that the lease contract for the land was executed [one month late], and that this *Controleur* had recommended that the Assistant Resident withhold the ratification. The reason remains concealed [to me], because the government considers that [I have] nothing to do with [it]. (Ledebøer 1924, 4)

To overcome the hurdle, Ledebøer recruited an able lawyer from Surabaya, who explained to him what had happened: First, the lease price was so high that the *Controleur* could have suspected the transaction of being a disguised sale; second, the land-register entry made the natives appear to be leasing more land than they owned; and finally, there was no evidence that the Native landholders were provided with a certificate of land reclamation (*ontginningsbewijzen*), which guaranteed lands were legally reclaimed. Ledebøer remarked that anyone who was aware of the agrarian law and “the Banjoewangi reign abuse” would immediately understand that the delay was done deliberately to hinder the leasing process (Ledebøer 1924, 4). Nevertheless, he duly submitted to the delay and ordered a planting freeze until the authorities’s clearance. He even sympathized with the new controller, who had “in many ways seen

the growth of clandestine land ownership of land in his district and wanted to clamp it down, and saw in this lease one of the many forms of such ownership” (Ledeboer 1924, 5). So, although he was convinced that he had sufficient rights to start cultivating the land, he did not “[risk] planting, because taking possession of the ground before the confirmation was obtained was explicitly stated in land lease ordinance as impermissible” (Ledeboer 1924, 7).²³ Despite his frustration with the local officials, Ledeboer attempted to present himself as a good, law-abiding citizen who followed rules and regulations regardless of the heavy loss he had to absorb. His confidence in law finally bore fruit: he acquired the twelve year lease in 1913.

These difficulties notwithstanding, the land was generous to the Ledeboers. By 1919, roughly seven years after the first planting, the Wadoeng West Estate began exporting coffee to the Netherlands, where it was traded in the Amsterdam bourse.²⁴ Benefiting from the sterling reputation of East Java coffee, Wadoeng West grew to be a prosperous estate, inciting “rogue Europeans” to covet the land the Ledeboers had cultivated. Over the years, underhanded transfer of land use rights among the Native landholders—through pawning or other means—had caused the lands that Wadoeng West leased to be concentrated among only a handful of people. For example, in land register No. 1 in Kali Wadoeng village, Genteng district, within three years Native landholders had decreased from 53 to only 9 individuals. Only two of the original holders remained, and a certain individual named Doleah came to own 26 parcels (Ledeboer 1924, 18). Ledeboer noted that Doelah was a strawman for a European clandestine landholder who had already controlled more than a hundred *bouws* of land.

²³ Ledeboer was referring to Lease Ordinance between Native and non-Native, which at that time was regulated in St. 1900 No. 240.

²⁴ “Handelsbericht,” *Het Centrum*, Utrecht, August 19, 1919, <http://kranten.kb.nl/view/article/id/ddd%3A010006141%3Ampeg21%3Ap003%3Aa0053> (accessed March 22, 2012).

There were many ways land could change hands undetected by the colonial officials for many years.²⁵ There were simply too many loopholes in the law meant “to protect the natives.”

These clandestine land acquisitions threatened the survival of medium-sized estates, especially those that planted perennial crops such as tea and coffee like Wadoeng West, since there was no guarantee that the new landholder would be willing to extend the lease upon its expiration. To make matters worse, the natives’ habit of repeatedly pawning land without transfer records made tracking ownership almost impossible. Moreover, a lease of native land could not exceed twenty years, putting the medium estate at a disadvantage compared with larger enterprises with seventy-five-year *erfpacht* leases of the free state’s domain. Ledebøer lamented the lack of middle-sized farmers and the rampant illegal land occupation in the fertile region of Banjoewangi. He blamed it on the Alienation Prohibition. He argued that as long as the law prevented the *blijvers* from owning and cultivating land, there would not emerge any strong small- or middle-sized farmers in the colony, an essential element for any land’s prosperity: “The law would not allow it” (Ledebøer 1924, 8). The Prohibition to him was simply a farce to protect big businesses in the Netherlands.

The bureaucracy’s impotence was another sore point for Ledebøer. The Attorney General ignored the complaint he sent about the clandestine land occupation by rogue entrepreneurs. As he built his enterprise, he had to deal with controllers and Assistant Residents whom he accused of having wanted to thwart his estate. There was

²⁵ Ledebøer listed the following among the illegal transactions:

1. Sham lease. The lessee bought the land in advance, but let the previous owners appear before the Controller, and both lessee and lessor concealed the sale that had already taken place.
2. Owning and tilling of the land as an agent of a native and by order of that native.
3. Purchasing large complexes of land in the name of a native woman and then marrying this woman.
4. Buying up land in the name of a child and then recognizing the child as European.
5. Simple purchase of land from a native, then cultivating this land with no authorization or title.
6. Buying land and then letting it be cultivated by any native, whom they pay with half of the land revenues. (Ledebøer 1924, 22).

nothing the bureaucrats at the Binnenlands Bestuur could do, claimed Ledeboer. To add insult to injury, when the Assistant Resident sent out a circular to warn the clandestine landholders of their criminal offence, the latter no more than blinked their eyes. The Assistant Resident and other authorities proved to be powerless to their defiance, allowing all the illegal land occupiers to think that they could continue doing what they did.

Ledeboer's frustration with the bureaucrats and the confusing system of land lease was a stark contrast to promises in the agrarian laws to ease private investors' access to land. The law's mandate for public auction, for transparent process of land acquisition, and of support from colonial bureaucrats fell flat in the everyday reality of an estate manager. Ruptures persisted between discursive legal structures and the material implementation by state agents, putting in question the widely accepted narrative about collusion between capitalist entrepreneurs and the liberal colonial state. Through his vituperation of the agrarian laws and the bureaucratic class, Ledeboer created an image of himself as an anti-elitist, a pro-native, and a supporter of small- and middle-sized independent European-*blijver* farmers who were never allowed to prosper thanks to the Alienation Prohibition. To Ledeboer, the threat for the natives lay not in the presence of small- and medium-sized *blijver* farmers, but in the greed of the Native elites, facilitated by the hands-off Binnenlands Bestuur staff, who cheated their own people by buying land at rates much cheaper than the annual rents from *ondernemers* such as himself.

Bernard Ledeboer published his public testimony in 1924. Two years later, he was killed on a hunting expedition in Mombasa, Africa,²⁶ but not without leaving a special legacy that would later define the fate of the Wadoeng West Estate: a two-

²⁶ Anonymous, "Het Nimrod Geveld," *Het Centrum*, July 3 1926, p. 11, <http://kranten.kb.nl/view/article/id/ddd%3A010001981%3Ampeg21%3Ap011%3Aa0177> (accessed July 11, 2012).

year-old daughter of mixed race. His brother, Adriaan Johan Marie Ledeboer, took over the management of the estate. Under his supervision the Wadoeng West Estate continued to flourish and to supply high-quality coffee for the Netherlands market. The rising profile of Adriaan Ledeboer as a *blijver* reflected the continuous prosperity of the Estate. He became a wealthy entrepreneur and took control of vast land in the Yang plateau, a highland between Mount Argopuro and Mount Radeng, northwest of the Estate, where he initiated a conservation site for Javanese deer. He became a legendary tiger-hunter, a pastime available only to wealthy *blijvers* in the Indies (Boomgaard 2001). He also initiated the hunting ordinance that was discussed in the Volksraad in 1931.²⁷

In the Netherlands Indies, valuable land plots began their life story as landscapes. It was the abstraction of property relationships, materialized in a series of colonial laws and legal decisions, that converted these landscapes into commodities ripe for the market. The law gave landscapes identities that determined their eligibility and exclusion and their future life course as they entered the market. The law also determined the kinds of land transactions allowed for people with a particular identity. Being a European opened doors to certain land lease that promised some lavish return, but closed doors to another, such as buying land from the native population. Unquestionably, colonial law was skewed to the benefit of the colonizers, yet within that limited corridor, there was still room to maneuver for the rights of the native population. In 1934, a Native member of the Volksraad, R.P. Soeroso, began to challenge the Wadoeng West Estate.

R.P. Soeroso was a seasoned politician with a strong grassroots political network in East Java. He was born to a minor aristocratic family in Sidoardjo,

²⁷ Anonymous, "Geheel alleen op de Tijgerjacht," *De Rijnbode*, May 1 1940, <http://rijnlandsmidden.courant.nu/index.php?page=1&mod=krantresultaat&q=&datering=01-05-1940&krant=RB&qt=paragraaf&doc=1&p=2&y=83> (accessed May 21, 2012).

a small town outside Soerabaja. Kicked out of a teacher's training school (*Kweekschool*) in Probolinggo after leading a student protest against the headmaster, Soeroso quickly became a political activist after he joined Sarekat Islam in 1912. By the time he was twenty-one, he was president of the Sarekat Islam branch that covered Probolinggo and Krasakan in 1915, and of the SI branch in Modjokerto 1919 until the branch's demise in 1932. Soeroso's leadership was widely acknowledged in East Java. Between 1916 and 1924, he was elected chairman of various labor and workers' organizations across the region, such as the Association of Native Workers in the Department of Public Works (*Vereniging Inheems Personeel Burgerlijke Openbare Werken*, VIP-BOW) in 1919 and the *Personeel Fabrieksbond* (Factory Workers Union) in Modjokerto in 1921. He led a labor strike of twelve sugar factories in Modjokerto and negotiated with sugar factories for a better lease agreement for the Native peasants during his tenure in Sidoardjo, Modjokerto, and Djombang between 1912 and 1923.

Given his sterling career in political activism, the central government looked to him as a potential partner. In 1924 the government appointed him a member of the Volksraad. True to his nature, in his inaugural speech, Soeroso criticized the planned land tax in West Sumatra, which led Governor General Fock to disinvite him from the inaugural dinner. During his Volksraad career, Soeroso was a member of the National Faction established in 1927 by seasoned nationalist politicians. Among the members were Koesoemo Oetoyo, M.H. Thamrin, Soeangkoepon, Otto Iskandardinata, Sukardji Wirjopranoto, Dr. Rasjid, and Wiwoho, all leading Volksraad members. The Faction maintained a flexible position vis-à-vis government policy, sometimes cooperating, other times non-cooperating. They commanded a degree of respect from the nationalist and intellectual groups in the colony, even those who staunchly remained non-cooperative.

The Men Made the Law: Wadoeng West in the Volksraad

R.P. Soeroso's final remark in the Volksraad culminated a long struggle he had begun in 1934. From the outset, Soeroso recounted a different story from Bernard Ledebouer's 1924 account. The following is Soeroso's version as recorded in the Volksraad 1934–1935 sessions.

According to Soeroso, twelve years after renting the natives' land through a lease that started in 1915/1916 (as opposed to 1912 in Ledebouer's account), the manager of the Wadoeng West Estate failed to renew the contract upon its expiration. An official investigation started soon after, and by 1934 the Raad van Justitie in Surabaya ordered the Estate to return the land they occupied in Semaoen village to its lawful holder, a peasant named Samingoen (Volksraad Handelingen, Afdeelingsverslag 1934/1935, Section 5, 17). The violation of Samingoen's rights apparently was not an isolated incident; several other peasants in the villages of Kaligondo, Setail, Taman Sari, and Gambiran had also complained to the government about Wadoeng West's refusal to return their land upon lease expiration (Volksraad Handelingen 1934/1935, 737). Soeroso criticized the Binnenlands Bestuur's foot-dragging, an act exceptionally disrespectful to the court of law when the Raad van Justitie and the Supreme Court had decided that Wadoeng West was at fault. He accused the Binnenlands Bestuur of neglecting to investigate the issue, and he found it odd that the regional staff in Besoeki were unfamiliar with the illegal occupation. When the Director of the Binnenlands Bestuur, F.A.E. Drossaers, dismissively said that the issue was being communicated to the Governor of East Java and the Resident of Besoeki, Soeroso roared back,

It has surprised me greatly that on this issue, the Government [merely] declared that . . . it is trying to find a solution. I explicitly pointed out in the first Volksraad session that the illegal land occupation by the Wadoeng West Estate is [already] proven: Out of the [legal] process of Samingoen, one of the landholders, it has been established that Wadoeng West has occupied his land

illegally. Now I would like to hear from the Government that measures will be taken. I do not really understand the [Government's] answer . . . when it is already proven that the illegal land occupation has taken place. I would thus like to ask why the Government has not taken any action in this case by evacuating the Estate out of the land. (Volksraad Handelingen 1934/1935, 1080)

Soeroso added that the people wanted their land back with what had been planted upon it, namely coffee, because “that is the property (eigendom) of the landholders.”

It was strategic move by Soeroso to choose the word eigendom, which also meant “freehold estate,” a form of ownership privilege only for Europeans, in contrast to the legally proper *erfelijk grondbezit* (inheritable usufruct rights). By saying so, he signalled that the Native landholders should also benefit from full ownership of the land as enjoyed by Europeans and protected by law without having to be made equal to Europeans before the law.²⁸ Thus, the return of their land should unquestionably come with the plants that were already growing upon it. This was a small but critical note, because Wadoeng West could have resorted to using adat law which distinguished rights to plants and vegetation from rights to land. By doing so, they could retain their rights to coffee gardens they had planted. Even so, Soeroso's peculiar demand left a few question: Who would benefit from the coffee? The peasants themselves? Could they have been sponsored by European backers that Ledebor had written about, who would undoubtedly benefit from the coffee trees already planted by Wadoeng West Estate? Was it possible that Soeroso had unknowingly waged a struggle for these clandestine landholders?

To his credit, the Director of Binnenlands Bestuur skillfully defended his department. He denied the accusation of the government's inaction to eject the Estate from the illegally occupied land. On the contrary, he reported, when the officials were

²⁸ As demanded by Article 4 Agrarian Decree 1872 No. 116.

to execute the court order for Samingoen, no one, including Samingoen himself, could point out where his land plot was located. Further, he argued that Soeroso had misplaced his grievances, because, obviously “ . . . when there’s a dispute between two parties on land rights, the decision is not the Government’s, but [it is] the court that must pass the verdict, that the decisions of the judge must be executed by the appropriate authorities designated by law” (Volksraad Handelingen 1934/1935, 1128). His defense relied on the division of authority over the colonial state apparatus and implicitly denied the executive body any power over the case.

New details emerged a year later during the 1935/1936 Volksraad session. They demonstrated that the matter was not as simple as Soeroso had assumed.

Responding to Soeroso’s written request for an update on the case, the Director of the Binnenlands Bestuur reported that when the initial land lease expired, Wadoeng West claimed that the original owners had sold their rights to the land to another Native person, who in turn transferred the land rights back to the “daughter of one of the former managers of Wadoeng West,” that is, Bernard Ledeboer’s daughter with a Native woman, Romanti.²⁹ After the transfer, this child, Adia Orrie Ledeboer, was recognized as Ledeboer’s legitimate daughter, and she became legally European and subject to European laws. With her new legal status, the daughter leased the land to Wadoeng West with a contract drawn between two European subjects, skirting the land lease ordinance (*grondhuurordonnantie*)³⁰ for transactions between native and non-native subjects. The Director of Binnenlands Bestuur claimed that only one of the original owners of land had demanded a return of his land, while the remaining

²⁹ Genealogy of Bernard Ledeboer is provided by <http://www.chabot.demon.nl/genealog/chabot04/329.htm> (last accessed July 21, 2011).

³⁰ By this time, St. 1918 No. 88 had replaced St. 1900 No. 240, which regulated land lease by a Native to non-Native at the time the Ledeboers signed their contract. And in both laws, a Native equalized as European was excluded from the definition of “Native” understood by this law.

claimants had declared under oath that they no longer had rights to the land plots (Volksraad Handelingen 1935/1936, 1020–1021).

Wadoeng West skilfully manipulated legal loopholes to maintain their grip on the land. As discussed earlier, the Agrarian Decree in St. 1870 No. 118 guaranteed full enjoyment of land for a native who had transformed his or her use rights to eigendom rights, provided that the native was assimilated to European legal status. She or he “[could] dispose of them freely, subject to limitation set by law and subject to expropriation in the public interest with adequate compensation.”³¹ Whether Adia Ledebouer had requested a transfer of her land to eigendom as mandated by Article 3 of the Agrarian Decree was another issue, as was the fact that she was very young when this event took place.

Soeroso struck back. The manner in which the land had come into the possession of Adia Ledebouer, he argued, was questionable:

She came into the possession of the lands, which, in any case are occupied illegally by the Wadoeng West Estate. I should like to be informed how it is possible for one of the original landholders to win against such a company. Is it necessary, as was informed by the Government authorities, for the other original landholders to declare [under oath] to have renounced the land, if the sale of the land of the original landowners to the . . . child of the previous manager had been legal? For me it is still a mysterious case, and I hope therefore that the authorities will clarify the matter further in the second session. (Volksraad Handelingen 1935/1946, 1075–1076)

The Director of Binnenlands Bestuur, however, skirted Soeroso’s demand, claiming that the issue was still under further investigation by the governor of East Java.

Soeroso, he said, needed to be more patient.

Another year passed. But Soeroso was unrelenting about the Wadoeng West case. In the Volksraad session of 1936/1937, again he asked the government about the progress

³¹ St. 1872 No. 116 Article 4.

of the case. More details emerged that leave an observer with more questions than answers when Soeroso revealed intriguing details to an already complex case:

The Government will certainly have known that a certain Lunel,³² residing at Genteng, acted as an authorized *con amore* by the landholders to recover their land. This representative has written to the prosecutor in Surabaya, after the court verdict was published for the case of Samingoen against Wadoeng West to the advantage of Samingoen, to inquire whether a criminal proceeding could be charged against the Wadoeng West Estate on the grounds of illegal occupation. The prosecutor had responded to him in a written communication, that in conformity with the governor of East Java and the Attorney General's, prosecution was suspended until the Government expressed its views, whether this will continue or whether another arrangement will be taken. (Volksraad Handelingen 1936/1937, 652; emphasis added)

The Attorney General had apparently been consulted about the case, yet the government still had not taken a clear position on the issue. This was certainly scandalous, because if the information was true, it proved that the government had been dragging its feet. It punctured Drossaer's defense that the Binnenlands Bestuur did not—could not—have a say in the execution of a legal decision. More dishearteningly, this fact demonstrated that the judicial system was hardly an independent body.

Soeroso continued,

This letter from the prosecutor was identified as dated in Surabaya 1 October 1934 No. 5466. So it has been two years that the Attorney General has waited for further instructions from the Government on this case. (Volksraad Handelingen 1936/1937, 653)

³² We may never know who the "certain Lunel" was or what his motive was in assisting the landholders; how Soeroso got in touch with him and acquired information about this letter; what their relationship entailed; and what constituted Lunel's political position. A search has brought out a certain A.W. Lunel, who was registered as a subscriber in the Cultuur Gids Volume 7 (1905-1906, 234) as a staff member of an estate in Somber Mangis Kidoel in Pasoeroean, Malang. His proximity to the location of Wadoeng West and his profession in the estate business that would have trained him on the matter of land lease regulation were a good fit; A.W. Lunel might have been the Lunel Soeroso indicated. But such a conclusion requires further investigation.

In response, the Director of the Binnenlands Bestuur said merely

that land occupation by the company Wadoeng West has become a difficult and complicated agrarian question which would not bring an instant solution. Indeed, this case has for some time already captured the attention of the judiciary and the government, and should the opportunity to prosecute beyond doubt emerge, it would certainly be carried out. (Volksraad Handelingen 1936/1937, 1065)

He stated further that the case continued to be investigated by the governor of East Java and that the government would soon be able to make a decision.

The Director's promise remained mere lip service. A year passed without any ripples on the Wadoeng West case in the Volksraad.

In the 1938/1939 session, again Soeroso inquired in writing about the progress of the Wadoeng West case and received only a tentative response from the government,³³ which claimed it still needed more time to see whether an administrative solution was possible and desirable (Volksraad Handelingen 1938/1939, Memorie van Antwoord, Section 5, 19).

Soeroso used the Volksraad session to express his displeasure at the pace the government took in handling the case. He was utterly dissatisfied with the progress, especially because he had raised the issue five years previously; however, the government had never demonstrated a genuine interest in or resolution to solve the case. He appealed in the Volksraad session:

Mr. President! Just now I saw the deputation of the peasants sitting in the gallery. It is clear, however, that this attitude of the Government still does not satisfy the sense of justice on the peasants' part, especially after these people exhausted all efforts to try to regain their land. Sending such a deputation from Banjoewangi to Batavia has already cost them a lot of money. . . . It therefore

³³ The government reported that a thorough investigation of the legal position that the state had taken on the case had been carried out. The investigation had cast doubt among legal experts about whether the claimed "ground breaking of the law" (*inslaan van den weg van rechten*) in the case deserved a recommendation.

seems to me that this should finally be a valid motive for the Government to make a speedy and fair decision on the illegal occupation for the peasant's sake. The Government should be informed that one of the peasants [here] has won his case. Here is proof that the occupation of the land was illegal. (Volksraad Handelingen 1938/1939, 540; emphasis added)

Soeroso's statement demonstrates how colonial law became a common discursive framework accepted by a Native politician and the peasants as a point of reference to protest injustice. Law—especially laws that promised to protect the native population from illegal takeover of their land—became the shared language through which the discourse of struggle was waged.

The colonial agrarian regime had prohibited non-natives from buying land from the native population, but it did not prohibit an assimilated native from exercising European rights on the land she acquired as a Native, as was the case with Adia Ledeboer and her supposed lease to the Wadoeng West Estate. It was through a keen understanding and manipulation of the maze of colonial law, law that differentiated citizens from subjects, legal jurisdictions, rights to land based on identity, and the nomenclature of land and its legally sanctioned form of lease, that Wadoeng West could hold out for so long after Soeroso's continuous barrage in the Volksraad. The emergence of the mysterious Lunel, who fought for Samingoen's land, leaves more questions than answers. Who was Lunel? What was the motive for his involvement with Samingoen? Why couldn't Samingoen point out the boundaries of his land if the parcel was indeed his? Regardless of these unanswered questions, one thing remains true: The call for justice at *Raad van Justitie* and *Hooggerechtshof* on the part of Samingoen, and at the Volksraad on the part of Soeroso, summoned the specter of the State and made its presence apparent.

In this long exchange of demands and deflections from action, the Binnenlands Bestuur had the last say. But before we hear their final defense, we shall turn our

attention to reports from their own rank and file, the Residents, which reveal quite a gripping surprise.

Reports from Besoeki and the Binnenlands Bestuur's Last Say

The Residency of Besoeki had long been plagued by the problem of illegal land occupation. The earliest government account comes from the 1913 Memorandum of Transfer (*Memorie van Overgave*) by Resident Bosman, the same resident who Bernard Ledebouer complained had withheld the ratification of his lease in 1912. Bosman reported a serious case in subdistrict Kali Baroe, district Genteng, Banjoewangi: a number of Europeans had acquired large expanses of land under the names of their Native housekeepers, some intending to plant Robusta coffee (Bosman 1913, 32). This information coincided with Ledebouer's account of his own search for land for a coffee estate, although it is not proof that Ledebouer was one of the culprits. Maintaining a hardline position, Bosman suggested that the central government adopt a forceful legal act to strike this offense at its root. In the meantime, he assigned the controller and the *wedono* of Genteng, a Native official at the district level, to investigate the case further, insisting that "Without criminal prosecutions these abuse could not be curbed (Bosman 1913, 33)." However, there is no follow-up record of his initiative.

Over the years, the amount of free state land available for lease in Besoeki decreased sharply. In his Memorandum of Transfer in 1918, Resident B. Schagen van Soelen reported that as much as 69,232 *bouws* (49,127 hectares) of land was already handed out in *erfpacht*, a steep increase from 40,602 *bouws* (28,811 hectares) in 1911 and 48,002 *bouws* (34,062 hectares) in 1916. An additional 13,000 *bouws* (9,224 hectares) of land under native usufruct rights were rented out for tobacco cultivation on a rotating base with rice and firewood. Besoeki was so crowded that many estates

could not expand their plantations unless they rented directly from the natives; this meant diverting land from the cultivation of food crops.

Schagen van Soelen's Memorandum of Transfer revealed a deep concern for the welfare and food security of the native population. He considered it important for the native peasants to plant food crops and not export commodities like coffee, tea, or quinine. "From a land management viewpoint," he wrote, "the first concern of the government was to guarantee that the people can feed themselves. Rice, corn, cassava, groundnuts, and kedele, such crops should be prioritized (Schagen van Soelen 1918). A well-fed population, he argued, is a happy population, and this was especially important to counter the increasing influence of the "radical" Sarekat Islam in the region. Schagen van Soelen's idealism was not an anomaly for colonial officials in this period, who were inspired by the principles of Ethical Policy.

Illegal land occupation continued to plague the Besoeki residency. J. Ph. Fesevur, the Resident who served between 1919 and 1922, found himself continuously occupied by the issue, especially for cases in subdistrict Kalibaroe, district Genteng, Banjoewangi, the same area mentioned by Resident Bosman in his 1913 report. He noted that Europeans and Foreign Orientals had significantly expanded their landholding through their native maids and strawmen:

Following an inquiry, a report was released by the Assistant Resident of Banjoewangi regarding the occupation of natives' land by and on behalf of non-natives. I presented the report to the director of Binnenlands Bestuur, and it was forwarded to the Attorney General so that an attorney of the Raad van Justitie in Soerabaja could further investigate this case in situ. (Fesevur 1922, 4)

This was the first time on record that a Besoeki Resident had pursued a legal avenue to curb illegal land occupation in the region, although this was not the first time a Resident attempted to maintain a "hardline" position, as proved by Resident Bosman's memorandum.

Resident Fesevur stated further,

It is very desirable that the matter be adequately regulated and vigorous action taken against Europeans as well as Foreign Orientals. Further, to the Land Registry a statement of surveyed lands was requested, lands whose holders have not requested a title. I have commissioned the Assistant Resident to ascertain the reason for not applying title on those grounds.

The land tax team, tasked with the revision of the interest assessments for land in the divisions of Djember and Banjoewangi, was in charge to ascertain which grounds were unlawfully occupied. The report can be seen shortly. [The assistant resident] experienced much cooperation in the investigation of illegal land occupation [from] the land registry and the land tax team. (Fesevur 1922, 15)

Beginning in 1913, Besoeki Residents consistently warned the central government of illegal land occupation in the region. But it was not until 1926 that a resident explicitly mentioned the names of the culprits.

H.A. Voet, the Resident from 1922 to 1926, reported that by 1926 more than 130,000 *bouws* (92,248 hectares) of long-term *erfpacht* lease existed in Besoeki, divided between Djember (60,000 *bouws*) and Banjoewangi (58,000 *bouws*) divisions. The residency was so crowded that new entrants could no longer acquire *erfpacht* rights. Renting from Native landholders was not an option either, due to rampant illegal land occupation. Many involved only small pieces of land that were only temporarily illegal because the holders lack sufficient funds to process the paperwork, but many others were engaged in an open challenge of the law. However, in keeping with an amnesty program, many illegal landholders had begun to legitimize their plots by entering them into a lease agreement. He remarked that at that point, illegal land occupation, “at the request of the Attorney-General[,] is now no longer (criminally) prosecuted” (Voet 1926, 27). Perhaps this was intended to encourage any illegal holders to come forward and legalize their holdings.

Resident Voet then made a shocking revelation: In Banjoewangi division, two major illegal occupiers were Europeans. And one of them was the Ledeboers.

Resident Voet noted that the case of the Ledeboers had been relegated to the judiciary, and at the time of writing in 1926, the matter was still pending (Voet 1926, 28). Significantly, this was the same year Bernard Ledeboer published his manifesto.

Reports from Besoeki Residents, the regional frontmen of the Binnenlands Bestuur, demonstrate that they were acutely aware of the offense. As early as 1913, Resident Bosman had already raised the issue. He appealed to the central government in Batavia to maintain a hardline stance and increase punishment to stop the offense at its root. In 1926 Resident Voet explicitly mentioned the Ledeboers as one of the major perpetrators of illegal land occupation. He had also followed up with the case of the Ledeboers in the judiciary. Having been reported in a Memory of Transfer, Wadoeng West's violation could not escape the attention of the Binnenlands Bestuur's ranking officials. It was during Resident Voet's tenure that Bernard Ledeboer published his personal manifesto as an offensive tactic to defend himself. The fact that by 1926 the Ledeboers' case was still pending in the judiciary indicated that the Ledeboers most likely did not participate in the 1924 amnesty, perhaps encouraged by the Attorney-General's position not to criminally prosecute illegal land occupiers. Hence, not only the Residents, but also the prosecutor and Raad van Justitie in Soerabaja, the Landrent team, the Land Register office, and the Tax office had extended their cooperation in battling the case. In this light, Soeroso's accusation that the Binnenlands Bestuur's regional officials lacked knowledge of the case signalled something else: Either Soeroso was not informed of the actual situation, or the officials had been ordered by their superiors not to talk openly about the case. If it was the latter, why? Why was this case never resolved, when the enthusiasm for and attention to the case over the years on the part of the Residents, the Controlleurs, the wedonos, and the related

colonial agencies in the region clearly signalled the seriousness of the offense? And as reported by Soeroso, why did the Attorney-General request a delay in the execution of Samingoen's case?

Fast-forward twelve years: not much had changed.

In 1938 the Binnenlands Bestuur tried to close the case once and for all. In the Volksraad session, they acknowledged that the Wadoeng West Estate had leased the land from the daughter of Bernard Ledeboer. After this extraordinary lease took place, a number of the original owners claimed that no transfer had actually happened between them and the strawman of the company who had handed ownership over to Adia Ledeboer. The owners demanded that their land be returned as soon as the lease expired. Taking this narrative "to context," the Director of the Binnenlands Bestuur explained that the case came to involve two legal aspects: public law and civil law. From the civil law perspective, this was a conflict that involved two civil subjects, a company and a Native person; the government could not intervene and had to maintain its "neutral" position precisely because the civil law protected the sanctity of contract and property rights from governmental interference. Only the courts of law could settle a purely civil dispute between two claimants to land. Soeroso's appeal for a speedy and fair decision by the government on behalf of the peasants was thus misplaced. The government could only advise that Samingoen pursue a civil case against Wadoeng West in court, because the government had no authority to deprive Wadoeng West of the land under its control or to force it to return the land to the original owners. The government's responsibility was limited to the public law aspect of the case (*publiekrechtelijk*): it had set up a thorough investigation of Wadoeng West practices. Although a decision was yet to be made, the Director of the Binnenlands Bestuur reassured Soeroso, the results of the investigation would inform

the pending amendment of the provisions to combat the illegal land occupation by non-natives.

Conclusion

The three basic laws that provided the foundation for agrarian laws and regulation—the Regeeringsreglement 1854, the Agrarian Law of 1870, and the Alienation Prohibition—transformed the conception of property relations in the Indies, particularly the native’s categories regarding relations between people and land. At the same time, these laws and their derivative regulations rendered the illusory state concrete and cemented “the state” as the ultimate arbiter of justice. Agrarian laws and regulations altered landscapes into commodities ripe for market; decided which lands were to be leased by the Government on long-term heritable leases (*erfpacht*) and which to be rented from the native on a short-term basis (*grondhuur*); regulated who could and could not acquire a certain form of lease; and prohibited Europeans and Foreign Orientals from alienating. But agrarian laws and regulations were only a part of the colonial agrarian regime, which also encompassed legal practices and specific enterprises that underpinned the rearranging of social and property relations in the colony.

In the constitution of the colonial agrarian regime, the whole spectrum of the colonial society took part: estate owners/managers, government agents, residents, assistant residents, controleurs, *wedonos*, native politicians, judicial staff, European *blijvers*, and the peasants themselves took ownership of and engaged with various aspects of the agrarian regime. They pushed for certain legal practices to advance their interests and carried out attempts such as lease transfer or warnings in bureaucratic missives, concurrently extending and challenging the massive project to reorder social relations.

The role of law in commodifying land is demonstrated by the transformation of the Banjoewangi landscape into the Wadoeng West Estate. The Land Rent Ordinance made available to non-Natives previously inaccessible reclaimed plots under native rights. The Ledeboers rented land from the natives, set up a coffee plantation, and took a gamble that they could extend the rent beyond the maximum twelve years with a renewed contract. It meant that, at least theoretically, the Wadoeng West Estate was always vulnerable to rent termination by the Native landholders while at the same time threatened by “clandestine European landholders” who lurked to take over their rent. In turn, the Estate took an unconventional ways to secure its grip on land. When Besoeki Residents began to detect his practices, Bernard Ledeboer deployed an offensive tactic by protesting the “impotence” of officials in controlling illegal occupation. He waged a fight against the “hypocritical and elitist undertone” of the Alienation Prohibition. To him, the Prohibition’s true objective was a farce perpetrated by the Netherlands at the expense of the *blijvers* and natives, those who actually worked the land. The Prohibition caused illegal occupation and clandestine land ownership in Besoeki Residency; scrapping it would nurture the small- and middle-sized farmer groups that were essential for Indies prosperity.

The Binnenlands Bestuur officials in Besoeki rejected Ledeboer’s opinion. Over the years, successive Residents underlined the importance of law enforcement as a means to protect the natives from predatory land takeover. Not only did the Residents report the illegal land occupation, but they also cooperated with other colonial apparatus such as the land tax office and the Raad van Justitie to curb these illegal maneuvers. To them, the existing laws were already sufficient to fulfill the government’s objectives to promote capitalist agricultural estates and to protect native landholdings. It was the enforcement of these laws that they found wanting.

To a Native politician, R.P. Soeroso, the agrarian laws gave him a “common discursive framework” with the colonial government for determining what was legal and illegal. He and the peasants from Semaoen village mobilized the colonizers’ legitimating narrative to challenge unfair agrarian practices that sided with land leasers. Soeroso questioned the Attorney General’s new policy not to criminally prosecute those who alienated land from the natives—an interpretation that diverged from the law’s mandate to prevent massive land transfers. He demanded that the Binnenlands Bestuur react swiftly in response to Raad van Justitie’s verdict for Samingoen. He waged a tireless five-year crusade to right the wrong. In other words, Soeroso intervened in the conventional agrarian practices and the colonial agrarian discourse by presenting his alternative reading to the table. The five-year fight in the Volksraad seemed to be quixotic and futile, but its value lay less in the success of wresting the land back for the peasants than in the way it kept the struggle of the small peasants in the public view.³⁴

The colonial agrarian regime provided no stable framework for property relations, as proven by the responses of subjects and citizens of the Dutch Empire in Banjoewangi. A diverse mixed of social actors actively re-interpreted and challenged the agrarian laws. They were actively “making the law” in the way they engaged with law at various levels: from directly challenging a rule to demanding the execution of a legal decision. In their interventions, they helped shaped the colonial agrarian regime, understood here as the complex ensemble of laws, legal practices, and specific enterprises that underpin the rearranging of social relations and property rights in the colony. Within the time frame of Wadoeng West’s case, their actions did not result in changed laws, but they created enough ripples to put into question the stability of

³⁴ The Wadoeng West Estate remained the steward of the Banjoewangi land disputed by the Native population until the end of the colonial period.

colonial agrarian laws and regulations. The story of the Banjoewangi land plots demonstrates how “law made the land” in the ways it shaped the character of land as a commodity, and how the law’s making was always tentative. Colonial subjects and citizens undermined this massive project through constant struggle and noncompliance, pulling the making of land in unexpected directions. In the process, subjects and citizens interpellated the state, affirming the presence of what in reality was merely a specter.

CHAPTER 3:
Constituted Subject and Autonomy:
Soepomo, Adat Land Rights, and Agrarian Reorganization in Surakarta, 1900–
1920s

Introduction

The project of colonial domination encompassed both coercion and consent; it was made possible not only through violent conquest but also more ingeniously through knowledge production and other cultural technologies of rule (Cohn 1996).

Forms of knowledge and modes of representations produced and deployed by European colonizers to preserve their domination were part and parcel of the colonial project of rule, powerful in the way they introduced European categories to the colonized and made them authoritative. They took forms, among others, in census, statistics, museum artifacts, reports from colonial officials, and legal discourse.

Legal discourse here is understood as distinct ways of writing about law, which include production of legal knowledge, writing of legal codes and regulations, and founding a legal discipline. Legal discourse follows mostly unwritten rules that contain “a set of categories, a vocabulary for naming events and persons, and a framework for interpreting actions and relationships” (Merry 1992, 218). Legal discourse became an essential element in the legitimating narrative for colonial regimes (Merry 2000, 2003). It was deployed to conjure the myth of “the state” as the ultimate arbiter of justice; yet, true to the “doubling” nature of colonial projects (Comaroff 1998), it was also pregnant with inner tensions and contradictions, and its fractures made legal discourse vulnerable to contestations by both the colonizer and the colonized. The slippery position of colonial legal discourse as it sits precariously in the interstices between legitimating and fracturing narratives was exemplified in the

event when *adat*¹ law, and along with it *adat* land rights, increased its purchase as a framework to constitute the Agrarian Regime in the colony.

Within the large expanse of colonial legal discourse, here I focus on colonial legal knowledge production. I analyze how a native scholar, a subject formed by both colonial and indigenous discourses, exerted agency in constituting legal knowledge about *adat* law on land rights. I do so by examining a doctoral dissertation written by Soepomo that interrogates the agrarian reorganization in the Surakarta Principality in the early 20th century. The reorganization was a part of a project to constitute an agrarian regime.

Trained in Dutch legal tradition at the Batavia Rechtsschool and Leiden University United Faculty of Law and Letters, Soepomo was a product of a colonial project of subject formation. At the same time, as a member of a minor Javanese aristocratic family, he was raised and thoroughly immersed in Javanese ethics. Because Soepomo was exposed to both worlds, his sense of personhood cannot be neatly delineated as thoroughly Javanese or Dutch; indigenous and European cognitive orders reciprocally penetrated each other in a way that generated a unique form of being-and-knowing. This hybrid subjectivity was the foundation of particular forms of agency Soepomo conveyed when negotiating legal knowledge on *adat* land rights and agrarian reorganization in Surakarta. I argue that Soepomo was not devoid of autonomy, the capacity for critical reflection and deliberate self-transformation, as he demonstrated his autonomy in challenging the underlying premises of the reorganization. I also argue that in the case of the colonized whose subjectivity was

¹ A politically loaded concept, *adat* refers to the customs and practices of Indonesia's diverse ethnic groups. It encompasses ritual conventions, marriage rules, kinship system, methods of conflict resolution, rules for resource use, rules of land acquisition and ownership, and other formally articulated norms and ideas (Zerner 1994; Tsing 1993).

constructed by heterogeneous discourses, discursive resistance can be more accurately detected using heterogeneous epistemic references: indigenous and European.

To support my argument, I present the debate on adat land rights in the Netherlands in the dawn of the 20th century, focusing on several key actors and their positions in the debate. I situate Soepomo's dissertation in the context of this debate, paying close attention to his position on land-related adat law and to the ways in which he responds to competing positions on native land rights. I borrow my analytical framework from South Asian debates on the role of native scholars in colonial knowledge production complemented by a recent theorizing of Foucauldian subjectivity and agency.

Colonial Subjects as “Active” Natives

Subjects, according to the Foucauldian line of inquiry, are not naturally occurring phenomena. They are constituted by relations of power. Power itself is not a thing possessed by a sovereign, readily disposed at his or her whim; rather, power is dispersed throughout the social sphere to a point where it becomes “capillary” in the extremities of local, regional, and material institutions (Foucault 1980, 96). At these points, the relations of power become tangible, and exist as exercises and means “by which individuals try to conduct, to determine the behavior of others” (Foucault 1988, 18). In this light, subjects cannot be conceived as an antagonist to power. Instead, power is an a priori condition for the possibility of individual subjectivity, as Foucault explains: “It is already one of the prime effects of power that certain bodies, certain gestures, certain discourses, certain desires, come to be identified and constituted as individuals. The individual, that is, is not the vis-à-vis of power; it is, I believe, one of its prime effects” (1980, 98).

To justify its objectives, a system of power requires a regime of truth from which it derives a set of categories and vocabularies for its system of meanings. Termed the “episteme” by Foucault, this regime of truth is a historical a priori whereupon knowledge and discourse find their foundation. The episteme defines what one may know and can know; in other words, it represents the possibility of knowledge and discourse. Foucault wrote,

I would define the *episteme* retrospectively as the strategic apparatus which permits of separating out from among all the statements which are possible those that will be acceptable within, I won't say a scientific theory, but a field of scientificity, and which it is possible to say are true or false. The *episteme* is the ‘apparatus’ which makes possible the separation, not of the true from the false, but of what may from what may not be characterized as scientific. (1980, 197)

As a construct constituted by power relations, subjects cannot escape the epistemic reference from which power derives knowledge and discourse. Indeed, as stated earlier, subjects are the effects of power in every aspect of their individuality. The subjects are “the things through which power finds its expression” (Allen 2002). This construction of power—in contrast to many claims against Foucault—does not deny autonomy. Expression of autonomy, in the Foucauldian realm, “has to take the form of taking up existing relations of power and subjection in a transformative way” (Allen 2008, 63). Autonomy manifests itself in questioning and challenging the universe of reference presented to us as the only possibility of thinking-knowing-and-being, thus making possible the subversive transformation of those limits which are in reality contingent.

Knowledge belongs to this constellation of episteme and discourse that constituted the subject. Colonial knowledge refers to the forms of knowledge and modes of representation that European colonizers deployed to preserve their domination over their colonized subjects. Recent debate on the nature of colonial

knowledge revolves around the role colonized subjects played in colonial knowledge production (Wagoner 2003), a debate that widely involved South Asianists. One position in the debate, supported by Cohn (1987, 1996), Dirks (2001), and Inden (1986), suggests that the colonized were at most passive actors who provided only raw materials to colonial scholars, who in turn analyzed them using foreign modes of knowing (Wagoner 2003, 784). In this sense, colonial knowledge production emerged as a form of epistemological violence imposed by the colonial state upon its colonized subjects (Dirks in Cohn 1996, xii). Thus, to understand the history of British India, one has to interrogate the “investigative modalities” such as published reports, statistical returns, legal codes, and encyclopedias deployed by the British to sustain their domination by regulating the knowledge produced (Cohn 1996, 5).

The opposing view argues that indigenous intellectuals contributed actively to colonial knowledge production. The form of their engagement with European scholars was complex, particularly because the natives used their own cognitive regime and, in the process, co-produced colonial knowledge with a hybrid of native-European epistemic references. This position is endorsed by Bayly (1996), Trautmann (1999), Pinch (1999), Eaton (2000), Peabody (2001), and Wagoner (2003), among others. For the “active native” proponents, to understand British India means to direct the gaze at local processes of social, political, and economic changes that shaped knowledge production; one should consider epistemic references that both the colonizers and the colonized introduced in the process. The proof of active native contribution, thus, lies in the imprint of indigenous thinking patterns on the resulting knowledge.

I depart from Wagoner’s (2003) view of the active native in two ways. First, I focus on a text written by a colonized scholar instead of a colonizer’s text. The text is still “colonial” because Soepomo produced it with guidance from van Vollenhoven and his construct of adat law on land rights, and in conversation with debates on adat

land rights in the Netherlands. Second, my attribution of active native relies less on a native scholar's epistemological contribution and more on his capacity to autonomously respond to the internally fractured colonial discourse. This is due to my conviction that, to some extent, van Vollenhoven had attempted to introduce the native episteme into his construction of adat land rights and into the Dutch legal realm, thus laying a path for Soepomo and other native scholars to follow.

Reflecting on the animated debate in South Asian scholarship on colonial knowledge production, the case in Indonesia is somewhat different. In contrast to the experience in British India, intellectual encounters between the colonizers and the colonized in the Netherlands East Indies were more limited. The transition from the mercantilist British East India Company to British rule in the 18th century required the massive deployment of investigative modalities to intensify colonial technologies of rule (Trautmann 1999; Cohn 1996). This meant recruitment of native scholars as key informants, thus the space for intellectual encounter. The Dutch, in contrast, took over the colony from the Dutch East India Company (*Vereeniging Oost Indische Compagnie*, VOC) only in the early 19th century after the British interregnum. Governing through local aristocrats for decades, the Dutch started their colonial investigative projects only in the second half of the 19th century. Rudimentary education for the native population did not start until the 1850s, and modern European college education began only in 1917 with the launch of the Bandung *Technische Hoogeschool*, and in 1924 with the foundation of the Batavia *Rechtshoogeschool*. A very short span of European education in the Indies had limited intellectual exchanges between European and Native scholars when compared to the experience of British India.

Perhaps reflecting this relatively short period of intellectual exchange, the role of Indonesia's native intellectuals in shaping adat law remains under-researched.

During his long tenure at Leiden, van Vollenhoven guided seven Indonesian doctoral students and many more master's students. However, there is a lack of in-depth analyses of these works and their possible constitutive correlation with colonial discourse on adat law, even for a scholar such as Soepomo. Takashi Shiraishi in his book *An Age in Motion* (1990) summarizes Soepomo's dissertation as a background for his discussion of the emergent nationalist movement in Surakarta. Peter Burns's (2004) extensive study of Leiden's adat legacy to Indonesia mentions only Soepomo's influence on the 1945 Constitution. Elsewhere, Soepomo's philosophical outlook that permeates the Indonesian Constitution has been well researched (Bourchier 1996; Simanjuntak 1994); yet, his intellectual project on adat land rights and his role in colonial knowledge production of adat law as part of the Leiden intellectual circle remain largely unexplored.

In the following sections, I will explore how Soepomo responded to an inherently contradictory colonial discourse on agrarian reorganization and *adat* land rights, a discourse that was waged in the name of progress. How did Soepomo maneuver his way through the slippery arguments of the colonizers? What particular strategy did he deploy to avoid this slippery slope? How does Soepomo's struggle inform our understanding of "an active native" in colonial knowledge production? Versed in both native and colonial worldviews, Soepomo was well equipped to return his own critical gaze on the debate on agrarian reorganization in Surakarta.

The Making of Soepomo

Born in 1903 in Sukoharjo into a family with ties to the Kasunanan Royal House, Soepomo had the requisite lineage needed to break into a successful *priyayi*²

² Traditionally, *priyayi* was an elite group in Javanese society that had a claim to aristocratic lineage and conformed to the Weberian concept of the patrimonial elite group. During the colonial era, the Dutch employed the *priyayi* to run the low-level colonial administrative machinery. Nurturing their status as a

career since both his of grandfathers were regents in Kasunanan of Surakarta territory. Brought up in his paternal grandfather's household, Soepomo grew up to be "quiet, polite, careful and without ambition to achieve fame" (Soegito 1984).³ He was a person who was "constantly exposed to classical values and traditions of his Javanese elders," shaping Soepomo into a person who was "humble, respectful, obedient (*patuh*), *tertib*,⁴ polite and held strong to custom and tradition" (Soegito 1984, 7). The biography describes his fashion sense and physical appearance as "*necis*" (16), a curious borrowing from the Dutch word *netjes* that covers the concept of neatness and tidiness, smartness in dressing up, or decent, respectable, proper in social manners. The word *necis* is also used to describe Soepomo's verbal expressions, which were "harmonious with his demeanor." In short, Soepomo was the epitome of a Javanese gentleman, an ideal type of *Wong Solo* (16).⁵ Scant information is available on Soepomo's traditional education. However, as a scion of two minor aristocratic families, he must have received the best of traditional Javanese education available to

special class in the colonial society, the priyayi gradually built a sense of identity that was based on what they considered to be the best of Javanese culture (Geertz 1960, Anderson 1972, Sutherland 1979).

³ This biography is the only one available on Soepomo. His early death in 1958 followed by period of turbulent transition in Indonesia in 1965 has left Soepomo among the least researched and written about among Indonesia's founding fathers, except perhaps for his thoughts that helped shape the Indonesian Constitution (Bourchier 1996; Simanjuntak 1994; among others). Commissioned by the Ministry of Education during the height of the New Order regime, this biography provides only a veneer of information about Soepomo. It includes more pages on Soepomo's speech during the constitutional discussion in 1945 than on explorations of Soepomo's life experience. Echoing the New Order politics on traditional values, the author venerates Soepomo as the epitome of the Javanese gentleman. This problem notwithstanding, the biography does offer a window—albeit small—to understanding Soepomo's subjectivity.

⁴ *Tertib* comes from a Javanese word that means disciplined conduct in maintaining order, structure, or rituals. It implies an internalization of rules set up by an external entity.

⁵ Solo is the capital of the Surakarta Principality. Wong Solo literally means "People of Solo," which distinguishes between the Javanese from the inner area of the kingdom who are *halus* (literary: smooth), refined, and sophisticated and the Javanese from the periphery who are *kasar* (rough) in manners and expressions.

continue his family's service to the Surakarta Principality, shown by his accomplishments as a classical Javanese dancer.⁶

Soepomo's European education began in *Europeesche Laager School* (ELS) in Boyolali and *Meer Uitgebreid Lagere Onderwijs* (MULO) in Solo, which he finished in 1920.⁷ He continued his education at the *Batavia Rechtsschool*, a vocational school for educating native law clerks for services in the judicial system, from which he graduated in 1923. Upon his graduation, the colonial administration assigned him as an intern under the Landraad Chairman in Sragen regency, Surakarta, before sending him on a scholarship to study law in Leiden in 1924. Undoubtedly, his European education, particularly in the Batavia Rechtsschool, fundamentally shaped the ways in which he situated himself in the world and constructed meaning of his experiences. The pedagogical strategy and the design of the curriculum in the Batavia Recthsschool and at Leiden that encouraged independent thinking (see chapter 1) arguably were imprinted into Soepomo's outlook on the world; it influenced the ways he understood, interpreted, and re-presented legal discourse to colonial society.

Throughout his student years, Soepomo was closely connected with Budi Utomo,⁸ a Java-national movement founded by Soetomo, and Gunawan and Tjipto Mangoenkoesoemo—native doctors educated at STOVIA (*School tot Opleiding van Inlandsche Artsen*, School for the Training of Native Doctors). He was also an active

⁶ Soepomo continued to train and perform classical Javanese dances while he was studying at Leiden with fellow Indonesian students. His performance in Paris in 1926 impressed the Netherlands' ambassador so much that he asked Soepomo to perform again the next year (Soegito 1984).

⁷ MULO was a less prestigious secondary school than the Hogere Burger School (HBS), reflecting the fact that Soepomo did not come from the crème of the crème of Surakarta's aristocratic society.

⁸ The ethical politics in the Netherlands affected the dynamics in the colony through education, as education nourished nationalist consciousness among the natives even though it started out as patrimonial consciousness. One of the earlier patrimonial movements in Indonesia was Budi Utomo, which, however, gradually became "very priyayi, drawing its members from the upper and middle classes of Central and East Java, and advocating a paternalistic program that emphasized the duty of the aristocracy to lead the masses towards enlightenment" (Sutherland 1979, 59).

member of Jong Java in Batavia (Miert 2003; Soegito 1984). His conservative⁹ leanings, influenced by Javanese ethics and his involvement in Budi Utomo, defined his position in the debate about the direction Jong Java should pursue. As secretary of Jong Java in its 1921 congress, Soepomo rejected radical members' suggestion to borrow the French revolution motto of Liberty, Equality, and Brotherhood, proposing instead to use Dutch theosophist Fournier's principle of "cool-headedness and warm heart" (*kepala yang dingin dan hati yang gumbira*) (Miert 2003, 61–62).

In this light, Soepomo represents a curious combination of the "new intelligentsia" and the "old *priyayi*." He was thoroughly exposed to European education, ideas, and values, and at the same time—coming from families that had long served the Surakarta Principality—he was raised in the tradition of Javanese ethics which provided him with an alternative reference. His embrace of Fournier's ideas, a theosophy that combines Western ideas with Eastern mysticism, popular among *priyayi* in that period, demonstrates his interest in East–West fusion. Soepomo's subjectivity and epistemic reference thus were results of a hybrid of native and colonial discourses. I will briefly explore Javanese ethics in the following paragraphs to offer a glimpse into one of the influences on Soepomo's subjectivity.

Javanese ethics revolves around two basic principles: *harmoni* (conflict aversion) and *hormat* (respect) (Magnis-Suseno 1988).¹⁰ *Harmoni* manifests itself in

⁹ Conservative in this context is contrasted with the more radical approach waged by students influenced by Marxist-socialist ideology.

¹⁰ Magnis-Suseno's construction of Javanese ethics is based on literature reviews of others' research. He offers a caveat that the Javanese he constructs is more of an ideal type following Weberian heuristic methodology. As was suggested by Anderson (1972) and Geertz (1960), the elements of Javanese ethics are predominantly drawn from the *priyayi* worldview and experience; thus it is not independent from colonial influences that the *priyayi* were heavily exposed to. Sutherland (1979, viii), for example, argues that *hormat* as a refined and over-elaborate principle was a defense mechanism built as a response to the native aristocrat's impotence against the pressing colonial power. This construction of the Javanese ethic may be outdated for the contemporary situation, but I argue that it is still relevant in trying to understand the subjectivity of the Javanese aristocrat in the early 20th century. Geertz's and Anderson's research subjects in the 1950s and 1960s, subjects who were contemporaries of Soepomo, arguably shared Soepomo's worldview.

the ways one carries oneself in social relations and how one maintains one's mental state. In social relations, a Javanese man is expected to act in certain ways to avoid conflict, even if it is only to maintain a perceived state of harmony, peace, and contentment. Conflict aversion as a mental state demands giving up one's personal interests for the sake of common agreement (*kesepakatan bersama*). It enforces compromises to maintain harmony, expressed in the exercise of self-control over emotional outburst, and in vigilance in controlling others' responses through carefully measured actions and verbal expressions (Magnis-Suseno 1988, 47). Thus the essence of harmony in Javanese ethics is to regulate individuals from unmeasured and uncontrolled conduct that may lead to open conflict.

Hormat relates to the treatment of others. A Javanese who understands *hormat* never carries himself above his social station and treats others in accordance with their status and hierarchy. This principle is based on the opinion that every social relation is hierarchically patterned and that such hierarchical patterns have inherent values (Magnis-Suseno 1988). Those of higher status deserve respect, and those of lower status deserve protection extended with a sense of paternal responsibility. In contrast to conflict aversion, the principle of respect only demands an outer expression in social relations, not an inner mental state; it acknowledges status, expressed in accordance with appropriate etiquette (Magnis-Suseno 1988, 68). The colonial regime benefited from the *hormat* principle, adopted and impounded it deeper into Javanese daily life by demanding the *hormat* treatments to their officials.

Together, conflict aversion and *hormat* constitute the basis for achieving the quality of being *halus* (refined) that separates a *priyayi* from the commoner, the crude, the uneducated masses, the *wong cilik*. Clifford Geertz likens *halus* to the "pure, refined, polished, polite, exquisite, ethereal, subtle, civilized, smooth" (1960, 232), while Benedict Anderson draws various comparisons to represent *halus*:

Smoothness of spirit means self-control, smoothness of appearance means beauty and elegance, smoothness of behavior means politeness and sensitivity. The antithetical quality of being *kasar* means lack of control, irregularity, imbalance, disharmony, ugliness, coarseness, and impurity . . . Being *halus*, on the other hand, requires constant effort and control to reach a reduction of the spectrum of human feeling and thought to a single smooth “white” radiance of concentrated energy. (1990, 50)

The quality of being *halus* in Javanese etiquette is “in itself a sign of Power, since *halus*-ness is achieved only by the concentration of energy” (Anderson 1990, 51). A man with true Power

. . . does not have to raise his voice nor give overt orders. The *halusness* of his command is the external expression of his authority. The whole Javanese style of administration is therefore marked by the attempt, wherever possible, to give an impression of minimum effort, as through the *perintah halus*. The ethics of *halus*-ness are at bottom the ethics of Power. (Anderson 1990, 54)

As principles that infused the ideal type of Javanese ethics, harmony, *hormat* and *halus* were spectacularly torn to pieces by Dr. Tjipto Mangoenkoesoemo, himself deemed the epitome of the Javanese gentleman (*ksatria*) by his contemporary. Tjipto Mangoenkoesoemo was a decorated native doctor who co-founded Budi Oetomo, the Javanese nationalist organization, with Dr. Soetomo in 1908. By 1919, he was a member of the Volksraad, and a seasoned nationalist, having been exiled between 1913 and 1914 to the Netherlands for his activities with Suwardi Suryaningrat and E.F.E Douwes Dekker. The Dutch selected him to be a member of the Volksraad to convince skeptics that the Volksraad was not populated by politically impotent native figures.¹¹

¹¹ See Shiraishi (1990) for a detailed study of Tjipto Mangoenkoesoemo and Surakarta *Insulinde* activities in the late teens to mid-1920s.

Between 1912 and 1921, precisely Soepomo's formative years in Surakarta, which was teeming with nationalist awakening,¹² Dr. Tjipto Mangoenkoesomo rallied an attack against the Surakarta Principality after his lieutenant, Haji Misbach, was arrested by the Dutch government. A prominent Muslim inspired by Marxism, Haji Misbach assisted local peasants in addressing their grievances against unjust Dutch agricultural estate operators and native officials. These native officials became more involved in peasants' daily life after the agrarian reorganization in the Kasunanan Surakarta.¹³ Clearly, the agrarian reorganization in Surakarta had caused restlessness among its population, not the least among middlemen (*bekel*) who lost their position. And Mangoenkoesomo responded to it.

Mangoenkoesomo's protest was essentially an anti-Principality campaign. He waged his criticism through the Javanese publication *Panggoegah* and through the *Volksraad*. He accused the Principalities of having overburdened the people in Surakarta with obligation to support and maintain two royal houses. He proposed to dismiss the Kasunanan and the Mangkunegaran and to pay the royal family a monthly pension, or to return Madiun to Kasunanan to help with financing their expenses (Shiraishi 1990).¹⁴ Mangoenkoesomo insisted that the agrarian reorganization in Surakarta would never achieve the objective of improving the welfare of the peasants because it was designed to keep them living at subsistence level. He openly attributed Javanese peasants' misery to the royal houses, first because it was their obsolete and medieval agricultural system that sustained the peasants' impoverishment, and second

¹² For a detailed study of Surakarta and the nationalist movement, see Shiraishi (1990) and Elson (1984).

¹³ Misbach never led the peasant's strikes; the dismissed apanage holders organized the strikes because they resented the reorganization that demoted their social standing. Nevertheless, after a strike in April 1919, Misbach was detained by the government, prompting Mangoenkoesomo's protest.

¹⁴ Ridiculous as it might have sounded to the royalists, it worried them nonetheless since the reorganization of the agrarian system was on its way, and Mangoenkoesomo's idea was controversial enough that it could have aroused the Dutch's interests.

because it was the royal houses that issued the royal decree in the name of the Sunan, which obliged the “little men,” the Javanese coolies, to pay taxes, perform corvee labor, and hand over their land to Dutch agricultural estates—those very same estates that belonged to the Indo-European families who maintained intimate relations with the Royal Houses. These estates leased the land on a rotating basis, effectively granting the owners the legal bases to suppress the peasants’ protest. It was in Sunans’ name that Surakarta’s subjects became bonded to the Dutch plantation and from which the Sunan benefited financially (Shiraishi 1990).¹⁵

Mangoenkoesomo’s open challenge to the royal houses was a controversial act, one that was shunned by old school aristocracies but that caught the imagination of the educated, younger generation of Javanese elite, including Soepomo. These tensions, psychological wars, and struggles within the native circle took place in Soepomo’s proximity. In 1919 he was finishing his HBS in Surakarta, and between 1920 and 1923, when Mangoenkoesomo criticized Javanese Principalities at the Volksraad, he was studying in Batavia. Mangoenkoesomo’s position was so controversial that the young Soepomo was certainly aware of its serious challenge against the royal houses’ legitimacy. This is affirmed by the fact that Soepomo was an important official in the Jong Java movement in Batavia.

I do not go into depth here about the conditions at the Batavia Rechtschool and Leiden University United Faculty of Law and Letters that helped to shape Soepomo’s outlook, as they were explored in chapter 1. Suffice it to say that his Rechtschool and Leiden years must have infused him with a deep sense of autonomy,

¹⁵ In his campaign, Mangoenkoesomo courageously faced the vehement counterattacks by royalists in the Volksraad. To silence Mangoenkoesomo, Prince Mangkunegara Prang Wedana, the crown prince of the Mangkunegara royal house, appealed to the Dutch official to clarify the potential role reserved for the Surakarta royal houses in the future autonomous Indies, to which the government representative, W. Muurling, announced in the Volksraad, “Whoever tries to undermine the authority and the position of the self-governing principalities of Java, the government sets itself against” (Shiraishi 1990, 181).

which was enhanced by observing the growing nationalist sentiments among Indonesian students.¹⁶ Radicalization of Indonesian Leidenaars caused concern among the Dutch conservatives who accused the Leiden ethicist professor, Cornelis van Vollenhoven, of being responsible for the radicalization of the students (Poeze 1986).

Soepomo wrote his dissertation on agrarian reorganization in Surakarta at the height of criticism against van Vollenhoven and using van Vollenhoven's construct of adat law on land rights as a point of departure. A charismatic professor and a staunch supporter of Ethical Policy, van Vollenhoven was unceasing in his effort to secure *beschikkingsrecht* for the natives despite all the controversy, and by his intellectual leadership to stop "progressive expansion of Western law in the colony" (Otto and Pompe 1989, 245). His intellectual work challenged the conventional wisdom that the implementation of European law in the colonies would benefit the native population (Otto and Pompe 1989).¹⁷

Constructing Native Land Rights Using Adat Law

In the Dutch East Indies, adat law on land rights was a subset of adat law, a non-statutory law that consisted of customary law and, in some parts, Islamic law, and included "decisions of the judge containing legal principles in the milieu in which he delivers judgment" (Soepomo 1953, 218). Each ethnic group had its adat law that

¹⁶ Much has been written on the nationalist awakening among Indonesian students in the Netherlands. For detailed analysis, see Miert (2003), Noer (2002), Rivai (2000), Hatta (2002), Poeze (1986), and Sastroamidjojo (1979), among others.

¹⁷ Even though his disposition toward native welfare was positive, when Indonesian students in the Netherlands became more animated in their nationalist endeavor, van Vollenhoven stopped coming to the gathering of Perhimpunan Indonesia (Indonesian student association in the Netherlands) and distanced himself from Indonesian nationalist arguments (Burns 2004; Laman Trip-de Beaufort 1956). This, however, failed to erase the high regard his Indonesian students held for him. More than two decades later, Soepomo still expressed deep respect for van Vollenhoven (Soepomo 1953). Ali Sastroamidjojo, a Leiden student who was also a PI activist—later he served as Indonesia's prime minister—wrote an account that reveals the respectful relations between the native student and the professor: although he was under arrest, he was allowed to take his Master's exam, and the attitude and actions of the examiners, van Vollenhoven among them, "were completely scholarly" (1979, 33).

regulated land rights and distribution. Trying to understand the Native's proprietary system, the Dutch began collecting data about adat rulings on land rights in the late 19th century. The information was used to write agrarian law for the colony. They compiled the rich findings in *Eindresume*,¹⁸ an enormous data repository that informed Cornelis van Vollenhoven's magnum opus on adat law. Van Vollenhoven gave adat law a formal structure through his influential publications, lectures, and the training of legal scholars at Leiden, all of which helped create adat law as a new sub-discipline in the Dutch corpus of legal study. Soepomo's dissertation was written in conversation with van Vollenhoven's construct of adat land rights and the colonial agrarian policy.

The Invention of Adat Law

Although Snouck Hurgronje was the first person to introduce the term adat law (*adatrecht*) in his advice to the Director of Justice in the Netherlands Indies (Hurgronje 1957), it was van Vollenhoven who developed it into a legitimate branch of legal studies in the Netherlands and the East Indies. A full professor at the Faculty of Law, Leiden University, in 1901 at the age of 26 (Laman Trip-de Beaufort 1956) and a long-time colleague and close friend of Snouck Hurgronje, van Vollenhoven became familiar with the adat question early in his career when he served as the secretary for the Commission for Adat Law of the Royal Institute of Indonesian Linguistics and Ethnology at The Hague, where Hurgronje was chairman. As a legal scholar, van Vollenhoven was deeply influenced by the great seventeenth-century Dutch jurist Hugo de Groot, who resisted Justinian code in the Netherlands, and by

¹⁸ This finding was prepared by the Commission of Inquiry on land rights and land use practices in Java, Madura, and the Outer Islands.

Von Savigny, a German legal theorist known for his doctrine of organic law (Burns 2004).¹⁹

In his effort to establish adat land rights in colonial discourse, van Vollenhoven faced major obstacles, one of which was waged by G.J. Nolst Trenite.²⁰ Aside of his advice on an amendment of article 62 Regeringsreglement 1854, Nolst Trenite also prepared a document in 1912 titled “The right of the State to land in the directly-governed Outer Possessions of the Netherlands East Indies.”²¹ Known also as *Domeinnota*, this document was attached as an appendix in the colony’s Agrarian Regulation for Sumatra’s West Coast in 1916 (Burns 2004, 21). Nolst Trenite’s argument challenged van Vollenhoven’s rejection of domain theory, which the latter first expressed in his 1909 book *Miskenningen van het Adatrecht*. It was also Nolst Trenite who prepared a position paper in the Indies Association of Jurists of 1929 that argued that the state was the master of all land without exception (Burns 2004). Over time, he became van Vollenhoven’s most persistent opponent.

Van Vollenhoven and the Leiden school’s stance on adat land rights remained a thorny issue among both liberal and conservative Dutch. To balance the ethical leanings of the Leiden Faculty of Law, a new school of Indology was founded at the

¹⁹ Hugo de Groot resisted the imposition of Justinian Code in the Netherlands by the courts of the United Provinces. The universalism of Roman Law stood in contrast to Grotius’s conviction that indigenous communities had innate rights to their own set of law, as was clearly expressed in his book *Mare Liberum*:

Java, Sumatra, the Moluccas have their own kings, public institutions, laws and rights and they have had them always. One is not entitled to deprive these infidels of their will and princely power because they do not believe. Indeed it is even heresy to assume that the infidels should not be master of their goods, for it is no less theft and robbery to deprive them of their goods than it would be if a Christian were concerned. (Quoted in Hooker 1978b, 71)

Von Savigny—on the other hand—argues that there was no making of law, only evolution, “that could only take place within the native community—the nation. Law—the genuine law—should be thought of, at its beginning, as a bud, growing out of the stem of communal culture” (Burns 2004, 232).

²⁰ See also chapter 2 about van Vollenhoven and the Nolst Trenite debate on Domain Declaration.

²¹ In Dutch: *Het recht van den Staat op den grond in de rechtstreeks bestuurde Buitenbezittingen van Nederlandsch-Indie*.

University of Utrecht in 1913, financed by “petroleum money” collected by big businesses of the day and the ultra-imperial loyalists (Burns 2004, 77). The school later recruited Nolst Trenite as one of its key faculty members, and by doing so launched the famous Utrecht vs. Leiden debate on the legal system in the colony. The debate between the liberal- and conservative-leaning Dutch policymakers hung on two issues: first, on a critical legal argument of domain right; and second, on the general policy to promote welfare among colonial subjects.²² The debate was to have profound consequences for adat law on land rights. Otto and Pompe describe the debate as follows:

The main legal issue was whether the Indonesian communities (*rechtsgemeenschappen*) should have a right of disposal (*beschikkingsrecht*) over land that excluded Western property rights and *staatsdomein* (the doctrine that all property rights are ultimately derived from state ownership). In more general terms, the position of adat law within the colonial legal system was at issue. (1989, 247)

This institutional polarization showcases the inner cracks in colonial discourse and the tensions between key factions on the issue of native land rights.²³

Van Vollenhoven’s Basic Structure of Adat Land Rights

Van Vollenhoven laid the base for his construction of adat law in *Het Adatrecht van Nederlandsch-Indië Vol. I* (1931), *Miskenningen van het Adatrecht*

²² Burns (2004) provides a detailed analysis of the Utrecht-Leiden polemic in his book *The Leiden Legacy* (2004). Aside from the legal issue, the debate stems from Utrecht’s concern with Leiden’s approach vis-à-vis the native students that “bred a rebellious spirit towards Netherlands authority and a hostile spirit towards major capital undertakings in Indie” (79; see also Poeze 1989).

²³ The debate continued well into the 1930s until van Vollenhoven’s death, and the issue remains unresolved until now. With van Vollenhoven’s death in 1933, Leiden University lost its influential defender of adat law. Van Vollenhoven’s protégé, Barendt ter Haar, a professor of adat law in Batavia Rechtshoogeschool, died in Auschwitz in 1939 when he went back to the Netherlands for the first time after 14 years. World War II and Indonesia’s independence deflated interest in the Netherlands on adat law (Pompe 1993).

(1909, 1926), and *Indonesier en zijn Grond* (1919).²⁴ The struggle to introduce the native episteme is recorded in van Vollenhoven's *Het Adatrecht* (1981), in which he urged his audience to acknowledge the local episteme as an alternative to the West's in providing a reference to understand the native milieu:

He who turns from the law of the Netherlands to the law of the Dutch East Indies enters a new world. He has learned to visualize law as a body of rules codified in statutes and decrees . . . How different in the Indies! . . . Viewed through the eyes of a codist the legal inventory of the Indies presents a jumble, an incomplete, inadequate and untidy whole; but when explored by one whose desire for knowledge and explanation of the living law on earth is inspired by the very diversity of its past and present manifestations, this same inventory becomes an inexhaustible source of instruction. (Vollenhoven 1981, 1–2)

In this statement, van Vollenhoven admonished the colonizer's rigid tendency to cling to his own cognitive world that denied him the possibility of understanding a foreign legal system. His response to a discussion in the Dutch *Tweedekamer* reflects his position regarding the native's alternative episteme. He said, "Adat law is held in contempt; but this is in great measure because it is very difficult to enter into another person's way of thinking" (Vollenhoven in Burns 2004, 14). He suggested that this local episteme had the potential to mature like that of the West:

We have only pointed out that people ignorant of adat law have time and again, and without using any standard of comparison, arrived at the preconceived conclusion that only European law could be fully-fledged law, and that adat law must of necessity be inadequate and inferior. (Vollenhoven 1981, 26)

With this conviction, van Vollenhoven established his project to construct the basic structure of adat law on land rights in terms that could be understood by his fellow Dutchmen.

²⁴ Originally a pamphlet van Vollenhoven prepared to stop the amendment of article on land rights in Dutch East Indies constitution in 1919.

Van Vollenhoven's construct of adat law on native land rights consists of four basic fundamental principles. First, the Netherlands could not use domain-theory to claim domain right over the East Indies or to enforce legal security. To van Vollenhoven, the domain declaration "is an unsympathetic misconception, historically indefensible, and theoretically a source of misconception" (1909, 30). Further, domain-theory is in contradiction with Article 75 clause 3 and Article 62 clauses 5 and 6 of Regeeringsreglement 1854. Van Vollenhoven's rejection of state ownership encompasses the indigenous state, and in this position, he was at odds with Raffles,²⁵ who introduced a land rent system based on the assumption that "the sovereign had been the sole owner of all lands" (Boomgaard 1989, 2). In contrast, van Vollenhoven's construct of native land rights relies heavily on the premise that the native sovereign had no original right to land (Vollenhoven 1931, 504 and 685). I suggest this was a necessary negation to "restore" the people's right to land.

Second, for van Vollenhoven the local community had a legal entity nonexistent in European categories. He termed it *rechtsgemeenschap*, or jural community (Sonius 1981, xlii), which was marked by a distinct legal competence to exercise right of allocation over land, or *beschikkingsrecht*.²⁶ *Beschikkingsrecht*—formed from the two words *beschikking* (disposal) and *recht* (law)—is van Vollenhoven's attempt to capture the native concept of land property known as *hak ulayat* (Vollenhoven 1909, 19). He encountered the challenge of establishing the native signified within a European system of difference; he acknowledged that the term was ambiguous and obscure, and he fumbled in its translation; he realized that

²⁵ Sir Thomas Stamford Raffles was the British Lieutenant-Governor who served during the interregnum in the Dutch East Indies between 1811 and 1816.

²⁶ *Beschikking* represents layers of the signified. One signified is the concept of *ordenen* and *regelen* (administer, regulate). When used with the preposition *over*, *beschikking over* represents the signified of the concept *bezitten* or *tot zijn dienst hebben* ('disposal over' or 'power to decide about'). *Recht*, on the other hand, is relatively more straightforward: it represents the concept of law and rights.

the Dutch legal universe could not fully comprehend *hak ulayat* because when used in reference to property, the word “*beschikking over*” suggests a principle of alienation, a characteristic that van Vollenhoven strongly denied to exist in *hak ulayat*.

Third, acknowledging the poverty of the Dutch episteme to fully comprehend *beschikkingsrecht*, van Vollenhoven spelled out six characteristics to help define this native land rights concept:

- i. The jural community and its members may make free use of virgin land within its area. The land may be brought into cultivation; it may be used to found a village; it may be used for gleaning, etc.
- ii. Others may do the same there only with permission of the jural community: lacking that permission, they commit an offence.
- iii. For such use, outsiders must always pay some charge or give a gratuity in tribute: members of the community may sometimes have to make such payments.
- iv. The jural community retains to greater or lesser degree the right to intervene in questions concerning land already under cultivation within its area.
- v. Should there be no other party from whom recovery can be made, the jural community is accountable for whatever transpires within its area.
- vi. The jural community cannot alienate this, its right of allocation, in perpetuity. (Burns 2004, 18)²⁷

The sixth characteristic is particularly significant because van Vollenhoven stressed these characteristics in many of his writings (1909, 1919), and argued that Western researchers’ misunderstanding of adat land rights stemmed from an inability to grasp the inalienability principle in *hak ulayat* (1919, 7–9).

Finally, *Beschikkingsrecht*, or the right of allocation, lies in the sphere of *privaatrecht*, or private law, law that regulated relations between citizen, not *publiekrecht*, or public-constitutional law, which refers to all law regulating the relations between the state and its citizens. *Privaat-* or *civielrecht* was meant to protect

²⁷ In Dutch, this is written as “en dat is niet het minst merkwaardige—zij kan dit haar recht niet blijvend vervreemden” (Vollenhoven 1909, 20).

citizens in their personal transactions from interference by the government, with the idea of protecting freedom of contract and property rights from the government's meddling.

Agrarian Reorganization in Surakarta, 1912–1924, through the Eyes of a Native Scholar

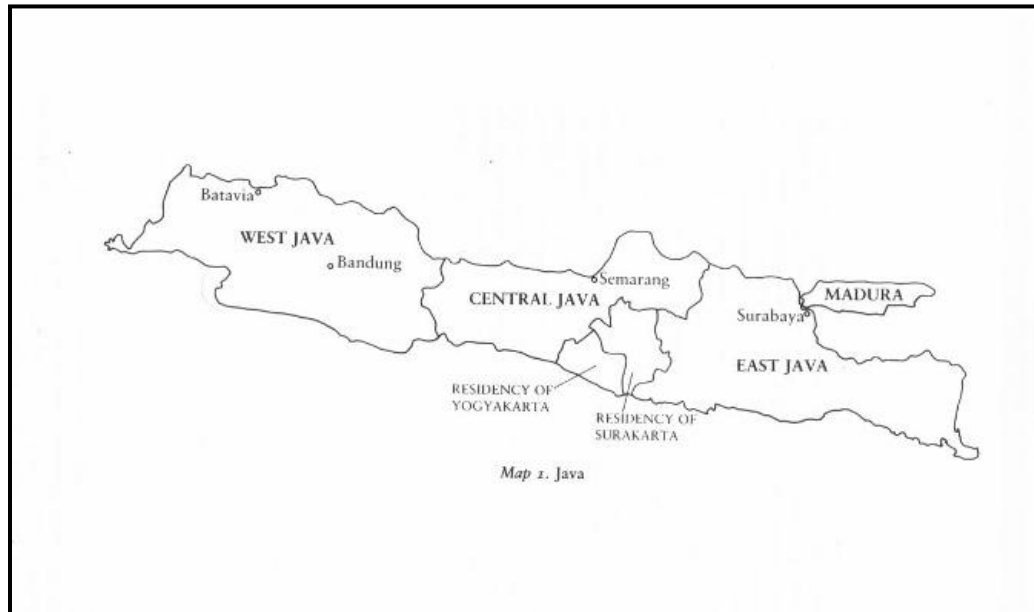
Soepomo's doctoral dissertation, *The Reorganization of the Agrarian System in the Region of Surakarta*,²⁸ dissects the agrarian reform in Surakarta that was triggered by a wave of legal reforms in the Dutch East Indies between 1912 and 1924. Since the Mangkunegaran, the junior royal house in Surakarta, had partially abolished its apanage system in 1870, the mandated reorganization meant it only needed to abolish fourteen remaining apanages in its jurisdiction. Kasunanan, on the other hand, completed its reorganization between 1917 and 1924. The reorganization severed the feudal apanage system in four steps: by abolishing the apanage system, by creating a new form of village and village administration that took over the traditional role of the *bekels*, by defining the peasants' right to land more clearly, and finally, by revising commercial land lease regulation in Surakarta (see Map 3 and Map 4).

Writing about the reorganization gave Soepomo insights into the relational transformation between the peasants and the Principalities, known in Dutch as the *Vorstenlanden*. By juxtaposing the old with the new tenure system, Soepomo was able to interrogate colonial debates on native land rights,²⁹ debates that reflect ruptures between the capitalists and the legal-ethicists whose credo influenced the reorganization. Shiraishi describes this credo as follows:

²⁸ In Dutch: *De Reorganisatie van het Agrarisch Stelsel in het Geweest Soerakarta*.

²⁹ Despite its strategic thrust, it was unclear whether Soepomo had chosen the dissertation topic himself, as van Vollenhoven traditionally assigned research topics for his students (Pompe 1993).

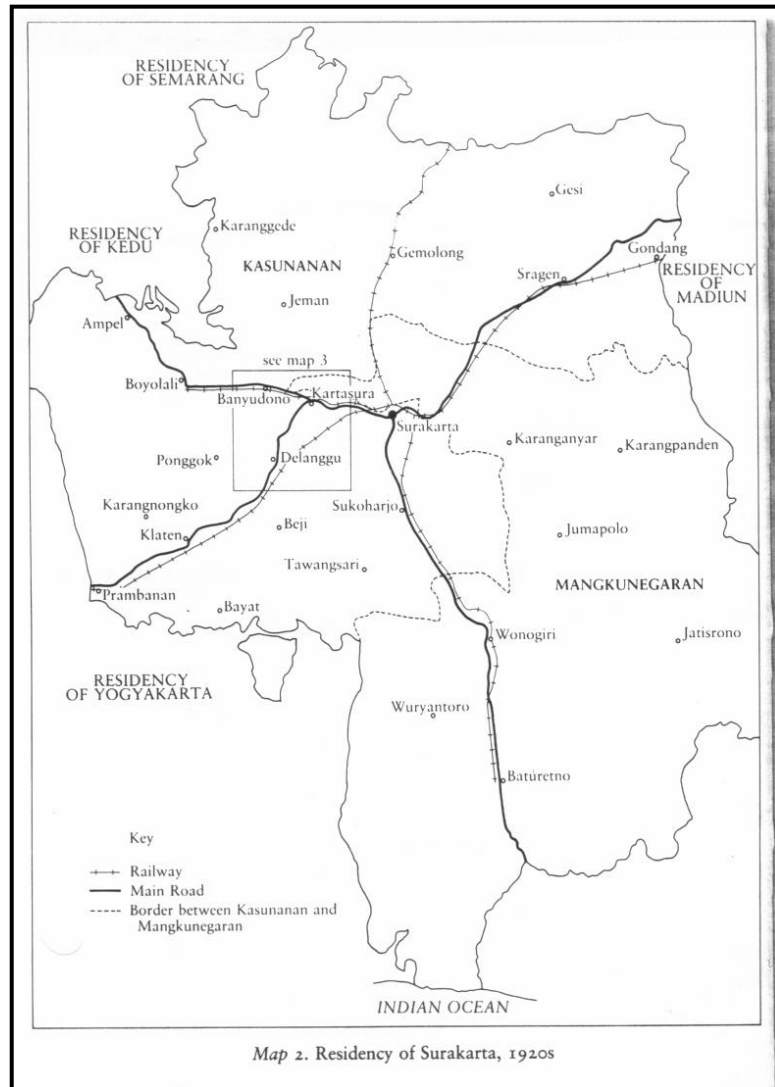
In the Ethical era, the idea that the people should be free from the bond of the land, and that there should be a separation between the usufruct of the land and the command over the labor of people who live on the land, became indisputable; and in the light of this idea the agrarian situation in the *Vorstenlanden* increasingly came to be seen as a “medieval” system, a carry-over of the nineteenth century Cultuurstelsel. (1990, p. 18)



Map 3. Java in the 1920s.

Map courtesy of *The Age in Motion*, Shiraishi 1990. Used by permission of the publisher, Cornell University Press.

The agrarian reorganization in Surakarta was fiercely debated by diverse factions of Dutch society in the Motherland and in the colony, precisely because at this site debate about domain declaration and Native rights to land was no longer abstract, but had major consequences for accessibility to land and labor in the Principality. Disagreements between the ethicists and capitalists, and between liberals and conservatives, were very visible and illustrated the ambivalent character of the colonial agrarian regime.



Map 4. Residency of Surakarta, 1920s.

Map courtesy of *The Age in Motion*, Shiraishi 1990. Used by permission of the publisher, Cornell University Press.

Soepomo divided his dissertation into two main sections: The first three chapters describe the pre-colonial apangage system in Surakarta and the accompanying rights and obligations of the local community to the apangage holders. The remaining three analyze the objectives and mechanisms of the reorganization, its impact on the relations between peasants-Principalities and peasants-agricultural plantations, and the legal consequences of the commercial land lease system in the region. With this two-

pronged approach, Soepomo's dissertation emerges as an extensive study of both indigenous and colonial law on land rights, critical in its assessment of tensions and ruptures in this particular discourse.

In this chapter, I focus only on the second half of Soepomo's dissertation, aiming to render visible the autonomy of a colonial subject, whose thinking and being in the world were shaped partially by training in the Dutch legal tradition and partially by being raised with Javanese ethics. I first elaborate the transformation processes that Soepomo explains in his chapter 4. Afterwards, I dissect Soepomo's analysis of the reorganization's impact of the reorganization on the network of relations. In this section of his dissertation Soepomo exposes the hypocritical colonial discourse of progress, explicates the struggles among the Dutch factions in the metropole and the colony, and demonstrates instances where the *Vorsten* indiscriminately emulated the Indies government policies that were detrimental to the peasantry. Finally, I bring to the foreground Soepomo's analysis of the reorganization's impacts on the commercial land lease system, which he elaborates in his final chapter. Soepomo writes in unambiguous terms about how the new system had unfairly burdened the peasants and how the native *Vorsten* officials and Dutch colonial bureaucrats shared a role in maintaining a regime that essentially siphoned off the peasants' surplus.

Building an Argument: Four Processes in Surakarta Agrarian Reorganization

To transform the indigenous agrarian system to "fit with the progress of society," the colonial government intervened in four stages: abolishing the apanage system, transforming traditional villages into administrative units, unambiguously defining peasants' rights over land, and revising commercial land lease regulation. Soepomo describes each of these key stages in chapter 4 of his dissertation, paying close attention to contradictions and ruptures that emerged. Soepomo's reactions to the

contradictions were so neutral that it appears as if he is defending the government's policy on Surakarta. It is only towards the end of his dissertation that Soepomo's seemingly agnostic position becomes explicable.

Javanese Ethics at Play

The Dutch domination of the Vorstenlanden court was common knowledge since it was the princes who, in the mid-18th century, called the officers of the Dutch East Indies Company to intervene in the bloody rivalries that had plagued the Javanese landscape for decades (Ricklefs 1974). It was fascinating, then, to observe the political theatre in the early 20th century when the Dutch denied its dominant role in the reorganization, insisting that the Vorstenlanden had acted as independent and equal partners in the agrarian reorganization process.

Soepomo accepts Surakarta's need for an agrarian reorganization. As he demonstrates earlier in his thesis, the traditional apanage system was vulnerable to abuse, hence the necessity of fundamental reform, since it "no longer fits with the context of the period" (Soepomo 1927, 48). Yet, he qualifies his approval by promptly asking a double-edged question: "Have the *Vorsten* wanted the reorganization themselves?" (Soepomo 1927, 48). It was the Member of Parliament Vliegen who originally asked this question to the then Minister of the Colonies, De Waal Malefijt. But instead of quoting Vliegen directly, Soepomo appropriates the question and presents it in his own words, effectively amplifying the tensions in the paragraph. Almost instantly, Soepomo tones down the tension by quoting Malefijt's own response:

. . . the Minister answered 'not only were we guaranteed of that' (of the cooperation from the Sunan [of Surakarta] and of the Sultan [of Yogyakarta]).

Of the two princes [the junior royal houses]³⁰, nothing was mentioned), ‘but also that the reform is considered to be the act of the Vorstenlanden themselves’ and that the Dutch ‘did not make this step public before we met with the Susuhunan and the Sultan where both gave their approval to the presented plan.’ (1927, 48)

Soepomo then switches back to his own voice:

Is that a correct reflection of what happened, or is the Encyclopaedie van Nederlandsch Indie . . . correct, that the reform regulations were practically *imposed* upon the principalities, in place of being *discussed* by them or [in other words] led by the principalities themselves? (1927, 49; original italics)

The italics in “imposed” (*opgelegd*) and “discussed” (*overlegd*) are Soepomo’s own. Framed with the earlier question, “Have the *Vorsten* wanted the reorganization themselves?” the italicization of these words enables Soepomo not only to express his skepticism in a subtle, impassive way, but also to juxtapose two opposing colonial positions, one in the Encyclopaedie of the Netherlands Indies and the other in the Memorandum of Explanation for the Indies budget 1912 (hereafter shortened to “the Memorandum”). To neutralize his “attacks,” Soepomo quickly quotes the Memorandum, which argues that the concerned native government officials “*have not brought in any principle objections*” (49). These italics are also Soepomo’s own, but the lack of context makes it difficult to conclude whether he is emphasizing skepticism or expressing support for the argument that would have absolved Malefijt. I propose that these italics are meant to obscure Soepomo’s position on the imposition of the reorganization in order to maintain “objectivity.” Wrapping up, Soepomo acknowledges the Vorstenlanden’s eventual support for implementing the agrarian reorganization, a support which, he carefully notes, was reprinted in several colonial documents. Still, he carefully refrains from giving his personal opinion.

³⁰ The Mangkunagaran and Paku Alaman royal houses.

This play of attack and retreat, amplifying tension and instant neutralization, is puzzling. It is as if Soepomo cannot make up his mind about the kind of intervention he intends to make. I suggest that this is a case of Soepomo's Javanese ethics at play in the midst of a thoroughly European intellectual exercise. No Javanese gentleman would degrade himself to an unmeasured and uncontrolled conduct that may lead to open conflict. *Harmoni* must be maintained; attacks must be balanced with retreat (Magnis-Suseno 1988). By deploying this play of attack and retreat, Soepomo maintains an appearance of respect regardless of his interior mental state and, despite his critical views of the reorganization, achieves a degree of *halusness*, the quality in Javanese etiquette which is "in itself a sign of Power, since *halusness* is achieved only by the concentration of energy" (Anderson 1990, 51).

Soepomo keeps returning to this question-and-answer style in his dissertation. He uses it in ways that allow him to address sensitive, even controversial questions in a dispassionate manner while retaining the effect of second-guessing Dutch policies. As he narrates the first process of the transformation, he asks, "What was the motive behind the abolition of the apanage system?" (Soepomo 1927, 50). Despite the promising possibility in the question, Soepomo's answer is rather simplistic. He cites three colonial sources with no apparent interest in challenging them. The first argues that the abolition of the apanage system was needed "because the working of it in each respect is pernicious (*verderfelijk*) [to society]" (50).³¹ It reflects the ethicist ideology that permeates the mood of the period: the idea of people bound to land was considered baneful, feudalistic, and poisonous for a society seeking progress. The second motive he cites also echoes this ethic: The apanage system's nature "is not consistent with orderly social condition" (50).³² This statement pushed to the surface

³¹ Soepomo cites the Bijlage B Handelingen Staten-Generaal 1911-1912 38 for this motive.

³² Soepomo quotes *Het Koloniaal Verslag van 1917* for this motive.

the colonial desire for order and discipline, as practiced widely by other colonial powers during that period.³³ For the third motive, Soepomo cites van Vollenhoven, who considered abolition of the apanage system to be “imperative for selflessness (*onzelfzuchtigheid*) in the state” (p. 50).³⁴ Other than presenting these motives verbatim, Soepomo refrains from offering his own interpretation and from speculating about other possible motives.³⁵ Only later in Soepomo’s dissertation does it become clear that this casual indifference is a strategic response.

Four Stages of the Reorganization

The first key process to transformation was the abolition of the apanage system. Although seemingly steered by the royal houses, the abolition of the apanage system was a thoroughly colonial project. It was the epitome of power to colonize, as it ensured “the spread of a political order that inscribes in the social world a new conception of space, new forms of personhood, and a new means of manufacturing the experience of the real” (Mitchell 1991, ix). However, I suggest that Soepomo also saw it as an opportunity to purge certain elements from a traditional system that were largely manipulative and exploitative.

The abolition of the apanage system was closely tied to the second key process in the transformation: the formation of villages as administrative units to replace the traditional *bekel* system. Soepomo emphasizes the enthusiasm among colonial policymakers to revive the native system (*volkswezen*) in the Principalities. This enthusiasm manifested in a statement in the Memorandum of Explanation for the 1912

³³ See Mitchell 1991 for colonial order and discipline in Egypt.

³⁴ Soepomo quotes van Vollenhoven’s article “Het onbaatzuchtige in recht en staat,” 1919, 11.

³⁵ Curiously, Soepomo does not touch upon any motives from the native perspective, despite the fact that the Mangkunagaran Royal House had started their own land reform by abolishing part of their apanage system as early as 1870.

budget, where the colonial government deemed establishing villages for rural peasantries a necessary condition for progress, a cornerstone for reform in the Principalities, which the royal houses were powerless to resist. Succumbing to the government demand, the two royal houses issued *pranatans*, regulations of the Vorsten, which laid out the principles for village formation to guarantee that the newly formed villages were carved out in an “appropriate manner.” The principles were: a) As far as possible, a village must have natural boundaries; and b) Lands allocated for each village should be able to support between 80 and 150 *koeli kenceng*.³⁶ This aimed at ensuring efficient and satisfactory supervision by newly formed village officials; c) The salary land for village officials and pension land for former *bekels* must be located within the *desa* boundary where they live; d) All *koeli kenceng* must be given equal amounts of usufruct land, regardless of the quality or the productivity of the land, and the land should be located in the village where they live; and e) The land given to *koeli kenceng* in areas that were leased to the Dutch for agricultural estate purposes should be divided into two equal parts: one for peasant agriculture such as rice, and the other for the cultivation of commercial crops such as sugar cane or tobacco.

Using these principles, by the completion of the reorganization, the Kasunanan had created 1,226 villages and the Mangkunegaran 738. A newly formed village was run by a team of village officials consisting of a *lurah* (village headman), a *carik* (village scribe), a *modin* (village religious official), a *kamitua* (deputy village head), an *ulu-ulu* (official in charge of water distribution and management), and a *kebayan* (village messenger). Each received allotted land commensurate with their hierarchy: 4.5 *bouw* for the village headman, 2.25 *bouw* for the scribe, and 1.0 *bouw* each for the deputy village head, the religious official, the official in charge of water distribution

³⁶ *Koeli kenceng* are villagers who are entitled to usufruct rights to paddy fields and housing plots, or either of the two, and carry the full rights and responsibilities that come with these rights,

and management, and the messenger. In place of the dismissed *bekels*, these village officials now exercised the right of allocation for salary land for village officials, pension land given to dismissed *bekels* as compensation, village treasury land to support village administrative expenses, and the village communal land to the *koeli kenceng*.³⁷

The principles that guided the formation of villages made the Javanese landscape more legible and transparent to the colonizers' eyes. Ensuring natural boundaries for each village facilitated easier mapping and territorialization in the *Vorstenlanden*. By keeping access to land only within one's village—be it land for the peasant, the village head and official, or the dismissed *bekels*—the colonial government secured not only discipline, but also easier surveillance for their economic and political interests. Pushing for a new village formation solved the nagging problem of a chaotic apanage system that even the royal houses had failed to rectify. Most important of all, it was an ingenious solution to overcome the land shortage problem for agricultural estates. Soepomo notices the dual legal system imposed in the *Vorstenlanden*. Lands leased to commercial agricultural enterprises were released from the royal houses' legal jurisdiction and were subjected to the Indies Land Lease Regulation (*Grondhuurreglement*) decreed in *Staatsblad* 1918 no. 20 (Soepomo 1927, 53). This legal ruling, and the grim consequences it imposed on the native populations, was the core of Soepomo's analysis in the last chapter of his dissertation.

The third process in the transformation was the effort to define more clearly the peasants' right over land. Soepomo responds to this process by asking a double-edged question, which essentially problematizes the colonial's "benevolence": "What has moved the [Dutch] government to give the Principalities' people better rights on

³⁷ It was these dismissed *bekels* who played an active part in mobilizing peasant demonstrations in Surakarta, which caused the imprisonment of Haji Mochammad Misbach of *Insulinde* Surakarta.

land than had the royal houses themselves?” (Soepomo 1927, 54). Following this question, he carefully lays out the government explanation of such “benevolent” interests. According to the 1912 Memorandum of Explanation, the government recognized the *Vorsten* as the absolute owner of the land. However, the government considered the peasants to have very limited rights as tenants of paddy fields and, in return for corvee labor, as users of their housing plots. Legally, then, the peasants only had a terminable contractual right of agricultural land and a very weak right of housing plots. The government wanted to strengthen these rights to provide the peasants with a “more independent place in society” (*meer zelfstandige plaats in de samenleving*), an ideal that echoed the creed of Ethical Policy. In this reorganization, the government split the bundle of rights to land into several distinct rights: The domain right, the highest form of Dutch property structure *eigendom*, was assigned to the *Vorsten*; the property right (*bezitrecht*) of fields to the village; and the usufruct right (*gebruiksrecht*) of the village communal land to the village residents, allocated by the newly formed village officials (Soepomo 1927, 55). Soepomo concludes, “thus, we are seeing a similar construction [of legal system] to that in the Dutch-governed areas in Central Java: in place of *landsdomain* we will get *Vorstendomein*, and upon that a ‘communal property’ of the village with fixed shareholders” (1927, 54).

The fourth and final process in the transition involved the revision of commercial land lease regulation. Observing this process, Soepomo points out how the reorganization introduced “free leasing of land and free labor” (1927, 57). With the new system, agricultural estates could only acquire land by free lease from the people, as was the case in the areas directly under the Dutch control in Java and Madura. The same system applied to labor in agricultural factories such as sugar factories: labor was acquired on the “free” labor market instead of through a forced system as in the *cultuurstelsel* period.

Although very critical of certain tensions and ruptures in the discourse, Soepomo's observation of the Dutch agrarian policies in the Vorstenlanden appears neutral. But had the colonized become thoroughly reshaped into a "double" of the colonizer in thought, worldview, instinct, desire, and expectation? If there is autonomy at all, a capacity for critical reflection, how and in what ways does Soepomo realize it? At this stage, I read Soepomo's main objective as to lay out information and processes that function as building blocks for a substantial intervention presented later in his dissertation.

Exposing Colonial Hidden Agenda

In chapter 4 of his dissertation, Soepomo uses words that demonstrate more explicitly his capacity for critical reflection upon a specific set of colonial arguments; he is very critical of the royal houses and the government. Against the *Vorsten*, Soepomo criticized their emulation of the Dutch domain declaration—an attempt without precedence in Javanese tradition. Soepomo also addresses their acquiescence in adopting Dutch corvee labor regulations, something he argues they could have resisted. Against the Dutch, Soepomo questions their ambiguous reactions to the mandates of Ethical Policy. This ambiguity emerged in the re-categorization of the Principalities residents, which was spatially designed to fulfill the need of plantations for land and labor. Soepomo also criticizes the Dutch demands that the *Vorsten* follow the corvee labor ordinance implemented earlier in the Dutch-governed areas. In this section of Soepomo's dissertation, resistance surfaces and complicity recedes.

Soepomo starts his fifth chapter by underscoring that the *Vorsten* were not legally bound to follow certain colonial legal rulings:

If we wish to examine whether and in how far the reorganization has created village community³⁸ then we need to establish first and foremost that article 71 *Regeeringsreglement* (. . . including the Javanese native municipal ordinance St. 1906 no. 83 that is based on this article, and St. 1907 no. 212 concerning the election of village heads . . .) in relation to article 27, paragraph 2 *Regeeringsreglement*, is not applicable to the Vorstenlanden. (1927, 60, emphasis added).³⁹

In this passage, Soepomo reminds his audience that although nominal, the Vorstenlanden possessed a kind of autonomy nonetheless. Within this nominal autonomy, the Vorstenlanden had its own legal system—the *pranatans*—that it could have deployed to support legal arguments crucial to protect its interests, that is, by using the *pranatans* to contextualize the debate about agrarian reorganization in its own terms. But while the *Vorsten* had an opportunity to resist the *Regeeringsreglement*, they failed to exploit it. By identifying this fact, Soepomo creates a space to argue against the Dutch demand for the *Vorsten* to model their agrarian reorganization after the experience in the Dutch-governed area. He writes,

Moreover we need keep in mind [the fact] that—according to the Memorandum of Explanation for Indies Budget 1912 about the reorganization—the conditions in the Dutch-governed area surrounding [the Vorsten] will serve as a model, but with the avoidance of as much as possible “common recognized faults.” Consequently, in these discussions, each time we make comparison we will naturally prioritize comparing with reorganization in

³⁸ Creation of uniform village and village administrative officials was one of the four transitional processes to the new agrarian system.

³⁹ This paragraph is one of the most difficult to translate due to the heavy legal references and Dutch language penchant for multiple sub-clauses. For the sake of comparison, I am quoting the paragraph in Dutch here:

Willen wij nagaan, of en in hoeverre de reorganisatie dorpsgemeenten in het leven heeft geroepen, dan dien te worden vooropgesteld, dat artikel 71 regeeringsreglement (nu artikel 128 Indische staatsregeling) met de daarop gegronde Javasche inlandsche gemeenteordonnantie St. 1906 no. 83 en met St. 1907 no. 212 betreffende de verkiezing van desahoofden, in verband met artikel 27, lid 2 regeeringsreglement (nu artikel 21, lid 2 Indische staatsregeling) niet op de Vorstenlanden toepasselijk zijn. (Soepomo 1927, 60)

Soepomo made a note of the new regulation that replaced the 1854 Regeeringreglement, that is the 1924 Indische Staatsregeling, which was not in effect during the process of reorganization.

Yogyakarta, and [only after that] with the village conditions in Java outside the Vorstenlanden. (1927, 60; emphasis added)

Soepomo's use of quotation marks in "common recognized faults" (*algemeen erkende fouten*) draws attention to the imperfections of the colonizers' supposedly superior system. The underlined words give his argument the pretext of prioritizing Yogyakarta—and not the Dutch-governed area—as a benchmark to compare Surakarta's reorganization experience, precisely because they share similar characteristics as native principalities. Making this claim explicit is crucial for the arguments he builds later in his dissertation.

My exposition below follows Soepomo's double criticism: one of the Principalities and the other of the colonial government.

Critiquing the Principalities' Mimicry

Agricultural reorganization in Surakarta created paradoxical effects: on the one hand, it weakened the authority of the Vorstenlanden as Dutch officials gained a more substantial role in plantation administration; on the other hand, it brought the *Vorsten* directly into contact with their subjects by way of newly formed village officials. Such a paradox led the latter to mimic Dutch policies, most prominently in two areas: first by proclaiming a domain declaration, which practically led the Principalities to abolish the villagers' right to wastelands; and second, by allowing plantations to demand corvee labor from the peasants, a policy implemented at Dutch insistence.

Losing Rights to Wastelands

Before the reorganization, peasants in Surakarta possessed specific rights to claim wastelands (*woestegronden*). Article 44 of *Angger Sepuluh*, Surakarta's Constitution, stated that whenever someone opened wastelands or forest, or worked

hills and swamplands into housing plots or farmyards, nobody could protest within three years after the first stage of reclaiming. After the three-year term, to argue as illegal the land already claimed by a villager was prohibited. Based on this article, Soepomo concludes that opening wastelands in Surakarta had led to particular rights to land albeit still under the umbrella of the apanage system (Soepomo 1927, 76).⁴⁰

After the reorganization, the *Vorsten* declared its own version of *domeinverklaring*, effectively erasing the remaining protection of the villagers' traditional right to wastelands. Soepomo stresses that such explicit domain declaration (*uitdrukkelijke domeinverklaring*) had not existed in Surakarta's legal code (1927, 79). He attributes this alienation to the Principality's eagerness to mimic the Dutch 1870 domain declaration:

Outside the explicit regulation of the *pranatans*, it is explainable that the government in the Vorstenlanden is not willing to relinquish wastelands into communal possession. This is because the government outside the region since 1874 has been trying [in a very deliberate way] to restrict the agrarian rights of the village [only] to its aggregate of bouw fields, grazing land, and residential areas. (1927, 61, emphasis added)⁴¹

There is a sense of irony in the way Soepomo addresses the colonial government as “the government outside the region” (*de regering buiten de gewesten*). By doing so, Soepomo puts the *Vorsten* at the center of the discourse, addressing the colonial government only in relation to the *Vorsten*, a subtle act of dismissal; yet it

⁴⁰ If an apanage holder claim wastelands himself, he needs no consent from another authority. If the *bekel* did the claiming, his responsibility towards the apanage holder depends on whether they choose the *maron* system or the *madjegan* system. The village residents in Surakarta and Jogjakarta had few rights over forest products, because the principalities had contracted their forest out to the interregnum government in 1812. In Mangkunegara, however, the peasantry had the right to take out timber from the forest with a pass from the patih; they could bring their livestock to the forest, and take out grass in assigned parcels; and they could also collect fruit, alang-alang (*imperata*), *glagah*, and rattan.

⁴¹ Soepomo credits this argument to Cornelis van Vollenhoven's statement in *Adat Law in the Netherlands Indies*, part I, p. 515.

was precisely after this “government outside our region” that the *Vorsten* had been trying to emulate itself.

Options to open and claim lands were still available to villagers. As a matter of fact, Surakarta legal codes mandated a regulation to protect this right, but the *Vorsten* kept delaying issuing the regulation, practically denying the last option to reclaim what used to be the villagers’ rightful wastelands. Soepomo laments,

The right of the people to reclaim, which is mentioned and recognized in article 44 of the Angger Sepuluh . . . is maintained by the reorganization. According to Artikel 7 of Rb. 1917 no. 33 (Kasunanan) and Rb. 1917 no. 14 (Mangkunegaran), the reclaiming right (termed “wawenang njitak sawah” and “nandoering boemi oro-oro”) should be regulated by separate *pranatan*, yet until today the *pranatan* is still a long time in coming (*zich laten wachten*). (1927, p. 79)

Rights to Agricultural Land

Soepomo held the view that apanage holders never gained tenurial rights of lands entrusted to them by the royal houses. Before the reorganization, tenurial claims by apanage holders were one-sided, strengthened only by gradual legal usurpation (*rechtsaanmatiging*). The apanage holders took over the best paddy fields and other fields that the peasants opened from virgin lands by manipulating various payment structures at their disposal (Soepomo 1927, 25). To a certain extent, a *koeli kenceng* had rights on village agricultural land, depending on whether the *bekel* used the *madjeg* system or the *maron* system. In the *madjeg* system a *koeli kenceng* had relative freedom to decide what crop to cultivate, and he could work his entire allotted land, provided he fulfilled the obligatory tax and corvee labor. As long as he did not arouse the displeasure of the royal houses, the apanage holder, or the *bekel*, for example by letting the land lie fallow, a *koeli kenceng* had relatively secure access to land (Soepomo 1927, 26).

The reorganization in Surakarta brought massive changes in property and social relations among village residents. *Bekel*ships, characterized by personal, dyadic relationships between apanage holders, *bekels*, and *koelis*, were transformed into what Shiraishi (1990) terms a “territorial corporation” managed by village administrations as its “board of directors” with *koeli kenceng* as “shareholders” of village communal lands. Categories of residents became spatialized in the way the peasants’ status was linked to claims to their village communal land.

There were now four categories of peasants: *koeli*, *pengindoeng*, *norokaryo*, and the rest, which included women, children, elderly, and the disabled handicapped. The *koeli* category was divided into two groups. The first was *koeli kenceng*: peasants who were entitled to usufruct rights to paddy fields and housing plots, or either of the two, and carried the full rights and responsibilities that come with usufruct rights; the second was *koeli gundul*: peasants who had lost their farmyard or housing plots; the third and fourth were *pengindoeng*, or co-residents, people with their own separate housing that was situated in other *koeli*’s allotted land, and *norokaryo*, able-bodied men who were outside the previous three groups.

After the reorganization, land came under the direct jurisdiction of the *Vorsten*.⁴² The abolition of the apanage system resulted in the transfer of authority on right of allocation from the *bekels* to the newly appointed village officials (some of whom were recruited from previously dismissed *bekels*), in effect keeping this traditional right at the village level. Soepomo calls this form of rights *dorpsbeschikkingsrecht*, or the village right of allocation. Recall that one of the principles in setting new villages in agricultural estate areas is that the *koeli kenceng*

⁴² Legally, however, their power was limited by law: The *Vorsten* could only set aside and allocate agricultural land by expropriating the land for public interest use, which requires compensation to the *koelis* whose farms are taken over, and using their authority specified in Rijkbesluit 1917 No. 34 (Kasunanan), and *Rijkbesluit* 1917 no. 15 (Mangkunagaran) (Soepomo 1927, 81).

was obliged to split his allotted land into two halves: one half to be worked as usual, and the other to be made available to plantations and to be planted with commercial crops per plantations' instructions, earning him wages and rent. This principle was particularly contentious since the peasant had to make his land available at any period demanded by the agricultural estates that leased the land from the royal houses, regardless of whether that was in the middle of his own planting cycle. At any time, he could work only half of his allotted land. If the benefit the *koeli kenceng* received in wages and rent was smaller than the income he could have accrued by planting rice or other traditional crops, conflict could arise. Thus the welfare promised by agricultural reorganization remained dim.

The colonial government justified this rolling system by arguing that the lands were “communal property” (*communal bezit*), effectively negating the village's right of allocation. Soepomo offers an alternative perspective. He considers these lands to be under the jurisdiction of the village, *dorpsbeschikkingsrecht*. It includes the authority to manage village land not distributed for villagers' use; the rights to manage pension land that becomes available due either to death or to an official's dismissal; and the authority to allocate housing plots, grazing land, and cemetery plots. All these, Soepomo argues, are the distinguishing characteristics of *dorpsbeschikkingsrecht* (Soepomo 1927, 81–83). If previously *koelis* could abandon their farmyard—if they felt they could not tolerate the tax burden—or move to other *bekelships* or open wastelands with the permission of related *bekels*, the options were now nonexistent.

Soepomo demonstrates in this section of his dissertation how the Kasunan mimic the Dutch legal maneuver of domain declaration. After Kasunan's own *domeinverklaring*, the wastelands was now reclaimed by the Vorsten; the peasants' option to claim was practically eliminated by the lack of mandated regulation; the village head lacked the flexibility to assign village communal land to a stranger. Thus,

ironically, instead of liberating the peasants from the shackles of land as colonial discourse claimed, the reorganization made village residents even more bound to the land.

It was important for Soepomo to assert the existence of *dorpsbeschikkingsrecht* for three reasons: First, the introduction of the village-corporation was essentially a governance reform. What was feudal, traditional, and personal could now be transformed into a rational, modern system. Attaching the adat-based *beschikkingsrecht* onto the modern village structure was an experiment intended to create a hybrid system whereby an indigenous institution was amalgamated with a village-corporation system. In this way, village rights of allocation were an intellectual building block for Soepomo, which he kept returning to in his future contemplation of adat law and adat communities in postindependent Indonesia.⁴³ Second, with the official establishment of villages, the idea of the jural community (*rechtsgemeenschap*) could now be attached to a concrete form of village-corporation, which exercised the right of allocation (*beschikkingsrecht*). Third, with the village right of allocation (*dorpsbeschikkingsrecht*), villages presumably could decide whether they wanted to lease their land to commercial plantations. However, this was not the case, especially since the *Vorsten* had declared their domain rights.

Although the reorganization introduced characteristics of modern municipality to otherwise traditional and feudal villages (manifested in its new village officials, its own properties, and its own *koeli* shareholders), these characteristics failed to encourage the self-governing capacity implicitly mandated by Ethical Policy and explicitly stated by the Indies government, particularly because the *Vorsten* bypassed

⁴³ An example of his continued contemplation on the topic is demonstrated in an essay he wrote for a conference on South East Asia in Washington, D.C., in 1953 titled “The Future of *Adat* Law in the Construction of Indonesia” (Soepomo 1953).

the villages' new authority by imposing corvee labor on the villagers. Soepomo had the following to say:

it is not to be anticipated, that the *Vorsten* regulations bring about any sense of self-government upon the villages. Even in Yogyakarta and Dutch-governed areas, there is no self-government in the village. . . . At the most in Solo villages, village residents can speak about the distribution of the corvee labor, yet this concern was also to be addressed under the supervision of government officials. . . . (1927, 76)

And he continues,

The newly formed villages however have not in the least self-command (*eigenmeesterschap*): the little autonomy which the *Vorsten* regulations (*pranatans*) have granted the villages were decimated through the legal and illegal interference of the Vorstenlanden officials. (1927, 77; emphasis added)

Soepomo uses unambiguous terms in his criticism of the *Vorsten* officials' role in curtailing village self-governance, which was promised along with the reorganization. He cites and supports another scholar's claim that the reorganization was a half-hearted endeavor:

Rightly so, Adam had claimed that the *Vorsten* regulations (*pranatans*) have granted the villages with so much authority, that they have self-command (*eigenmeesterschap*) given with one hand, and withdrawn with another [by the Vorstenlanden officials]. (1927, 81)

These paragraphs demonstrate that Soepomo was perfectly capable of deliberate self-transformation. He was a part of the Surakarta aristocracy, yet in his open criticism of the Principalities' practices that emulated the Dutch's policies in the Dutch-governed areas at the expense of the peasants' welfare, he distanced himself from the circle of power. He put a pause in his role as the "relayer of power" and questioned the given epistemic reference (Allen 2008). He was beyond romanticizing the adat-based agrarian system and traditions, and in doing so, did not exactly mirror van Vollenhoven's views.

Exposing Colonial Hypocrisy

Contrary to the Dutch claim, agrarian reorganization had not liberated the peasants from being bound to the land. Earlier in his dissertation, Soepomo demonstrates how the government demanded that the Vorstenlanden adopt its version of corvee regulation, to which the *Vorstens* acquiesced even though it contradicted the government's own discourse of progress and liberation. Before the reorganization, the villagers had to perform three kinds of corvee labor: services for village maintenance such as village roads, dams, and bridges; corvee labor for the *Vorst*; and corvee labor for the apanage holders, which included domestic services for the *bekel*. After the land reform, the corvee labor expanded to include work for agricultural estates (*landbouwondernemers*) authorized by the *Vorst*. This service required the villagers to maintain the irrigation system on which sugar plantations were heavily dependent.

Soepomo continues,

Artikel 46 *Indische Staatsregeling* prescribed [for Dutch-governed areas] that in each region the nature and duration of the personal services, to which the people are subject to, the cases wherein, and the ways and conditions whereby they can be demanded, must be regulated by the Governor General, in agreement with the existing needs, institutions and necessities. The regulations about the individual services in each region are revised by the Governor General every five years with the objective to gradually reduce it, in accordance with general interest. In practice, people assume that under personal services in the said article, it meant only corvee labor, and that the village services, since it is a municipal institution, are regulated by article 128, lid 3 *Indische Staatsregeling*. (1927, 110)

Soepomo stresses, however, that after the reorganization “These services were not abolished, and indeed these work burdens were gradually converted into a burden in money, which came to mean ‘head tax’” (Soepomo 1927, 111).

Comparing practices in Surakarta with the Dutch-governed area, Soepomo comments:

. . . we have described the situation of the corvee labor in the Kasunanan after the reorganization. Both concerning the linkage of (compulsory) service to usufruct rights and concerning the nature and duration of the service, [the regulations in the Kasunanan] have imitated the situations in the surrounding area [i.e. Dutch-governed area]. (1927, 116)

Irony is evident in this paragraph. Even though the *Staatsregeling* No. 76 did not apply to the Vorstenlanden, several instances demonstrate the Vorstenlanden's willingness to fulfill Dutch demands, which, again ironically, failed to bring the *Vorsten* closer to modernity and progress. Soepomo underlines this fact in a striking paragraph:

Now what is remarkable is that: the corvee obligation in the Government's area rests upon the usufruct holders and is a replication of the regulation regarding royal services in the Mataram Kingdom. The latter simply united the ancient division in the village with its corvee services, according to which the core villagers, the holder of usufruct rights to agricultural land and housing plots, are obligated to do village services. In a roundabout manner, one finds again in the Kasunanan's regulation on corvee labor the old class regulation of ancient Javanese villages. (1927, 117 emphases added)

With these statements, Soepomo thoroughly punctures and deflates the colonizers' claim that progress could be achieved through agrarian reorganization. Earlier in the dissertation, Soepomo quoted three colonial sources to explain the motive behind the abolition of the apanage system: "because the working of it in each respect is poisonous (*verderfelijk*) [to the society]"; not "consistent with orderly social condition"; and "necessary for selflessness in the state." Colonial discourse posits the necessity of the reorganization because the feudal system "no longer fits with progress and modernity." In practice, the colonial-style reform was actually pushing Surakarta back several hundred years by borrowing from the old Mataram kingdom a feudal system that relied on the "old class regulation of ancient Javanese villages."

Similar retrogression materialized in the form of the demand for corvee labor for commercial plantations located in the Vorstenlanden. In theory, peasants should no

longer be bound to the land as in the apanage system, but in practice the bondage became even tighter. To earn usufruct rights to agricultural land and housing plots, peasants were still obliged to provide corvee labor to the *Vorsten* and to sell their labor to the commercial plantations owned by Europeans or by the *Vorsten* itself:

The obligation of the population to perform the forced farming work for the European plantations is embodied in Rb. 1917 no. 34 (Kasoenanan) and Rb. 1917 no. 16 (Mangkunegaran), and further specified for the Kasoenanan in Rb. 1919 no. 5 and for the Mangkunegaran in Rb. 1919 no. 8. The State gazette that is last mentioned implies that [corvee service] is to be regulated through *Vorsten's patih*⁴⁴ in agreement with the [Dutch] Resident and for as far and as long as necessary in consideration with the conditions of the land rent regulation St. 1918 no. 20. The village officials—at the first notification or on behalf of the Vorsten Patih—have to take care of making available the labor of those who are entitled to usufruct rights of agricultural land for the use of the [commercial] agricultural enterprises, upon whom the right of [demand] for such work is granted by the *Vorst.* (Soepomo 1927, 120; emphases added)

Compulsory agricultural estate work was precisely the peasants' ticket to gaining usufruct rights to village land. The village officials' main occupation was to ensure that the villagers' labor was available whenever the agricultural estate's work demanded it. The inability of a villager to perform corvee labor was threatened with a fine of a hundred gulden at the most, detention for three months, or revocation of his allotted land (Soepomo 1927, p. 120).

As he analyzes the consequences of agrarian reform in Surakarta, Soepomo emerges as a confident scholar comfortable in his critical observation of events; he starts gazing back at the colonizers' claims and presents several concrete examples of the risk in mirroring Dutch policies in the *Gouvernementsstreken* and in implementing them in the *Vorstenlanden*. Per the *Regeeringsreglement* 1854, the *Vorsten* did not have to follow the government's legal demands to the letter, yet they did so to claim

⁴⁴ Prime Minister.

domain rights, implement corvee labor, and incorporate the maintenance of irrigation systems into the people's corvee structure. Echoing Dr. Tjiptomangoenkoesomo's attack on the *Vorsten* in 1917, Soepomo demonstrates how the pauperization of Surakarta's subjects was the doing of the *Vorsten* themselves.

The Peasants' Double Burden: Legal and Empirical Consequences of the Reorganization

In the sixth and final chapter of his dissertation, Soepomo details the Land Lease Regulation (*Grondhuurreglement*) stated in *Staatsblad*⁴⁵ St. 1918 no. 20, now enforced for land leased to agricultural estates in the Principalities. Addressing the legal consequences of the reorganization helped Soepomo expose the ruptures, slippages, and contradictions between the empirical events in the colony and the progress claimed by the Dutch. Soepomo interprets three aspects regulated by the Land Lease Regulation: the legal subject of land rent agreement, its legal object, and its form and formality.

More fascinating than these legal analyses, however, are the explicit criticisms Soepomo wages against the government and the royal houses. Against the colonial government, he reveals how the reorganization effectively favored agricultural estate operators by guaranteeing them legal incentives to secure land access, which included land cultivated by the natives long protected by Agrarian Law 1870; by making available the peasants' labor to work the plantations; and by supporting the maintenance of the operator's irrigation system by guaranteeing the peasants' labor and full cooperation of colonial officials. Against the *Vorsten*, Soepomo protests their emulation of the Dutch policies, at times imposing unnecessary and more unjust

⁴⁵ *Staatsblad* is the legal document for Netherland's East Indies. The *Vorstenlanden*'s legal documents are *Rijksbesluit*, and bound only for the *Vorstenlanden* area.

policies than what took place in the Dutch-governed areas. Colonial legal discourse was a discursive conquest of native epistemology and ways of seeing. Even when native episteme such as adat law, jural communities, and rights of allocation were already introduced into the European legal reference, the unequal status of the two laws made it imperative to exert struggle at the more dominant level: European colonial law. It is at this level that Soepomo wages his struggle.

The basis for a new agricultural land tenure system for Yogyakarta and Surakarta was stated in Land Lease Regulation St. 1918 No. 20. It regulated the legal transition of existing plantations to the new reorganized system and outlined new provisions for commercial land lease in the *Vorstenlanden*. Included in the St. 1918 no. 20 were the new rights and obligations of the agricultural estate managers who had renounced the rights stated in old lease contracts. For plantations that were not reorganized, the old land lease contracts remained valid, but were not extendable for longer than the period specified by the head of the regional government.

Soepomo points out how the converted plantations were doubly guaranteed by the conversion resolution of the *Vorst*, a rule based on article 8 of the Land Lease Regulation. First, by giving up the previous lease, which varied between ten, twenty, and thirty years, agricultural estate operators acquired a fifty-year period lease for land they needed to operate for as long as their business existed. Second, during the first five years after the conversion they had the right to dispose of the peasants' labor for cultivation (*cultuurarbeid*). Soepomo underlines this:

This decision has a public-law consequence in the sense that the state ensures the enjoyment for the agricultural estate operator of the necessary agricultural lands and that the state still takes on the responsibility that villages make these lands available at the appropriate planting period. The right of the agricultural estate managers towards the lands is thus not derived from a civil-law agreement, yet it is one of a particular nature, [namely] a “concession” as the official explanation of the land lease regulation calls it. Such right is for

practical reasons, namely to facilitate [plantations] in acquiring loans. This is made clear in St. 1918 no. 21. . . . (1927, 123)

Public-law transactions in land for agricultural estates were transactions between private enterprise and “the state.” The agrarian estates effectively became the stewards of lands granted to them by “the state”: they were legally responsible for it, authorized to demand that the villagers make the leased lands available at appropriate periods, and the villagers were to follow the estates’ designation as if they represented the government. This fact stood in stark contrast to Soepomo’s earlier narrative about the government’s reason for doing “more than the *Vorsten* had already done to the population.” Soepomo asked the following question earlier: “What has moved the [Dutch] government to give the *Vorstenlanden* people better rights on land (*rechten van den grond*) than had the *Vorsten* themselves?” (1927, 54). He answered this with the government’s claim that it wanted to strengthen these rights to provide peasants with a “more independent place in society” (*meer zelfstandige plaats in de samenleving*), an ideal that echoes the creed of Ethic politics. By guaranteeing the plantations’ right to dispose of the peasants’ labor for cultivation (*cultuurarbeid*), the government made this honorable objective an empty discourse. Strengthening the right of the local communities was only an intermediate process on the way to the main objective: to facilitate easy access to land for Dutch agricultural estates.

The Indies government granted three incentives to encourage agricultural estate expansion in the *Vorstenlanden*: legal incentives to secure access to land, the right of disposal of villagers’ labor for agricultural estate work, and support in maintaining irrigation systems.

Legal Incentives for Agricultural Estate Security

Soepomo clearly states that the colonial government's fifty-year lease guarantee demonstrated that it was bowing down to agricultural estate managers who had demanded since 1864 a legal certainty to the land they worked on (1927, 123). He asks, "Isn't 50 years too long?" and then narrates how Carpentier Alting, the Director of the Binnenlands Bestuur at the time, acknowledged at a People's Council session that it was indeed long but was still significantly shorter than the seventy-year period demanded by agricultural estate operators. The Indies government decided to settle for fifty years, reasoning that commercial plantations would deliver great benefits to the people. The continued existence of the agricultural estates and industries was in the people's interest (Soepomo 1927, 124).⁴⁶ Although fifty years was indeed long,

[Carpentier Alting] said people are requested to observe that the land is not owned by the people, but by the royal house, who in fact leases out the land to the agricultural estate operators. (1927, 124)

This must have been difficult for Soepomo, who by now understood that the royal houses' domain declaration was intended to legalize leasing of lands to Dutch agricultural estates. By declaring domain rights, acknowledged by the Indies government, the royal houses became the legal owner of all lands within its boundaries.⁴⁷

In return for the lease, plantations would pay annual compensation to the lessor, the amount of which was determined by the kind of land they leased. For lands they leased from villagers in alternate planting periods, the lands the *Vorsten* had

⁴⁶ This position was clearly in contrast with the earlier conservative position against private plantations, arguing that it would bring more damage to native communities without a clear individual property regime.

⁴⁷ Beyond land lease, the Indies government protected commercial agricultural estate investments in the *Vorstenlanden* by creating a regulation to perpetually secure their buildings and establishments. This is stated in the *Gouvernementsbesluit* of 10 April 1918 no. 26 *bijblad* no. 9005.

allocated to the *koeli kencengs* through village heads, agricultural estate operators would pay in the amount determined by the head of the regional government in consultation with the prince or his minister, at the suggestion given to him by the established Lease Commission. This commission consisted of equal numbers of European and Indonesian officials and nonofficials (such as agricultural estates or managers of agricultural enterprises) (Soepomo 1927, 125). The minimum price was to be revised every ten years as needed. In fact, it was extremely inadequate given the speed of inflation during the World War I years.

The Right of Disposal over Peasants' Labor

As mentioned several times in Soepomo's dissertation, agrarian reorganization in the Vorstenlanden created a "free" labor system, a system to replace the *cultuurstelsel* cultivation system. By "free" it meant that the peasants' labor was compensated with a minimum wage set by the government and the Sunan or his minister. It was to be no lower than the average wage of similar work in the areas surrounding the plantations. Soepomo finds hypocrisy in this policy:

The agricultural estate operators are guaranteed labor of the people for five years. The government found it necessary to guarantee these, in order to give the existing plantations—at least initially—the certainty that the manual labor, without which they cannot accomplish their task, will not be lacking. The agricultural estate operators requested that labor be guaranteed for ten years. But the government only gave five years because they deemed that coerced labor for a longer than the decided period . . . cannot be justified in relation to the speedy progress of the development of the Indonesian society. (1927, 128)

He continues in clear, unambiguous terms to express his opinion on the matter:

In my opinion any coerced labor for the benefit of the private sector—regardless of how short the duration—is condemnable (*afkeurenswaardig*), and a five-year agricultural estate labor obligation for the benefit of private agricultural estates does not belong in a civilized society. (*hoort niet in een beschaafde samenleving thuis*). (1927, 128; emphasis added)

Let us briefly look back at seemingly neutral statements Soepomo makes earlier in response to the Dutch policies in the colony. Soepomo cites three reasons the government used to justify agrarian reorganization in Surakarta, all of which claimed a commitment for progress for the natives. He specifically cites the *Bijlage B Handelingen Staten-Generaal 1911-1912* 38, which suggested that the abolition of the apanage system was needed “because the working of it in each respect is poisonous (*verderfelijk*) [to the society]” (50). In *Het Koloniaal Verslag* of 1917, the nature of the traditional apanage system was considered “not consistent with orderly social condition” (50). Quoting these colonial discourses verbatim allows Soepomo to wait until he comes to his last chapter to puncture these arguments. Using evidence from the colonizers’ own discourse, he demonstrates how agrarian reform, more precisely the abolition of the apanage system, ended up a means to accommodate capitalists’ demands. Indeed, “purchasing” usufruct rights with obligatory five-year agricultural estate work for the benefit of private plantations “does not belong in a civilized society” (Soepomo 1927, 128). With irony, Soepomo continues,

It is the village officials who must provide workers to the reorganized plantation, for as long as and as far as decided by the government officials. Further, we have seen there also that only in the authorized agricultural estate cultivation are compulsory (*cultuurdienstplichtig zijn*); that noncompliance with compulsory cultivation work is threatened with a liberty penalty (*vrijheidsstraf*) or fine; and that in case of relapse, the bouw field of the culprit can be withdrawn by the village officials. (1927, 129)

Instead of liberty from the bond of land, the peasants were now bound to work at the Dutch agricultural estates. The peasants were deprived of the options to withdraw from such a “free labor market” system; noncompliance was punishable with the *vrijheidsstraf*—a liberty penalty. Recall Soepomo reiterating the Dutch claim that in the government’s territory,

. . . since 1 January 1920 the forced cultivation system that started compulsory cultivation labor (*cultuurdiensten*) were practically abolished with the disappearance of the Government coffee plantation, the only remaining agricultural estate using the *cultuurstelsel* system. (Soepomo 1927, 97)

In reality, forced cultivation had disappeared in name only; agrarian reorganization was precisely the tool to enable its extension by commercial private plantations.

Corvee Labor to Maintain Irrigation System

Article 12 of the Land Lease Regulation granted agricultural estate operators the right to allocate water for irrigation, manufacturing, and other purposes to the same extent and under the same condition as the pre-reorganization period. Unfortunately, this law does not address the irrigation system that was privately built by the agricultural entrepreneurs. Soepomo observes,

The maintenance of these water works and water distribution are completely in the hands of the agricultural estate operators. The water board established between 1907 and 1910 in Surabaya was no public institution. Their authority was purely advisory in nature. Now that the reorganization established villages and with it stronger rights to land, the government found that the people should not remain dependent on the agricultural estate operators with regard to water for their fields. (1927, 130)

To solve the problem, he suggests transforming the private management of irrigation systems into public institutions. Irrigation systems that benefited only the agricultural estate operators should stay private to prevent shifting the maintenance burden to the public or, more precisely, the peasants. The management of irrigation systems that benefited the public must remain with the government with the cost levied on the public. Once the irrigation systems became public institutions, the *Vorsten* could lawfully charge fees and impose taxes and penalties (Soepomo 1927, 130–131). The public-private issue that surfaces here still rings true for the

contemporary period, and so is the challenge faced: “The composition of the water system council is however such that their agricultural estate operators can never be overpowered” (Soepomo 1927, 133). As an example, the Dengkeng irrigation system had 34 agricultural estate representatives versus 29 government and 2 non-government members. It was difficult for the people’s representative to speak up because they would be overpowered by members who were appointed by the Dutch Resident.

The Royal House’s Initiatives

In the last chapter of the dissertation, Soepomo points out a characteristic of the Surakarta royal house’s fawning emulation of the Dutch policies. According to article 5b and 5c of the Land Lease Regulation (*Grondhuurreglement*), land lease contracts could only take place between a European agricultural industry as lessee and a village—the entity that exercises right of allocation—or the royal house as the lessor. Who was eligible to become an agriculture entrepreneur in the principalities? Article 3 of the Land Lease Regulation has an answer:

1. Nederland’s subjects, for as long as they belonged to the European category⁴⁸
2. Europeans, who were residents of Netherlands Indies
3. Partnerships, established in the Netherlands or in the Indies, composed of and managed by Europeans. (Soepomo 1927, 133)

Based on this regulation, Foreign Orientals and native Indonesians, the other two population groups in the colony, were barred from initiating an agricultural enterprise unless they petitioned to become European legal subjecta, or unless they were a *Vorsten*’s subjects. This restrictive regulation was absent in the Dutch-governed area. Soepomo continues,

⁴⁸ In this period, any individuals in the East Indies could petition to become European before the law.

For the Vorstenlanden the government recognizes that those conditions do no longer in fact fit with an arrangement which breaks with the past and which is destined to establish the agricultural industry on the ground principle of freedom. The *Vorsten* nevertheless preserve the old system on the argument that the political and economic conditions in the Principalities do not permit an alternative arrangement for the time being. (1927, 134)

Soepomo cannot hide his frustration:

Where the [Dutch] government follows the village land regulations in the Dutch-governed area, one should ask the question why she does not do it in the free *Vorsten* domain? What objection would there be to also implement the land lease (*erfpacht*) institution in the Vorstenlanden? (1927, 134)

To which he concludes,

In conclusion, one needs to observe that other than in the Dutch-governed area, the agricultural authorities in the villages are not authorized to lease their own fields to the European agricultural entrepreneurs. (1927, 134)

The effort to modernize and strengthen the villages turned out to be nothing more than lip service. The *Vorsten* were unwilling to allow villages to emerge as fully modern institutions. Whatever liberating policy the *Vorsten* officials introduced, they were cancelled out by the same institution through regressive policies in other areas. But since the Land Lease Regulation was a legal product of the Indies government, Soepomo's frustration was directed at both the *Vorsten* and the government.

Indeed, in the final paragraphs of his dissertation Soepomo comes to realize the hollow discourse of agrarian reorganization and the inadequacy of relying on adat institutions to protect impoverished peasants. As he gazes back on the realities of the Surakarta agrarian reorganization, he realizes the betrayal by the Principality when it emulated the colonial government's *domeinverklaring* at the expense of the Javanese peasants. At the same time, he is skeptical of the colonial claim of the peasants' liberation from medieval practices through agrarian reorganization, when in reality the model for corvee labor practices replicated the archaic system of the Sultanate of

Mataram period. All this gazing culminated in a paragraph in which Soepomo, using precise words tinged with repulsion, expresses a rejection of the colonial discourse of progress:

coerced labor for the benefit of the private sector—regardless of how short the duration—is *condemnable* (*afkeurenswaardig*), and a five-year agricultural estate labor obligation for the benefit of private agricultural estates does not belong in a civilized society (*hoort niet in een beschaafde samenleving thuis*). (1927, 128, emphasis added)

In Soepomo's dissertation, one observes a native scholar who was capable of critically assessing the tensions and ruptures within colonial discourse on adat land rights. The complex and contested relations in colonial knowledge produced by such discourse made it impossible to maintain a clear opposition, especially so since a range of indigenous categories was involved. Thus, deciding whether a native scholar such as Soepomo was an active native requires more than simply tracing his epistemic contribution. It is equally imperative to assess his efficacy in resisting the hegemonic nature of the hybrid discourse deployed by colonial and indigenous institutions.

Conclusion

Soepomo was an example of a colonized elite whose way of thinking-and-being was shaped by heterogeneous colonial and indigenous discourses. Historical events such as Mangoenkoesomo's challenge to the Surakarta Principality influenced his outlook further. For a colonized subject, to cast a two-way gaze requires references other than that contained within colonial discourse. In the case of Soepomo, his alternative universe was provided by Javanese ethics. Multiple universal references allow a native scholar to wage multiple forms of resistance, some of which would be undetectable from a European frame of reference. It becomes important, then, for a scholar to investigate forms of native subjectivity to understand distinctive expressions

of resistance. Soepomo was, after all, a Javanese lower aristocrat raised during a specific historical conjuncture, that is, the rise of imagined communities and the advent of the Ethical Policy. Appreciating Javanese ethics as a part of Soepomo's complex subjectivity is crucial for understanding the strategies he deployed to perform his critical agency, strategies at times so subtle they are misunderstood as submissiveness and acquiescence to the dominant discourse. On the other hand, his training at the Batavia *Rechtsschool*, which prided itself for pounding the values of integrity, independence, and impartiality into its students, inescapably shaped his sense of justice. Thus, to perceive Soepomo as a complete Other from the colonizers elides the nuanced process of identification and disavowal.

The unique combination of discourses that shaped his subjectivity is discernible in Soepomo's expressions of autonomy, here understood as the capacity for critical reflection and deliberate self-transformation. In the strategy of "attack and retreat," one detects Javanese ethics at play. Without compromising the ethics of *hormat* (respect) and *harmoni* (conflict aversion), Soepomo expressed his critical readings of the agrarian reorganization in Surakarta. The strategy of "attack and retreat" quickly followed by the restoring of balance was ubiquitous in Soepomo's dissertation, even more so if the first part of his dissertation—omitted in this chapter—is considered. The strategy allowed him to address sensitive questions without appearing to be cynical or skeptical. This is demonstrated, for example, in his question about the Dutch motive for the reorganization. Another example can be seen when he asked a question pregnant with possibility: "What has moved the government to give the Principalities' people better rights on land than had the royal houses themselves?" (Soepomo 1927, 54). This multi-interpretable question was quickly followed by a matter-of-fact list of reasons that portrayed the government rosily as an arbiter of social justice. Only when we borrow the lens of the Javanese ethics of *hormat* and

harmony do the benign sentences come into sharper relief and demonstrate a unique form of agency informed by particular subjectivity.

Although Soepomo was a Javanese subject of the Surakarta Principality—at the time of writing his dissertation he was engaged to be married to a niece of the Sultan of Surakarta—his position hardly prevented him from casting a critical gaze upon oppressive agrarian practices of the Principality. Soepomo openly and explicitly criticized the Principality’s act of domain declaration, an act that had no precedent in Surakarta legal tradition, an act that mimicked the Dutch domain declaration of the whole archipelago, at the expense of the peasants. With the domain declaration, the peasants in Surakarta no longer had the right to reclaim virgin lands (regardless of whether they still existed at the time); every inch of land in Surakarta became the domain of the Principality. The adoption of Dutch corvee labor regulations by the Principality also did not escape Soepomo’s scrutiny.

The colonial government was not safe from Soepomo’s critical examination. He utterly punctured the claim that the reorganization was implemented to bring progress to the native population in Surakarta. He pointed out how the new corvee obligation that followed a model in the directly governed area was simply an adoption of an ancient system used by the Mataram kingdom in the 17th century. He wrote, “In a roundabout manner, one finds again in the Kasunanan’s regulation on corvee labor the old class regulation of ancient Javanese villages” (1927, 117). He found the demand for corvee labor a retrogression and a complete betrayal of the promise of progress, a promise that was to be fulfilled by breaking the chain that bound the peasants to land and to obligatory services.

The best illustrations of Soepomo’s direct form of criticism appear in the last part of his dissertation, where he dissected legal and empirical consequences of the reorganization. The reorganization essentially provided a window for the colonial

government to insert legal incentives to agricultural estates operating in the Principality and to guarantee peasants' labor for five years. Of each of these "violations" of the earlier promise for progress, Soepomo expressed his disapproval in unambiguous terms: "coerced labor for the benefit of the private sector . . . is condemnable" and the obligation to provide five years of services to private agricultural estates "does not belong in a civilized society" (Soepomo 1927, 128).

Soepomo's dissertation demonstrates his autonomy in the way he took up in transformative way the relations of subjection hidden in a discourse that seemingly championed progress for the native peasants. Using indigenous cognitive reference allows us a closer reading of Soepomo's dissertation that renders visible forms of agency which otherwise remain undetected. Through his dissertation Soepomo realized the ideal of his training at the Batavia *Rechtsschool*, which aimed to train native lawyers who possessed integrity, independence, and impartiality (Gedenkboek 1929, 40).

CHAPTER 4:
(Un)Making a Colonial State:
How Native Scholars Made and Unmade a Colonial State through Academic
Texts

Introduction

The production of legal knowledge served as an important legitimating narrative in colonial state formation. Far from being unidirectional, the production of legal knowledge was a collaborative, mutually constitutive process whereby native subjects, as part of the colonial state-system,¹ shared equally important roles with Europeans. Yet, colonial historiography tends to present native subjects in two extremes: either in full submission to or in diametrical opposition to the colonial state-system (Zachernuk 2000).

In this chapter, I interrogate colonial state formation by dissecting the seemingly clear-cut boundary between the state and its native subjects. To do so, I draw on the works of Indonesian scholars *cum* judges about native land rights published in the influential *Indies Journal of Law* (*Indisch Tijdschrift van het Recht*, ITR) between 1929 and 1931. Here, I examine the role of these native scholars in creating legal knowledge in their own vision, paying close attention to the ways in which they extended particular forms of property relations while contesting others. Situating these academic texts within the socio-political context of the time, I highlight the porous boundary between colonial state-system and native subjects in the process of state formation. I suggest that these scholars, in their unique position of being natives yet trained in colonial law in the metropole, scholars yet part of the colonial judicial system, played unique roles in colonial state-making. By way of their

¹ I borrow the term “state-system” from Abrams (1988) to avoid reifying “the state.” Abrams defines the state-system as “a palpable nexus of practice and institutional structure centered in government and more or less extensive, unified and dominant in any given society” (58).

discursive intervention, they at once extended and contested the force of the colonial state-system.

In the following sections, I will start by theorizing colonial state formation, borrowing Hansen and Stepputat's concept of symbolic language of stateness (2001), Comaroff's proposition of law as the vernacular language of a colonial state (1998), and Roseberry's common discursive framework (1994) as my theoretical bases. This will be followed by a brief narrative of institutional and discursive frameworks that shaped the administration of justice on native land rights. To understand the context of the native scholars' works in colonial legal discourse and governance, I will situate the legal journal where they published their works in terms of its position among the legal community in the colony. After establishing these contexts, I will then examine one article by Wirjono Prodjodikoro and two by Soepomo that appeared in the journal between 1929 and 1931, reading them against socio-historical events that shaped the period. I will conclude by proposing that the role of native intellectuals in colonial state formation is more ambiguous than what had been conventionally assigned to them.

Colonial State Formation and the Symbolic Language of Stateness

The legislation of the Agrarian Law of 1870 and the declaration of domain right was a watershed for colonial state formation in the Netherlands East Indies. First, through the Agrarian Law of 1870, the Dutch parliament and the colonial administrators established the discursive presence of "the state" on matters related to land tenure and property relations. Second, by claiming state proprietorship of land, colonial administrators reconfigured property relations between the natives and the state: the natives then came to possess only perpetual usufruct rights to state land, never full ownership of it. Third, in setting the Agrarian Law of 1870 as a reference

for land-related law, a foundational element to facilitate modern agricultural enterprises, colonial administrators created an appearance of legitimacy for legal decisions regarding land. In short, the Agrarian Law of 1870 represented a symbolic language of stateness, an arsenal of governance and authority deployed through the institutionalization of law and legal discourse to conjure the imagination of the state as the authoritative center that is capable of issuing “the last judgment” (Hansen and Stepputat 2001, 8).

Before proceeding further, a brief layout of the theoretical construct that informs this chapter is needed: The construction of a modern state is a continuous process that takes place through the deployment of various practical and symbolic techniques of governance called the “language of stateness” (Hansen and Stepputat 2001). An essential form of one symbolic language of stateness is the institutionalization of law and legal discourses that establishes the authority of the state and sustains the state’s discursive presence in the consciousness of the population. It was law that held colonial state-forms together and made them appear united and coherent (Comaroff 1998). In this light, state formation here is thus understood as the practices and processes through which state agents project a specific center that possesses the ultimate authority in society (Hansen and Stepputat 2001; Joseph and Nugent 1994; Abrams 1988), with the objective to create and reproduce an image of a genuine presence of the entity of the state. State formation, however, needs to be understood in the context of the resistance and struggle against which it is formed (Joseph and Nugent 1994; Corrigan and Sayer 1985), and discursive intervention provoked a discursive resistance. In the Metropole and in the colony, the discursive resistance emerged in the sphere of knowledge production.

At the turn of the century, a sense of indebtedness towards and responsibility for the natives permeated the zeitgeist and shaped not only the political direction as

evident in Ethical Policy, but also the intellectual orientation in the academia. At Leiden University United Faculty of Law and Letters that trained colonial officials, the spirit materialized in an empathetic commitment to understand the natives in order to help improve their welfare. An avenue to this spirit materialized in the study the native's customary or adat law. As a chaired professor on adat law, Cornelis van Vollenhoven championed the teaching of adat law and made it an important part of the curriculum. Other Indies scholars created a foundation for the research and dissemination of knowledge on adat, *Adatrechtstichting* (Fasseur 1993; Otto and Pompe 1989). Soon Leiden University cemented its reputation as the intellectual center for the study of adat and adat law.

Led by the charismatic van Vollenhoven, Leiden scholars developed a unique intellectual perspective on adat law. They adhered to Von Savigny's principle of organic law² and rejected the imposition of positivistic European legal thought upon the natives, arguing that law should burst forth from the dynamic of the people it serves and should reflect the people's own cultural character (Burns 2004; Otto and Pompe 1989; Eikema Hommes 1979). On the issue of the native's land, the Leiden school of adat law, henceforth referred to as the "Adat Law school," rejected the colonial domain principle on the basis that the natives and their jural communities possessed the rights of allocation from time immemorial that could not be negated by a mere legal declaration by the colonial government (Vollenhoven 1919). Because of their opposition to the government's main legal narrative, the colonial administrators largely considered the Adat Law school to be a thorn in the flesh. Yet, the influence of the school prevailed in the colony through Leiden graduates who served in the colonial offices.

² The Leiden adat law school traces its intellectual genealogy to Von Savigny's historical school of thought. For a discussion of this school of legal thought, see Eikema Hommes (1979).

The discursive opening that the Leiden scholars created on native land rights made possible a form of intervention to the symbolic language of stateness embodied in colonial agrarian laws, even after the influence of Ethical Policy had waned. By the late 1920s, the progressive spirit of yesteryear had dissipated, and the political leanings in the colony had returned to conservatism (Lindblad 2002; Cribb 1994; Benda 1966). Yet, the legacy of the Adat Law school remained: in the administration of law, in the legal discourse among jurists, and in the Indies legal journal, the jural community and right of allocation remained indispensable concepts that defined the legal discourse in the colony. Their staying power was sustained by Leiden alumnae who assumed various posts in the colony as lawyers, teachers, colonial officials, and members of the Volksraad.

The first Native lawyers trained in the metropole belonged to this group. Sent to study at Leiden under the government scholarship program, these Native lawyers returned to serve in the colonial judicial system.³ Most started their careers as chairmen of the *landraad*,⁴ the court for the native population that had its seat in the capital of each regency. They administered law, made legal decisions, and set legal traditions for the native population on behalf of the colonial government. Among them were individuals who contributed to conversations about legal matters through newspapers, cultural bulletins, and, more importantly, legal journals, drawing topics from their daily encounters with cases in court. They borrowed the Adat Law school discursive framework in their engagement with colonial legal discourse, especially discourse on native land rights. They were at once judges and scholars; they played their part as state agents while also exercising their intellectual capacity; they made

³ Forty-two out of 189 graduates of the *Rechtsschool* earned their master's degree at Leiden, seven finished with a doctorate; however, not all of them went with the government's scholarship.

⁴ In later years, *Rechtshoogeschool* graduates would also start their career at, if not close to, the top position at a *landraad*.

law as part of the state-system and at the same time bore the consequences of their legal decisions as native subjects.⁵ In short, they took part in constructing the colonial state through the symbolic language of stateness. Their situatedness, however, resists the neatly drawn boundary between colonial state and colonial subject. It invites an examination of the persistent binary categories of colonial “state” and native subject.

Institutional and Discursive Framework on Native Land Rights

The administration of law in the Indies implemented the principle of separation following the classification of its inhabitants (see Appendix A). Except in semi-autonomous areas, the state-system administered Government⁶ justice (*gouvernementsrechtspraak*) through three separate courts: a court for Europeans, a court for Natives and Foreign Orientals, and a court for all groups for criminal cases.⁷ Europeans were subject to European civil codes (*Burgerlijk Wetboek*), while Natives and Foreign Orientals were subject to their respective customary and adat law. Ordinary court for Europeans was administered in the Residency Court that had its seat in the residency capital. *Raad van Justitie* reviewed Residency Court decisions in cases of appeal, while final decisions rested with the Supreme Court, the *Hooggerechtshof*.

For the Natives and Foreign Orientals, the *landraad* at the regency capital served as the ordinary court to hear and try all civil and criminal matters. A government civil servant trained in law chaired the *landraad* and led a team that

⁵ This will become apparent in the discussion on Prodjodikoro’s essay.

⁶ Henceforth I use the word Government with a capital G to denote the colonial government as a specific network of institutions and practices that dealt with administration of justice and with adat land rights, and that actively conjured the imagination of the state. See Appendix B for a diagrammatic view of the Netherlands East Indies governance structure in the late 1920s. The state-systems discussed in the dissertation are marked with dotted patterns.

⁷ The classification was not strictly based on race. Individuals could petition to be assimilated to European groups and hence submit to European civil codes.

included the regent and several prominent Native chiefs. A registrar was responsible for recording cases and maintaining correspondence with higher courts (Massier 2008, 80 fn 13). In addition to this team was a native law clerk (*rechtskundige*) assigned as an official seconded to the landraad with a career path that in principle could lead to the position of chairman. Appeals of landraad decisions were reviewed first by the European Residency Court before going to the Raad van Justitie and finally the Supreme Court (Massier 2008, 80 fn 13).

In the semi-autonomous areas, indigenous justice (*inheemsche rechtspraak*) administered law for all civil and criminal cases with a regent or *patih* presiding over the native court. Massier describes the complex system and its affiliation to Government justice as follows:

In addition to this indigenous justice, native judges presided over two institutions that came under the auspices of government justice, being the *districtsgerecht* (district court) and the *regentschapsgerecht* (regency court). The district head and the *regent* (or *patih*), respectively, functioned as sole judges, assisted by native counselors, a *penghulu* (state-paid religious official) (in the case of the regency court) and a *jaksa*. Their jurisdiction was confined to small claims and petty crimes committed by Natives only. Court decisions made in civil cases heard by the district court could be appealed at the regency court while review of the regent's decision would be undertaken by the *landraad* (Katwijk and Dekker 1993a:28–29). (2008, 83 n. 12)⁸

Because adat law remained the law administered by the landraad, legal decisions could suffer if and when the chairman was not well versed in the particularities and intricacies of adat law. The frequent transfer of the landraad chairman exacerbated the situation, as it limited his immersion in local adat dynamics. He would have to rely on translators and mediators who were familiar with local adat law, roles usually fulfilled by the registrar and the native chief members of the team.

⁸ For cases that involved subjects belonging to different classifications, interracial law (*intergentiel recht*) would apply, while for interracial commercial transactions, European civil codes would be followed (Darmawi 1973).

Even so, because of the frequency of incorrect translations, there was no guarantee that decisions would be made with the utmost recognition of local legal consciousness.

Such complexity prompted several initiatives to unify the legal system and to create a common civil law, but all of them failed. The proponents pointed out that a common law would enable the indigenous inhabitants to participate in increasingly commercialized agriculture and in internal trade (Hooker 1978a, 191). The Adat Law school scholars and jurists rejected the initiative (Hooker 1978a). They disapproved of the fast-paced imposition of European positivistic legal tradition upon the native population, and suggested a more gradual process such as via codification in the case of van Vollenhoven, and via jurisprudence and judge-made law in the case of Barend ter Haar.

As narrated earlier in Chapter 2, G.J. Nolst Trenite, a one-time legal adviser to the East Indies agricultural department, and Cornelis van Vollenhoven, the charismatic adat law professor at Leiden University, took a contrarian position regarding native rights on land. Whereas Trenite proposed loosening the legal protection of native land rights for agricultural estate expansion, van Vollenhoven argued that fallow and virgin land was not “free land” as Europeans understood it, but land under the jurisdiction of jural communities in the villages that exercised rights of allocation.⁹ The debate continued in the colony between Nolst Trenite and van Vollenhoven’s protégés Barend ter Haar and J.H.A. Logemann until the late 1920s¹⁰ (Burns 2004; Otto and Pompe 1989; Nolst Trenite 1929; Logemann and Haar 1929).

⁹ Van Vollenhoven was also a prolific writer in Dutch newspapers. Around this time, he published several articles on the topic of native land rights. See *Verspreide Geschriften 3rd volume* (Vollenhoven 1934).

¹⁰ Nolst Trenite eventually gained supporters from among the industrialists in the Netherlands and was granted a chaired professorship in the Faculty of Indology at the University of Utrecht, a new establishment sponsored by the Dutch industries to compete with Leiden’s United Faculty of Law and Letters (Burns 2004).

At a first glance, the debate seems like an ideal example of a struggle for hegemony, understood here not merely as a shared ideology but as “a common material and meaningful framework for living through, talking about, and acting upon, social orders characterized by domination” (Roseberry 1994, 361). To Roseberry, hegemony is a process whereby the state and community interact and eventually co-develop “a common discursive framework,” a language that was at once sanctioned by the state to express control and appropriated by non-state entities to wage contestation. The debate between the Adat Law school proponents and Nolst Trenite, who ultimately represented the Dutch industrial lobby (Burns 2004), seems to represent a struggle to become “the” common discursive framework for native land rights. In practice, the debate’s discursive dynamic deviates slightly from Roseberry’s theory. While Roseberry maintains the state as an important entity in the contestation, the state in this debate was absent, while the actors appeared distant from the state. One proponent was a university professor and his protégé, while the other was a staff member of a state-centered institution widely supported by the Dutch industry who eventually became an academic at the University of Utrecht. While the state blurred into the background, the state-systems in the form of the Governor General, the *Raad van Indie*, and the influential Department of Interior—the Binnenlands Bestuur—remained passive. Only the parliament members in Netherlands expressed tacit approval of van Vollenhoven’s native land rights argument by dropping the proposed amendment. I suggest that in this implied approval of van Vollenhoven argument, the state-system did not so much authorize Adat Law School discursive framework as tolerate it.

In deploying the concept of the right of disposal and the jural community, van Vollenhoven and the Adat Law school challenged the intrusion of European law into agrarian matters in the colony (Burns 2004; Logemann and Haar 1927; Vollenhoven

1919). The native population, he argued, deserved to regulate their property relations using their own property rights regime. Opening a free market for land transaction would be detrimental to the welfare of the natives as they would be defenseless against the predatory market of land and labor.¹¹ Arguably, van Vollenhoven's theoretical construct that found its legal backing in Article 62 of the Regeeringsreglement 1854 contributed to putting a brake on capital intrusion and massive land takeover in the colony. His construction of native land rights and adat community continued to inform later works on adat land rights. It gained currency as a parallel common discursive framework to which even the powerful, conservative Binnenlands Bestuur officials had to pay attention. In the colony, van Vollenhoven protégés, Indonesian and Europeans, would continue his struggle through numerous avenues, one of the most important of which was the legal treatises they published in the scholarly journal the *Indisch Tijdschrift van het Recht* (The Indies Journal of Law).

Indisch Tijdschrift van het Recht

The *Indisch Tijdschrift van het Recht* (ITR) was an influential flagship publication of the Netherlands-Indies Lawyers Association¹² that was re-established in 1913. Re-launched in 1915 from a previous publication, *Recht in Nederlandsch Indie*, ITR was intended to serve the Association's objective to provide its members with the means to study jurisprudence (*rechtswetenschap*), especially in Netherlands-Indies lawmaking (*wetgeving*), and the administration of justice (*rechtspraak*) (Katwijk and

¹¹ Van Vollenhoven argued that the entire system of native legal consciousness should be allowed to undergo its own evolution, which eventually will lead to a final, advanced form of individual land rights akin to Dutch's *eigendom* system (1919).

¹² *De Nederlands-Indische Juristen-Vereeniging*. Membership in the association was open to lawyers with doctoral and master's degrees (*gepromoveerde* and *afstudeerde*), *rechtskundigen*, and notaries, with an annual membership fee that included free subscription to ITR. Non-members could buy the journal at a price not less than the annual membership fee (Katwijk and Dekker 1992).

Dekker 1992). It was distributed free to all paying members, 286 in January 1915, seven of whom were native law clerks. The Association's bylaws called for two editors, one each from the judiciary and bar, in order to ensure the comprehensive coverage of legal issues that mattered most to both professions.¹³ With an initial readership shy of 300, ITR might not have been the largest academic journal in the East Indies, but it was influential considering the stature and position of its members in society. It was also influential in the way it became mandatory reading for certain courses at Leiden University United Faculty of Law and Letters and at the Batavia Rechtshoogeschool (Jaarboekje 1928).

ITR consisted of two sections: one section featured essays on legal matters (*verhandelingen*) and the other published comments on actual cases in the administration of justice (*geannoteerde rechtspraak*). The former frequently published essays, which contained such a wealth of information that they became informal guidelines to help judges navigate their way in the administration of justice, especially when it involved complicated interracial law or adat law. The section for the administration of justice, on the other hand, published expert commentaries on legal decisions the editors deemed important for the study of law in the colony. Through these means, ITR shaped the legal consciousness in the colony, and as a reference publication, it maintained a capacity to both amplify and curtail the Government's discourse on legal matters.

Among the topics discussed in the ITR publication between 1926 and 1942 were the native property rights regime, which expanded the pioneering works of van Vollenhoven and the scholars of the Adat Law school. The topic of agrarian reorganization in the Javanese Principalities in Central Java was of particular interest

¹³ Two Dutchmen served as its first editors: H.G.P. Duyfjes, registrar at the Netherlands Indies Supreme Court (*Hooggerichtshof*), and A.H. van Ophuysen, an advocate and attorney in Batavia (Katwijk and Dekker 1992).

due to the entangled administration of Government justice (*gouvernement-rechtspraak*) and indigenous justice (*inheemsche rechtspraak*) courtesy of the semi-autonomous status of the Principalities.¹⁴ The editors of ITR published three articles on the agrarian reorganization in the Principalities between 1929 and 1931 written by two Indonesians, Wirjono Prodjodikoro and Soepomo, a master's and a doctoral graduate of Leiden University, United Faculty of Law and Letters in 1926 and 1927, respectively.

Prodjodikoro and Soepomo belonged to the same cohort at the Rechtsschool and studied at Leiden at the time when Perhimpunan Indonesia, the nationalistic Indonesian student association in the Netherlands, was solidifying its non-cooperative stance towards the Dutch colonial administration. After graduating, both returned to serve in the Government judicial system, where they started their careers in the top positions in the landraad. By 1930, Prodjodikoro had served as official seconded to the chairman of the Landraads in Klaten and Boyolali (1926–1927), as extraordinary chairman seconded to the chairman of the Landraad in Makassar (1928–1929), and finally as chairman of the Landraad in Poerworedjo and Koetoardjo (1929–1930).¹⁵ Meanwhile, by 1931 Soepomo had served as official seconded to the chairman of the Landraad in Yogyakarta (1927–1928), chairman of the Landraad in Yogyakarta (1928–1930), and, starting in 1930, as official seconded to the Ministry of Justice to implement research on the private law of the indigenous population.¹⁶ Experience as

¹⁴ The Javanese principalities (*Vorstenlanden*) in Central Java were semi-autonomous areas that consisted of Yogyakarta and Surakarta. Surakarta was the home of the Kasunanan and the Mangkunegaran royal houses, ruled respectively by the Sunan and the Mangkunegara. Yogyakarta was the home of Kasultanan, led by the Sultan, with a small area carved out for the minor royal house of the Paku Alaman. Considered to be the center of Javanese civilization and culture, Yogyakarta and Surakarta in the early 20th century hosted and were home to scholars, intellectuals, entrepreneurs, and planters as well nascent radicals from all racial backgrounds (Shiraishi 1990, Sears 1996, Bosma and Raben 2008).

¹⁵ *Stamboek van Meester Wirjono Prodjodikoro*, ANRI.

¹⁶ Curriculum Vitae of Soepomo in the archive of M. Yamin, ANRI.

landraad personnel equipped Prodjudikoro and Soepomo with a mastery of the common discursive framework as well as cognizance of the symbolic language of stateness, which they demonstrate in their ITR articles.

Symbolic Language of Stateness in the Hands of Native Scholars

Starting in the mid-19th century many *patuhs* began to lease their *apanage* to Dutch planters (Bosma and Raben 2008). But *patuhs*' continued demands for higher rents, combined with pressure for long-term security from foreign investors, sent the planters to the Residents in Yogyakarta and Surakarta to ask for protection from the *patuhs*' arbitrary demands. At the same time, the central Government in Batavia was reluctant to respond to these requests, lest they end up rocking the boat (Haspel 1985). However, eventually they relented. The negotiations between planters, Surakarta and Yogyakarta Residents, officials at the Binnenlands Bestuur, and the Principalities' administrators started in 1909. Full implementation of the reorganization began in 1912 and finished only in 1926 (Haspel 1985).

By the time Soepomo and Prodjudikoro published their articles in ITR, the reorganization had been finalized and had transformed the agrarian system in Surakarta and Yogyakarta. It replaced the *apanage* system with a newly formed village system; it introduced village administration to take over the traditional role of *bekels*; it defined the peasants' right to land more clearly; and it revised land lease regulation addressed at Dutch agricultural enterprises. The articles by Soepomo and Prodjudikoro assessed the impacts of the reorganization on their contemporary society. Born and raised in Surakarta, Soepomo and Prodjudikoro produced legal knowledge about the Principalities from double perspectives: from the perspective of knowledgeable indigenous individuals and, having served in *landraad*, also from the perspective of state agents.

Wirjono Prodjodikoro 1930: A Struggle with Marginalization

The underlying theme of Wirjono Prodjodikoro's article *Het een en ander over het adatvermogensrecht der Indonesier in het gewest Surakarta*¹⁷ revolves around the marginalization of Surakarta's remaining sovereignty. That the sovereignty of the Principalities had long been circumscribed¹⁸ was an accepted fact among educated elites, but continued marginalization of the Principalities had irked Javanese nationalists. In Boedi Oetomo congresses in the early 1920s, many members expressed dissatisfaction with the intensified Dutch intrusion in Surakarta and Yogyakarta internal affairs (Larson 1987) and the half-hearted attempt to emancipate native officials.¹⁹ Prodjodikoro's article reflected this rising sentiment and explored the circumscription through three rubrics of law: jurisdiction, legal subject, and adat property law. Convinced that effective command of each of these rubrics reflected the level of sovereignty of semi-autonomous regions,²⁰ Prodjodikoro demonstrated that this was not to be the case with Surakarta.

Prodjodikoro asserted that legal subjects²¹ (*rechtssubjecten*) in Surakarta were a flimsy category subject to the colonial government's whim. For decades, the Government had categorized Indonesians from outside of the Principalities as Foreign Orientals²² with the consequence that European civil codes applied to them for

¹⁷ A Few Things about the Adat Property Law in the Regions of Surakarta.

¹⁸ Their status as vassals required them to maintain passive legation duty by attending regular reception of Dutch Residents in the Principalities (Resink 1976).

¹⁹ Soepomo's keynote speech at the opening of Boedi Oetomo's 1927-1928 congress. In his speech, Soepomo expressed his skepticism regarding the Government's *ontvoogding* program, that is, the program to emancipate the native administration corps (*Inlandsch Bestuur*).

²⁰ Because the territorial jurisdiction for Surakarta was relatively established, Prodjodikoro wrote only summary paragraphs about it.

²¹ Dismissive of the jurisdiction (he wrote only three short paragraphs about it, most likely because the Principalities jurisdiction was more or less stable), Prodjodikoro focused his article on the remaining two rubrics.

²² St. 1855 No. 79 article 9.

property law (*vermogensrecht*), testamentary inheritance law (*testamentair erfrecht*), evidentiary law (*bewijsrecht*) and qualification (*bevoegdheid*). In 1912,²³ when the Government eliminated this category, it created a legal limbo for non-local natives living in Surakarta. It was unclear which adat law would be applicable to them, leaving a complicated question that was neither easy nor short to answer (Prodjodikoro 1930, 109). Particularly in the case of property rights and commercial transactions (*vermogensrecht*), Prodjodikoro concluded that non-local natives had no option but to go along with the locally applicable adat law that, fortunately, he stressed, provided adequate security.

Because of the Government's indifference, legal subjects in Surakarta were informally grouped into three categories: 1) Sunan's subjects (*onderhoorigen*), encompassing all Indonesians who were established in the Kasunanan area of Surakarta, and Indonesians who originated from the Kasunanan but resided in the Mangkunegaran area; 2) Mangkunegaran's subjects, which included all Indonesians who were established in the Mangkunegaran area of Surakarta, and Indonesians who originated in the Mangkunegaran area but temporarily resided in the Kasunanan area; 3) Government's subjects, which included all remaining Indonesians originating from outside Surakarta but who temporarily resided in the Surakarta area (Prodjodikoro 1930, 110).

The colonial Government re-categorized subjects in Surakarta when they introduced a new law decreed in St. 1921 No 566. In this law, Indonesians who were employed by the Government (*Landsdienaren*) were re-categorized as "the subject of the state" (*Landsonderhoorigen*), or more precisely the subject of the Government.²⁴

²³ St. 1912 No. 451. See Resink 1976 pp. 464-465 for a brief explanation of legal relations between the Principalities and the colonial government.

²⁴ In legal terms this means that Government employees such as Prodjodikoro and Soepomo themselves would be tried at the government's *landraad*, instead of the native court, should they become defendants in a legal case.

This decision, Prodjodikoro reported, created a furor among Surakarta's leaders, who deemed it ungrounded. A member of the Volksraad from Surakarta, Mr. Dwidjosewojo, protested this move and filed a motion to repeal the code in the Volksraad session of 1921. It was flatly rejected by Mr. Schippers, the director of the Binnenlands Bestuur, who invoked a principle that the Government had adopted at one time whereby "the [colonial] state's employees, wherever established, are the subject of the [colonial] government (*Landsonderhoorigen*)."

Prodjodikoro was skeptical of Schippers's argument, and wrote,

Does the Government mean to say that they would not tolerate a departure from a one-time adopted principle, without the need to find, that first an investigation is carried out on the possibility of locally different conditions? If that is so, then it seems to me [it is] a questionable proposition. Mr. Dwidjosewojo had already pointed out in the objection, that through St. 1921 No. 566 a great injustice was created, that now a much greater number of persons who live in the semi-autonomous area, on the one hand shall enjoy the security and other regulation [offered by] the semi-autonomous area, but on the other are indeed free from regulations and obligations imposed by the semi-autonomous administrators, and that in addition, all the tax imposed on them flow into the (colonial) Government treasury. (1930, 111)

This skepticism of the Government's legal decision reflected the increasing assertiveness among Surakarta's elites vis-à-vis the Dutch. They learned to distrust the colonial government after the annexation of the semi-autonomous kingdom of Karangasem in Bali in 1922 and the new contract between the Dutch and the Sultan of Yogyakarta in 1921 (Larson 1987). In a circle meeting in 1926, Surakarta's elites expressed their dissatisfaction with the Government ordinance that revoked certain native law court jurisdiction and legal powers in the Kasunanan (Larson 1987). Presumably Prodjodikoro was aware of these developments. The Government's defense using the exterritoriality principle irked him, and he retorted,

This argument of the government seems at first sight adequate, but in my opinion it does not amount to much. What's important is this: how far does

exterritoriality go? Also the argument borrowed from *Bijblad* 9385 p. 247, that persons employed by the government may be considered the true representatives of the government, is far from convincing. Is it correct to maintain that a switchman of the Indies State Railway could be considered “the true representative of the government”? The matter—in my opinion—is perceived by the government from too much a theoretical point of view, whereby no sufficient concern is given to the practical difficulty the regulation causes. (1930, 112)

Here, Prodjudikoro problematized the Government’s move to reconfigure native subjects into categories that benefited the Government. Ordinarily, natives in Surakarta were subjects of the Sunan or the Mangkunegaran and paid taxes according to Surakarta’s legal codes, but with the new law, any natives employed by the Government were to pay taxes to the colonial government, not to the Native Sovereign. Prodjudikoro considered this an unfair, arbitrary move and contested the categorization that doubly disadvantaged Surakarta, both materially through loss of taxes and discursively through an implied disesteem of its sovereignty.

The Government’s move represented by the *Binnenlands Bestuur* demonstrates subject formation as the twin side of state formation (Krohn-Hansen and Nustad 2005). The colonial state-system needed to mold subjects into a form of abstraction and simplification that represented the reality it aimed to control. By categorizing the subjects this way, the colonial state-system achieved a legible frame making management and domination possible. Redefining native employees as the subjects of the Government would presumably ensure loyalty, either voluntary or coerced.

In addition to depriving Surakarta of its legal subjects, the Government marginalized it even more by intruding on its indigenous administration of justice (*inheemsche rechtspraak*) on property and land rights. Adat law in Surakarta followed a different thought world from the European law. Rights and obligations in Surakarta, “are perceived by adat law from the standpoint of the object with which [individuals] have a relationship, and towards this object rights and obligations are refracted”

(Prodjodikoro 1930, 112, emphasis added). The Surakarta legal thought world acknowledged two main forms of property: land and water, reflecting the agricultural character of the population. Movable objects such as houses and crops were grouped under these two forms. It was this legal thought world that brought Surakarta a special court called *Balemangoe*, which heard and tried issues of land disputes.

Putting a legal object at the center of the administration of justice was in contrast with European tradition that focused on the subject: regardless of the object in dispute, the trial would take place in the court applicable to the subject. Prodjodikoro noted how Surakarta indigenous administration of justice had undergone a long process of marginalization that started as early as 1847, when *Balemangoe* was abolished by the Government through the decree of St. 1847 No. 30. It was further weakened by the Sunan's decision in 1894²⁵ that removed from the jurisdiction of the Surakarta court of justice decisions concerning land and the *bekel* system. The Regent was now able to resolve land disputes in his capacity as a government official, with his decision requiring consent from the royal officials. The final decision, however, still had to be approved by the Dutch Resident (Prodjodikoro 1930).

Prodjodikoro's account reflects how the colonial state-system penetrated the indigenous administration of justice for land disputes, more intensively so after 1894 when owners/managers of agricultural estates in Surakarta began demanding a more "reliable legal security," which led to the agrarian reorganization and eventually to a full transfer of land conflicts under the jurisdiction of the *landraad* (Haspell 1985). Another blow to the indigenous administration of justice was imposed by the executive order (*dawoeh*) of the Sunan's Royal Administrative Office in March 21, 1905. This order, presumably intended to elucidate the 1894 regulation, listed the types of disputes that had to be resolved using the executive authority. It included

²⁵ Soenanpranatans May 31, 1894 No. 92.

disputes regarding land rights (*bezitrecht*), land pawning (*gade ginade boemi*), or the leasing of land (*tebas tinebas boemi*).²⁶ Prodjodikoro wryly noted,

One may now with Mr. Thieme, Prof. Mr. Ter Haar, and Mr. Soepomo²⁷ dispute the fact of the legality of the said Sunanspranatan of 31st May 1894 and the dawuh of the Soenan's royal administrator of March 21st 1905. The fact that those semi-autonomous [region] regulations exist and are still being followed in practice until today, in connection with what we have mentioned under section II and III, does seem to convince [us] that Surakarta adat law views the land (and also water) as unmistakably distinct legal objects from other remaining legal objects. (1931, 113)²⁸

It would be off the mark to take the colonial Government as the only party involved in the marginalization of indigenous administration of justice (*inheemsche rechtspraak*). European scholars were also culpable for similar offenses. In the last paragraphs of his article, Prodjodikoro narrated what he deemed a flattening of the native legal thought world. In the adat law literature dominated by Dutch scholars, he found that every immovable object (those not categorized as land, water, houses, or crops) was grouped into *schuldenrecht* (debt law) as opposed to *grondenrecht* (land law). Dissatisfied with these categorizations, Prodjodikoro insisted that categories between Javanese and European legal thought were not necessarily interchangeable. He marked,

²⁶ In the case of water as a legal object that establishes property relations among the Surakartan natives, Prodjodikoro described the institutions that managed water issues in Surakarta, which was regulated by articles 45 and 61 of the Surakarta legal code *Angger Goenoeng*.

²⁷ Prodjodikoro provided full references for the works of each person he cited in his article. They are *Indisch Tijdschrift van het Recht* vol. 109 (1918) pp. 1-14 for Mr. Thieme, *Adatrechtbundel* 23 p. 201 for Prof. ter Haar, and *De Reorganisatie van het Agrarisch stelsel in het geweest Soerakarta*, Soepomo's dissertation for his doctoral degree Leiden.

²⁸ Prodjodikoro added the following observation on houses and crops as legal objects:

Of two other legal objects, house and crops, one can doubt whether they can—in the adat system—be equated with land or whether they belong to another category of legal objects, which for convenience may be designated movable property, or belong to neither one nor the other, but constitute a separate category. It appears to us, that in Surakarta they belong (very well) to the category of land. (1930, 114)

A Javanese term for *schuldenrecht* (debt law) is not known. The term *oetang kapipotang* used by Prof. van Vollenhoven and ascertained by Holleman for Toeloeng-Agoeng is in my opinion too restrictive. In my opinion, it is difficult to bring transactions such as rent [*huur/sewo*], safekeeping [*bewaargeving/titip*], and mandate [*lastgeving/kongkon*], under this term (i.e. *oetang kapipoetang*). . . . [In Surakarta's legal code *Angger Goenoeng*] nowhere it is shown that the *potang pipotang* [was] used as a generic term for "debt law." (Prodjodikoro 1930: 115)

To Prodjodikoro, many distinct terms in Javanese, such as *potang pipotang*, *gade ginade*, *silih silihan*, *hadoel toekoe*, *titip tinipan*, as mentioned in Article 64 of Surakarta's legal code *Angger Goenoeng*, hardly pointed to the term *potang pipotang* as a generic term for debt law. The term *prakoro poro padoe*, on the other hand, was too broad, since it also included disputes concerning family and inheritance.

In his critical assessment of adat law literature developed by its architect himself, scholars, and his prominent student, Prodjodikoro attempted to demonstrate an inimical discursive dynamic whereby limiting terms and categories imposed by Eurocentric interpretation of Surakarta adat law flattened the dimensions of property relations. It ignored nuances in the indigenous legal consciousness, which took its cues from the particular social structure and relations involved. In fact, Prodjodikoro actually echoed van Vollenhoven's advice to European jurists to acknowledge the local episteme as legitimate and parallel to Europeans' in order to understand the native milieu on its own terms (Vollenhoven 1919). Prodjodikoro's short diversion to critique van Vollenhoven can easily be mistaken as trivial, a minor difference between two academics who essentially belonged to the same school of thought. However, this "minor" difference becomes salient when read in the context of colonial conditions, first because it demonstrates a native intellectual's independent capacity to deliberate (Zachernuk 2000), a precondition for agency, and second because of what was at stake in the micro-relations of power in the entangled world of colonial academia (Bremen and Ben-Ari 2005). Anecdotes such as this urge one to rethink literatures that

downplay the intellectual independence of native scholars in light of their charismatic European professors.

Yet, a key question remains: in what way was Prodjodikoro's article an expression of state formation? As stated earlier, state formation needs to be understood in the context of the resistance and struggle it is formed against (Joseph and Nugent 1994; Corrigan and Sayer 1985). Through his article, Prodjodikoro expressed a two-pronged rejection of colonial state formation: first, he rejected the continued marginalization of Surakarta sovereignty, and second, he rejected the flattening of native legal thought. He disapproved of landraad intrusion into land conflicts and disputes, despite the fact that he himself was the landraad chairman in Poerworedjo and Koetoardjo at that time.²⁹ Borrowing the symbolic language of stateness, Prodjodikoro quietly waged his contest against the colonial state, in this case the Binnenlands Bestuur, that conjured the practices and processes of marginalization through legal discourse, as realized in St. 1921 No. 566. The fact that Prodjodikoro himself was part of the state-system as a landraad chairman demonstrates Abrams's argument (1988) that "the state" is never a coherent entity, but rather a cacophony of contesting interests.

Prodjodikoro ends his essay on a contemplative note:

In total absence of any Javanese name that indicates *schuldenright* (debt law), we should not need to be immediately surprised. We have but to remember that, for example, for the word *dragen* (carry) in the larger sense no collective name exists in Javanese. People talk of *njoeggi* (carry on the head), *mikoel* (carry on the shoulder), *gendong* (carry on the back), *tjangking* (carry with the hand). (1930, 116)

²⁹ *Stamboek van Meester Wirjono Prodjodikoro*, ANRI.

Soepomo 1929: Reinterpreting Supreme Court Ruling

Agrarian reorganization swept through the whole region of the Principalities, including their urbanized capitals, Solo and Yogyakarta, where land use and land classification were different from the rural areas. Soepomo's work *Adatgrondenrecht ter hoofdplaats Jogja na de Reorganisatie* (Adat land right in the capital of Jogja after the reorganization) complemented an earlier publication by Barend ter Haar in *Adatrechtbundels* volume 22, 1923, that laid out nine categories of land in the capital of Yogyakarta (also named Yogyakarta) prior to the reorganization. In this article, Soepomo examined the status of land rights in Yogyakarta after the reorganization. He carefully recorded all relevant aspects of land rights in the capital, and he described various codes introduced between 1918 and 1925 that dealt with lands not affected by the reorganization; and he discussed different procedures for Indonesians who wished to acquire the European right to build (*opstalrecht*). His most valuable analysis, however, was on the different impacts of the reorganization on urbanized and rural areas of the capital, specifically on the nature of ownership.

The agrarian reorganization shaped different land categories differently. Out of nine categories of land described in ter Haar's article, three were untouched by the reorganization,³⁰ and six underwent substantial changes. They are: 1) land used as payment for the Principality's official salary (*ambtelijke gebruiksrecht* or *tanah golongan*); 2) land used by extended family of the royal house (*tanah kasentanan*); 3) land used by the regent; 4) orchards located outside the city center (*kebonan*); 5) properties of *wong cilik*,³¹ literally "little people," falling outside the other categories;

³⁰ The three included 1) land used directly by the Sultan himself; 2) land used by the colonial government such as the Resident's house, military forts, and so on; and 3) land given to Chinese or Europeans under the European property ownership form such as *eigendom* or building rights (*opstalrecht*).

³¹ From *wong cilik*, a Javanese term for poor people that included peasants, day laborers, and the urban poor. This term was popular during the rise of nationalism in the late colonial period.

and 6) rice fields managed by *bekels*. With the Royal Decree Rb. 1925 No. 23, the Kasultanan relinquished its control of the first four, previously managed under the *bekel* system, to the people who had worked and lived on the land for generations. They became the effective owner of these lands.

To the fifth category, properties of *wong cilik*, the reorganization introduced a legal framework for ownership, granting the people inheritable usufruct rights (*erfelijk gebruiksrecht*) under the native property rights regime, a significant improvement from the arbitrary apanage system. The same change affected the sixth category, rice fields previously managed by *bekels*. After the Kasultanan abolished the apanage system and dismissed all *patuh* in 1914, the stewardship of the rice fields returned temporarily to the Kasultanan. *Bekels* were retained until 1925, when the Kasultanan ceded the rights to the entitled peasants who had worked the rice fields for generations. Understanding the legal consequences of these changes, Soepomo was firm in his belief that agrarian reorganization introduced a claim for the *wong cilik* by granting them a proper legal framework to secure ownership.

To Soepomo, the most profound impact of the reorganization was the elimination of the complicated legal relations. Gone were the arbitrary rules decided by the whims of the *patuhs*, *bekels*, or regents. In their place was the modern property relations regulated by law that laid out rights and obligations, guaranteeing secure ownership. Contemporary accounts record a more complicated day-to-day peasant's experience than what Soepomo narrated in his article (Pranoto 1991; Shiraishi 1990; Larson 1987). However, in his subjective experience, Soepomo considered that a clear legal framework offered the *wong cilik* recourse to court, even to landraad, should they find their use rights unfairly challenged. For Soepomo, such legal security was superior to the management of land under the traditional apanage system (Soepomo 1929, 5).

The urbanized section of Yogyakarta was divided into *kampungs*,³² administrative divisions with no presence of a jural community as in the rural areas. Native lands in these *kampungs* were owned independently from the control of the community: the buying or selling of land required no community approval. Consequently, native-owned land rights in the urbanized area was more amenable to evolving into individual rights. When the Kasultanan transferred ownership of urban land to the entitled inhabitants, it created a new form of ownership that Soepomo called Eastern *eigendom*, a concept proposed by van Vollenhoven (1919). Eastern *eigendom* arguably offered stronger legal security than inheritable use rights because it was a more complete individual ownership that the Principality acknowledged as long as the native owners underwent a process of claiming, verifying, registering, and obtaining a form of written proof called a land register.

Soepomo carefully documented the process through which a plot of urban land could be transferred from inheritable-use right status to Eastern *eigendom* status. It consisted of measuring the plot, mapping the block-wise parcel, recording it in the land registration office, and having the record kept in the land registration office. He writes:

The land under the native land rights regime is measured and mapped block-wise and recorded in land registers (*grondregisters*). . . .³³ The records are kept and maintained by the land-registration office established at the capital . . .³⁴ Selling, either under-the-table (*dilijerake, doltinoekoe*), or execution (*dilelangake*), gift (*diriläake, dilintirake*), and exchange (*diidjolake*) of lands possessed under native rights of disposal can only be carried out for individuals who are the subject of semi-autonomous areas³⁵ or to Indonesian

³² *Kampungs* in this sense were villages that had become so urbanized that jural communities no longer played a role in people's daily lives.

³³ Royal Decree Rb. 1926 No. 13 jo. No. 24 (Kasultanan) and Rb. 1925 No. 36 jo. Rb. 1926 No. 13 (Pakoealaman).

³⁴ Rb. 1926 No. 32 (Kasultanan) and in Rb. 1927 No. 8 (Pakoealaman).

³⁵ In this case, subjects of Yogyakarta Principalities.

institutions of public or religious nature. . . .³⁶ For a transaction to be valid, a transfer to the name of the assignee (*rechtverkrijgende*) had to be reported in the land register (*grondregister*). Pawning (*sende; panggade*) of land under the native property rights regime acquires the force of law (*Rechtskracht*) only through the making of a record at the land register. . . .³⁷ Without transfer or recording in the land register, there is no alienation or pawning agreement. This article, which prescribes under which terms the said transfer or recording must be done in the land register, is unambiguous—as is evident from its redaction—about the idea that alienation or pawning has taken place and that subsequent transactions should later be registered! (1929, 7)

In this passage, Soepomo essentially narrates a process of state formation in the Kasultanan. The series of activities to register Eastern *eigendom* necessitated the presence of a state agent, that is, a land register official, and required a certain form of legal subject. To own a piece of land in Yogyakarta one had to be a legal subject of the Sultan (or the Pakualaman royal house). “The state” materially emerged in the form of land register personnel and land cadaster staff, and continually reproduced its presence through the recording of land transfer each time land changed hands. The passage pointed out to the ITR readership that Yogyakarta as a state was in the process of “modernizing;” it was a state capable of progressing to a “modern” management of land that favored individual-oriented ownership. Indeed, the reorganization had introduced the land register system into the native property rights regime.

The situation was different for areas in urbanized Yogyakarta that still retained their rural character. Soepomo wrote,

Transactions of land that is still under village rights of disposal, thus land under “usufruct rights,” take place in the presence of the village meeting. In addition, the agreement is recorded in the village register, but the recording possesses only administrative significance. If a transaction of land with “usufruct right” status takes place without the foreknowledge of the village officials or of the village meeting, then it is *peteng*. In other words, the

³⁶ Rb. 1926 No. 1 jo. Rb. 1927 No 13 Kasultanan and Rb. 1925 No. 32 jo. Rb. 1926 No. 24 Pakoealaman.

³⁷ Rb. 1926 No. 1 Kasultanan en Rb. 1925 No. 32 Pakoealaman.

transaction is not complete; its fulfillment shall not be enforced in court. (1929, 8)

In this essay, Soepomo meticulously documents the result of the reorganization in Yogyakarta, especially the process to change the native form of ownership into Eastern eigendom. This document has to be read against the reality of the administration of justice in the Government's *landraad*. Before 1910, most *landraad* chairmen could not speak the native language, were the only Dutch-speaking officials, and most likely were the only ones versed in law. They served a short stint in each *landraad*, about 2 to 3 years, before being shipped off to another *landraad*. Their short service period and their lack of local language mastery made it difficult for them to understand the local adat dynamic, which often led to disastrous court decisions (Massier 2008). By the 1930s, the situation had improved due to the presence of native law clerks and Indonesian lawyers who graduated from Leiden, and who acted as interlocutors between non-Indonesian *landraad* chairmen and the locals. Even so, this was no guarantee of an intimate knowledge of the nuances of local adat law.

Contextualized in this way, Soepomo's attention to detail reflects a concern for a possible disconnect between *landraad* personnel and local dynamic on land rights that might lead to disastrous decisions. Having these details recorded and archived in the ITR, Soepomo seemed to believe that the *landraad* would not unknowingly commit injustice against "the little people" who took the trouble to register their land claim. In fact, with his article as a reference, *landraad* personnel would have been able to advise the little people about acquiring proper legal documentation to secure their property.³⁸ With such conviction, it is hardly surprising that Soepomo supported the newly

³⁸ Soepomo was more explicit about this advising role of the *landraad* chairman in his 1931 article in ITR, where he mentioned that in his capacity as *landraad* chairman of Yogyakarta, people often consulted him on matters regarding inheritable use rights.

introduced land registry system in Yogyakarta and dismissed the skepticism of this European influence in the native system. He argued,

Although the land registry was introduced through European influence, what is important here is native property right on land; and this right does and remains a right that belongs in the adat law, such [that] the question of proof over native property right in relation to the regulations of the adat law should be evaluated. The current adat law does not recognize the distinction of the positive and negative [legal] system; it recognizes no strong formal regulation with regard to the evidence and in the adat process requires only a satisfactory ruling by the judge. (1929, 9)

Adat law, Soepomo acknowledged, was unfamiliar with objective proof of ownership. It traditionally relied on the discretion of the judge in cases that required proof. Introducing a land register system would dampen the possibility of arbitrary judge decisions, thus protecting the “little people” who had no power to tip the judge’s decision in their favor.

In the mainstream colonial legal discourse, the native property rights regime continued to be considered inferior to the European model due to its lack of an individual ownership structure in parallel with the Dutch eigendom right. Earlier in his works, van Vollenhoven downplayed the presence of individual ownership in the native system (1931). However, in his later writing he acknowledged the possibility of the native system of proprietary rights evolving into one that acknowledged individual rights, which he termed Eastern *eigendomsrecht* (Vollenhoven 1919). As he analyzed adat law on land in urban and rural Yogyakarta, Soepomo re-introduced van Vollenhoven’s Eastern *eigendomsrecht*. In theory, Eastern *eigendomrecht* would provide stronger legal security than the inheritable usufruct right because it was a full individual ownership right. In citing Eastern *eigendomrecht* Soepomo demonstrated the capacity of a communal-oriented native property rights regime to evolve into a regime that also acknowledges full individual rights. He did so not by comparing

properties in two different chronological periods, which would have required him to invoke abstract examples, but by comparing properties in two different geographical settings, rural and urban, materially existing at the same time. This demonstration gives credence to van Vollenhoven's conviction of the capacity of native property rights to transform to individual forms of ownership (Vollenhoven 1919, 10–11).

Unfortunately, the construct of Eastern *eigendomsrecht*, a form of native property ownership supported by the land register office and endorsed by the Yogyakarta Principality, lacked the legal support of the Supreme Court, as Soepomo remarked:

With regard to the Indies eigendom document (*Indische eigendomsakte*), by its judgment of January 5, 1911 (RNI 96, p. 535, 546 and 556), the Supreme Court has taken a standpoint that the deed does not provide the presumption of [European] *eigendom*. (Soepomo 1929, 8)

Here the contestation between the Adat Law school and the mainstream legal discourse in the colony becomes more transparent. In *De Indonesier en zijn grond*, van Vollenhoven had expressed his incredulity that the Dutch legal system could refuse to accommodate a native property rights system that was undergoing a process to “mature,” a process of evolving towards individual-oriented rights (1919, 10, 63–4). By 1929, ten years after this plea, and eighteen years after the Supreme Court decree in 1911, the refusal remained.³⁹

Soepomo was undeterred by the decree. Even though the Supreme Court proclaimed that the native land register had no evidentiary value, as long as it was widely accepted by the community, Soepomo saw no reason why it could not serve its purpose as a proof of ownership. Reinterpreting the Supreme Court's decision, he

³⁹ Such systematic control to keep native property rights inferior vis-à-vis Europeans' was not news. It was widely understood as the Government's attempt to keep land off the market, broker transactions between Natives and Europeans or Foreign Orientals, and skim off to the Government's coffer the differentiated price between Native price and free market prices for land (Tauchid 1952).

prescribed in his own vision of what a *landraad* chairman needed to do when a conflict arose.

What concerns the Government judge, particularly the *landraad* in Jogja, on the matter of evidence, [is that] he is to consider native regulation, and the relevant question to consider hereby is whether or not the land register is an authentic deed.

The answer is affirmative [that it is an authentic document], but the concern here is [that it is] an authentic official (*ambtelijke*) document, which none of the [disputing] parties are entitled to and of which the material evidentiary value is thoroughly at the discretion of the judge.

Take into account, however, the regulation about the land registration; the objective that it intends, that is, legal security about the free native property right . . . the activities that are related to the land registration, such as the block-wise survey of the land and so forth, and the guarantee, which the registration rules place upon the registration staff by entering the land and the rightful claimant [into the land registry ledger]. Considering all of this, the land register should have a great evidentiary value to convince the judge, much greater than what elsewhere [is fulfilled] with land rent register and land rent note. The practice by the *Landraad* in Jogja is then also this: that he who refers to the land register [as proof] is released from having to provide further proof, and the opponent has to provide counter proof. (Soepomo 1929, 9, emphasis added)

In this passage Soepomo effectively argues that a *landraad* judge should worry less about European law and more about adat law. Implied in this paragraph is an encouragement to overlook the Supreme Court decree that proclaimed a native land register did not have a legal evidentiary value. More important was what the native population deemed to be the value of the land register. Moreover, adat law recognized no positive law, but relied more on the decision of the judge. Soepomo reminded his readers that the procedure involved in producing a land register was so extensive that it warranted being taken seriously. It was extensive enough that Soepomo was confident to endorse it against other evidence valid elsewhere, evidence such as the land rent register and the land rent note.

With this argument, Soepomo established the role of judges in Yogyakarta in response to regulations and institutions introduced by the agrarian reorganization.

Using his extensive theoretical and empirical knowledge, Soepomo prescribed the stages for a judge in considering cases of disputes regarding land under the native property rights regime. His detailed record of the steps to convert land not under the control of jural communities into Eastern *eigendomrecht* became a reference on which any landraad judge could fall back. By reinterpreting the Supreme Court's refusal to acknowledge the evidentiary value (*bewijskracht*) of the land register, which would have kept the native property rights regime perpetually inferior to the European model, he assured his readers and landraad personnel that this land register did have value and could be used as the basis for legal decisions in land conflicts.

In contrast to the changes and processes in the urbanized section, the rural areas in the capital of Yogyakarta followed the same transformation path as the rural areas outside the capital where the *bekel* system was terminated. With the royal decrees Rb. 1918 No 16 KasoeItanan and Rb. 1918 No 18 Pakoealaman, the Principalities transferred the ownership of the land to the three villages, which then exercised the right of disposal. The village members became 'shareholders' of the land under the stewardship of the village, and exercised inheritable use rights on their allotted land. Soepomo described the new system as follows,

The "inheritable use right" of the villagers is nothing other than a native property right, which in character is not dissimilar from the said free native property right. It is only that [the former] is trapped (*bekneld*) in the village right of disposal (*dorpsbeschikkingrecht*), although according to Rb. 1925 no. 23 (Kasoeltanan) and Rb. 1925 No. 25 (Pakoealaman) the village members could petition the Principality at any time to remove this crushing binding (*knellende band*), and thus elevate their unfree land into a free native property right land.

The owners of land in the *kaloerahans* inside the capital of Yogyakarta, as well as those in [the *kaloerahans*]⁴⁰ outside the capital, are authorized [to carry out] all transaction over their land the same way as the owners of the free

⁴⁰ *Kaloerahan* was the smallest administration unit in Yogyakarta that still contained a jural community, as opposed to a *kampung* that lacked a jural community.

native property right in the capital. Their transaction, however, requires the cooperation of the village meeting, which can raise objection against the proposed transaction.

The land registers [system] is not applicable to the unfree native land in the jural community of the *kaloerahans*, but those entitled to the land could acquire a *kohier* in which their names and the related land are registered.

The *kohier* is an authentic official document, whose material evidentiary power [depends] upon the independent discretion of the judge. While this *kohier* is based on less technical safeguards than the land register, it nevertheless performs the tasks mentioned in the land issues appealed before the Landraad in Yogyakarta, and also had a strong position [as proof of ownership]. (Soepomo 1929, 12)

In this passage, Soepomo essentially offers his interpretation of legal rulings decreed by the Principality, and prescribes operationalization of the rulings for the benefit of the landraad personnel in Yogyakarta.

Soepomo's article embodies the symbolic language of stateness in a rather unpredictable way. On the one hand, the article conjures the imagination of the state. It exposes readers, jurists, and lawyers, even Volksraad members, to the impact of the agrarian organization in Yogyakarta on the administration of justice. It provides a reference for legal decisions regarding native land rights, especially for the landraad in Yogyakarta, but more generally for legal officials in the colony. Further, in the way the article documents the relation between native subjects and the colonial state-system, that is, the landraad and the Supreme Court, Soepomo not only reifies but also sustains the appearance of a coherent colonial state which, through landraad decisions, has the final say over land issues. Soepomo also endorses the new land register system in Yogyakarta, which, in its own way, renders the presence of the Yogyakarta Principality as "the state" to its subjects materially and to ITR readers ideationally.

On the other hand, Soepomo's reinterpretation of the Supreme Court ruling that denied the evidentiary value of Eastern *eigendom* (or, as expressed in the 1911 wording, *Inlandsch eigendomsakte*) very subtly punctured the appearance of the colonial state as a coherent entity that authorizes. The fact was, in cases of land

disputes, Soepomo authorized the evidentiary value of the native land register since all the activities surrounding its issuance bear enough weight to maintain the land register's relative value. The land register might have not lived up to the Supreme Court's Eurocentric demands, but among its most important stakeholders, that is, the Yogyakarta subjects and those involved in transactions with them, it had its own significant value.

Soepomo 1931: Village System as State Formation

Soepomo's 1931 article *Verslag omtrent het onderzoek naar het adatgrondenerfrecht in het gewest Jogjakarta buiten de hoofdplaats* (Report on the Research into the Adat Land Inheritance Law in the Yogyakarta Region Outside the Capital) was the result of field research in rural Yogyakarta. Endorsed by the Assistant Resident and the Government official seconded to the assistant for agricultural issues, a commission was created to research the impact of agrarian reorganization on land inheritance practices among *koelis*⁴¹ in rural Yogyakarta.⁴² Using a method laid out in the inaugural publication of *Adatrechtbundel* in 1910, twice to three times a month the commission visited Yogyakarta's sub-districts and held question-and-answer sessions with all village heads and older *koelis* from the area. They asked "concrete questions" to obtain "specific responses" so that the research could discover adat law in its actual implementation, not its ideal prescription. From these sessions Soepomo acquired detailed information about land rights inheritance practices among *koelis* post-reorganization.

⁴¹ *Koelis*, or coolies, was a specific term used in Central Java for peasants who work the land under usufruct rights. There was a distinct hierarchy of *koelis*, with the *koeli kenceng* as the highest in rank and having the most secure access to land use.

⁴² The commission consisted of Soepomo as the *rappporteur*, the *controlleur* for agrarian issues, and the head of the land registration office, all of whom were Indonesians.

At the time of the research in 1929, Soepomo was the chairman of the *landraad* in Yogyakarta. By the time he published the article, he was an official seconded to the Department of Justice (*Department van Justitie*), tasked with researching adat law in various regions of Java.⁴³ By then, the progressive spirit inspired by the Ethical Policy remained only as a remnant of the past. The Communist rebellion in 1926–1927 had soured colonial officials toward progressive efforts to improve the welfare of the native population. Conservatism among *Binnenlands Bestuur* corps had intensified, and there was an increased resistance to initiatives that aimed to elevate adat law (Doel 1994; Benda 1966).

Consistent with his 1929 ITR article, Soepomo firmly believed that the agrarian reorganization in Yogyakarta and Surakarta necessitated knowledgeable and decisive judges in anticipation of conflicts on land claims. Such fundamental changes in land ownership structure had caused confusion about what was legal and illegal under the new regulations. Many individuals had turned to the *landraad* in Yogyakarta, specifically to Soepomo in his capacity as the chairman, to seek clarification of the inheritance law of usufruct right (Soepomo 1931). Lack of clear guidelines from the Principalities made things worse, such that “it becomes more important to decide whether [particular] rights existed before the reorganization, and if yes, in what way, or whether the inheritable land right was thoroughly the same, or if it had changed in certain situations” (Soepomo 1931, 1). Judges had to be knowledgeable and decisive, Soepomo emphasized, especially because land conflicts had fallen within *landraad* jurisdiction ever since *Balemangoe*, the Principality’s traditional court for land conflicts, had been eliminated, while the Islamic court and the Islamic *penghulu*

⁴³ Curriculum Vitae of Soepomo in the archive of M. Yamin, ANRI. His tenure resulted in several reports on adat law in Central Java (written by M.M. Djojodigoeno and R. Tirtawinata, who were Soepomo’s staff at the *Landraad* in Yogyakarta), and adat private law of West Java and Batavia (written by Soepomo himself).

(jurist) were not authorized to resolve them. Soepomo made clear that “It is therefore the foremost duty of [landraad] to research what the adat law prescribed with respect to land inheritance” (1931, 2). With this legal situation in mind, he prepared the report to serve “as a guide to resolving disputes concerning land inheritance in Yogyakarta” (1931, 2).

Faithful to his stated objective, Soepomo documented numerous aspects of inheritable land use rights before and after the reorganization. He recorded the nomenclature of land distribution in its native terms: whether the land was under *apanage* or directly used by the Royal House; whether the *apanage* land was managed using the native system (*kedjawenstreken*), assigned as land for a *bekel*'s in-kind salary, or leased out to Dutch agricultural estates (*ondernemingen*); and *whether* the same terms were used for the same land use in the different districts. Soepomo also recorded the relationship between *patuhs* and *bekels*, the various roles of *bekels* in ensuring stability in and maximizing productivity of their assigned lands, and the nomenclature of *bekels*. He was careful to explain the divisions of land down to the smallest unit assigned to *koelis*, called *pekoelen*, and the related terms for different kind of *koelis* and their respective obligations and rights. Most importantly, Soepomo registered various services (*dienst*) and forced labor (*verplichtingen*) that *koelis* had to fulfill in order to maintain the right to use a plot of land, services and forced labor that were orders of magnitude heavier if the assigned plot was part of land leased to Dutch agricultural estates.

In the area managed with the native system, *koelis* were expected to provide free labor to the Principality (*pegawejan negori*) for holiday festivities, and free labor to do night watch in the village (*pegawejan rondo*). In agricultural estates, *koelis* had to satisfy heavier demands: on top of obligatory services for holiday festivities and village security, they had to fix roads, dams, and bridges and offered services to the

agricultural estates, such as night watch, maintenance of estate facilities, and guarding cane fields in sugar plantations, totaling about a hundred days in a year (Pranoto 1991). Before the reorganization, retaining the right to cultivate land in agricultural estates demanded such heavy labor of the *koelis* that they frequently abandoned their assigned land. Soepomo reported this practice before the reorganization:

In areas where land is leased to Dutch planters, the forced labor was much harder than in the land under direct management of the Royal House (*maossan-dalem*) and in areas managed in the native system (*kedjawènstreken*). The *krigan* or *kerig* service in the agricultural estates, especially, demanded so much of the *koelis* such that—and it sounds like a paradox—the land use right [there] is not particularly desirable for acquisition [by *koelis*]. The abandonment of land by those concerned, because they were no longer able to perform the service, was the order of the day. It was subsequently the *bekel's* task, on the threat of dismissal, to set up a new [*koeli*] over the abandoned land within 40 to 60 days. The agricultural estates were in need of labor, after all. One less [*koeli*] in essence means one less free worker. In that sense, for all the trouble he had, the *bekel* . . . was providing for his master. Therefore, in the estate area the [the *koeli* system] also put the emphasis on the performance of services. He who performed the *kerig* services was considered to be the [legitimate] *koelis*. . . . So unwanted was the land, especially paddy fields in the agricultural estate area, that the *bekel* struggled to find someone who was willing, that is to say, who was prepared to receive a piece of property and sawah as gifts. (1931, 13)

Based on this detailed assessment *koelis'* heavy workload in agricultural estates under the *apanage* system, it is understandable for Soepomo to conclude that the elimination of the *apanage* system improved the *koelis'* welfare.

Soepomo's research has shown that despite the fundamental change in ownership structure, agrarian reorganization did not transform the system of inheritance among peasants.⁴⁴ The reorganization eliminated only the *apanage* system

⁴⁴ According to Soepomo, prior to the agrarian reorganization the principles of inheritance in Yogyakarta had a malleable character infused with the spirit of *roekoenan*, or amicable settlement, among survivors of the deceased under the mediation of the *bekel*. A set of principles guided the settlement, which followed one of eight possible scenarios based on the composition of the surviving family members, their residential status, and whether land was in a *kedjawen* or plantation area. The eight scenarios are: if it included a widow and grown sons and daughters; if the oldest son already had a

and replaced it with a village system. Through the royal decrees of Rb. 1918 No. 16 (Kasultanan) and Rb. 1918 No. 18 (Pakoealaman), the Yogyakarta Principality broke the grip of the apanage system and the demanding service of backbreaking labor. The new village system considered the villagers to be “shareholders” of the village “corporation.” They acquired allotted village lands distributed by village officials, and were entitled to bequeath their use right to their descendants, using the same adat law of inheritance applicable during the pre-reorganization period. Soepomo concluded that essentially the reorganization had bound ownership of land to the village (1931, 34).

Soepomo was consistent in his support of the agrarian reorganization. He wrote positively about the protection of the *wong cilik* granted by the reorganization:

The essential difference between the situation before and after the reorganization is that while before the reorganization inadequate or non-performance of obligatory services could result in the dismissal of the *koelischap* [*koeli* system] and might have caused loss of land use rights, after the reorganization such negligence would never lead to loss of rights. The village corporation (*desagemeente*) created by the reorganization did not have the authority to use *koeli*'s neglect of duty or other antisocial behavior (e.g. committing a crime) as grounds for denying access to land. The only sanction against non-performance of services is criminal punishment (imprisonment of not more than three days or a fine of not more than six dollars) to be found in Rb. 1918 No.19 (Kasoeltanan) and Rb. 1918 No. 22 (Pakoealaman). (1931, 41)

In this passage one detects the bases of Soepomo's approval of the reorganization. First, in Soepomo's understanding, the reorganization had drastically reduced required labor for the *koelis* to maintain usufruct right. By putting land tenure

pekoelen; if the oldest son was away from the village/*kabekelen*; if the widow did not have grown children; if the widow only had an excluded daughter; if the couple did not have children; if there was an adopted son; and if there was neither widow nor children. Soepomo documents these scenarios in detail, making careful records of specific rules in the plantation area such as cases of fleeing *koelis* and of refusal of surviving members to continue the deceased's claim on land. Again he underlines the demanding and back-breaking forced labor required to stake a claim for use right in the plantation area (1931).

under a proper legal framework, the reorganization had theoretically terminated arbitrary punishment in cases of *koelis*' failure to fulfill the required services and forced labor. The reorganization had also provided the *koelis* with a form of legal certainty. Soepomo mentioned a rather interesting argument for the reorganization's positive impact: he remarked how land in the agricultural estates regained their attractiveness to *koelis*, especially because the competing demand for services and forced labor by *bekels* and *patuhs* was eliminated. This remark has to be read against the reaction of the Dutch planters to the idea of reorganization. The planters wanted control of rent prices, but were reluctant to support the elimination of the *apanage* system since it guaranteed delivery of free labor (Haspel 1985). Only after being convinced that the new system would still guarantee access to labor were they willing to go along with the plan. Here, in his capacity as a state agent, Soepomo was marketing the benefit of reorganization to planters, that it would be less difficult now to get workers to toil the land for them:

The performance of services is, since the reorganization, no longer an essential element in land ownership (see Chapter I, p. 13). Leaving the village does not lead to loss of land, unless the person clearly reveals his intention to give up his rights to the land . . . These conditions grant legal certainty on his land and it is for this reason, and by the fact that his obligations are generally lighter than before the reorganization, that to the villagers the land is again a valuable and desirable object, and the vanished attachment for the land in the agricultural estates during the *apanage* system era is now fortunately returned. (1931, 41)

Soepomo summed up the article with the following paragraphs:

On the content of [the inheritance ruling] the law's impact . . . is very small. Rb. 1918 No. 16 (Kasultanan) and Rb. 1918 No. 18 (Pakoealaman) indeed rule that the property is inheritable, and call the right on land an "inheritable usufruct right," but how precisely it is inherited is not mentioned in the *pranatans* [the Principality law code] or other *pranatans*. The [Principality's] lawmakers thus had not understood the existing indigenous tradition. In contrast, the reorganization had thoroughly transformed the forms and

formality in the observation of the inheritance of land by the abolition of the bekel system and the influence of the former bekels in land issues. . . . (1931, 42)

Although Soepomo's detailed account is relatively accurate, it might have painted a less complicated picture of the *koelis*' condition post reorganization.⁴⁵ Numerous contemporary accounts have demonstrated the hardships and difficulties *koelis* still had to undergo after the reorganization (Pranoto 1991; Shiraishi 1990). However, I suggest that his thorough documentation of the state of the *koelis* post reorganization is valuable not so much in the presence or absence of "truth" or factual correctness as it is in its value as guidelines for colonial judicial staff in dealing with land disputes. Not only was Soepomo's account detailed, but also it was equipped with relatively accurate legal references that lent credence to his legal prescriptions. Now that his article had carefully documented the adat law on land inheritance as well as rulings in the Principalities, landraad chairmen and personnel could return to it as a reference for decision making. Others, such as judges, jurists, members of the Indies Association of Jurists, law students and general readers of ITR could now understand better the adat law system in regulating inheritance of land use rights. The value of this documentation cannot be underestimated. In its role as a guideline and repository of knowledge on adat law, Soepomo's article was at once sustaining colonial state formation and challenging the rising conservatism that observed everything related to acknowledging adat land rights as an unjustifiable project.

The research and its result in the article was part of a continued attempt to investigate and create a native legal tradition parallel to that of the Dutch. At this time in the early 1930s, the influence of the Ethicists and the Adat Law scholars in the East

⁴⁵ There is a wealth of literature on the fate and social conditions of coolies in the Principalities that successfully demonstrates the continued social inequality even after the reorganization. See more in Shiraishi 1990, Pranoto 1991. For *koelis* in Java in general, see Elson 1994 and Breman 1978.

Indies had declined. Their protégés, now serving in various official posts, were increasingly beleaguered by the pressures of conservative Binnenlands Bestuur ranking officers (Burns 2004; Doel 1994; Fasseur 1993). In this light, Soepomo's implicit instructions for the landraad chairman in Yogyakarta emerges as an attempt to sustain pro *wong cilik* changes introduced by the agrarian reorganization.

Soepomo's 1931 article can easily be dismissed as a routine report of an inconspicuous native judge about changes and continuities in the colonial state, or as a bureaucratic attempt to gain visibility over the land tenure structure in Yogyakarta. Indeed, Soepomo did record the structure of land rights before and after the reorganization, detailed the fate of *koelis* after the introduction of the desa system, and documented various forms of inheritance to land use right, all activities that qualify as "descriptive legal anthropology" (White 2005). Yet, the situatedness of this article, that it was published in a highly respected legal journal considered to be a repository of the latest legal discourse in the colony, a legal journal read by practitioners, and even law students, signals a much deeper meaning than a mere "descriptive" essay. As Soepomo explicitly stated in the beginning of his article, his aim was to provide a guideline for judges in Yogyakarta to make legal decisions in an increasingly complex legal terrain, especially after the massive transformation introduced by the agrarian reorganization. Clearly, his goal was to encourage particular practices and processes that project a presence of an authoritative core. Indeed, this article was a part of colonial state formation carried out by a native subject.

Conclusion

In this chapter, I interrogate colonial state formation by examining the seemingly clear-cut boundary between the state and its native subjects. The chapter examines micro processes of colonial state formation, specifically discursive

interventions by native scholars *cum* jurists expressed in academic texts published in the *Indisch Tijdschrift van het Recht*.

One article by Wirjono Prodjodikoro and two by Soepomo invariably responded to as well as exercised the symbolic language of stateness. As Roseberry proposes, hegemony is “a common discursive framework” whereby discursive means serve contradictory interests: as a medium for cognition and control by “the state” on the one hand and as an apparatus for contestation by non-state entities on the other. The discursive framework built around the idea of adat land rights in the Indies diverges from this understanding. Adat land rights never fully became a “common discursive framework” despite the apparent victory in the Dutch parliament and the rising interest to study adat and adat law after the enactment of St. 1925 No. 447, which officially introduced the dual legal system in the colony (Katwijk and Dekker 1992). Rather, adat land rights became a parallel framework tolerated by the state-system while the more oppressive framework that favored large access to land by agricultural corporations retained its dominance. Many agents within the state-system utilized the “parallel discursive framework” of adat land rights, including state agents of native origins such as Soepomo and Wirjono Prodjodikoro who deployed it in their discursive interventions.

Analyses of academic texts by Soepomo and Wirjono Prodjodikoro reveal a dynamic more ambiguous than the trajectory that would have occurred under strict readings of Hansen-Stepputat and Roseberry. As state agents, both Prodjodikoro and Soepomo evoked colonial state institutions and the institutions’ utterances that strengthened the imagination of the state’s presence and authority. However, they differed from each other in the expression of their interventions.

Despite his position as a *landraad* chairman, Prodjodikoro did not shy away from being critical of the colonial government’s project of subject formation. He uses

unambiguous words and terms in his disapproval of the Binnenlands Bestuur's move in defending the Government ruling in St. 1921 No. 566, which classified native employees of the Government as Government subjects—depriving Surakarta of its sovereignty and tax base. He bemoaned the loss of native judicial institutions such as *Balemangoe*, regretted the intrusion of colonial bureaucrats and administration of justice into adat property law (*vermogensrecht*), and protested van Vollenhoven's limiting construct of debt law (*schuldenrecht*) as a blanket term for various nuanced categories of property in Surakarta's legal thought world.

Compared with Prodjodikoro, Soepomo was more ambiguous in his discursive intervention. He strengthened the imagination of the colonial state as guarantor of rights when he affirmed the role of the landraad as the leading institution for researching adat land rights and adat inheritance codes post-reorganization, and as the proper judicial institution for resolving land conflicts in Yogyakarta. His support for agrarian reorganization reflected his firm belief that a formal legal framework benefited the little people in seeking redress should a dispute about land ownership take place. His support lent credence to the colonial administration of justice as a better option for protecting and securing native rights to land. At the same time, however, Soepomo punctured this image of the colonial state when he—among his other acts—reinterpreted the Supreme Court's ruling that negated the evidentiary value (*bewijskracht*) of the Eastern *eigendom* land register (*Indisch eigendomakte*). He escalated this rupture in his prescription of landraad judges's role when evaluating land registers issued by the Principality's land register office.

In their individual ways, Soepomo and Prodjodikoro engaged the colonial state's symbolic language. In their unique position as both colonial state agents and native subjects, they deployed the symbolic language of stateness to create legal knowledge in their own vision and to extend particular forms of property relations.

To demonstrate these interventions, I examined academic articles less as representations of truth or factual correctness than as subjective experiences strategically situated to amplify the authors' quiet contestation of the dominant narrative. Academic texts offer a window to understand how colonial subjects and native intellectuals play their role within a parallel discursive framework, and how they at once help sustain and fracture the appearance of "the state." It is telling that the articles were published in an academic journal, one that was peer-reviewed (at least by the editors) and addressed to the highly educated elites among European, Foreign Oriental, and Native inhabitants of the colony in whom the state's mythical quality was already entrenched. Their imagination of the state and the state's legal authority over the inhabitants was already established, which makes Prodjodikoro's and Soepomo's attempts even more potent.

"The state" is a perceived entity continuously in the process of being constituted and contested. State formation, thus, is inherently historical. The question that emerges now is, what is colonial in colonial state formation? From the discussion in this chapter, I propose one element that characterizes colonial state formation: it involves practices and processes of legal segregation based on racial classification regardless of the intention of the segregation, whether benevolent or otherwise. This process includes submission of the native legal thought world under European categories by force and by persuasion, even in cases where the legal scholars empathized with the plight of the natives. It also includes the submission of the native administration of justice into the European system. All of these practices reflect a particular form of hegemony.

Yet, hegemony is never totalizing. Native scholars *cum* judges have taken indispensable roles in colonial state formation through their agency in the state-system. Their role emerges to be more ambiguous than what had been conventionally

assigned to them. Through their discursive intervention, they at once extended and contested the force of colonial state formation.

CHAPTER 5:
We, Too, Want Land:
Indo-Europeans and Their Quest for Land Rights

The welfare of the Eurasians and the Dutch
can only be served if instead of racial sentiment,
considerations of humanity are taken as a basis.
And Eurasians shall [acquire] full rights to property in this land,
which has indeed become their country,
if they let go of their relationship with the Netherlands

—Agus Salim, in *Pemandangan*,
in *Indisch Press Overzicht* 10 October 1936

Introduction

A Eurasian population was a natural consequence of a colonial society like the Dutch East Indies, but not all Eurasians were the same. The colonial authorities legally recognized a subset of them as European, they call themselves Indo-Europeans.¹ Because of their European legal status, the Alienation Prohibition decreed in St. 1875 No. 179 applied to them; Indo-Europeans were prohibited from buying land from the Native population. This law proved to be a great disadvantage when Indo-Europeans could no longer rely on government employment because of competition from educated Indonesians and Chinese. When jobs on agricultural plantations became scarce after the Great Depression hit the Indies in 1930, Indo-European leaders decided that their people's future lay in small agricultural enterprises. To farm, they needed a way to acquire and cultivate land economically. So in 1930 the Indo-European Association (*Indo-Europeesche Vereeniging*, IEV) controversially requested

¹ In general, literature on Indo-Europeans use the term Eurasians and and Indo-Europeans interchangeably. Here I exclusively use the term Indo-European to differentiate this group from Eurasians in general.

a review of the Alienation Prohibition to allow them certain forms of land ownership, a privilege that had been reserved exclusively for the Native population.

In this chapter I follow the struggle of Indo-Europeans to acquire a form of land ownership rights in the Dutch East Indies for housing and livelihood purposes. Indo-Europeans claimed they were as much *landskinderen* (children of the land) as the Natives and thus had “an inherent right” to own land. This claim signaled a departure from the legally sanctioned identity as Europeans into one that reflected their own view of their personhood. The demand outraged many Indonesian leaders and resulted in heated debates in the Volksraad and other public fora. Among Indonesians themselves, the question of who could claim rights to land struck a chord and generated a strong sense of nationhood.

I argue that in the act of claiming rights to land, Indo-Europeans attempted to create an identity separate from the one sanctioned by law, and by doing so, they exercised the practices that resulted in isolation and identification effects. At the same time, they used both effects as a point of departure and a point of contestation in shaping colonial agrarian laws for their benefit. The struggle of Indo-Europeans renders visible how subjects and law in late-colonial Indonesia were reciprocally constituted, and how the two influenced the evolution of the colonial agrarian regime. It illustrates my overarching argument that state effects are instigated not by a particular state apparatus, but by series of discursive battles carried out by identifiable human agents. It was individuals who, singularly or as part of a wider interconnected state system, set into motion isolation and identification effects and rendered the illusory state a concrete entity with the authority to arbitrate.

In tracing the ensuing battles between Indo-Europeans and Indonesian leaders in the Volksraad in other fora, I aim to illuminate contestations of colonial practices that propagated isolation and identification effects through land entitlement. It is

through these effects that the presence of the illusory state was both constituted and felt (Trouillot 2001). I deploy isolation and identification effects as conceptual tools to avoid the trap of seeking sites of “the state” or forms of encounter with “the state.” I refer to isolation effects as “the production of a particular kind of subject as an atomized member of a public” and identification effects as “the capacity to develop a shared conviction that ‘we are all in the same boat’ and therefore to interpellate subjects as homogenous members of various imagined communities” (Trouillot 2001, 131–132). In both definitions Trouillot avoids assigning an explicit agent that represents a central government or a state entity precisely because “the state” is a set of processes with no institutional fixity.

I build my case using archival and printed materials: transcriptions of the Volksraad sessions, articles from Indonesian- and Dutch-language newspapers published in Indonesia and in the Netherlands, the Indo-European Association’s publication, findings of the Spit Commission—the commission tasked to resolve Indo-European demands for land rights—the archive of the Binnenlands Bestuur from the Netherland’s national archive, and the archive of Mohammad Jamin, found in Arsip Nasional Republik Indonesia (ANRI). Juxtaposing arguments and counter arguments among the entire spectrum of the colonial society regarding subject classification and the designated forms of land rights for each, I call attention to the representation of self by the subject itself and to the everyday making of identification and isolation effects.

Indo-Europeans: The Subjects Defined

The Eurasian population was an integral part of the Indies society. During the East Indies Company era, Eurasians made up the majority of the colonizers’ society with their own intricate Indisch mestizo culture (Taylor 1983, Bosma and Raben

2008). They remained small in number due to a limited influx of Europeans to the colony. When the Suez Canal eased travel between the Netherlands and the Indies, new immigrants from the metropole resulted in a significant increase of the Eurasian population. By 1930, at around 134,000 people, they made up around 56 percent of the population classified as Europeans (Veur 1960). Along with the influx of “fresh European blood,” the Indisch culture and lifestyle—note mostly by concubinage—were frowned upon; the newly arrived Dutch population re-introduced a lifestyle morally attuned to that of the Motherland.

The colonial government introduced racial classification in the colony in article 109 of the Regeringsreglement 1854. It differentiated Europeans and those assimilated to European status (*gelijkgesteld*) from the Natives and their equal, which included Chinese and Arabs and other Foreign Orientals. Revised in 1906 and enacted in 1920,² the law categorized all populations in the Indies as subjects (*onderdanen*), but granted citizenship (*ingezetenen*) only to Europeans and those assimilated as Europeans. A Eurasian needed only “recognition” by his or her European father to become legally European. Eurasians descended from a European woman married to a non-European man were ineligible for European status. A non-European woman married to a European man would be absorbed into European society regardless of her origin and race.

In late-colonial Dutch East Indies, unrecognized Eurasians would disappear from the “civilized” European circle into the Native or Foreign Oriental population, losing all privileges that accompanied a European status such as subsidies and guaranteed access to European schools. The sense of white-race superiority and the widespread condescending attitude towards the natives put the Indo-European

² It was amended again in 1925 in the *Indisch Staatsregeling*, a new constitution for the colony that replaced the Constitutional Regulation of 1854.

community in constant fear of “being lost” in the native society, never to be recovered. This “vulnerability” remained the underlying motive for many of Indo-Europeans’ political and social maneuvers.

Racial purity marked the social hierarchy within the Indies’ European society. On top of the ladder were European *trekkers*, Dutch persons who came to the colony to work as expatriates and who would return to the Motherland upon retirement. They were highly educated and mostly worked in government offices. European *blijvers* of pure blood populated the second place. They included Dutch persons who came to the colony to pursue a livelihood and to remain in the Indies. The Ledeboers in chapter 2, for example, considered themselves *blijvers*.³ Indo-Europeans filled the next tier and made the largest part of the European *blijvers* in the colony. As *blijvers*, Indo-Europeans were Dutch citizens (*ingezetenen*) submitted to Dutch legal jurisdiction. *Blijvers* in general had more invested interests in the autonomy of the Dutch East Indies.

Indo-Europeans traditionally relied on government jobs for their livelihood. In 1930, 47.3 percent of employed Indonesian-born Europeans worked in the civil service, the railway and tramway, and the telegraph and telephone services, while 10.4 percent worked in independent occupations (Veur 1954). Unfortunately, the privileged European status did not necessarily translate into a European standard of living. Only ten percent of Indonesian-born European wage earners earned more than the estimated minimum wage to maintain a European lifestyle (Veur 1954)⁴. As the availability of

³ From two autochthonous women, Bernard Ledeboers had a son and a daughter who were recognized as Europeans. Adriaan Ledeboer married Sophia Julia Borgen, who was born in Makassar, Celebes, and was most likely a Eurasian herself. <http://www.chabot.demon.nl/genealog/chabot04/333.html> last accessed March 8, 2012.

⁴ Veur set \$1200 a year (presumably at the 1960 value, but he did not explain how he came up with the number) as a minimum salary on which a family could maintain a European lifestyle. The income statistics for 1925 reveal startling information: About 37,500 wage earners, or 45.5 percent of the total number of “European” wage earners, earned between \$1200 and \$800 a year. More than 25,000, or 30.5

Western education increased for native elites, the Indo-European community found fierce competition for government jobs (Blumberger 1939). The situation hardly improved when the Great Depression that hit the Indies in 1930 dried up employment on agricultural plantations (Stoler 1985).⁵ As the 20th century progressed, Indo-Europeans found themselves increasingly impoverished, exacerbating the fear of “becoming native.” This prompted a search for means of livelihood that could sustain the lifestyle appropriate to their status. Finally, in 1930 the leaders of the Indo-European Association IEV decided that small agriculture enterprise (*kleine landbouw*) offered them an opportunity to solve the pauperization problem. But the path to land ownership was tortuous.

Colonial law introduced to the Indies population a new category of persons delineated by race and legal identity. One’s legal identity defined one’s entitlement to resources, most importantly to land rights. As Europeans, Indo-Europeans were bound to rulings for Europeans laid out in agrarian laws, including the prohibition of sale and permanent transfer of land from a Native as enacted in the Alienation Prohibition of St. 1875 No. 179.⁶ Tightly controlled mechanisms for exceptions indeed existed with severe legal consequences if ignored. The *Raad van Indie*—the Council of Indies—issued the mechanism in 1870 in an executive order registered as Bijblad 3020. Non-Natives were allowed six avenues by which to control land. Ranging in ownership intensity, they were eigendom, heritable leasehold right (*erfpacht*), building right (*opstal*), rent right (*huur*), use right for business uses (*gebruik*), and loan right

percent, of these wage earners earned between \$800 and \$400 a year, and more than 13,000, or 15.9 percent, received less than \$400 a year.

⁵ Veur (1968) described many causes that gradually pushed the Indo-Europeans down the social ladder of Europeans, but the Great Depressions hit them hardest.

⁶ Permanent transfer here refers to transferring the land permanently from the Native legal realm into Dutch eigendom.

(*bruikleen*). Of the six, Europeans highly coveted the first two because of the near-absolute status of disposal and the guaranteed security in case of conflicts.

The European Civil Code (*Burgerlijk Wetboek*) detailed further this access to land. Article 570 of the European Civil Code defined eigendom as the right to free enjoyment of an object and to dispose of it in the absolute manner pursuant to legal regulations. The government strictly controlled this right: only small pieces of land no more than 10 *bouws* (71,000 m²) were allowed for eigendom and only for expanding towns and villages or to set up work or industrial establishments. The limited acreage practically prevented land under eigendom from being utilized as an agricultural estate or from being concentrated into massive landholdings. Article 720 of the Civil Code defined leasehold rights (*erfpacht*) as the rights to full enjoyment of one and other claims of immovable goods. This right was to be recognized almost as an eigendom following an annual payment, either in cash, products, or yields from the land. The government grouped *erfpacht* rights into three: leasehold rights for large-scale plantations, leasehold rights for country estates, and leasehold rights for small-scale agriculture (*erfpacht voor kleine landbouw*). The last was the right that the Indo-European community tried to change.⁷

The government dedicated leasehold rights for small-scale agriculture (*erfpacht voor klein landbouw*) as a safety net for its citizens.⁸ Only impoverished (*minvermogend*) Europeans and charity organizations were eligible for no more than 25 and 50 *bouws*, respectively. The land should be intended strictly for agriculture or horticulture, and the tax was set at no more than f 1,- per *bouw* per year, while

⁷ Verslag Commissie voor het Grondbezit van Indo-Europeanen, Sumier overzicht, 14, n.d.

⁸ This rights was regulated in St. 1904 No. 326, which was amended in St. 1905 No. 153, St. 1908 No. 263 (the regulations Bernard Ledeboer referred to when acquiring a land lease in Banjoewangi), St. 1923 No. 358, St. 1924 No. 578, St. 1925 No. 144 and 433, and St. 1926 No. 376 (Verslag Commissie voor het Grondbezit van Indo-Europeanen, Sumier Overzicht, 16, n.d.).

administrative costs and other expenses to issue the certificate could be exempted in special cases of need. Further, a holder could keep the land for a maximum of twenty-five years and could mortgage it for loans. With this generosity came strict requirements. The rights to the leasehold expired if the leaseholder carried over the rights after the end of its term without permission from the regional government; if the land was divided due to death or other reasons, including putting the land on a sharecropping agreement with the Native; and if the leaseholder failed to fulfill obligations to the government.⁹ The leasehold for small-scale agriculture was actually quite generous in providing an alternative livelihood for impoverished Europeans, yet the IEV found their members unable to cope with the allegedly exorbitant costs to acquire this right and with the strict regulations they were to follow.

IEV and the Desire for Land

The Indo-European Association (*Indo-Europeesch Verbond*, IEV) was founded in 1919 as a reaction to increasing competition for jobs (Blumberger 1939).¹⁰ It aimed to advance the moral, social, intellectual, and economic development of the Indo-Europeans in the Dutch East Indies, whom it defined as:

- a. All residents in the Dutch East Indies, of Indies-born [pure-blooded] Europeans or Eurasians, and their descendants;
- b. All residents of the Dutch East Indies of European blood, who have children born in the Dutch East Indies, or [Europeans] married to individuals who are Indo-European according to point (a). (Blumberger 1939, 51)

⁹ Verslag Commissie voor het Grondbezit van Indo-Europeanen, *Sumier Overzicht*, 17, n.d.

¹⁰ IEV was not the first initiative at civic organizing by an Indo-European. In 1912, Douwes Dekker initiated *Indische Partij*—later transformed into *Nationaal-Indische Partij*/*Sarekat Hindia*—with Dr. Tjipto Mangoenkoesomo and Soewardi Soerjaningrat and inspired by revolutionary-nationalist sentiment. It did not attract interest from mainstream Indo-Europeans. For a succinct account of other initiatives by Indo-Europeans, see Blumberger 1939.

This all-inclusive definition made eligible for membership any Europeans with the slightest connection to Indo-Europeans, or Europeans who were long-term Indies residents with children born in the colony. In special circumstances the executive board could waive membership requirements where deemed necessary. Although claiming to be a neutral organization, IEV stood against any initiative that threatened the interests of its members. It also opposed any violent acts against the Dutch authorities, practically putting it squarely against “extremist” organizations, by which it meant left-leaning organizations ran by Dutch *trekkers* and *blijvers* (Blumberger 1939). In Indies’s political spectrum, IEV leaned to the right.

Although the founders claimed they had no intention of steering IEV into a political party, by a twist of fate IEV entered the Volksraad in 1921. With members and chapters growing fast—10,000 members and 60 chapters by 1924—IEV gained six seats in the Volksraad by 1930, the most of any party.¹¹ Unfortunately they wielded little influence. IEV’s political objective to create a united front for all Europeans received only a lukewarm response from full-blooded Europeans, who suspected IEV’s aspiration to ascend the colonial society ladder on their backs (Kroef 1953).

The years leading up to 1930 were marked by very active movements among Indies’ political activists. The Communists seceded from Sarekat Islam after years of infiltration, set up the peasant-based organization Sarekat Rakjat, and moved on to take over control of trade and labor unions. In 1926, they staged a rebellion that was

¹¹ The establishment of IEV established a new history in the political life of the Dutch East Indies. When they joined the Volksraad, there were already a handful of political parties populating the Council, such as the Dutch Indian Liberal Federation (established late 1916), the Indian Social Democratic Party (September 1917), the Christian-Ethical Party (September 1917; by end of 1930 renamed the Christian Political Party), the Indies Catholic Party (November 1918), and the Political and Economic Association (January 1919). But these parties focused on promoting the interests of the Dutch East Indies in general, and not so much on the special interests of the Indo-European population (Blumberger 1939).

easily crushed by the government. Shaken by the first large-scale rebellion, the colonial government adopted harsh tactics in controlling political activities in the Indies and among members of Perhimpunan Indonesia (PI)—the Indies student organization—in the Netherlands. In 1927, returnee members of PI established Partai Nasional Indonesia (PNI) under the chairmanship of Ir. (*Ingenieur*) Soekarno. Among key members of the party was Tjipto Mangoenkoesomo, Mr. Ali Sastroamidjojo, and Mr. Soenario. The party aimed for complete independence for Indonesia and decided to adopt a “non-cooperative” stance vis-à-vis the colonial government. PNI grew exponentially and became a very powerful nationalist organization in the Indies. Worried by nationalist sentiment gaining steam, the government arrested PNI leaders in 1929, put them on trial, and sentenced them to several years’ imprisonment. Some were sent to remote areas of the Indies. A year before, students and ethnic-based youth organizations held a “Youth Congress” that resulted in a proclamation of nationhood unified by one nation, one language, and one homeland: Indonesia. These movements were only marks of wider activism in the Indies that raised a strong sense of awareness of “imagined community” among the Native population. People began addressing themselves as “Indonesian” and adopted the identity of being Indonesian. Then the Great Depression happened.

The Great Depression hit the Indies in 1930, leading to a scarcity of jobs for Indo-Europeans. Increasingly desperate, IEV pushed for farming opportunity for its members and made its splash in the Volksraad. On July 18, 1930, N. Beets, an IEV representative in the Volksraad, gave a long, passionate speech about the fate of the impoverished Indo-Europeans caused by the Great Depression (Volksraad Handelingen 1929/1930, 319). He narrated a story of an Aceh war veteran who attempted to cultivate a small plot of leasehold land (*kleine landbouw erfpacht*) to support his Native wife and five children. Starting in 1921, this man’s leasehold was

slightly under 10 *bouws*. He planted the land with 4500 kapok saplings, 200 vanilla orchids, 2 *bouws* of feed grass, 1 *bouws* of cassava, and 2.5 *bouws* of paddy fields. As a small farmer with leasehold rights, he was eligible for a line of credit, from which he withdrew 2000 guilders to help pay for the cultivation. Illness and the pressure to supplement his income forced the man to be away from his land to find work, leaving the land in the care of his Native mother-in-law and his young family. While working as a supervisor to lay rail tracks in Aceh, the man received a letter in October 1927 terminating his leasehold. The government accused him of putting the land under a sharecropping arrangement with a native, an arrangement prohibited for the leasehold and a cause for lease termination. The government rejected his proposal to pay back his debt after the land brought some yields, and in March of 1930, ordered him to pay back his loan. When he finally managed to extricate himself from the work in Aceh and returned to recover the land from his mother-in-law, he found that the land had already been auctioned off and that the new Native owner, the local village head, had put it into a sharecropping arrangement with ten native workers. All his hard work—kapok trees, paddy fields, cassava fields, and vanilla orchids—had disappeared. The enthusiastic attempt to settle as a farmer was deflated by the government's rulings (Volksraad Handelingen 1930/1931, 319–320).

Beets narrated this story as an illustration of the difficulty Indo-Europeans faced in managing a small leasehold farm. The conditions for heritable leaseholds for small farms were too prohibitive for most Indo-Europeans. Few had any experience in farming, and there were few avenues to gain experience. The prohibition on sharecropping arrangements with the native population limited their survival strategy, especially when they were starting to learn how to run a farm while juggling other employment to supplement a meager income. The twenty-five-*bouw* limit for small farms was too small to allow for a profitable enterprise. If only Indo-Europeans could

own land and work it with no limitations like Native landholders, the potential of small agriculture leaseholds could be unleashed. With this reasoning, IEV argued for relaxing the regulations.

Beets claimed that Indo-Europeans were entitled to certain rights to land in the colony because they were *landskinderen*, children of the land. Considering that numerous government positions long reserved for Indo-Europeans were made available to Indonesians, it was simply fair for them to benefit from the land, just as Indonesians did. Beets assured other members of the Volksraad that there was no threat posed by Indo-Europeans to Native farmers if they gained access to land, not only because they were small in number, but also because they lacked large amounts of capital. IEV's request for a form of land rights was mainly aimed at providing its members with a decent livelihood. If their request was granted, Indo-Europeans as a community were committed to respecting Native land rights and would continue to carry out obligations imposed on landholders as prescribed by native adat rulings (Volksraad Handelingen 1930/1931, 320).

Beets also asked for the removal of "being impoverished" as a condition for acquiring a small farm leasehold, particularly for Indo-Europeans. He proposed that the government withdraw the Alienation Prohibition (Volksraad Handelingen 1930/1931, 320), a very pillar of the colonial agrarian laws. A very bold suggestion, if approved, the new ruling would radically alter the racially structured agrarian law and regulations. To temper its demand, IEV proposed that only Indo-Europeans born in the colony be allowed to have ownership rights. He pleaded for Native members of the Volksraad to be sympathetic to the plight of Indo-Europeans.

In summary, IEV expressed their demand for land rights in three specific requests: first, they requested a form of land rights for housing and livelihood for their members. Although they were yet to specify what the form would be, they indicated

that they wanted a freedom similar to that of Native landholders, who could farm out their land in a sharecropping scheme. Second, they asked that the condition of leasehold for small farms be relaxed, allowing Indo-Europeans to access rights regardless of their economic status. Finally, they asked for the cancellation of the Alienation Prohibition.

The director of the Binnenlands Bestuur, F.H. Muhlenfeld, was skeptical of Beets's and IEV's motives. In a surprisingly explicit manner, he accused IEV 's proposal of seeking to skirt the sharecropping prohibition for small-agriculture leaseholders. If the Indo-Europeans acquired the right to land in forms they proposed, they would no longer need to adhere to such rulings. The government could not concede to this demand because "sharecropping was in many cases the most advantageous method of exploitation for a landowner, often to the detriment of the sharecropper and the public interest" (Volksraad Handelingen 1930/1931, 1275). This response portrayed the government as an impartial arbiter: it was committed to protecting the Native population from being deprived of its land rights and for being abused in sharecropping arrangements. The image was further burnished when, despite his sharp rebuke and to the surprise of many Volksraad members, Muhlenfeld agreed to set up a commission that would look into IEV's demand.

The debate in the Volksraad scarcely escaped public scrutiny. Within a couple of days a comment appeared in a Malay-speaking newspaper, *Revue Politik*. The author, a man named Tabrani, empathized with the Indo-Europeans' plight and personally had no objections to their request. However, he rejected this request for land rights if and for as long as Indo-Europeans considered themselves part of the Dutch population, preferring to remain strangers to Indonesians:

Their request for land rights is logical, but more logical is our duty to reject the request, as long as the Indos consider themselves strangers, and so for us [they are]. If they are willing to become Indonesian citizens (*staatsburgers*), then we

are obliged to put their claims into serious consideration. These land rights are key to our existence and our prosperity. Watch that those rights are not transferred to foreign hands! (*Revue Politik*, in *Overzicht van de Inlandsche en Maleisch-Chineesch Pers*, henceforth IPO, August 23, 1930, 341)

In this essay Tabrani invited Indo-Europeans to become “Indonesian citizens,” to be no longer “strangers to us.” Wanting to have a slice of the land as *landskinderen* but rejecting membership of the larger extended family of cousins, Indo-Europeans only prodded Indonesians to respond to “the call of duty” to defend their rights from being wrested away by “foreigners.” This essay marked the beginning of a tug of war between Indo-Europeans and their Indonesian cousins. The former insisted on the “same but different” position, presenting itself as belonging to an identity that many Indonesians found politically unacceptable.

Gradually Indonesians became aware of the Indo-Europeans’ demand and began to express their views in the press. One reaction expressed incredulousness that Indo-Europeans seemed to think the other racial groups in the colony would simply sit back in response to such demand. The author was also skeptical of Indo-Europeans’ zest for farming (*Swara Publik*, in IPO February 14, 1931). Another predicted that the issue of Native land rights, well discussed in the progressive Indies bulletin *De Stuw* and in the IEV bulletin *Onze Stem*, would continue to grip the East Indies (*Pewarta Surabaya*, in IPO April 24, 1931).

Despite dissenting Indonesian public opinion, on June 15, 1931, the government set up a commission tasked with inquiring after IEV’s request, named the Commission for the Land Rights of Indo-Europeans (*De Commissie voor het grondbezit van Indo-Europeanen*), popularly known as *Commissie Spit* after its chairman, H.J. Spit.¹² Its members consisted solely of pureblooded Dutch men.¹³ The

¹² Spit graduated with a doctoral degree from Leiden University in 1911, under the tutelage of Cornelis van Vollenhoven. He came to the East Indies the year after. As a *trekker*, he had a stellar career in the Department of justice, serving as landraad chairman and then secretary of the department. He served in

Commission was to answer the question “whether in accordance with the current principles of agricultural policy and the social position of Indo-Europeans it will be possible and desirable to make additional provisions relating to land for these population group, and if yes, what.”¹⁴

The government’s move to establish this commission upset many Indonesians. Shortly after the announcement, Boedi Oetomo, the Javanese nationalist organization, published an article about the risk of a Pandora’s box: if the Indo-Europeans’ request was approved, Chinese and Arabs would also demand the very same right, threatening the already precarious land possessions among the Native population. Boedi Oetomo pointed out that the government had already constrained Indonesian options in commodity agriculture. Indonesians may plant sugarcane, but could neither establish sugar factories with machines of more than 10 horsepower nor attain land area of greater than twenty-five *bouws*. “Therefore we will,” wrote the author, “not let our land be divided in this way by foreigners” (*Boedi Oetomo*, in IPO August 22, 1931, 347).

As soon as the Volksraad began its 1931/1932 session, a number of its members expressed their dismay, including Mohammad Thamrin, an esteemed member from Batavia and a key figure in the Nationalist Faction in the Volksraad. Empathizing with the Indo-Europeans’ need for an alternative source of livelihood and right to land, Thamrin was nevertheless skeptical about its practicality. He underlined the racial divide between European and non-European that complicated the matter,

various commissions in the department, the most famous being the Commission for the Land Rights of Indo-Europeans. <http://www.historici.nl/Onderzoek/Projecten/BWN/lemmata/bwn2/spit> last accessed March 4th, 2012.

¹³ Among the members who served at different times were Dr. J.W. Meyer Ranneft; J.C. de Vos, a resident assisted to the Governor of West Java; Prof. Dr. R.D. Kollewijn, a professor at the Batavia College of Law; Dr. J.W. de Stoppelaar, Dr. W. Hoven (The Spit Commission, nd).

¹⁴ Verslag Commissie voor het Grondbezit van Indo-Europeanen, Deel 3, Eindconclusies, nd

stressing that the right of allocation (*beschikkingsrecht*) attributed to the Native population was a moral and natural right. It was a right inherent in the very nature of the Natives' indigeneity; it was not a privilege granted by the government. Thamrin tried to set the record straight:

However, in the course of centuries this right of disposal was repeatedly and heavily questioned, the fiercest by the so-called domain declaration of the government, which, according to Professor van Vollenhoven, is the biggest injustice imposed upon the native population in the present time. Although the people's right has been repeatedly assaulted, the disposal-, use-, occupy- and cultivation-rights to a certain extent continue to subsist, albeit modestly and under aggravated circumstances. Due to the domain declaration, it has become possible to satisfy other populations' hunger for land, fulfilled by the establishing and granting of other [forms of] rights to non-Native groups, such as property rights (*eigendomsrechten*), leasehold rights (*erfpachtsrechten*), agrarian rights (*agrarische rechten*) and rights to the small agricultural land (*kleinen landbouw erfpachtsrechten*). Through these other [forms] of rights thus the special position of the Natives as legitimate and genuine owners, as indigenous people, hence the exclusive owners of land in the course of time, has been put to an end, so that of the many forms of rights that used to belong to indigenous population, what remains is only the heritable individual lease rights (*erfelijk individueele bezitsrecht*), essentially no more than a right to occupy, and which when compared with the previous forms of rights, imposed very onerous stipulations. I hereby once again underline that the moral and natural right to land for a population group is a consequence of being indigenous. (Volksraad Handelingen 1931/1932, 807–808, emphasis added)

In this speech, Thamrin deflated the government's discourse that projected rights to land as a right granted by an entity of a state to its subjects. Instead, Thamrin pointed out that rights to land was a natural and moral right inherent in the personhood of a Native subject. The government claim in Domain Declaration muddied the fact of who the real owner of land was in the colony.

Further in his speech, Thamrin questioned IEV's all-inclusive definition of "Indo-Europeans" and challenged them to clarify the eligibility to be Indo-European in the case of land rights. The current definition practically made eligible as members full-blooded Europeans with the flimsiest connection to a Native or Indo-European.

Such a loose definition could easily be abused by Europeans to acquire land ownership. Thamrin's rejection of Indo-Europeans' claim was based not only on the racial boundary but also on the practicality of implementing the rights. He said,

I recognize indeed, as I have said, that rights to land is a certain moral right for those who were born here as part of the indigenous population, but the question is whether that process is practical. What is essentially the case? The Indo-European group is constitutionally classified under Europeans, and although one would be categorized as Indo-European based on having been born here and be granted a certain right to land, the fact that the Indo-European group is constitutionally not separated from the European group meant granting land rights to the Indo-European could also result in granting land rights to Europeans and those equated with them. The consequences of this for our group are unacceptable because of the limited land availability in Java and the great increase in the Native population, as the last census demonstrates. (Volksraad Handelingen 1931/1932, 810)

The fluidity of legal identity between Indo-Europeans and Europeans was worrisome to Indonesian leaders. If approved, what was the exclusive privilege of the Native population would be accessible to others, and would deprive many Indonesians of their rightful claim. To Indonesian leaders and intellectuals, not only did claiming both privileges exude greed, but it also exuded betrayal to Indonesians' struggle to gain a stronger footing in the colonial society.

Thamrin continued,

Certainly there is a part of the IEV group who feels like a child of the land and a certain theoretical entitlement to the nation's land (*nationalen bodem*), but as long the group identifies itself, or is identified with other groups [full-blooded Dutch], which theoretically cannot assert this right, it means a surrender of this right. For a genuine children of the land, it is inexcusable. A defensive attitude on our part in this matter should not be attributed to a non-sympathetic attitude toward the IEV, but should rather be seen as self-defense. (Volksraad Handelingen 1931/1932, 810)

All along the debate for Indo-European land rights, the colonial government remained a passive actor and continued to portray itself as an impartial arbiter.

Muhlenfeld, the director of Binnenlands Bestuur, said that the members of the Spit Commission were independent and open-minded individuals who held no stakes in their future decision on land rights. And the reason the government had to establish this commission was that “the executive body cannot revoke the rights of the indigenous population,” addressing the Indo-Europeans of the supremacy of law on this fundamental rights of the Natives. It also addressed the concerns of the Indonesian leaders, expecting them not to speculate about what position it would take. The government trusted the Spit Commission to be neutral and unbiased in its deliberation (Volksraad Handelingen 1931/1932, 1076).

The Spit Commission

The Indo-European demand for land rights put the colonial government in an awkward position. On the one hand, they needed to demonstrate sympathy with the plight of the Indo-Europeans; on the other hand, allowing IEV to acquire what had been a privilege of the Native population would open a flood of demands from the Chinese and Arab populations. A confrontation with peasants in Surakarta Principality caused by a land rights issue was still fresh in the government’s memory (Shiraisihi 1990). At the same time, the Native population’s nerves were still raw from the capture and exile of the Indonesian nationalist leaders Soekarno, Hatta, and Sjahrir. Another flare-up with an explosive racial element was the last thing the government needed in a time of tension and vigilance. Consequently, the colonial government had an interest in maintaining an impression of impartiality and fairness in this struggle, and the Spit Commission understood this urgency.

Quite surprisingly, the Spit Commission carried out its inquiry in an open and relatively participatory manner. It held meetings with Governors, Dutch Residents, and Native Regents; carried out listening sessions with agricultural and forestry

officials from Java and Madura;¹⁵ sent surveys to Binnenlands Bestuur officials and regional heads of the Outer Islands and to European leaseholders of small farmers in the Indies.¹⁶ Most interestingly, it advertised in numerous newspapers a call for feedback from the general public and civil associations.¹⁷ In the first round of inquiry, European and Native officials aired their skepticism about the feasibility of the Indo-Europeans' demand. Dutch Residents and Native Regents in West Java rejected IEV's request in light of the social and political tension in the region.¹⁸ The listening sessions held with agricultural and forestry officials from Java and Madura resulted in the same sentiment. The voices of the European leaseholders of small farms, however, were not shared with the public, although the Committee received 320 surveys back from 500 sent out, enough to draw a conclusion.¹⁹

Responses from Indonesians came in stages. The earlier ones arrived from the West Coast of Sumatra, where several women's associations, responding to the Commission's invitation, held public meetings in Padang and Padang Pandjang. The meetings passed motions from voting members to reject IEV's demand (*Bintang Timoer*, in IPO October 31, 1931). The reaction from Java came slower than from

¹⁵ Anonymous, "Grondrechten voor Indo-Europeanen," *Het Vaderland*, November 19, 1931, <http://kranten.kb.nl/view/article/id/ddd%3A010013830%3Ampeg21%3Ap010%3Aa0211> (accessed March 18, 2012).

¹⁶ Anonymous, "Gronrechten voor Europeanen: Overvloed van Studie-materiaal," *Sumatra Post*, September 29, 1932, <http://kranten.kb.nl/view/article/id/ddd%3A010361722%3Ampeg21%3Ap005%3Aa0074> (accessed March 18, 2012).

¹⁷ Anonymous, "Grondrechten voor Indo-Europeanen," *Het Vaderland*, November 30, 1931 <http://kranten.kb.nl/view/article/id/ddd%3A010013848%3Ampeg21%3Ap010%3Aa0257> (accessed March 18, 2012).

¹⁸ Anonymous, "Grondrechten voor Indo-Europeanen," *Het Vaderland*, November 30, 1931 <http://kranten.kb.nl/view/article/id/ddd%3A010013848%3Ampeg21%3Ap010%3Aa0257> (accessed March 18, 2012).

¹⁹ Anonymous, "Grondrechten voor Europeanen," *Het Vaderland*, October 24, 1932, <http://kranten.kb.nl/view/article/id/ddd%3A010014402%3Ampeg21%3Ap008%3Aa0203> (accessed March 18, 2012).

West Sumatra considering the distance from Batavia, because numerous nationalist and native organizations in Java followed the position of the Union of Political Associations of the Indonesian People (*Permufakatan Perhimpunan Politik Kebangsaan Indonesia*, PPPKI), which had principally objected to the formation of the Spit Commission (*Bintang Timoer*, in IPO October 31, 1931).²⁰ Individual responses began to trickle in during October of the same year. An essay in *Darmokondo*, the official publication of Boedi Oetomo, stated that the request from the Indo-Europeans sounded like a death knell for Indonesians, as land was a matter of life and death to them. The author urged for a united front among Indonesians to protest against this request. Echoing Thamrin, he demanded an unambiguous definition of “Indo-European,” and he urged the press and Indonesian associations to carry out the task (*Darmokondo*, in IPO November 7, 1931). Undoubtedly, the Spit Commission’s encouragement to the Indies population to voice their opinion sparked debates in public fora and in many associations’ and organizations’ meetings. Indonesian, Dutch, and Chinese newspapers²¹ widely reported these conversations. Political organizations and their youth wings, independent women’s association, and religious and civic organizations held discussions and voted on positions.

Responses continued to flood in during the next four years until the Spit Commission announced its summary of findings in 1935. Although the general reactions from Indonesians were negative, there were nuances in the responses, ranging from resentment to mild empathy, that reflected the ambiguous relationship between the Native population and their Indo-European cousins.

²⁰ Anonymous, “Grondrechten voor Indo-Europeanen,” *Het Vaderland*, November 30, 1931 <http://kranten.kb.nl/view/article/id/ddd%3A010013848%3Ampeg21%3Ap010%3Aa0257> (accessed March 18, 2012).

²¹ In fact, many Chinese newspapers are published in tandem with Indonesian ones, such as the influential *Sin Tit Po*, but my language limitation prevented me from accessing them.

General resentment of IEV's demand was widespread among Indonesians because Indo-Europeans already enjoyed generous benefits from the government. Further demand for the right to own was seen as a sinister attempt to take over what was traditionally the exclusive right of the Native population. Weak though it might be when compared with the Dutch eigendom right, the Native land rights and property regime nevertheless had withstood various assaults by the colonizers, as Thamrin described in the Volksraad debate. Land was the only asset most Indonesians could own, whereas Indo-Europeans enjoyed enviable benefits from the government. An article in *Swara Katholiek*, an official publication of Indonesian Catholics, described the generous assistance enjoyed by "impoverished Indo-Europeans." Indo-Europeans were allowed to lease small parcel of lands for agriculture (*kleine landbouw erfpachtsrecht*) up to 25 bouws at an extremely low rent of 10 cents per bouw per year, a figure unimaginable for impoverished Indonesians. The author pointed out an example in the Djember area of East Java. For pauperized Europeans, the government exempted tax. Further, their children were free to attend European schools, a privilege highly coveted by all population groups. If living in a village, they were exempted from obligatory village services without being deprived of the full benefit of services provided by the village. Not a few of this leasehold rights were managed under sharecropping arrangements with local natives (*Swara Katholiek*, in IPO March 17, 1934). These generous benefits did not escape Indonesians' attention.

Seeing the demand mainly as greed and not as a means for survival, Indonesians rejected it. Chapters of the Catholic Youth Organization, PPKD, in Blitar and Magelang rejected the idea of granting land rights to Indo-Europeans, arguing it would disrupt the economic, social, and political stability of the Native population (*Swara Tama*, in IPO February 13, 1932). For many Indo-Europeans, this rejection

was unexpected and disappointing, because the Catholic community in the Indies counted numerous Indo-European as its members.

Although many voiced strong rejection, not a few Indonesians expressed a more nuanced outlook on the case. An essay published in a North Sumatra newspaper empathized with the plight of Indo-Europeans. The author claimed to have nothing against their request for land rights, but Indo-Europeans' vehement identification with the Dutch had offended his sensibility. To make their demand for land rights legitimate, the author invited Indo-Europeans to identify themselves as one of many ethnic groups of the Indies and to become an official part of "Indonesia" (*Lentera*, in IPO November 7, 1931). An author identified as "Hercules" shared a similar sentiment in *Swara Katholiek*. He claimed he had no objection if Indo-Europeans gained some form of land rights as long as they were equated with Indonesians in their legal status. He demanded that they co-operate with the nationalist front to fight for Indonesian independence (*Swara Katholiek*, in IPO January 30, 1932). Yet another author in the same newspaper pointed out the importance of the land question in the context of race relations. Indo-Europeans belong to the "Masters" (*overheerschers*), and they must be consistent with their decision with all its consequences (*Swara Katholiek*, in IPO February 13, 1932).²² An article in *Pewartu Deli* echoed this position. The author would approve Indo-Europeans' demands if they share the same obligations imposed on Indonesians. The author urged the "real *landskinderen*" to vigorously defend their rights, which had already been acknowledged by law (in IPO October 15, 1932).

The series of responses by Indonesians reflected a continuous calling to Indo-Europeans to identify with Indonesians, to become "one of us," implying the former's

²² Indo-Europeans and their Dutch supporters were understandably disappointed by the position of the Indonesian Catholic and Christian, as expressed by de heer Ruiters, a member of the central committee of the *Christian Staatkundige Partij*, known to be a center-right party, who said that it was a pity to find that the question of the Indo-Europeans' plight for land rights was not amplified by the Indonesian Christians.

eagerness to share the identity, yet IEV leaders stubbornly insisted on keeping the group a part of the European population. In the IEV congress in 1934, Chairman De Hoog restated IEV's commitment to the *Nederlanders*: "Indo's Nederlanders zijn en willen blijven"—Indo-Europeans are Dutch and will remain so. Such defiance attracted mocking responses. An essay by an Indonesian author acknowledged that IEV's position was understandable as there were no better alternative: "Today, the Dutch have the power, and to rally to the side of the party in power is a very safe bet"; nevertheless, "the question for Indo-Europeans was whether the full-blooded, purebred Dutch-*trekkers* recognized them as 100% Dutch as the name 'Indo' itself signified a difference with 'European' (*Pemandangan*, in IPO April 7, 1934, 205). The author alleged that De Hoogs's position was not necessarily shared by poor Indo-Europeans, and he urged the latter to take note of IEV leaders' declaration.

In questioning the law, Indo-Europeans attempted to remake their identity as Europeans who—in contrast to agrarian laws—had a legitimate claim to land due to their blood ties to the colony. Being prevented from owning land and having an anchor in the Indies was for Indo-Europeans an existentialist threat, since most of them had not stepped on the Netherlands soil and knew only the Indies as their home. Being "European" in the strictest legal sense of the term isolated them from the wider spectrum of their perceived real identity, and they waged this struggle to wriggle out of the state's isolation effect. On the surface, their struggle for land did project strong economical motives, but on a deeper scrutiny it was also an attempt to reject the rigid identity imposed on them and to redefine it on their own terms. In turn, Indonesians appeared to have sensed this deeper search, but instead of entertaining IEV's proposal to be acknowledged as both *landskinderen* and Europeans, Indonesians called upon them to identify fully with the nation. There was indeed a chorus of invitation to Indo-Europeans to identify with the "poorer cousins" whose plight was even more desperate

than theirs. Indo-Europeans' insistence on being the "Other" was deemed the key deal breaker in sharing the rights to land. Understandably, it stoked Indonesians' resentment.

Identity, thus, was not a one-way trajectory. For an identity to establish, it required sanctions not only by a set of state institutions, but also by fellow social actors. In this case, Indo-Europeans' proposed "new" identity hinged on the approval of the Indonesian population, albeit implicitly. There was an intriguing sense of confidence among Indonesians that their unwillingness to share land rights with Indo-Europeans would be warranted by the colonial government, not so much out of the latter's sympathy with Indonesians' plight as out of loyalty to their symbolic language of legal cultures. Thamrin, for example, in his defense of Native land rights, interpellated the concept of natural and moral rights and the underlying principle of colonial agrarian laws to cajole the government not to deprive Native population of their rightful claim to land. Naturally, it was a flimsy claim upon the colonial administrators, yet strong enough to be played against them if they were to hold intact other colonial structures legitimized by legal languages. IEV themselves felt insecure of the government's support. At IEV 15th congress, the chairman De Hoog lamented the government's treatment of Indo-Europeans as worse when compared with Indonesian "extremists." Identity in colonial conditions defined entitlement to resources, and naturally there were always struggles among social actors to claim an identity that brought about the most benefits. But it was not a straightforward event decided by a single state-centered entity.

If Indonesian-language newspapers focused on reporting Indonesian reactions, the Dutch-language newspapers in the East Indies and in the Netherlands appeared distant: they limited their reports on the factual progress of the Spit Commission's work. They relayed news from Batavia when the Commission made clear they would

not abandon the Alienation Prohibition, which signaled what could be expected in the Commission's future recommendation.²³ They applauded the Commission's legal brief publication that explained principles of the Agrarian Law and its derivative rules and regulations, which defined forms of land rights available to Europeans.²⁴ Other than these polite responses, Dutch-language newspapers kept their distance from the debate.

The Spit Commission Summary Findings

After a three-year delay, the Commission finally announced a summary of its findings in February 1935.²⁵ The Commission understood they needed to break the status quo. They acknowledged the Indo-Europeans' desire to be connected to the Indies, which was to be represented symbolically by ownership to land, and to acquire land rights for housing and economic livelihood. At the same time, they understood the objection to such a demand, that the unlimited possibility of acquiring land rights by non-Natives posed the danger of Natives' dispossession. It would very likely disrupt practices of adat law that intimately interwove land rights to socio-cultural relations. The Spit Commission designed their recommendations based on four principles: 1) There was a real need for an economical means for impoverished Indo-Europeans to acquire land for housing and livelihood opportunities; 2) an accommodation of this need was desperately needed for social and political reasons; 3) the interests of the Native population had to be protected, taking full account of adat

²³ Verslag Commissie voor het Grondbezit van Indo-Europeanen, n.d.

²⁴ Anonymous, "Grondrechten voor Europeanen," *Het Nieuws van den Dag voor Nederlands Indies*, April 16, 1934, <http://kranten.kb.nl/view/article/id/ddd%3A010230075%3Ampeg21%3Ap001%3Aa0012> (accessed March 18, 2012).

²⁵ The full final report came out only in mid-1936. It consisted of three sections with a summary overview of the agrarian regulation (*wetgeving*) and ten appendices.

laws and economic and political concerns connected to any accommodation to the Indo-European demands; and 4) lifting the Alienation Prohibition was “absolutely out of the question,”²⁶ and this prohibition in principal had to be preserved in the Agrarian Regime. Thus, any solutions including acquisition of land for Indo-European agricultural purposes, “should be found strictly within the limits given by adat law and economic consideration.”²⁷

The Commission tried their very best to accommodate both needs as reflected in their recommendation. Based on the principles, the Commission quashed the allegation that Indo-Europeans were unqualified to initiate small and medium-sized agricultural enterprises, a notion widely spread among skeptics. However, it warned against future legal provisions being redacted to encourage an artificial peasantry; instead, legislative provisions should be designed to enable Indo-European *blijvers* to actually own land so that they could engage in small or medium-scale farming. Moreover, the Commission clarified that their conclusions should apply not only to Indo-Europeans *blijvers*, but also to full-blooded European *blijvers* of Dutch nationality.

With the principles established as a guideline, the Spit Commission specified five recommendations to the government in response to the Indo-Europeans’ three requests²⁸: providing land for housing and work opportunities; providing land or agricultural purposes; establishing small leasehold regulations (*kleine erfpacht bepalingen*); revising the redaction of the Alienation Prohibition; and miscellaneous issues of no relevance here. In the recommendation, the Spit Commission responded

²⁶ Verslag Commissie voor het Grondbezit van Indo-Europeanen, Deel 3, 2, nd.

²⁷ Verslag Commissie voor het Grondbezit van Indo-Europeanen, Deel 3, 2, nd.

²⁸ Indo-Europeans’ demands regarding land rights encompassed three specific areas: a form of land rights for housing and livelihood for its members; a relaxing of the condition for acquiring leasehold for small farms into one that allowed Indo-Europeans to access the rights regardless of their economic status; and removal of the Alienation Prohibition.

to two of the Indo-Europeans' demands, but flatly rejected the proposal to remove the Alienation Prohibition.

In the first two recommendations, the Commission suggested an optimization of two exceptions laid out in the *Indische Staatsregeling* 1925 Article 51, which was a recent revision of the Agrarian Law of 1870. These exceptions allowed the alienating of land for housing/work purposes and for small agricultural purposes. Utilizing these exceptions made possible a form of land rights for Indo-Europeans without creating new regulations that might clash with the principles of existing agrarian laws. In tandem with this law, the Commission recommended using adat law as the legal reference in alienation transactions: land alienation should strictly follow the rulings of adat law; after a transfer, land should remain under adat law jurisdiction; alienation was not allowed in land prohibited by adat law from being transferred; all taxes and obligations valid under adat law such as land taxes and Native pawning (*inlandsche verponding*) and other burdens related to property ownership should remain; the right should be susceptible to conversion to agricultural eigendom rights or Western eigendom rights in cases where it is possible for Natives to do so; and further alienation by the entitled-European to a non-Native should be prohibited, with the exception of a European-*blijver* who was a Dutch subject.

The Commission recommended that these provisions be strictly aimed at impoverished Indo-Europeans. Land for housing should not exceed half a *bouw* (0.3548 hectares) and land for agricultural purposes, five *bouws* (3.548 hectares), excluding the part for housing. If the land was situated within a Native community, it should not exceed five percent of the paddy fields area; in the case of dry land the size should not exceed a limit set by local authorities. This set ratio of Indo-Europeans in a Native community was apparently intended to curb racial tensions. In substance, these first two recommendations responded positively to the Indo-Europeans' requests for a

kind of land rights. Although they stopped short of granting full ownership to land, the recommendations retained a window for full conversion to agricultural eigendom rights in the rare case a Native could do so.

For the third recommendation, the Spit Commission suggested revisions to eligibility and assistance for the small leasehold (*kleine erfpacht*) requirements.²⁹ They proposed expanding eligibility to include Europeans of “small means” (*minder bemiddeld*), a category one notch higher than the impoverished one (*minvermogend*). In a way, this recommendation responded positively to IEV’s request for a relaxing of the criteria, but not so far as to include all Indo-Europeans regardless of their economic status. Further, the Commission proposed scrapping the land credit policy, to be replaced by an increased lease period from twenty-five to seventy-five years. This legal option should be available only to European-*blijvers* and Indo-Europeans of full blood who were also Dutch subjects (*onderdanen*). Revocation rules were to be tightened: permission could be revoked if land was being used differently from the stated intention. To minimize conflict with local community, there was a set maximum land allowed for Europeans living within a Native municipality (*gemeente*), 5% of total land for paddy fields and a certain limit set by local authorities. The Spit Commission also recommended a tax higher than f 1,- per bouw for larger land holdings and a retribution for native municipality fund. To anticipate the population density in Java, they suggested procuring land in the Outer Islands using the legal basis of reclamation rulings in St. 1896 No. 44 and the agrarian regulations.

In their fourth recommendation, the Spit Commission proposed a revision to the redaction of the Alienation Prohibition,³⁰ with the new wording as follows:

²⁹ Staatsblad 1904 No. 326 spelled out the regulation for this.

³⁰ The original Alienation Prohibition was redacted as follows: “That land use right is not susceptible to alienation by Natives to non-Natives, so that all agreements, such as alienation, directly or indirectly intended, are legally void” (Indische Staatsblad 1875 No. 179).

By law it is declared null and void—and punishable—each legal transaction under whatever form, whose objective is to supply/grant to non-Native directly or indirectly the disposal over land, upon which Native land rights are exercised, as well as over the buildings or crops occurring on the land- except in cases prescribed by the authority or by general regulation.³¹

I will discuss this proposal in detail in chapter 6. In contrast to IEV's request, the Spit Commission retained the Alienation Prohibition, but redacted it in a way that minimized multiple interpretations.

The Spit Commission's suggestion to retain land transferred to Indo-Europeans and European *blijvers* under adat law was an intriguing one, although it resonated with the IEV's promise that they would honor adat obligations upon the land if given the rights to own it. Keeping the land under adat law meant that the new holders were bound to taxes and burdens and social obligations attached to the land per adat law regulations. It was a nod to the social role of land among the Native population, which was different from the European worldview. Keeping the land under adat law also meant that the land could easily revert to Native landholders without too much of a legal entanglement such as would be the case if the land were put into European eigendom. In keeping with this suggestion, the Commission proposed that any legal conflict be resolved at the Landraad, the Native Court, even if the defendant was European.

³¹ In Dutch: Van rechtswege wordt nietig—en strafbaar—verklaard elke rechtshandeling, onder welken vorm ook, die ten doel heeft, een niet-Inlander, rechtstreeks of middellijk, de beschikking te verschaffen over gronden, waarop Inlandsche grondrechten worden uitgeoefend—dan wel over de op die gronden voorkomende opstallen of beplantingen—anders dan in de gevallen bij of krachtens algemeene verordening toegelaten.

Reactions to The Spit Commission Findings

IEV Reacted

Within two months after the Spit Commission published its recommendations, IEV held a congress. Members differed on how to respond, marking a rift in their approach to maintaining a relationship with the Native population. The Batavia chapter proposed a motion to declare the Spit Commission report “unsatisfactory.” They recommended that IEV establish a committee to lead the fight on scholarly and political fronts (Onze Stem 1935, 73). The Malang chapter disagreed substantially with Batavia. A representative from the Malang chapter, a Mr. Schijfsma, argued that only if IEV could effect a revision of the Alienation Prohibition would it create a lasting change. The revision should try to unify the racially divided agrarian law. Unification, he argued, would prevent predatory land transactions between Natives and non-Natives and curb dispossession by the rich Natives of the poor. In this way, transforming the indigenous land rights regime would offer both Indo-European and Native populations “principled and lasting solutions” for “the salvation of the Indigenous society,” a principle “completely in line with our [position for] unified colonial politics” (Onze Stem 1935, 74). To Schijfsma, only after these solutions were in place would there be the possibility of making indigenous rights accessible to Europeans. To move forward with this plan, the Malang chapter decided to accept the Spit Commission’s summary finding only as a preliminary solution before a more fundamental solution could be carried out, in this case the revision of the Agrarian Regime.

Schijfsma’s proposal was more problematic than it appeared. The keynote speaker for the Congress, Mr. Barre, contended that the government would never abandon the core principle of its agrarian regime as laid out in the Alienation Prohibition, not so much for fear of Native dispossession by the Indo-Europeans as for

fear of the threat by the Chinese and Arab populations, who, as moneylenders, had amassed large amounts of land from their Native debtors. Barre criticized Schijfsma's unification idea as unspecific, lacking clear direction, and vulnerable to multi-interpretation to the disadvantage of the Indo-Europeans. Even IEV's claimed willingness to carry out adat obligations attached to land under the Native tenure regime was naïve, because it underestimated the socio-cultural consequences for Indo-Europeans. Managing land under the Native regime, Barre argued, would force Indo-Europeans to carry out numerous obligatory services, such as services for the village and village head; services to maintain public facilities, roads, and gutters; and other menial tasks unworthy of their status. He said,

These are all obligations inherent in the native property rights, because of unification of this property right, the European [will be put] directly under the native village officials, not under the highest [European] government official as it should be. . . . There is no defense against that possibility. He will be exposed to incessant harassment from the village officials. (Onze Stem 1935, 78)

Instead of unification, Barre recommended that IEV focus its energy on exploring the heritability of leasehold rights for small agricultural enterprises (*erfpacht voor kleine landbouw*), which the Spit Commission had recommended be extended to seventy-five years. It was a simple solution, and the Spit Commission seemed to pursue a breakthrough in that direction. Further, Barre recommended that IEV lobby the government to regulate the heritability of this leasehold in the Civil Code (*Burgerlijke Wetboek*), thus securing it for management under European law. Barre was explicit in his reluctance to unify with the “great million mass,” as it would threaten the very existence of the Indo-European group. He said Indo-Europeans should have learned a lesson from the unification in education that had marginalized them from government jobs in the first place.

The proposal to have a unified agrarian law “for the benefit of both Indo-European and Native populations” reflected a vision of progress in history. In this vision, Indo-Europeans felt they shared the burdens of white men in the civilizing mission of their Indonesian cousins. But the tendency to identify with the Natives through a unified agrarian law was quickly quashed by hardliners who demanded a clear boundary and separation from “the million masses.” The latter considered that the slightest dilution of their precarious European identity would bring much distress. Unification—if only in agrarian rights—with their Native cousins meant dragging down the socio-economic status of Indo-Europeans; being put under the authority of a Native village head meant severance from proper treatment as Europeans entitled to services offered by European officials, a cause of harassment, and a symbolic divorce from the larger European society. Such possibility struck them with a primal fear, so much so that it amplified the argument that Indo-Europeans should fight against it with all their might.

Volksraad Continued the Heated Debate

Like IEV, the Volksraad did not wait long to start the debate about the Spit Commission’s summary recommendation. As soon as the 1935/1936 sessions opened, debates amongst members ensued.

The Indonesian Nationalist Faction members were very cautious about the recommendation. They underlined the privileged status of Indo-Europeans in terms of law, legal jurisdiction, employment, and salary levels, and in the State’s guarantee of personal rights and education. I.J. Kasimo, a Volksraad member representing Indonesian Catholics, contended that allowing Indo-Europeans to have land rights made even more unfair the already unjust tax structure. Where a native peasant was to pay tax of 10 guilders every three years for two to three bouws of land, an

“impoverished” Indo-European farmer working his small agricultural leasehold was charged with only 10 to 25 cents tax per *bouw* per year for up to 25 *bouws*. In special circumstances their ground rent could even be pardoned (Volksraad Handelingen 1935–1936, 739). Where Indonesian farmers had to resort to moneylenders for cash relief, Indo-European small farmers enjoyed generous assistance from the government in the form of cultivation credits.

Kasimo and his colleague Wirjopranoto then proposed a motion to carry out a study to compare agricultural burdens between Native and Indo-European farmers to complement the Spit Commission’s recommendation and to assist the government in its decision making. The study should compare the state of Indonesian and European farmers on the basis of their skills, available facilities, subsidies, and taxes in monetary terms due to the different nature of Native and Indo-European farming techniques. From the Native farmers’ side, it should monetize the burdens of land rent, village services attached to their land share such as maintaining of roads and bridges, irrigation works, graveyards, and so on. Those should be compared with Indo-European farmers’ burdens in the form of rents and mortgages.

The motion outraged Indo-European representatives. They argued that Indo-European farmers who owned or managed 25 *bouws* could only be compared with upper-class Indonesian landholders with similar acreage to be meaningful. Indo-European farmers had to shell out money for hidden expenses, most frequently demands from the village head, or for compulsory contributions for the maintenance of village water pipes, roads, or bridges, and other unsanctioned demands. Wealthy Indonesian landholders were very likely exempted from these obligations courtesy of their high status in the Native society. Moreover, Indonesian landholders could easily recruit *koelis* to sharecrop their land and receive a share from the harvest relatively

effortlessly. This was not the case for Indo-Europeans, who were prohibited by law from sharecropping at the risk of the revocation of their leasehold. Beets said,

And is it then not seen as reasonable and just . . . to ask for the same burdens and obstacles for the small European farmer or landowner, burdens which people in principle find objectionable, at least in the extent and manner in which they are currently imposed by the villagers? [Is it not reasonable] that while these Indian Dutchman stand entirely outside the village community and will continue to stand like the Javanese [who are alien to the local community] in the outer regions . . . for them to want to preserve their own status, a wish that surely they are entitled to? (Volksraad Handelingen 1935–1936, 1113–1114)

There is an underlying sense of estrangement in this statement, an estrangement from the Native population, an alienation, an overwhelming sense of Otherness that was only curable by maintaining a connection with Europeans. Beets and other IEV members considering maintaining their connection to the European population authorized Indo-European farmers to call on European officials should native village heads and village officials demand unwarranted payments. There was apparently a deep distrust of Native officials, who Indo-Europeans felt were out to harass them. It illustrated the disconnect between Indo-Europeans and the Native village and villagers with whom they would interact intensely should they gain the rights to land, and their discomfort with the village way of life.

The National Faction in the Volksraad eventually relented after an indirect consultation with the Spit Commission. The Commission explained that the motion asked more than what they could give, even considering the data they had accumulated over four years of work. Further, several studies were already available on the topic. After a promise that a general picture of the state of Native and European small farming would be included in the final report, Wirjopranoto and Kasimo withdrew their motion.

Public Reactions

IEV's reputation as the greedy cousin continued to reverberate among Indonesian intellectuals, leaders and journalists. Resentment still tinged the reactions published in Indonesian-language newspapers. A well-known author in North Sumatra shared Wirjopranoto and Kasimo's sentiment against IEV's eagerness in retaining their status as Europeans, which would definitely sustain their privileges and put them in the same class as the Masters. Indonesians found it almost a betrayal for the IEV to prefer remaining a stranger at a critical juncture in Indonesians' struggle for a more independent Indies (*Sinar Deli*, in IPO February 18, 1936).

Another article drew attention to IEV's attempt to secure the constitutional and legal position of the Eurasians once and for all. The author underlined the ambivalent position of the Indo-Europeans: they felt humiliated if they were categorized as a part of the indigenous group, yet they wanted to share rights of the Natives on the argument of being *landskinderen*, the country's children (*Radio*, in IPO May 16, 1936). Another essay reminded readers that even without such provisions, vast swaths of land in West Java were already under the control of non-Native groups (*Pemandangan*, in IPO March 21, 1936),³² a fact underscored by another article in *Sinar Sumatra* (in IPO August 1, 1936) which stated that if the government granted Indo-Europeans their demand for land rights, such privileges would also become accessible to all groups in the colony regardless of their origin, including pure-blooded Dutch persons. The author insisted he had nothing against non-Natives who wished to stay in the colony, as they had full rights to do so, but the *landskinderen*, the true

³² As was feared by many, the Chinese in the colony had begun to inquire about the possibility of owning land. They had sent their representative, Heer Kan, himself a member of the Volksraad, to an audience with the Minister of the Colony in the Netherlands in this quest. This news reached a wide audience, and Native leaders reacted to it (*Pemandangan*, in IPO, 18 Juli 1936).

children of the land, should never let the land they inherited from their forefathers be taken away by others.

As the resentment lingered, concrete actions among Indonesians also began to emerge. A member of Indonesian nationalist fronts established an initiative called the Native Commission for the Study of Land Rights in March 1936. The Commission was formed independently of the colonial government, and consisted of three native lawyers educated in the Batavia *Rechtschool*: Mr. Mohammad Jamin as secretary, and Mr. Sjarifoedin and Mr. Dr. Soekamto as second and third secretaries. The commission planned to issue a publication on the state of agrarian matters in the colony (*Pemandangan*, in IPO March 28, 1936), which would include a legal report on the state of agrarian matters and a report on agrarian politics in the colony. Both would be made available to the public. Another initiative for concrete action took place outside Batavia. A committee in Semarang, Central Java, was formed in reaction to the Chinese Association Chung Hwa Hui's initiative to gain rights to own land following in the footsteps of Indo-Europeans. The Committee vowed to fight the granting of land rights to non-Natives and would continue to oppose such initiatives in the name of the poor native farmers who were already deprived of land. The Committee called on all Indonesians to join the struggle and to contribute on the question of which approach was best to fight the actions of the Indo-Europeans and the Chung Hwa Hui (*Pemandangan*, in IPO, July 18, 1936).

Resentment and rejection notwithstanding, a voice of reason also emerged from among the Natives after the publication of the Spits Commission's summary findings. An author in North Sumatra reminded his readers that all population groups in the Indies were in the same boat together. Economic hardship befell not only the Indo-European population, but also other groups in the Indies, including Indo-Chinese and Indo-Arabs, who lived in more dire circumstances. These groups considered the

Indies to be their homeland as much as the Indo-Europeans. Therefore, the author called for the Spik Commission to be consistent in their recommendation by granting the same rights to these groups as the rights they recommended for the Indo-European population. This was a rhetorical call; the author knew the government would hesitate to do so for fear of massive land transfer out of the Natives' hands, as was hinted at by Barre in a recent IEV congress. The author called for Indonesians to unite in defending their land rights because the Native farmers had already had to compete for land against large-scale agricultural estates and against the government's forest reserve (*The Sinar Deli*, in IPO Agustus 1, 1936, 495). In the same tone, another article called for the Governor General to be neutral and to protect each and every colonies' population group, not only Indo-Europeans (*Tjaja Timoer*, in IPO August 15, 1936). These calls signaled a recognition among Indonesians that the colonial government could be interpellated to be just; they summoned "the state" to respond in its role as the ultimate arbiter of justice.

Along this line of response, Agus Salim—a well-known "extreme nationalist" who had a long career with Sarekat Islam—offered a deeper insights into the brouhaha. Instead of stoking the resentment, he directed attention to the "theoretical" cause of the fight. The government's politics of divide-and-conquer had caused two groups to butt heads who essentially shared an interest and urgency in creating a prosperous homeland in the Indies. The reason for the animosity in reality was more theoretical than practical. There was no genuine reason for Indonesians to fear competition from the Indo-European farmers, since only a few of them would actually seek a livelihood in farming. Further, IEV's request for land rights was not based on practical needs, since it could not force any of its members to farm if they not wish to do so. Last, the recognition of IEV's wishes had yet to happen (*Pemandangan*, in IPO September 11, 1936). In a separate article, responding to the heated debate in the

Volksraad, Agus Salim again called for calm (*Pemandangan*, in IPO October 10, 1936). He advised Indonesians to become acquainted and to pay attention to the Indo-Europeans' struggle, because to all appearances Indonesians would probably never live separately from them. On the other hand, Agus Salim called for Indo-Europeans to shed their racial illusions and image of superiority vis-à-vis the Natives. After all, there should be no shame for Indo-Europeans to desire to live like natives, as they would have passed for natives unnoticed. But if they had wished to be identified more as Natives, it was prevented by their peers and the Dutch intention to watch out for "the prestige of Europeans." Salim concluded that the Indies needed to jettison views, regulations, and provisions that were tinted with racial discrimination. Europeans could take part in this project by abandoning their racist delusions. He wrote,

The welfare of the Eurasians and the Dutch can only be served if instead of the racial sentiment, considerations of humanity are taken as a basis. And Eurasians shall see their ideals realized, i.e., acquisition full rights to property in this land, which has indeed become their country, if they let go of their relationship with the Netherlands. The welfare and prestige of the Indos cannot be served if they do not focus all their attention and interest in this country, and do not concentrate all their work towards the advancement of Indonesians. (*Pemandangan*, in IPO October 10, 1936, 651–652)

In contrast to Indonesian-language newspapers, the Dutch newspapers continued to keep a distance from the Indo-European case. They mostly reported factual information and progress, and published almost no opinion pieces. It was very likely they did not share the anxiety of the Indo-Europeans. They welcomed the publication of the Spit Commission's summary findings,³³ while another calmly reported the establishing of a commission at the instigation of Mohammad Thamrin,

³³ Anonymous, "Grondbezit voor den Indos," *Het Nieuws van den Dag*, 23 February, 1935, <http://kranten.kb.nl/view/article/id/ddd%3A010230339%3Ampeg21%3Ap002%3Aa0009> (accessed March 18, 2012)

the Volksraad member, to study native land rights in Batavia.³⁴ They also reported the Chung Hwa Hui inquiry to acquire land rights, following the footsteps of the IEV.³⁵ When the Spit Commission published its complete report and recommendations, the Dutch newspapers diligently reported it, too, and included in their report detailed information about the recommendation.³⁶ *Het Vaderland* also announced the administrative procedure that the report needed to go through, and the invitation from the Commission for the general public to comment on the matter, including comment from the commission that IEV had established.³⁷

In the midst of enthusiastic debates among various population groups in the Indies, the colonial government played their cards well. They portrayed themselves as an impartial and just mediator. Reacting to the Spit Commission's findings and the ensuing debates, the Director of Binnenlands Bestuur stated that the government would deliver an official opinion to determine its own position. Afterwards, the government would decide whether, and if so what kind of, changes in the agrarian regulations would be made. They must seek the opinion and approval of the government in the Netherlands, in which due diligence would be exercised. The government's hopes set an agenda in the next Volksraad session about which of the Spit Commission's would be executed (*Volksraad Handelingen 1936–1937*, 1287).

³⁴ Anonymous, "De Grondrechten," *Het Vaderland*, March 18, 1935, <http://kranten.kb.nl/view/article/id/ddd%3A010015874%3Ampeg21%3Ap001%3Aa0010> (accessed March 18, 2012)

³⁵ Anonymous, "Nederlandsch-Indie Grondrechten," *Het Vaderland*, January 29, 1936 <http://kranten.kb.nl/view/article/id/ddd%3A010016408%3Ampeg21%3Ap014%3Aa0278>; Anonymous, "De Chineez en het grondbezit," *Het Vaderland*, May 29, 1936, <http://kranten.kb.nl/view/article/id/ddd%3A010016612%3Ampeg21%3Ap008%3Aa0200> (accessed March 18, 2012).

³⁶ Anonymous, "De Grondrechten voor Indo-Europeanen," *Het Vaderland*, July 17, 1936, <http://kranten.kb.nl/view/article/id/ddd%3A010016695%3Ampeg21%3Ap002%3Aa0061> (accessed March 18, 2012).

³⁷ Anonymous, "Het Rapport der Commissie Spit," *Het Vaderland*, August 4, 1936, <http://kranten.kb.nl/view/article/id/ddd%3A010230483%3Ampeg21%3Ap001%3Aa0005%28> (accessed March 18, 2012)

Continued Resistance 1937–1939

The enthusiastic and heated debate that took place between 1930 and 1936 petered out from 1937 onward. Both Indonesian national front and IEV leaders could only sustain the debate in a haphazard way, because other pressing issues took over the stage. To bypass the stalemate, IEV sent its representative C.E. Barre to meet the Minister of the Colony in the Netherlands to push for a decision about the lease for small farmers (*kleine erfpacht*). Another IEV representative, Doeve, in the Volksraad session of 1937/38 urged the government to make a concrete decision about Indo-European land rights because it had promised a year earlier “to approve the Spit Commission’s recommendation within three months” (Volksraad Handelingen 1937/1938, 616). IEV was most interested in an implementation, not so much in further debates. Thamrin, repeating his keynote speech at a recent party congress, warned the government not to make a rushed decision regarding the Spit Commission’s recommendation. Since it had just been released a year before after five years’ work, it would take the general public more time to understand its implications (Volksraad Handelingen 1937/1938, 652). By 1938, Doeve gave up pushing for answers on the recommended revision of agrarian law for Indo-Europeans. He said, “I would prefer removing the shackles which the so-called small-leasehold had imposed on us due to disappointing law.” (Volksraad Handelingen 1938/1939, 572). By 1939/1940, not much was left on the issue of Indo-Europeans land rights.

Conclusion

In this chapter I follow the struggle of Indo-Europeans to acquire rights to land. I argue that in demanding the right to own land, Indo-Europeans created an identity separate from the one sanctioned by law, and by doing so, they exercised the practices that resulted in isolation and identification effects.

Colonial governance was driven by the “production of difference” using the vernacular language of law (Comaroff 1998). Among its projects was the creation of a new category of personhood based on racial delineation, a category that also regulated entitlement to resources. Colonial subjects in the Dutch East Indies were classified into Europeans, Foreign Orientals, and Natives; a subject’s legal status defined his or her access to land rights. Although land access for non-Natives was available via leasehold (*erfpacht*), absolute ownership to land (*eigendom*) was strictly regulated and controlled, presumably to prevent massive land transfer from Native to non-Native populations. Classified as Europeans, impoverished Indo-Europeans found it very difficult to benefit from the small leasehold option (*kleine erfpacht*) available to them. So, IEV leaders requested for their members a form of land rights that was more flexible and economical to manage.

Claiming to be *landskinderen*, IEV sought to differentiate them from European-*trekkers*: Native blood ran in their veins, and they considered the colony a permanent home. At the same time, they were not quite “Native,” despite their mixed blood. Numerous statements by IEV leaders underscored their sense of alienation from their Indonesian cousins. They felt they were strangers in the village setting and were consistently left “outside” of the community, thus legitimating their desire to remain “European.” Despite their ambivalent position in the colonial society, Indo-Europeans felt they were entitled to a certain form of land ownership. They would be “Europeans” yet own land as a source of livelihood. And they could foster a new class of medium-sized farmers.

Indonesian leaders and intellectuals vehemently rejected Indo-Europeans’ desire to claim the in-between status—one that would conveniently allow them to benefit from both sides of the division. Mohammad Thamrin reminded his colleagues at the Volksraad that land rights are not a grant from the colonial government; they are

an inherent and moral right attached to a Native person. But invented laws had created “other forms” of land entitlement that reduced Native ownership to a mere “right to occupy.” Indonesian leaders felt threatened not so much by the demand of Indo-Europeans as by the tentative nature of their identity, which would allegedly be abused should the demand be approved by the colonial government. Indonesians claimed they were willing to share the exclusive rights to land ownership on the condition that the Indo-Europeans give up their European status and integrated with other Indonesians to create a united front for a more independent colony (independence was yet to be a mainstream discourse). As a matter of fact, Indonesians invited Indo-Europeans to become “Indonesian citizens” (*staatsburgers*), to be no longer “strangers to us.” In this sense, Indonesians, too, fought the identification and isolation effects that had separated Indo-Europeans from them, effects that were also the results of IEV’s own doing. Indonesian identity as a nation thus was enhanced by the differentiation markings related to land: True Indonesians possessed rights to land; to claim rights to land, one had to “become Indonesian” by giving up their European legal status.

In their attempt to reclassify themselves as “the same but different,” as Europeans with special rights to own land, Indo-Europeans essentially waged an effort to remake the law that had classified and defined them in the first place. In their noisy rejection, aired in the colonial proto-parliaments and the vernacular press, Indonesians, too, “made the law” by preventing it from happening. Identity and personhood were not simply unilateral claims. They depended also on approval by the Native population as well as by colonial institutions such as the Binnenlands Bestuur, the Department of Justice, the Governor General, and the Minister of Colony in The Hague. Indonesians appeared to be quite confident that their rejection of Indo-Europeans’ request had the ears of the colonial administrators. Several essays rhetorically challenged the Spits Commission and the government “to be fair” in also

allowing the Chinese and Arab population to acquire similar rights should Indo-Europeans be granted land rights.

In this dynamic, we observe how law made the subjects, and how the subjects in return also made the law. Indo-Europeans' struggle was a process to reform law, albeit a less successful one compared with Indonesians' prevention of their becoming a certain kind of subject, that is, Europeans with special claims to land rights. It was Indo-Europeans and Indonesians who re-made themselves as "particular kinds of subjects" after they were formed by law and legal discourses. They re-invented themselves both as atomized individuals—creating the isolation effect—and as a part of a "homogenous member of certain community"—the identification effect.

In the battle for personhood, Indo-Europeans, Indonesians, as well as Chinese and Arabs interpellated to the "state" to "approve" their particular demands: in the Indo-Europeans' case, land rights; in the Indonesians' case, fairness and justice and rejection of Indo-Europeans' demand; in the Chinese and Arabs' case, similar rights to own land. In various ways, representatives of each population group called upon the Volksraad, the Director of the Binnenlands Bestuur, the Governor General, and even the Ministry of the Colonies, all parts of an interrelated network of state systems, to heed their demand. At the core of their demand was justice and fairness. And in the process, all these state institutions appeared as if they were a solid entity with the wisdom and authority to arbitrate social justice.

The struggle of Indo-Europeans renders visible how subjects and law in late-colonial Indonesia were reciprocally constituted, and how the two influenced the evolution of the colonial Agrarian Regime. Focusing on state effects instead of the "state" as an entity renders visible the interconnected network of social actors who carried out practices that are that frequently taken to be waged by "the state." It illustrates the ways in which state effects were instigated, not by state apparatuses, but

by series of discursive battles carried out by identifiable human agents. It was individuals who, singularly or as parts of a wider interconnected state system, set in motion isolation and identification effects and rendered the illusory state a concrete entity with the authority to arbitrate.

**CHAPTER 6:
Rupturing Discourse from Within:
Subject, Lawmaking, and Colonial State Formation**

Introduction

In 1936 the Spit Commission finally published its complete recommendation regarding the Indo-European community's demand for land rights. Although the Commission agreed there was a need to make land available in a more economical manner for Indo-Europeans of limited means, it stopped short of fulfilling the IEV's request to abolish the Alienation Prohibition. In fact, the Commission retained the Alienation Prohibition as one of the principles in drawing their recommendations. As a compromise, the Commission recommended utilizing legal rulings already laid out in agrarian laws. Land for Indo-Europeans, however, would be kept under adat law jurisdiction, binding those who use this arrangement to adat obligations attached to the land. The recommendation incited deep dissatisfaction within the Indo-European community, and the issue remained a thorny topic for years afterwards. During this time, a separate but related debate emerged among Batavia legal scholars at the triennial congress of the Netherlands Indies Lawyer Association (*Indische Juristen Vereeniging*).

If in the previous chapter I examine the struggle between Native and Indo-European communities over the Alienation Prohibition, in this chapter I push my interrogation about the same agrarian regulation deeper by dissecting a Native scholar's intervention into the legal practices surrounding the ruling.

Soepomo carried out his intervention into legal discourse on the Alienation Prohibition through an essay written for and presented and defended at the prestigious Netherlands Indies Lawyers Association Congress in 1936. His analysis demonstrates that the judicial system was inconsistent in carrying out the mandate of the Alienation

Prohibition and that the loosely structured wordings of the ruling encouraged a multi-interpretation that weakened the authority of law. My objective is to render visible Soepomo's capacity for critical reflection and deliberate intervention, with which he transformed the possibility of thinking-and-being beyond the existing legal discourse. By situating Soepomo's essay within a wider debate on the Alienation Prohibition, waged by members of the Volksraad and professors of the state-sponsored Batavia Rechtshoogeschool, the very members of the state system, I illuminate the role of the reciprocally formed subject and law in bringing about colonial state formation.

Subjects in colonial society—the colonized, the colonizer, and those wedged in between like the Indo-Europeans—were shaped by densely intertwined threads of power relations as much as by positive intersubjective relations (Allen 2008). Contrary to the critics of Foucauldian subjects, being an effect of and being embedded in power relations do not deny a subject autonomy, understood as the capacity to exert a critically deliberated intervention. In fact, Foucault contends that, “to the extent that he is a power-effect, the individual is a relay: power passes through the individuals it has constituted” (Foucault 2003, 29–30; emphasis added). As a relay of power, subjects possess the potential to maintain, reproduce, or alter power relations. In the act of altering existing relations of power and subjection, in making possible subversive transformation of discursive limits that are in essence contingent, a subject exerts his or her autonomy and agency. As racially based laws in the colony shaped its subjects, and the subjects in turn “ma[d]e the laws” in myriad ways, the trajectory comes full circle. In the previous chapters I trace processes of subject formation and lawmaking as almost two separate events; here I demonstrate how the two are intertwined in the reworking of the colonial agrarian regime.

The Indies Lawyers Association was an established and respected intellectual circle with a history tracing back to the mid-19th century. It called among its members

government's high officials, members of the Volksraad, advocates in private practice and, naturally, professors from the Rechtshoogeschool. The Association published the *Indies Journal of Law (Het Indisch Tijdschrift van het Recht, ITR)*, an important journal that shaped legal discourse in the colony and the metropole. The journal printed original essays and documented legal cases deemed to be of importance to the administration of law in the colony. The ITR was the reference publication for legal opinions and precedence: debates at the Volksraad frequently cited sources from the ITR; government institutions justified their legal positions using ITR; training of Indies lawyers in Leiden United Faculty of Law and Letters and in the Batavia College of Law used materials published in the ITR (see chapter 1). As part of the Association, the triennial congress also carried the prestige enjoyed by the Association and its publication.

Following a conventional academic fest, the Congress organizers picked three topics considered pressing for the administration of law in the colony. Two presenters each would report their research, which experts would discuss. One of the three topics selected was "Alienation Prohibition of Native Land," which dissected St. 1875 No. 179 and its actual implementation. Aside from Soepomo, at that time an Indonesian staff at the Department of Justice, a Dutch career judge, W.F.C. van Hattum, was the presenter for the topic.¹

The colonial government issued the Alienation Prohibition, decreed in 1875 in St. 1875 No. 179 to complement the Agrarian Law of 1870 and the earlier agrarian laws contained in the Regeeringsreglement 1854. If the Agrarian Law of 1870 created opportunities to invest in agriculture enterprises in the Indies, the Alienation

¹ During this tenure, Soepomo supervised the research on adat rights in Central Java carried out by M.M. Djodjodigoeno and Tirtawinata, and did his own research on adat rights in Batavia West Java. The summaries of this research were published in ITR in the 1930s. Prior to this tenure, Soepomo was a landraad chairman in Sukohardjo and Yogyakarta respectively, where he carried out research on adat land rights in Solo and Yogyakarta post-reorganization (see chapter 3).

Prohibition controlled land transfer from Native to non-Natives, which could then be passed over to Dutch absolute ownership (*eigendom*). These two laws hence reflected the government's contradictory objectives in constituting the colonial agrarian regime.

The precise wording of St. 1875 No. 179 is:

That usufruct rights of land are not susceptible to alienation by Natives to non-Natives, so that all agreements, such as alienation, directly or indirectly intended, are legally void. (Indische Staatsblad 1875 No. 179; emphasis added)²

The keyword usufruct right of land (*gebruiksrecht op grond*) reflected the domain principle that denied any Native forms of proprietorship as full and absolute. The colonial state forms acknowledged ownership under the Dutch *eigendom* as an undisputable form of rights, while land under the Native property rights realm was acknowledged only as an inheritable usufruct right. Because the nature of the native usufruct right was allegedly “unstable,”³ the colonial government reasoned that the Alienation Prohibition was needed to prevent massive land transfer from the Native population to Europeans or Foreign Orientals. In this sense, the Alienation Prohibition was an important ruling; a faithful interpretation of this ruling by the court of law would have protected the native population from predatory land transactions.⁴

In connection with the decree and in the spirit of “protecting the Native's land right,” the Raad van Indie, the Council of the Netherlands Indies, an institution that at the time governed alongside the Governor General, issued in 1870 an interpretation of

² In Dutch: *dat gebruiksrecht op grond niet vatbaar is voor vervreemding door Inlanders aan niet-Inlanders, zoodat alle overeenkomsten, die zoodanige vervreemding, rechtstreeks of zijdelings ten doel hebben, van rechtswege nietig zijn.*

³ The colonial government was conveniently silent about their role in imprinting “usufruct rights” as the highest Native form of property ownership.

⁴ Another reason for the Alienation Prohibition, as stated by Minister van Bosse earlier in 1871, was that by reserving the land to the natives, the State enjoyed obligatory services from the indigenous community as a payment of land rent, such as delivery of coffee beans, provision of labor services, and stability (Soepomo 1936, 86). Apparently the government wanted no loss in revenues.

the ruling to be implemented by the Binnenlands Bestuur. This executive order is known by its registry number, Bijblad 3020. The order laid out a mechanism for an officially sanctioned land transfer from Native use rights to non-Native ownership. The mechanism is as follows: A non-Native who wished to acquire a piece of land under the native property rights realm had to request for the government to intermediate the transaction. After a government official drew a “redemption contract” (*afkoopovereenkomst*) with a Native, the land became free from the native use right (*vrije grond*) and its ownership technically returned to the State per domain doctrine. The non-Native could then request to buy the land from the government and transfer its ownership to European forms of property rights such as full ownership eigendom or building rights (*opstal*), paying both the government and the Native who had given up his usufruct right. If the land had belonged to a jural community, the non-Native buyer had to compensate the community as well. Land transactions that disregarded this mechanism would be considered void; the state would not acknowledge the non-Native buyer rights to the land, and the Native seller was deemed to have abandoned his use rights. As a consequence, the state would wrest the land use rights from the Native, and the land would become free state land (*vrije landsdomein*), that is, land free of claims and of asserted rights of both Natives and non-Natives (Bijblad 3020, 7). If a non-Native attempted to utilize such land, he was considered an illegal occupant and would be subject to legally sanctioned punishment. Through Bijblad 3020, the Raad van Indie authorized the Binnenlands Bestuur to carry out the government’s role as intermediary in the case of redemption contracts. This executive order was at the heart of the 1936 debate on the Alienation Prohibition.

In the way it invoked the power of state forms to institute law and legal discourse, the debate on Alienation Prohibition strengthened the imagined presence of the state (Abrams 1988), and rendered “the state” the ultimate authority to authorize.

However, the process was not as straightforward as it appears. As bureaucrats, politicians, and scholars questioned particular readings of a legal code and intervened to alter them in a direction more in line with their own, they were practically “making the law” (Peñalver and Katyal, 2010). They might not always succeed, yet by puncturing a rigid reading they introduced wiggle room that created the possibility for the law’s evolution.

We start our survey by casting our eye upon an event that happened elsewhere in the colonial governance theatre.

Opening Gambit: A Volksraad Member’s Protest Against the Alienation Prohibition

Illegal occupation of Natives’ land took various forms and was committed by diverse actors: individuals and agricultural corporations, Europeans, Indo-Europeans, Chinese and Arabs residents of the Indies—all played a role. Although Native-land grabbing and appropriation had been long debated,⁵ it was only in 1936 that a member of the Volksraad questioned a specific form of illegal occupation in connection with the Alienation Prohibition. A prominent member of the Volksraad, this member, C.C. van Helsdingen, was a Dutch *trekker*⁶ with a long and distinguished record of service to the colonial government.⁷ He had come to the Volksraad as a representative of the *Christiaan Staatskundige Partij*, which was strongly influenced by the Ethical Policy.

⁵ See Burns 2004 for a detailed narrative of domain declaration and debate over adat law between Cornelis van Vollenhoven and Nolst Trenite.

⁶ *Trekker/trekkers* (pl) (lit. migrants) was a term used for Dutch expatriate residents in the Indies who intended to return to the Netherlands once they retired from the colonial service. In contrast, *blijvers* (lit. stayers) was a term for Dutch and Indo-Europeans who resided permanently in the Indies. Naturally, the political and economic interests differed between *trekkers* and *blijvers*.

⁷ He started his career as an extraordinary chairman for the landraads in Djember, Jogjakarta/Surakarta, and Sukabumi, before settling down in Batavia as a teacher at the *Rechtsschool*. The longest-serving teacher in the school—he served from 1912 to 1926—van Helsdingen ended his teaching career as the acting director in the last two years of the *Rechtsschool* before it closed in 1928. He taught nearly every

Van Helsdingen asked the government about an emerging cleavage between the Binnenlands Bestuur and the judicial system's position on the Alienation Prohibition. He pointed out a recent dissenting stance taken by a landraad chairman, who judged that a defendant who had violated the Alienation Prohibition could not be prosecuted in the criminal court, because⁸

All contracts in violation of the Alienation Prohibition are legally void, such that the native cannot lose his rights on the ground and the non-native cannot acquire rights on the ground. (Volksraad Handelingen 1936/1937, Afdeulingsverslag, 17)

This verdict boldly challenged the executive order registered in Bijblad 3020, where in cases of land alienation, the government could wrest from the Native their land use rights and declare the land free state domain. The new legal precedent disturbed van Helsdingen because it created a loophole in the implementation of the Alienation Prohibition ruling in the way non-Natives could occupy land through a straw man with impunity. Although the new verdict contradicted the Raad van Indie's legal interpretation, a position that resonated with his own disdain of the overly powerful Binnenlands Bestuur,⁹ van Helsdingen's concern seemed to stem from a deeper worry that such precedence would weaken the Volksraad's demand for an amendment of the Alienation Prohibition, an amendment that, if accepted, would offer a ruling higher in the legal hierarchy than the landraad's verdict. Responding to Van Helsdingen, the Binnenlands Bestuur was adamant that their position based on the

single *rechtskundige* (Native legal clerk) who passed through the school and was arguably the one element that connected cohorts of students and teachers across time. Van Helsdingen came to the Volksraad as a representative of the Christiaan Staatskundige Partij, which was strongly influenced by the Ethical Policy (see more in chapter 1).

⁸ The limited data prevent me from tracing the exact case this referred to. I suspect the high profile case of Wadoeng West at the Volksraad and the related suspension of criminal charges for illegal occupation ordered by the Attorney General (see chapter 5) provided the background for van Helsdingen's inquiry.

⁹ See chapter 1.

executive order not only was correct and but was also supported by the judiciary's decisions (Volksraad Handelingen 1936/1937, Memorie van Antwoord, 16).

The written volleys between the Binnenlands Bestuur and van Helsdingen continued in the Volksraad sessions, where van Helsdingen personally expressed his displeasure with the new legal precedent he deemed would severely disadvantage the Native population. He was disturbed by the Binnenlands Bestuur's conviction of the correctness of their interpretation, which had already been undermined by several judicial decisions. He insisted that the Government amend the current regulations¹⁰ to remove the entire controversy in order to prevent large-scale native dispossession, particularly urgent given that after the Depression, many Natives had had to pawn or sell their usufruct rights to moneylenders to survive.

The director of the Binnenlands Bestuur acknowledged van Helsdingen's rebuke in the second Volksraad session on August 19, 1936, claiming that "the protection of indigenous land ownership has always been one of the main principles of our agrarian laws" (Volksraad Handelingen 1936/1937, 1064). He promised to ensure regulations that would prevent Natives' dispossession.

Van Helsdingen was not easily convinced. He demanded a thorough review of the entire series of regulations and the judiciary position related to the Alienation Prohibition before the government proceeded with any decisions. Taking full advantage of the exposure, van Helsdingen drew attention to the overly powerful position of the Binnenlands Bestuur compared with the judiciary in the hierarchy of colonial state agencies,

I have also delivered an argument about this in Section II, where I pointed out the very special privilege the Binnenlands Bestuur occupied compared to that of the judiciary. I would therefore again insist that the Government give

¹⁰ By regulations, van Helsdingen meant the whole set of rulings related to Alienation Prohibition, which included St. 1875 No. 179, St. 1912 No. 177, St. 1918 No. 88, and Bijblad 3020.

serious consideration to not proceeding with the decision until the position of the judiciary has been seriously reviewed. (Volksraad Handelingen 1936/37, 1182)

In raising the issue of the Alienation Prohibition regulations, van Helsdingen set up an opening gambit for a debate on the implementation of St. 1875 No. 179. Since the Volksraad's inauguration in 1918, this was the first time a Volksraad member had questioned the effectiveness of the Alienation Prohibition's implementation. By problematizing the diverging position between the government and the judicial institution, van Helsdingen was able to not only question the authority of Binnenlands Bestuur as an executor of Bijblad 3020, as well as the legitimacy of the executive order, but also to demand a thorough review of legal products related to the Alienation Prohibition. A thorough review of the ruling was precisely what Soepomo performed in the Indies Lawyers Congress.

At the time of these exchanges between van Helsdingen and the Binnenlands Bestuur, Soepomo was a staff at the Department of Justice, tasked with carrying out research on adat law. It remains a challenge to pinpoint what exactly prompted Soepomo to review the Alienation Prohibition; nevertheless, it is a tantalizing possibility that he carried it out in collaboration with van Helsdingen to expose the loopholes and weaknesses embedded within the decree, especially considering that van Helsdingen was the longest-serving teacher at the Rechtsschool and that he had taught Soepomo. This possibility notwithstanding, the more urgent question to address is one that relates to the ways in which Soepomo's agency emerged while taking into account the context of colonial conditions, power relations, and his position as a staff member in the colonial judicial system in the midst of increasing nationalist sentiments among Native intellectuals.

Van Helsdingen's encounter with the Binnenlands Bestuur illustrates the cleavage among various state-centered institutions. There were no uniform

interpretation of the Alienation Prohibition among van Helsdingen as a member of the Volksraad, the Binnenlands Bestuur, and the judicial system. The asymmetrical power relations between the Binnenlands Bestuur and the judicial system had allowed the former to impose its reading of the Alienation Prohibition that undermined the judicial authority. A judge's verdict cited by van Helsdingen injected a new precedent into the already fragmented take on the Alienation Prohibition: on the one hand, it prevented the Native landholder from losing his use rights to land, and on the other, it prevented the perpetrator from being criminally charged. . Despite the fragmentary nature of these events, their totality signaled a nod to legal language as the pillar that propped up the presence of the colonial state.

Ruptures from Within: Reexamining the Implementation of Alienation Prohibition

In his carefully researched essay, Soepomo demonstrated the inconsistent application of the Alienation Prohibition throughout many court verdicts between 1907 and 1936. His finding led him to the grim conclusion that those legal practices to implement the law fell short in meeting its mandate. He argued that in practice,

no absolute prohibition exists in the alienation of native land rights, nor is such [a thing] wanted by the government; St. 1875 No. 179, which is strict and absolute in character, is not reflected by the [practice of] law in reality. (Soepomo 1936, 144; emphasis added)

In this sentence, Soepomo used “native land rights” (*inlandsche grondrechten*) as opposed to “native usufruct rights to land” (*inlandsche gebruiksrecht op land*), the official term the government used to refer to Natives' relationship to land. He used unambiguous words in expressing his judgment that the government lacked the commitment to implement the Alienation Prohibition. Not only the sentence, but even

the choice of words demonstrates a critical assessment of the government as represented by the Binnenlands Bestuur.

Rich in detail, Soepomo's essay filled full sixty pages in ITR publications. Divided into six sections, the essay includes discussion on the history and legal character¹¹ of the decree; an interpretation of the keywords used in the decree;¹² reviews of the court decision on land transactions¹³ related to Alienation Prohibition; a special section on a unique form of land transaction known as *afkoop*, or "redeeming" of Native use rights; thirteen transactions Soepomo considered to be in blatant disregard of the Alienation Prohibition; and a conclusion. Consequently, my exploration here can only capture the key passages that supported Soepomo's argument that the government was actually reluctant to enforce the Alienation Prohibition. I do so by focusing on two key themes infused in his essay, that is, by following his review of court verdicts on land transactions and by foregrounding his dissection of the *afkoopconstructie*, a form of transactions warranted by Bijblad 3020 that made possible skirting the Alienation Prohibition. In this way, I hope to do justice to making visible Soepomo's autonomy as a legal scholar of Native origin in a colonized condition through the way he contested the government's tacit assent of what he considered to be a breach of the Alienation Prohibition.

¹¹ What was understood as the legal character was the agreement among legal scholars that a non-Native could exercise land rights that existed in a Native legal realm to which he did not belong, and vice versa.

¹² The keywords used were usufruct rights (*gebruiksrecht*), land (*grond*), not susceptible to alienation (*nietvatbaar voor vervreemding*), by Native to non-Native (*door inlander aan niet-inlander*), and agreement (*overeenkomsten*).

¹³ The transaction categories included sale under distress/auction (*executoriale verkoop*), legal separation (*toescheiding*), compulsory purchase for public use (*ontgeining ten algemeenen nutte*), use of straw man (*gebruik van stromannen*), hypothecation (*verpanding*), security/collateral in a loan (*zekerheidsstelling*), purchase of trees (*verkopen van boomen*), and pawning of trees (*verpanding van boomen*).

The Breach of the Alienation Prohibition

To justify the Bijblad 3020, the Raad van Indie used as a legal basis the third article in the Agrarian Law of 1870 that did not prohibit the sale of building and planting rights of small plots of land by the government, “or sale of land cultivated by the Natives or sale of communal land or other land belonging to a Native village as long as the Native holders of use rights have voluntarily relinquished their right” (Staatsblad 1870 No. 55). Using this article, the Raad van Indie laid out the mechanism to transfer native land use rights into the European legal realm known as *afkoopconstructie*, or “redemption transaction,” in the manner described earlier. This mechanism was exorbitantly expensive because in addition to redemption payments for the Native and the village where the land was located, a non-Native had to pay the government triple or quadruple the price he paid to the Native. Unsurprisingly, under-the-table transactions were rampant. Although it seemed legal, Soepomo considered the redemption transaction a deliberately set legal loophole to enable skirting the Alienation Prohibition. It was “the routine path through which land under the realm of native property rights passed on to the European legal sphere” (Soepomo 1936, 94).

The redemption transaction was not the only way land transferred from a Native to a non-Native; at least eight other legal and illegal forms actually existed.¹⁴ Because many land transactions that ended up in court took one of these forms, the judiciary was aware of them, yet verdicts varied and some were inconsistent with the Alienation Prohibition. Soepomo reviewed all eight of these transactions, two of which I sample here: land pawning (*verpanding*) and land as collateral for debt

¹⁴ Eight of the most popular included sale under distress (*executoriale verkoop*), legal separation (*toescheiding*), compulsory purchase for public use (*ontgeining ten algemeenen nutte*), sale using a straw man (*gebruik van stromannen*), land pawning (*verpanding*), land sale as security/collateral in a loan (*zekerheidsstelling*), purchase of trees (*verkopen van boomen*), and pawning of trees (*verpanding van boomen*).

(*zekerheidsstelling*), forms of transaction frequently used by the Natives to raise cash when no other means was available.¹⁵

Land Pawning (verpanding)

In the first sample of cases, Soepomo began by asking whether land pawning (Indonesian: *gadai, gade*) fell within the boundary of the Alienation Prohibition.¹⁶ He noted that in a number of cases, the *landraad*¹⁷ voided pawning of Native land to non-Natives.¹⁸ Soepomo pointed out how between 1875 and 1902 the government officials considered pawning of native land not in breach of the Alienation Prohibition.

Demonstrating the complexity of land pawning, Soepomo cited a number of his contemporaries who considered land pawning to non-Natives neither alienation nor an act directly prohibited by law. The issue was so delicate that scholars were known to have changed their position on whether pawning breached the prohibition, such as Barend ter Haar, an established adat law scholar and a professor at the Batavia Rechtshoogeschool. Ter Haar considered pawning of native land to non-Natives a breach of the Alienation Prohibition only if it was intended for an indirect transfer of land use rights. He later recanted his position (ITR 142, 238), when he said that land pawning in general was indeed subject to the Alienation Prohibition because “the pledgor could let the pawning deadline pass so that even if the pledgee did not intend

¹⁵ See Breman 1983 for an in-depth study of land alienation in Cheribon in late-colonial Indonesia, and the attempt by colonial officials to control the acquisition of Native land by non-Native money lenders. Even though these moneylenders were non-Dutch, Breman held the Dutch accountable for the impoverishment of the Natives introduced by the brutal sugar industry and rotational planting. Such practices drove already impoverished Natives to pawn off their land in desperation.

¹⁶ I described in detail the mechanism of native land pawning in chapter 5.

¹⁷ The *landraad* is the government’s court for the native population. The *Raad van Justitie* was the court of appeals for *landraad* decisions, and the highest level of appeal was provided by the Supreme Court (*Hooggerechtshof*). See also chapter 3 for a detailed explanation of the judicial hierarchy in the East Indies.

¹⁸ *Landraad* in Bonthaen in verdict of September 3, 1931 (ITR 135, 343), *Raad van Justitie* in Surabaya of January 1, 1932 (ITR 136, 281).

to extend the pawning period, he had to end the pawning agreement and make the pledgor a full owner of the pawned land. Such is precisely what the Alienation Prohibition sought to avoid” (Soepomo 1936, 112).

Assessing ter Haar’s position, Soepomo concluded that ter Haar considered the Alienation Prohibition of such importance to the public order. The fact that “the only possible result of the pledgor’s non-discharge and the ‘passivity’ of the pledgee is a virtual conversion [of the transaction] into a ‘lepas’ transfer is enough for [ter Haar] to consider the transaction as to be an indirect transfer” (Soepomo 1936, 112, emphasis added).

Soepomo openly disagreed with ter Haar. He argued that in the Native property regime, pawning was never understood to be a full transfer of native property rights; thus, pawning in normal cases should not be considered an alienation. In pawning, the pledgee retained full control of the land, which lasted forever, even when the pledgor let the discharge period pass (112). In relation to this argument, verdicts by the Landraad in Djambi on December 6, 1934 (ITR 142, 235) and by the Supreme Court on October 31, 1901 (ITR 79, 54) had judged such transactions void. To Soepomo, the pawning of native land to a non-Native was in direct breach of article 1 in St. 1918 No. 88,¹⁹ which stated that the temporary enjoyment of native land by non-Natives could only be obtained in accordance with an ordinance under the umbrella of ratified land rent agreement. And indeed, pawning did provide temporary pleasure, fulfilling this code (Soepomo 1936, 113–114). Soepomo stressed that adat law did not recognize in its nomenclature the Dutch category of sale (*verkoop*) with the right to repurchase (*wederinkoop*). Adat law understood a sale only as a *lepas*-transfer, a final, permanent transfer of ownership. A transfer with a condition of repurchasing from the buyer upon

¹⁹ Land lease ordinance that replaced the previous ordinance issued in 1900 (St. 1900 No. 240), the ordinance that informed Bernard Ledeboer in his search for a land lease in Banjoewangi. See more in chapter 2.

a certain sum of money was not a “*lepas-transfer*.” No permanent transfer of ownership took place; hence it was not an alienation, but a “pawning” (115). Implied in this understanding, the original landholder continued to retain his full ownership.

Security/Collateral in a Loan (zekerheidsstelling)

Now we move along to the second sample case. In the adat legal system, ownership of land and ownership of objects upon or under the land were considered two distinct legal objects (Soepomo 1936: 117).²⁰ This particular category had triggered complications in legal transactions of land between Natives and non-Natives because the prohibition of land alienation excluded the sale of buildings or crops standing on the land. Such exclusion essentially created another legal loophole in the Alienation Prohibition. In fact, as Soepomo discovered in his research, many verdicts on the sale of houses standing on Native land to non-Natives were decided without ever mentioning the legal consideration of the Alienation Prohibition. To Soepomo, this simply demonstrated the lack of weight of the ruling, such that judges either overlooked or deliberately dismissed it (Soepomo 1936, 117). Such verdicts included one by the Raad van Justitie of Surabaya on September 22, 1926, and a verdict of Raad van Justitie of Padang on March 31, 1932. Verdicts faithful to the ruling of St. 1875 No. 179 in which the judges considered similar transactions void were exemplified by the decision of the Raad van Justitie of Makassar on November 6, 1925; by the Landraad of Tulungagung on May 30, 1931;²¹ by the Landraad of

²⁰ Compare this with Prodjudikoro’s exposition in chapter 3 about the adat law orientation to legal objects in Surakarta, that is, that courts were established based on legal objects, not on legal subjects.

²¹ This was a verdict of the Landraad in Toeloengagoeng in May 1931 (ITR 135, 247), which decided that stone houses by their nature should follow the fate of the land, so when a transaction of land and houses was not meant as two separate transactions, if the sale of the land was invalidated, the sale of the house was of no legal value.

Poerwodadi on November 30, 1933;²² and by the Landraad of Padang Sidempuan on July 31, 1933.²³

Against this tug of war over the legal interpretation of the ruling, Soepomo noticed a gradual divergence from the mandated prohibition that began as early as 1926. On September 15, 1926, the Raad van Justitie of Surabaya decided that because the Alienation Prohibition did not explicitly prohibit the alienation of structures built on land owned by a Native to a non-Native, the latter could legally buy a house built on a Native land plot without acquiring legal title to the land. The same Raad van Justitie veered further away from the Alienation Prohibition in a verdict dated November 17, 1926, where it decided that

By purchasing a house standing on native land, a European acquires the right of use of the land, for as long as it is necessary to allow him the enjoyment of the house. This law was to remain valid against each succeeding native owner of the land; as long as the house is not in any way gone, this right “in so far” is subject to “objective” nature. (Soepomo 1936, 119)

Within a year, an appeal decision by the Supreme Court confirmed the decision by the Raad van Justitie of Surabaya, because it

Protected the European buyer of the house against the legal successor of the native owners of the estate, by deciding that since the land was sold, the [new] Native property owner had to accept the sale of the land under the condition that all obligations [towards the house buyer] should pass with the sale (Case of 6 October 1927, T²⁴ 127, 12). (Soepomo 1936, 119)

²² This was a verdict of the Landraad in Poerwodadi in November 1933 (ITR 139, 242), that the sale of a non-stone house which was not bundled with the yard by a Native to a Chinese was valid, but that the demand to vacate the house along with the yard should be denied.

²³ The Landraad in Padangsidempuan said in its verdict of July 1933 (ITR 139, 270) that the sale of a house was inseparable from the sale of the house’s estate, so that the sale of a residential house with the yard by an Indonesian to a Chinese was in conflict with St. 1875 No. 179.

²⁴ “T” here is an acronym for the Indies Journal of Law, used as a convention for reference to ITR.

A couple years later, the Supreme Court inched even further away from the Alienation Prohibition through a verdict on April 2, 1931, in which it decided that through a sale to a non-Native, a Native owner of a residential plot with a stone house had yielded control of the property to the buyer, and that the Native owner and his successors had to allow the land to be occupied by the non-Native person whose house—in which he lived—stood upon that land.

In these verdicts, Soepomo made visible the succeeding arguments in the court of law that decided that no violation to the Alienation Prohibition had been committed in any of these sales, because the object of the transaction was not the land with native rights (*inlandsch bezitsrecht*) but the house built upon it. These verdicts essentially concluded that after the transaction, the new owner had to assume the already existing burden on the property, that is, the right of the house buyer to occupy the land (Soepomo 1936, 119).

The Supreme Court decision of April 2, 1931, set a precedent for similar verdicts. The Landraad of Kendal on September 6, 1933, split a transaction between a native and a non-native into a transaction of a plot of native land and of a house. The landraad declared the transaction void but the purchase of the house valid. The property took upon itself the burden on behalf of the house buyer, following the example given by the Supreme Court. In this manner, the judicial system tacitly assented to a means to skirt the alienation. The Raad van Justitie in Surabaya took a similar position in its verdict of January 1, 1932, in which it was decided that the pledging of a residential plot and a house to an Arab was void as far as the plot was concerned but valid as far the house was concerned (Soepomo 1936, 123).

Through this meticulous line up of cases and verdicts in all their possible permutations, Soepomo demonstrated that the judicial institution had only haphazardly implemented the Alienation Prohibition mandated by St. 1875 No. 179. Such an

inconsistent line of jurisprudence had clearly blurred the boundary between what was and what was not in violation of that law. Soepomo concluded that

Through the redeeming (*afkoop*) of the native property rights, the non-native does not automatically acquire the ownership of the land; he is not entitled to occupy the land. Yet in practice the redeemer immediately occupies the land and behaves as the master of this land. By doing so, he is guilty of unlawful occupation of the State's free domain, for which he could be criminally prosecuted under St. 1912 No. 177. (Soepomo 1936, 136)

Ironically, the government created yet another loophole to allow this practice to continue in the rental regulation of St. 1924 No. 240. With this regulation, a non-Native buyer of native land could “rent” the land from the government prior to officially transferring the legal status of the land to European property rights (*eigendom*) or building rights (*opstal*).

In the passages on land pawning and Alienation Prohibition, Soepomo demonstrated how different interpretations could emerge. He drew attention to the difference between his and ter Haar's readings of adat law on pawning (*gadai*) and how the overlapping of the Dutch thought world onto a Native legal realm resulted in a misunderstanding of the nature of the native transaction of pawning. The result of this misunderstanding was the blanket categorization of land pawning as alienation, which imposed a very grave consequence on a native landholder when and if Bijblad 3020 sprang into action. In the same section, Soepomo also drew on actual Raad van Justitie verdicts that gradually shifted the jurisprudence into taking the Alienation Prohibition less seriously than it should have been considering the “strict and absolute characteristic” of the law, such that at one point the Supreme Court also began to disregard the Alienation Prohibition. There was, indeed, a growing gap between the mandate of the Alienation Prohibition and the actual practice of the law.

Dissecting the “Redeeming Transaction” (Afkkooptransactie)

Raad van Indie issued the executive order Bijblad 3020 as a means to regulate officially a sanctioned land transfer called a redeeming transaction (*afkooptransactie*). Soepomo observed how this fiction of “redemption” had been taken to support the argument that the relinquishing of rights by a Native peasant was not in violation of the Alienation Prohibition either directly or indirectly (Soepomo 1936, 127). To address this misreading of the law, Soepomo had to disprove that such a form of relinquishing existed in adat law.

Soepomo explained in his article how different adat areas had different laws for relinquishing native land rights. A native in East Java relinquished his rights if the land was abandoned, neglected, or if he left the village permanently. Even in areas where the village’s right of disposal was no longer exercised, the relinquished land returned to the village control if there was no one willing to take over the land. There were cases in which peasants fled from a village due to the excessive burden of corvee labor and no one was willing to take over tilling responsibility (see chapter 3). In these cases, adat law acknowledged the relinquishing of land rights, and the land would return to village control. The redeeming transaction as spelled out in Bijblad 3020 utterly denied the village right of allocation, and instead ordered the land to return to the government as part of free state domain. To Soepomo, such an outcome was only valid for land situated in urban communities that no longer exercised rights of allocation due to the absence of a jural community (Soepomo 1936, 128).

Because adat law was not familiar with the form of land relinquishing defined by Bijblad 3020, the Supreme Court issued a ruling in 1931 to ensure that land transactions took place transparently, mirroring Bijblad 3020. Soepomo mentioned it carefully in his essay:

The ruling by the Supreme Court on January 8, 1931 (T 133, 421) stated that for the relinquishing of native property rights [for land] to become a free state domain, no particular convention is required, and that the [act of] relinquishing is to be considered a *unilateral act* of the entitled owner, which immediately impacts him in the following sense: that he loses his rights, and neither the Government nor the redeemer are expected to accept his native property rights to [still] be in effect. (Soepomo 1936, 128; original italics)

Such a ruling had no support in law.

To Soepomo, all the regulations, legal rulings, and the decision by the Supreme Court to implement Bijblad 3020 masked an unpalatable reality: *Afkooptransactie*, the redemption transaction, was simply an agreement to buy and sell and in truth felt like a purchasing transaction. It troubled Soepomo that he could hardly find a judicial decision that categorized the relinquishing of native land through permanent land transfer as alienation, a judicial decision that considered such transaction void based on the Alienation Prohibition (Soepomo 1936, 129). Instead, he found that the court took the formal designation of the agreement to reflect a genuine transaction when it was anything but. He contended that “Many judges had deluded themselves by considering buying and selling transactions between a native and non-native ‘redemption of rights’” (Soepomo 1936, 129). Such a decision was made by the Landraad in Banyumas in a verdict of March 23, 1931; the Landraad in Serang in a verdict of December 17, 1931; and the Raad van Justitie in Batavia in a verdict of December 9, 1932.

In his evaluation of the redemption transaction, Soepomo reviewed four sets of cases with verdicts taken by landraad and the higher court, Raad van Justitie. Here, I narrate only two sets of cases that clearly demonstrate the day-to-day practice of the redemption transaction.

First Set of Cases: Buying a House on Native Land

The first case involved a transaction of a house with an agreement to “buy and sell with the right to buy back” (*koop en verkoop met recht van wederinkoop*), complete with the relinquishing of the native use right of the land where the house stood. It was frequently the case that where transactions involving the “right to buy back” were never completed, the sellers intentionally let the deadline pass without redeeming the land. This was a widespread practice by non-Native moneylenders in the case of a defaulted loan. In this case, Soepomo concluded that the clause “buy and sell with the right to buy back” practically sidestepped the ruling of the Alienation Prohibition. The Raad van Justitie in Surabaya on November 17, 1926, declared invalid the case of a native relinquishing his usufruct right because the clause included in the agreement was not followed by an actual execution of “buyback” (*wederinkoop*). Soepomo approved this decision. However, in the appeal, the Supreme Court commuted the verdict, arguing that

By no means it is required . . . of the party who has practically renounced the rights [to land] to actually leave the land in this sense: that he actually should vacate the land without being permitted to have a further say with respect to this land, [or] in any derivative way to retain some legal relationship to the person for whom he has done the renouncing. (Verdict of 6 October 1927, ITR 127, 12, quoted in Soepomo 1936, 130, emphasis added.)

Soepomo could not suppress his bemusement, to put it mildly, at the Supreme Court’s decision. To him it was akin to mocking the prohibition of native land transfer,

Does the Supreme Court assume that the [native] right to land had passed over to the European [legal realm]? If yes, then this transaction is in essence an alienation and consequently is in conflict with St. 1875 No. 179. If one assumes that the land through the renunciation of the native right becomes a free state domain [as directed by Bijblad 3020], then can the European pass the right to the house he bought over to the domain of European property right? (Soepomo 1936, 131)

In this paragraph Soepomo challenged the interpretation of the law in Bijblad 3020. One senses an undertone of frustration, if not a raging grievance, in his measured, highly erudite sentences.

The Supreme Court's position was soon followed by several verdicts in various landraad in the colony, such as the landraad in Makassar in a verdict of November 1, 1933,²⁵ and a verdict by the landraad of Purworedjo of September 19, 1932 (T 138, p. 429).²⁶ Here, Soepomo's frustration came to the surface and was more visible. He wondered aloud,

I ask myself, how can this court of law take the materialization of this as a relinquishing of right, where the property owner—by refusing to leave the ground—properly demonstrated his unwillingness to let “los” [*lepas*, permanent transfer of rights to take place]. In my opinion, the [native] land owner had simply not perform his part to relinquish the land and the redeemer—after repayment of the debt of 1300 gulden—could only demand the compensation against the non-fulfillment of the obligation. (Soepomo 1936, 132)

Soepomo agreed with ter Haar that to allow the renunciation of native rights of a residential plot was simply a ploy by the government to let non-Natives buy a house standing on native land and to obtain a European title to the plot.

²⁵ Soepomo noted that this decision came about as a result of the Landraad's observation that the Government could enforce eviction of the non-native buyer of a stone house standing on land whose native ownership right had been relinquished by the native seller of the house. Thus the Landraad meant to allow the land, after the relinquishing, to become free state domain, while the buyer of the house forfeited the right to the land. This transaction paved the way for a transfer of legal title to European title, because the verdict treated the “sale” of a house with the “right to buy back” (as a) renunciation of the Native right of disposal upon the land of the house, and therefore the buyer could request a European legal title upon that land (Soepomo 1936, 131).

²⁶ A native landowner had relinquished his right to land to a Chinese over compensation of f 1300, on the condition that if he failed to pay back before a set deadline, the relinquishing of rights would take effect. When the landowner failed to repay his debt and refused leave the land, the Chinese buyer took an eviction action, which the local Landraad granted (Soepomo 1936, 132).

Second Set of Cases: The Government's Tacit Agreement

The second set of cases described the actual practice in land transactions as prescribed by Bijblad 3020. Bijblad 3020 required the government to act as an intermediary when a non-Native acquired a Native's land to ensure that it passed over into European eigendom status. In practice, many redeemers of Native land never proceeded to do so, keeping the status of their land in the Native realm indefinitely, which was punishable by St. 1918 No. 177. However, a number of court decisions had strengthened this executive order.

In 1916, the Supreme Court decided that a non-Native redeemer could neither acquire land under native usufruct rights nor acquire any rights unless he requested that the government transfer the land's legal status to the European property rights form (eigendom) (ITR 107, 400). The Raad van Justitie in Surabaya, in a verdict of April 13, 1921 (ITR 125, 53), and in Padang, in a verdict of October 28, 1926, followed this precedent: a redeemer of Native land use rights acquired no rights on the ground. Soepomo judged these decisions correct. However, he observed an oddity in the Bijblad 3020 implementation; he noted that there was no regulation that obliged the government to force the redeemer to transfer his land, which had then become a free state domain, into European *eigendom*. In cases such as these, he found that the court assigned only a right of priority (*voorkeurrecht*) to the redeemer of land to pass over the land into the European legal realm. The Raad van Justitie in Surabaya took this stand in their decision of April 13, 1921, in which they support the priority right (*prioriteitsrecht*) of the redeemer, while other verdicts spoke of the pre-emptive right (*voorkeurrecht*) of the redeemer, such as decisions made by the Landraad in Banyumas of March 23, 1931 (ITR 134, 665) and that of the Landraad in Serang on December 17, 1931 (ITR 138, 385). These decisions were in line with the legal interpretation offered by Maassen and Hens, who wrote "that an eigendom application

is set aside, if a non-native protest against it on the basis that he is the one who had bought the native right and he wanted to have title to the land” (Soepomo 1936, 134). In reality, Soepomo pointed out that application to pass land over to a European form of property right was very rarely made within the grace period, since the Government hardly ever forced the actual execution. As a result, a redeemer would keep his preferential rights indefinitely, and he could even pawn or sell the land using rules under the Native legal realm (Soepomo 1936, 134).

In these two sets of cases, we observe how Soepomo exposed the real nature of *afkoopconstructie*, the redemption transaction, as simply a transaction designed to skirt the mandate of the Alienation Prohibition. The intricate rulings and regulations were not only created by Raad van Indie and enforced by the Binnenlands Bestuur, but also strengthened by various hierarchies of the judiciary, and most dishearteningly by the Supreme Court. These rulings to Soepomo were no more than masks of the hypocrisy of the legal practices. Soepomo was deeply disturbed by judges who deluded themselves by accepting the fiction of the redemption transaction.

Law in Theory vs. Law in Practice: Soepomo Accuses

Two key issues emerged in Soepomo’s essay: the half-heartedness of the government and the judicial system toward implementing the Alienation Prohibition mandate, and the impracticality and ambiguity of Bijblad 3020, such that it was being continually stepped over.

As a *rechtskundige* and a graduate of Leiden University United Faculty of Law and Letters, well indoctrinated in the independence of the judicial system, Soepomo found it difficult to tolerate these less than stringent legal practices that shredded the credibility of the judicial system. The yawning gap between theory and practical implementation of the Alienation Prohibition disillusioned Soepomo, especially given

that his investigation revealed how both the judiciary and the Binnenlands Bestuur were complicit in manipulating the existing loopholes. Soepomo lamented this reality: “In practice (the law) recognizes the deliberate transfer of native land to non-native with the government’s cooperation, with the understanding that the non-native intended to acquire European eigendom rights” (1936, 140). This transfer was facilitated through the legal invention called *afkoopconstructie*, redeeming construction, which to Soepomo was nothing more than a contract to buy and sell: “In jurisprudence the fiction of redemption is taken as real, in fact it has come to be accepted that, in the land transaction between a native and a non-native which the judge understood as redemption (*afkoop*) and acknowledged as valid, the Alienation Prohibition is undermined” (1936, 141).

Soepomo found the hypocritical implementation of the law utterly unacceptable. He agreed with van Vollenhoven that the Alienation Prohibition was redacted (*geredigeerd*) in such a way that each word was literally subject to conflicting interpretation. Despite the dissent of opinion both in the literature and the jurisprudence,

The standpoint taken by the Court in the verdict of April 2, 1931 . . . regarding the native owner of a residential land and a sale of a stone house to a non-native [meant it was] not treated as conflicting with St. 1875 No. 179. [The verdict] only [required that] a trust be established upon the house on that land . . . , which the native owner and his successors have to indicate [to future residential land buyers] that the land is occupied by an entitled person who lived in the house [on that estate]. [The verdict thus] removes the Alienation Prohibition with regard to the residential estate with the stone house in all sense/denotation. (Soepomo 1936, 142, emphasis added)

As a solution to the entangled Alienation Prohibition rule, Soepomo suggested a revision. Surprisingly, however, instead of proposing his own revision, he endorsed the recommended revision written by the Spit Commission, which goes as follows:

It will be declared invalid by law, and punishable, each legal transaction under whatever form, directly or indirectly, which has the objective to provide land for disposal to non-natives, land upon which Native land rights is exercised, or on the common grounds on which buildings or plantations, other than in cases under general regulation or authorized. (Soepomo 1936, 142)²⁷

Soepomo endorsed this proposed revision of the law, writing

This proposal relates to the idea [the Spit Commission] has recommended, to allow two exceptions to the Alienation Prohibition, namely to allow alienation of native land to Europeans-*blijvers* within certain and prior authorization of the administrators; and [to allow] for Dutch subjects [land] for housing, and for agricultural purposes for the former [i.e. European-*blijvers*]. . . . Indeed, if this prohibition is redacted as such, similar to what is proposed by the Commission, the controversies discussed above will be removed. . . . The prohibition stipulation designed by the Commission speaks of legal acts which aim to furnish non-Natives directly or indirectly the disposal over Native lands as well existing buildings or plantings upon the land. (Soepomo 1936, 142–143)

In this way, Soepomo was dancing in tune with C.C. van Helsdingen demand.

Soepomo continued,

Circumvention of the ban on transfer with regard to transaction of native land, formal sale of the house standing thereon, or the crops thereon to name but a few, according to the proposed provision will no longer be possible. (Soepomo 1936, 143)

With this revised redaction, numerous illegal transactions to transfer land to non-Natives would fall within the proposed new prohibition. The pawning of land to non-Natives would become a prohibited transaction because it furnished the pawn holder (pledgor) with the right of disposal over the pawned land. It would also stop the

²⁷ In Dutch: Van rechtswege wordt niet—en strafbaar—verklaard elke rechtshandeling, onder welken vorm ook, die ten doel heeft, een niet-Inlander, rechtsstreeks of middelijk, de beschikking te verschaffen over gronden, waarop Inlandsche grondrechten worden uitgeoefend—dan wel over de op die gronden voorkomende opstallen of beplantingen—anders dan in gevallen bij of krachtens algemeene verordening toegelaten.

acquisition of native land via a straw man, a means by which non-Natives acquired Native land.

Soepomo's endorsement of the work of the Spit Commission tells a story of unexpected alliances in the constellation of colonial legal scholars. While Mohammad Jamin and his team reacted to the Spit Commission's recommendation by setting a self-appointed commission to investigate the state of Native land rights, Soepomo did not hesitate to back the Spit Commission's finding. However, it was not a wholesale endorsement. What he supported was the elimination of loopholes that had allowed the circumvention of the Alienation Prohibition. He made his position clear, albeit in a rather circumvented way, by writing,

With the question whether and to what extent the Alienation Prohibition should be maintained, I am not engaging with [it here], because that question is of a political and socio-economic nature, which is beyond the scope of this report. (Soepomo 1936, 144)

If Soepomo endorsed the 'cleaner' and 'clearer' redaction of the law per the Commission's proposal, he made explicit his refusal to evaluate the desirability of certain exceptions proposed by the commission:

Consequently, I do not concern myself with the question regarding the desirability of the Commission's . . . proposed exceptions for the Alienation Prohibition. [Nevertheless] the study of the legal aspect of this fundamental principle of the Indies agrarian politics led me to a conclusion, that in fact there exists no absolute Alienation Prohibition on native land rights and such (absolutism) is not desired by the Government, [and] that despite St. 1875 No. 179 bearing a strict and absolute mandate in nature, the law is not reflected in the reality. (Soepomo 1936, 144, emphasis added)

But rather, for Soepomo, what was more pressing was that

It seems to me—supposing that the current situation remains entrenched—the purity and truthfulness of our law desperately needed a thorough review of the St. 1875 No. 179 in the following sense: that what is printed there stipulates what for many years be applied as law. (Soepomo 1936, 144)

In summary, through his essay and speech at the triennial Netherlands Indies Lawyers Association, Soepomo made four arguments that punctured the image of a benevolent agrarian regime. He pointed out the diverging jurisprudence that cropped up in 1926, which was followed by numerous legal decisions by the Landraad, Raad van Justitie, and the Supreme Court. He exposed the real nature of *afkoopconstructie*, the redemption transaction, as a transaction deliberately designed to skirt the legal demand of the Alienation Prohibition. He protested the hypocrisy and the inconsistency of lower-hierarchy orders, in this case the Bijblad 3020 issued by the Binnenlands Bestuur that manipulated the loopholes deliberately created in St. 1875 No. 179. He endorsed the revision of the law created by the Spit Commission, a commission viewed with mixed feelings by numerous Indonesians who felt threatened by the Indo-Europeans' demand for land rights.

In building his case, Soepomo relied on thorough analyses of empirical data: verdicts of cases across the archipelago, across time, and across the judicial hierarchy. By doing so, he was able to draw a picture of concrete legal practices regarding a law, the Alienation Prohibition, designed to meet the contradictory objectives of the colonial agrarian regime. His puncturing arguments shed doubt on the carefully nurtured image of a benevolent agrarian regime in the colony, one that aimed to forward the economy by introducing commercial agricultural estates while protecting Native rights to land. An idealist trained in the tradition of the Batavia Rechtsschool, a school that claimed to educate independent minds and encourage critical thinking, Soepomo drew his strength from the repository of his Rechtsschool—and later Leiden University—experiences. However, he did not—or could not?—completely shake off the traces of power relations, proved by his safe decision to endorse the Spit Commission's recommended revision for the Alienation Prohibition. Indeed, an autonomous subject he was, autonomous enough to exert transformation into the legal

discourse of the Alienation Prohibition, but never quite liberated from the entangled network of state forms and state institutions.

The Debate Continued: The Professors Responded

From among a number of lawyers assigned to critique the essays of Soepomo and van Hattum were professors at the Batavia Rechtshoogeschool, J.H.A. Logemann and Barren ter Haar. Logemann's response to Soepomo's and van Hattum's interpretation of the Alienation Prohibition was so critical that it verged on being dismissive of their analyses. He characterized their readings of the Alienation Prohibition as breaching a long and solid tradition in the interpretation of the ruling, a disconnect from practical realities, a refusal to protect the priority-claim rights, and a blame against the government they considered carrying a practice in conflict with the system of law (ITR 1936, 447). He insisted that they used too narrow a reading of the historical context of related regulations and misunderstood the intention of the lawmakers. A more thorough and comprehensive reading of St. 1875 No. 179 that took into consideration related regulations, Logemann argued, would have led Soepomo and van Hattum to an interpretation consistent with the current jurisprudence backed by 60 years of history: that any illegal transaction in breach of the Alienation Prohibition would result in the nullity of the transaction and a relinquishing of Native rights, upon which land ownership returned to the State. The related regulations Logemann referred to included a government regulation on land pawning (*verpondingsordonnantie*) in 1823, a ruling issued in the Constitutional Regulation 1854 Article 62 sub 2, St. 1861 No. 45, and St. 1912 No. 177.

From the response printed in the ITR, it was clear that Logemann indulged in a didactic response to these young scholars. He took his time in narrating the historical development of the Alienation Prohibition. From 1823 to 1861, the legal status of all

land in non-Native possession had to go under the jurisdiction of Western commercial rights (*westersche zakelijke rechten*). The refusal to conform would lead the government to consider the land merely under the rulings of personal right of loan (*persoonlijk recht van bruikleen*), and unlawful occupants of the land would be considered “tacit borrowers” (*stillzwijgende bruikleener*). Under this ruling, non-Natives could still alienate land from Native use rights. The only way to protect the Natives from dispossession was through what Logemann called the “establishment of rigorous restrictions” using the apparatus of the Binnenlands Bestuur, in this case by reprimanding Residents severely if they had allowed pawning to take place in regions designated off-limits to non-Natives.

Regulations for non-Native land rights changed over time. The Constitutional Regulation of 1854 included in Article 62 paragraph 2 a ruling that reflected the settlement politics in the East Indies. The government decreed that it could issue the European form of land rights only for small parcels of land intended as extensions of towns and villages and for land directed for industry. Big parcels for agricultural land in rural areas were off-limits. In 1861, the government changed the earlier rulings on the legal nature of land under non-Natives’ possession with St. 1861 No. 45. It decreed that non-Natives could no longer retain their land under “*persoonlijk recht van bruikleen*”; instead, they had to transfer the land’s legal status to the system of Western commercial rights (*westersche zakelijke rechten*). This meant that there was a new arsenal to fight off illegal occupation through fiscal regulations contained in civil law (*fiscaal civielrechtelijke*). Logemann reminded everyone that these avenues to fight illegal land occupation were honored from 1861 to 1912, when the government decreed a new ruling with St. 1912 No. 177, that said

Use by non-natives, for any purpose, or use for their benefit to the domain of the State owned land, upon which or for which no established rights of others are imposed, is prohibited. (Staatsblad 1912, No 177, in Logemann 1936)

Logemann considered the increased appreciation of adat law among legal scholars to have complicated land rights and land transfer dynamics. He found its most awkward expression in the qualification of the Native property right as a commercial right (*zakelijk recht*). The complication was made worse when the Council of the Indies (*Raad van Indie*) found in the doctrine of interracial law that non-Natives could not exercise the Natives' "foreign commercial rights" ("foreign" here seen from the point of view of Europeans) upon their citizenship rights (*burgerlijk rechten*).²⁸ But the Minister of the Colonies was reluctant to build on the Raad van Indies' finding and decided to wait until the theory had a solid legal basis. And this took place in 1875 with St. 1875 No. 179, whereby it was legally explicitly stated that Native land use rights were not susceptible to alienation to non-Natives (Logemann 1936, 449).

Thus, Logemann argued, the objective of St. 1875 No. 179 was none other than to pave the way to implement St. 1861 No. 45, that is, to restore the previous condition whereby an unlawful occupant of government land (after he removed the rightful Native claimant from the land) would have been considered to be sitting on free state domain (*vrije landsdomein*). He reasoned that in this reading the intention of the lawmakers was very clear, that after an unlawful occupant removed the rightful native claimant and settled himself on the land, he was actually occupying a piece of free state domain. The clarity of this intention, according to Logemann, was demonstrated in the retaining of this reading of the law until 1912, when the government issued an explicit prohibition against non-Natives utilizing land with Native use rights in any form. In this manner, an unlawful occupant could be punished under criminal law on

²⁸ Soepomo had already clarified in his earlier paragraphs that there was no objection among legal scholars for an individual under a particular legal jurisdiction to exercise a right in another jurisdiction so long this right was legally acquired. For example, for a European who inherited land under the native legal realm, there was no prohibition against exercising rights regulated under adat law on that land.

the basis that illegal alienation of land automatically led to the land becoming a free state domain.

Based on this legal narrative, Logemann concluded that the nullity (*nietigheid*) mandated by St. 1875 No. 179 was only

Intended to take the transfer of the legal *title*, that usufruct right (*gebruiksrecht*) is *not susceptible* to alienation to non-Natives; transfer of that *right* can thus never be attained; agreements with *that* objective miss the effect, namely *that* effect. (Logemann 1936, 450; original italics)

Logemann insisted that what was understood as nullity was that whenever there is a sale of native use right, the law would consider it a “relinquishing of rights.” The agreement would be nullified, and land would automatically be returned to the state. Logemann did acknowledge that the wording of St. 1875 No. 179 could be clearer; however, its lack of clarity did not forbid “this [particular] interpretation especially not when people had sought—as has historically been proved—the essential point in the first sense [i.e. that Natives’ use rights were “Not susceptible to” alienation], and not in the second [sense, i.e. the wording “So that”]” (Logemann 1936, 450). Based on this, Logemann questioned Soepomo and van Hattum’s intervention into what he deemed the decades of sound and solid interpretation of the rulings. He said,

Then, when the intention of the lawmaker is clear and decades-long practice has created the meaning of living law, is there then a way on the path for the judges to suddenly say, I interpret those words differently? (Logemann 1936, 450)

With regard to Bijblad 3020, Logemann did not find the executive order to be interference from the government. To him, it was more of an attempt to oversee land transactions in order to guarantee that the Natives were not deprived of their land illegally. Logemann wrote a very charitable view of the government:

I expect of the presenters first and foremost to have thought about this objection, that the lawmaker had thought about redeeming [land rights] in order to sell only under the direct auspices of the administration. Both presenters rely on a passage in the supplement of Bijblad 3020. I understand they read that passage as such, but it is incorrect. (Logemann 1936, 450)

In contrast to Soepomo, Logemann interpreted the interference from the government as only a secondary objective of Bijblad 3020, which he argued was apparent when one consulted the unabridged text. Logemann quoted the words of the Minister of the Colonies:

‘The natives only give up their right or, if they transfer it, then transfer it over to the Government . . . The term or the fiction of the regulations is therefore that the Government through its officers . . . [make a] contract with the natives.’ (Logemann 1936, 450)

He concluded that the practice, which only aimed at examining whether the seller was adequately compensated, was thus perfectly legal. Thus the claim that the relinquishing of rights could only be recognized as government interference, as waged by Soepomo, was unfounded.

Logemann’s critique of Soepomo’s work demonstrates the tenacity among certain legal scholars to stick to interpretation that had withstood the test of time. Charging Soepomo with having misunderstood the lawmakers’ intent and with being motivated by an intention to blame the government, Logemann represented this reluctance to transform a given discourse, clinging loyally instead to a “solid” interpretation, even if this interpretation was largely homogenous and lacked the voice of the subjected. The fact of Logemann’s and Soepomo’s diverging interpretations is telling of the power relations that shaped their worldviews: although both shared similar rigorous educations in law, they came from the opposite ends of the spectrum of colonized-colonizer.

In contrast to Logemann, ter Haar's response to Soepomo's and van Hattum's exposition was rather mild, because both presenters shared with ter Haar the outlook that land pawning under customary law should have been included in the Alienation Prohibition. In his response, ter Haar used the opportunity mainly to explicate his position on adat law land pawning in relation to the Alienation Prohibition, which he did by putting into context the historical development of the legal rulings surrounding land alienation. By historically contextualizing the rulings, ter Haar suggested, it would be clear that pawning of paddy fields fell under the Alienation Prohibition, in relation to what was understood as the functions of St. 1875 No. 179. But this had been muddled by historical and etymological complications.

The function of the Alienation Prohibition, ter Haar posited, was to halt dispossession caused by the Natives' own wishes to recklessly sell their land away. If previously lawmakers did not consider land pawning under the adat law regime to be alienation, the more recent cases showed that land pawning was so closely related to alienation that if the earlier understanding of St. 1875 No. 179 was retained (that is, that land pawning was not an alienation), the law's function to halt land dispossession would be severely reduced. The confusion about this particular land transaction in adat law, ter Haar suggested, stemmed from the challenge of translating between legal thought worlds: the word *verpanden* (pawning) had its roots in the Dutch legal thought world but was not necessarily related to adat law's own concept of *gadai*. The definitive character of adat law's *gadai* was the period assigned to the transaction. If no period was stated, then the pledgee became the entitled owner of the land (*grondgerechtigder*) and could do as he wished to the land. The pledgor did have a right to end the *gadai*, but it was *never* obligatory. If a period was stated, and if the pledgor let the deadline pass without paying back, then that meant that he definitely gave up his right to the land. In ter Haar's understanding, the land pawning was thus a

land transaction with *gedjoeald* (sale) as the basis, though not yet *lepas* (complete forfeiting of rights). Ter Haar's thought process about *gadai* as something that would come under the jurisdiction of Alienation Prohibition is as follows:

The land pawning (*grondverpanding*) is a land transaction with *gedjoeald* (selling) as the basis, though not yet *lepas* (complete forfeiting of rights). The control of another (person) is established, and the customary law is indifferent to whether the previous control will ever be restored. Pawning (*verpanding*) is therefore neither a temporary transfer nor a permanent transfer; both phrases are inaccurate. Pawning (*verpanding*) has nothing to do with concepts such as borrowing money, loan debt, valuable security, etc. Therefore, since pawning in adat law brings about a land entitlement, of which it is uncertain whether it will again be cancelled out, St. 1875–179, in its understood function, opposes the transaction. (Haar 1936, 471)

Ter Haar's usage of *djoeal* as a Dutchified past participle *gedjoeald*, from the Malay word meaning "to sell," and *lepas* from the Malay word meaning "let go," demonstrates a persistent attempt to elaborate an alien concept from within one's own thought world. To support his argument further, ter Haar cited cases in Semarang, Central Java and Minangkabau, West Sumatra where *djoeal gade* (pawning) and *djoeal lepas* (selling) were mentioned simultaneously, while in contrast *sewa* (rent) and *maro* (sharecropping) were never included in the category. Ter Haar took this as a cue that the former terms signified a permanent transfer while the latter two were essentially temporary transactions in the Native legal thought world (Haar 1936, 472).

Ter Haar understood that *djoeal gadai*, or pawning, had an important social function among Native peasants. *Djoeal gadai* helped peasants raise cash when no other economical means was available and when the person who had not yet agreed to the irrevocable transfer of land was required to proceed. Theoretically, with pawning the native owner could redeem his land at any time, yet there were many ways that the pawning could lapse and land use rights be transferred to the pledgee, that is, through lack of evidence of pawning agreements, or by additional request of money, or if due

to inflation the initial user allowed the pledgee to take over the land. Based on this, ter Haar suggested that *djoeal gadai* and *djoeal lepas* should not be considered an abnormal or defective form of land transaction. In fact, he argued, “the permanent result of the gadai transaction was as socially regular and real as direct transfer and as the return of paddy fields to the original owner upon payback” (Haar 1936, 473).

Ter Haar criticized Soepomo’s and van Hattum’s allegation that lawmakers in the 1870s did not want to include pawning under the Alienation Prohibition. Ter Haar argued that at that specific time lawmakers understood pawning mainly as a form of collateral for debt, a financial transaction, a security for a debt or loan that involved no land transaction. *Djoeal gadai* then was understood as a form of mortgage. The lawmakers at that time did not understand the idea of sale with a condition of buyback, which was clearly an alienation transaction, and which currently was understood as land pawning. Ter Haar cited as an example the definition of the *gade* contract, in which the lawmakers equate the *gade* with the Dutch financial transaction akin to mortgage. In this sense, the lawmakers at that time did not wish to include such transactions in the Alienation Prohibition. But in reality, the pawning was a land transaction, akin to selling with the right to buy back. And if the lawmakers in the 1870s had understood the *gade* as fundamentally a land transaction, ter Haar was convinced they would have included it in the Alienation Prohibition (Haar 1936, 473). Indeed, ter Haar pointed out, the jurisprudence was such that when pawning was understood as sale with the right to buy back, it was voided by the judicial institution, for example,

The Council of Batavia in 1900 T 79 p. 63, the Raad van Justitie of Surabaya in 1905 T 85, 449 declared sale with the right of buyback to be in violation of St. 1875 No. 179. Compare it to the property transaction between a native and an Arab, which the landraad of Jambi in 1932 voided, and which was contained in a document titled *surat djoeal beli tanah* T. 136 b1.32. . . . (Haar 1936, 473)

Ter Haar continued,

Etymologically there is no objection to calling the *gade*-transaction alienation. There will result a strange claimant on the ground—the whole transaction is unknown in the Netherlands—therefore, one must decide on grounds other than etymological whether this transaction can be placed under alienation or not. (Haar 1936, 474)

In his response to Soepomo, ter Haar underlined the importance of capturing the evolution in the understanding of Native forms of land transactions among colonial lawmakers. He found the etymological problem to be the reason native land pawning was excluded from the Alienation Prohibition until 1902: the colonial lawmakers misunderstood the Native concept of land pawning and used a Dutch word that failed to capture the Native signified. Ter Haar explicitly denied any malicious intent on the part of the colonial lawmakers. Nevertheless, malicious intent or not, this seemingly trivial misunderstanding critically shaped everyday legal practices that Soepomo had demonstrated in the meticulously catalogued verdicts. His exposure was a showcase for how a small misstep in grasping the Native's epistemic reference powerfully influenced the dynamics of the colonial agrarian regime.

Despite minor differences, ter Haar essentially agreed with Soepomo in his concern about the Binnenlands Bestuur's intervention in the administration of law on land alienation. Ter Haar agreed with Soepomo's reading, that "The effect of the annulled pawning transaction is that non-Natives acquire no right of occupation upon the land, and the land thus remains under the rule of the native-owner." Ter Haar corrected Soepomo's suggestion that ter Haar considered pawning illegal if it was meant for indirect transfer. Rather, ter Haar said, "I objected to pawning to non-Natives not because it is an indirect transfer, but because the transaction itself extremely curtails the function of St. 1875 No. 179, and [thus it] must be included under alienation" (Haar 1936, 474). Ter Haar concluded,

It seems more realistic to me, on the basis of all such possibilities, to say:

pawning transactions are consequently to be interpreted as alienation because they threaten the *legal* and *social* function of Sb. 1875–179. (Haar 1936, 474)

The two respondents could not be more different in their reactions to Soepomo's work. Polite to Logemann's didactic response, Soepomo nevertheless was resolute in his rejection of what he considered the executive body's intervention into the Alienation Prohibition rulings. He wrote,

It is true that the Alienation Prohibition of 1875 is based on the ancient doctrine that a non-Native cannot exercise a Native's right to land. Yet why—[I] wonder—does the administration [i.e. Binnenlands Bestuur] construe the Alienation Prohibition to be the relinquishing [of Native use rights]? The law declares such transaction void, yet stipulates nothing about the consequences of the void. (Soepomo 1936, 475)

Further, Soepomo rejected Logemann's reading that the void meant in St. 1875 No. 179 referred to situations in which, when an illegal transaction took place, not only was the transaction void, but the use rights of the Natives were also voided by the government. This was the result of Bijblad 3020. Soepomo said,

From an agricultural politics standpoint [I] applaud the doctrine embraced by the administration; however, legally, [I] believe, they are not acceptable. From a judicial/legal perspective, sale is simply something other than relinquishing. (Soepomo 1936, 475)

Soepomo's rejection was manifold. He expressed his other rejection as follows,

[I] also thank Professor Logemann for the explanation that the lawmaker—with regard to purchase agreement—accepted the fiction that the government was supposed to draw contract [of the redeeming transaction]. [I] believe, however, that the acceptance of fiction by the lawmaker deserves no applause. The rulings in the Law Gazette should reflect reality as closely as possible. [I] consider that based on these grounds, St. 1875 No. 179 must be amended. (Soepomo 1936, 475)

Soepomo's relentless critique of *Bijblad 3020* and the power of the Binnenlands Bestuur echoed the sentiment that teachers at the Batavia Rechtsschool pounded into the students, most specifically carried out by C.C. van Helsdingen (see chapter 1). His critique was extraordinarily focused on a very specific issue in the large constellation of the colonial agrarian regime, and in so doing, revealed the mask of an otherwise benevolent-seeming state form.

To ter Haar, Soepomo was more conciliatory. He agreed with ter Haar's position that in the adat law thought world, *djoel gade*, or pawning, was equated with *djoel lepas*, or sale. He also agreed that due to the social function of the Alienation Prohibition, pawning should also come under the jurisdiction of St. 1875 No. 179. However, Soepomo had mixed feelings about a linguistic jump, about whether a pawning under the European term brings "alienation." He wrote,

Whether customary law transactions (*handelingen*) can be brought under European conception is a difficult question. By the problem statement of the question of customary law, the Western educated lawyers involuntarily depart from European law. The mistaken conclusion they then reach had been pointed out by Prof. Ter Haar in his article on "Tijdsverloop." "Alienation" is a Western concept that signifies (*inhoudt*) "transfer"; pawning in the adat law sense does not recognize this European law. If one now asks a question: "Is adat law's pawning an alienation?" then we at once start from a false problem statement. Yet in the interpretation of the Alienation Prohibition the question cannot be escaped. The answer must then, in my opinion, choose from between two possibilities: pawning is alienation, or pawning is not alienation. And with that one enters the territory of the politics of law (*rechtspolitiek*). (Haar 1936, 476–477)

[I] believe that what the lawmaker meant by "alienation" in Stbl. 1875 No. 179 is only permanent transfer (*lepas*), so "pawning" falls on the outside. However given the doubts raised about it, [I] deem it necessary that the lawmaker clearly gives their opinion regarding this issue and [I] would like to recommend the explicit inclusion of pawning in the prohibition. (Haar 1936, 477; emphasis added)

In these erudite paragraphs Soepomo demonstrated his intellectual prowess. He adeptly illustrated the challenge of switching back and forth from one legal thought world to the other. The risk of slippage contained within it had serious consequences in the everyday lives of colonial subjects. By signaling the challenge of “the Western educated lawyers” who “involuntarily depart from European law” in trying to make sense of the Native legal thought world, Soepomo subtly drew attention to the irreplaceable value of being immersed organically in the Native legal episteme. In short, he elevated the value and relevance of knowledge in the Native legal thought world in constructing a legal framework for a colonial agrarian regime.

If earlier in his essay, Soepomo rejected ter Haar’s inclusion of land pawning as falling under the Alienation Prohibition, he finally agreed to it in light of the social function of land pawning that ter Haar’s response underlined. His reluctance now made sense as he finally expressed his objective to revise the redaction of the Alienation Prohibition to explicitly include land pawning in the prohibition. He was convinced that a revision that included an explicit prohibition would lead to a uniform interpretation of the prohibition, an interpretation that genuinely carried out the mandate to protect Native land rights. This position was substantially different from that of ter Haar, who seemed to think legal jurisprudence was sufficient.

Ineffective Intervention? Rulings on St. 1875 No. 179 post 1936

A year after C.C. van Helsdingen brought the divergent interpretation of law within the government, he asked again if the government had made progress on the topic (Volksraad Handelingen 1937/1938, Afdeelingsverslag, 17). The government, represented by the Binnenlands Bestuur, responded defensively by citing the Netherlands Indies Lawyers Congress discussion on the Alienation Prohibition, arguing that the jurists had supported its position on the topic:

It is already established . . . that through such a transaction [that breaches the Alienation Prohibition] the land comes to belong to the domain of the State, upon which neither the native nor the non-native has rights. (Volksraad Handelingen 1937/1938, Memo van Antwoord, 22)

Partly urged by the suggestions of the Spit Commission, the Binnenlands Bestuur said that it was considering amending the Alienation Prohibition and that it would decide its position soon.²⁹

Van Helsdingen rebuked the government's claim of being supported by the Indies Jurist Congress, as there was no unanimous position regarding the effectiveness of the Alienation Prohibition. In fact, Van Helsdingen emphasized, there were a number of lawyers—he must have meant Soepomo and van Hattum—who thought that the Alienation Prohibition of 1875 could not have the impact as had been claimed up till then, and that therefore the government had to review the regulations and eliminate the controversy in the speediest manner possible (Volksraad Handelingen 1937/1938, 635).

If C.C. van Helsdingen was deeply concerned about the Native's dispossession, a Volksraad member from IEV, Doeve, thought that it was the Alienation Prohibition that stalled East Indies' economic growth. Its prevention of small-scale agricultural enterprises in Java managed by the Dutch or Indo-Europeans had prevented the Indies economy from flourishing. Had the government implemented Dutch property law on land, he suggested, investment from the Netherlands would have been fostered and a new class of small and medium-sized agriculture could have flourished (Volksraad Handelingen 1937/1938, 615). He suggested the Javanese peasants could work as paid laborers in the small to medium-sized agriculture this

²⁹ Pushing back demands for concrete acts seemed to be a habit of the colonial government, as was demonstrated in the Wadoeng West case (chapter 2) and the Indo-European demand for land rights (chapter 5).

policy created, or migrate to the outer islands, after selling their land to Dutch or Indo-European entrepreneurs.

A Volksraad member from de *Vaderlandsche Club*, Jan Verboom,³⁰ quashed Doeve's statement, because

they would show a mentality that even the word "cynical" could not characterize adequately. Not least was said that the Netherlands East Indies would have gone much better had the Natives worked their land as coolies for European landowners. Finally it was said that men who would remain and without work, ought to disappear into the outer regions, with which thus the colonization problem would be solved. (Volksraad Handelingen 1937/1938, 673)

Verboom accused Doeve of being merely a pawn of the Indo-European Association, whose sole interest was to gain access to Natives' land. And as a European himself, Verboom explicitly stated that he protested this move by Doeve in the strongest manner possible (Volksraad Handelingen 1937–1938, 673–674).

Two years after this debate, the redaction of the Alienation Prohibition in St. 1875 No. 179 had not been amended or revised (Regeeringsalmanak 1938). The suggested revision proposed by the Spit Commission that Soepomo endorsed remained on the back burner.

Conclusion: Colonial State Formation and Legal Rules for Native Land Rights

The Alienation Prohibition decreed in St. 1875 No. 179 was a law aimed at protecting Native use rights from being sold to non-Natives and converted en masse

³⁰ J. Verboom was a co-founder and a moderate leader of the *Vaderlandsche club*. Under his leadership, the *Vaderlandsche Club* moved from a reactionary to a conservative organization. He became a Volksraad member and part of the *College van de Gedelegeerden* beginning in June 1935. His political outlook was surprisingly aligned with that of Cornelis van Vollenhoven in the way it protested against uncritical application of Western management concepts. He was known to critique the government's economic policy that worked against the interest of the colony and its indigenous population. (<http://www.historici.nl/Onderzoek/Projecten/BWN/lemmata/Index/bwn5/verboom> last accessed February 20, 2012).

into European legal title. It was decreed to complement the Agrarian Law of 1870, and as such was a key part of the colonial agrarian regime. The Alienation Prohibition was widely regarded as the “benevolent arm” of the colonial agrarian policy, which projected the colonial state as an impartial arbiter of justice who took the Native’s welfare seriously in its agrarian policy (Soepomo 1936, 87–90).

The discursive movements surrounding the Alienation Prohibition bring to view an example of a micro-process of colonial state formation. The Prohibition was but one cog in the larger machine of the colonial agricultural regime. It was vulnerable to loosening, strengthening, tweaking by certain social actors in the colony, most particularly lawmakers and judicial officers. In this narrative, we observe how the individuals who waged the process maintained various levels of connection to state-centered institutions, from the People’s Council, the Batavia College of Law, the judicial system, to the Binnenlands Bestuur, the powerful executive arm of the colonial government. As the debate evolved, unusual collaborative moves between unlikely allies became visible, while confrontations erupted between state agents who should have shared a uniformed front on the issue. The debate created an opportunity for parallel moves between C.C. van Helsdingen of the Volksraad and Soepomo of the Ministry of Justice to carry out a thorough review of the Alienation Prohibition.

Soepomo’s review of the ruling had resulted in an intellectual confrontation between him and J. H. Logemann, and a crossfire between C.C. van Helsdingen and the director of the Binnenlands Bestuur, not to mention a war of words between IEV and Vaderlandsche Club representatives in the Volksraad. Indeed, in this debate over the Alienation Prohibition, colonial actors of varied backgrounds, each with a certain level of connection to state institutions, waged attempts to insert their particular reading of the law. Coming from within the state-system’s network, these ruptures underlined the fact that behind the appearance of “the Colonial State” as the ultimate

arbiter of justice, there was a competition to dominate the discourse. Not only that, the ruptures sealed law as the vernacular language that underpins “the colonial state.” The twist was, in this case, a Native subject was one of the key players.

Subjects in colonial conditions, both the colonized and the colonizer, were shaped by densely intertwined threads of power relations as much as by positive intersubjective relations (Allen 2008). Most of the key individuals involved in this debate had a law degree. Undoubtedly, the discipline of law and legal education helped shaped their worldview, their thinking-and-being in the world, and their instinctive reaction to events. In the case of Soepomo, I argue that the legal education he experienced shaped his subjectivity not only via Foucauldian strategic relations, but also via intersubjective relations, that is, the relations of mutual recognition and support he enjoyed with his teachers and professors (Allen 2008). Granted, one does not have a personal testimony of his experience at the Batavia Rechtsschool that would confirm this beyond a reasonable doubt, but between the claims of Batavia Rechtsschool’s administrators (see chapter 1) and Soepomo’s confidence in the authority of law and justice revealed in his 1936 essay, one detects a person who enjoyed a nurturing education which had encouraged autonomy and critical reflection. Different from his European counterparts, Soepomo was part of the colonized, and grew up steeped in Javanese (if not to homogenize it as “Native”) ethics and epistemology. He was also a part of a nationalist front in Indonesia, albeit the one that was “co-operative” with the colonial regime. As such, his interpretation of the Alienation Prohibition differed from Logemann’s, and to some extent from ter Haar’s. Yet, it was nevertheless in tune with that of van Helsdingen, who taught him at the Batavia Rechtsschool.

Soepomo’s essay and the subsequent debate with Logemann and ter Haar demonstrate a process of lawmaking in a wider sense of the term. Here, one observes a

scholar engaging with law, drawing materials from a wealth of empirical data, that is, verdicts that reflected daily encounters of colonial subjects with the Alienation Prohibition and its interpretation by the judicial system and the Binnenlands Bestuur. In questioning the persistent cleavage between the mandate of the law and the reality of the legal practices on the ruling, Soepomo contested the claim of the colonial state systems regarding the protection of Native land rights. He challenged the boundary defined by the colonial Agrarian regime. In Foucauldian parlance, he punctured the “epistemic reference.” His contestation of the colonial government’s commitment to the Alienation Prohibition was met with discouraging remarks from professors of the Batavia College of Law. Logemann considered Soepomo’s interpretation to be wildly motivated by a need to blame the government, while ter Haar neutralized his skepticism towards colonial lawmakers using the argument of etymology and the historical evolution of understanding. These did not deter Soepomo from questioning Binnenlands Bestuur’s intervention into the law and from insisting on an amendment to guarantee a more faithful implementation of the law’s mandate in the judicial system, which was the genuine protection of Native land rights. In these exchanges, the law was scrutinized, questioned, challenged, defended, and finally re-made in the ways its solid interpretation was ruptured; it made possible seeing the law from a different perspective, the perspective of the colonized.

The “time tested” interpretation of St. 1875 No. 179 was a small cog in a machine that was a part of a larger collective of machines that made up the entire universe of reference in the colonial discourse. This universe of reference defined and limited what one could know, and was entrenched in the deep crevice of a subject’s thinking-and-being in the world. At a macro level, it can be overwhelming to pinpoint what exactly the “universe of reference” is. But by zooming in on microprocesses and microdiscourses such as the Alienation Prohibition in the constellation of the colonial

agrarian regime, one renders the machinations identifiable and the cracks more visible. Here, we observe how Soepomo offered a new, fresh reading of the Alienation Prohibition that suggested a deep cleavage between the mandate and the practice of the Alienation Prohibition. He essentially ruptured the old school reading of the law as a benevolent protection of the Native's exclusive rights to own land. In Allen's words (2008), Soepomo transformatively punctured to the existing relations of power and subjection.

The debate over the Alienation Prohibition illustrates the mechanism, the nuts and bolts, and the everyday process of colonial state formation. When diverse actors interpellated law and legal provisions, they reinforced the presence of the state and made its authority visible. But the process is far from straightforward. At the same time the state is made to appear as if it was a concrete entity, its authority in issuing the ultimate judgment is punctured. This simultaneous process of challenging and reifying "the state" made its existence appear in a way akin to a pulse. It became an entity whose strength and authority alternately weakened and strengthened, just like a pulse.

CONCLUSION

This dissertation interrogates colonial state formation. Among numerous lenses one can use to cast an investigative gaze upon colonial state formation—technology, border-making, inter-insular postal service, and native education, for example—the constitution of the colonial agrarian regime is particularly intriguing because it offers a window through which to scrutinize the first-person voice of colonial subjects. Raising their voice in various events that helped shaped the agrarian regime, these subjects intervened and effectively took part in colonial state-making.

How was the colonial agrarian regime in the Dutch East Indies constituted? What are the ways in which it defined colonial state formation? As we trace the operation of subject formation and lawmaking in light of colonial agrarian policy, we observe how the agrarian regime could not have been sustained without the reciprocally formed subjects and laws. We have seen how colonial laws classified subjects into categories and granted them rights accordingly, and how, in turn, subjects waged discursive struggles against these laws and attempted to direct them into a trajectory more empathetic to their cause. These practices reflect my argument that the constitution of the colonial agrarian regime in the Indies involved not only lawmaking, but also, and just as important, subject-making. It was human agents having myriad forms of association with state institutions who carried out these practices, such that assigning a boundary between “state” and “subjects” is hardly tenable. Colonial state formation is thus not a uniform process administered by a single entity. Rather, it consists of heterogeneous practices that take place through dispersed nodal points where power, nestled in the capillaries of the social body, is exercised in virtually one-on-one confrontations.

In this dissertation, I have been concerned less with whether subjects succeed in their interventions, where success is marked by concrete and tangible changes in what they sought to achieve, than with understanding how law and subjects were reciprocally formed, and how they in turn inextricably took part in and influenced the constitution of the agrarian regime in the colony. These concerns led to my interest in examining what these processes mean to the notions of subjects and autonomy and how they illuminate our conception of colonial state formation.

In their seminal treatise on state formation, Corrigan and Sayer (1985) argued that state formation is a cultural revolution. What they meant by cultural revolution is that state formation entails a fundamental change in meaning-making, in how people make sense of events and in the ways in which people situate themselves in the world. The cultural revolution transformed meaning-making from organic processes into ones more amenable to “cultural forms . . . of particular centrality to bourgeois civilization” (1985, 3).

In colonial society, law and legal discourse were the vectors that brought about the cultural revolution alongside which change took effect. The change in meaning-making had an impact on everyone—colonized, colonizers, and those wedged in between—shaping their subjectivities into forms that fit well within the larger framework of the agrarian regime, a regime that reflected the colonial government’s doubling project. In this process, law and legal discourse emerged as the elements that held colonial state forms together and that projected the presence of the state as the ultimate arbiter of justice (Comaroff 1998, Hansen and Stepputat 2001).

I explore two pillars that constituted the colonial agrarian regime in chapters 1 and 2. My narrative in chapter 1 demonstrates that subject formation does not take place solely as a result of the Foucauldian dynamics of strategic relations. The curriculum and pedagogical philosophy deployed by administrators of colonial legal

education signal a more complex relationship than simply the “strategic.” There was a nod to mutual respect and to nurturing attitude, not something one expects in colonial relations marred by racial bias. Acknowledging this deviation brings forth the intricate reliefs that help us make sense of complex subject formation. Legal education and trainings brought the native students into a shared language about justice with the colonizer, and equipped them with the capacity to self-reflect and to engage with colonial legal discourse.

In chapter 2, I show how colonial agrarian laws transformed landscape into valuable real estate and how the laws regulated subjects’ relations to land. Yet these laws never became stable references, because colonial subjects never ceased engaging with them in order to both resist and advance the laws’ attempt to reconfigure social relations. We observe this in Bernard Ledebor’s manifesto booklet, in R.P. Soeroso’s protest in the Volksraad, in Wirjono Prodjodikoro’s essay in the *Indies Journal of Law*, in Samingoen’s case helped by Lunel, in van Helsdingen’s demand for a thorough review of the Alienation Prohibition, and in the director of the Binnenlands Bestuur’s rejection of it. This crisscrossing of contestations against and defenses of the agrarian laws represents the reality of lawmaking in the colony. Law, once introduced, was never finished or stable. Re-interpretation of law pushed by the subjects was part of the law’s evolution.

These two chapters present the foundational arguments for the subsequent chapters, which explore different aspects of colonial state formation that manifested through the constitution of the colonial agrarian regime. In chapter 3, I highlight the autonomy of a subject expressed in particular forms of agency. In chapter 4, I examine how the distinction between colonial subject and colonial “state” was no more than an illusory boundary. In chapter 5, I foreground how practices that resulted in isolation and identification effects did not emanate from a single, coherent entity, but were

waged by a network of social actors. In chapter 6, I present the dynamics between two groups of subjects—not so much in diametrical opposition than in a shared discursive realm—in making law and in interpellating the illusory state.

From the literature on agrarian issues in late-colonial Netherlands East Indies, I could hear only faint voice of the natives, and of the colonial subjects in general. Most research dwells on practical actions in the form of revolts or peasant struggles. By no means do I intend to downplay their importance, but focusing on large struggles like revolution and small struggles like acts of everyday resistance runs the risk of implying that agrarian struggles in the Indies took place only at the practical—never the ideational—level, and that fights over agrarian rights were inspired only by Marxist ideas. Such a focus obscures the process of deliberation, even muffling the voice of the Indonesian intelligentsia regarding land rights. In reality, agrarian struggles did take place at the ideational level. Paying close attention to this ideational struggle brings more prominently to light the role of the subjects as active agents in historical events.

My project is inspired by the search for a voice, and by the desire to hear the voices of subjects in the colony, not only the voices of the native population, but also the voices of those wedged in between the colonized and the colonizer. Thus my foregrounding of the colonial subjects and the autonomy of their enunciations and strategies in everyday making of “the state.” Finding a voice means zooming in on microprocesses and allowing the first-person voice to surface from the cacophony of colonial legal discourse on land rights. In this way, the subjects come forward as multiple embodiments of a process: as autonomous individuals despite being constituted by power relations, and as pillars of state-making such that it becomes difficult to isolate state from subjects.

In thinking about the subject, I found myself struggling to present it in ways that are manageable. Earlier in my research, I struggled with the question of how to isolate the most dominant factor and the most important network of relations from the vast arrays of possibilities that constitute “subjectivity.” Subjectivity is such a complex phenomenon and so elusive it that eludes attempts at scrutiny. Ortner acutely observes that numerous cultural analyses that borrow the Foucauldian concept of subject formation end up analyzing subjects in terms of political locations and political identities, which is substantially “different from the question of the formation of subjectivities, complex structures of thought, feeling, reflection, and the like, that make social beings always more than the occupants of particular positions and the holders of particular identities” (2005, 11). And in my quest for theoretical grounding that allows the subject to emerge, I have come to an understanding that the term “subjectivity” hands the ‘microphone’ back to the “subject.” Because of the near impossibility of pinning down “subjectivity,” the asymptotic way out was to explore the process of subject formation (in this case I limited it to legal education) and to make space for the process of deliberation to take center stage.

How do we foreground the subject? In a research area with a dearth of autobiographies from which to cull morsels to reconstruct the subject and the person’s way of seeing the world, a partial way out is to allow the first-person voice of the subject to be the focus of analysis, using materials where speech and writing are abundant. In this project, I do so by using speech transcribed from Volksraad sessions, dissertations written by law students, published essays and booklets, and newspaper articles—in short, by examining all materials that contain the first-person voice. This explains the unusually lengthy quotations here, especially in cases of abstract legal argument on land rights issues. Allowing these discursive expressions to come to the fore makes possible the linking of the subject to power relations, discourse, and

epistemic reference, all of which constituted the subjects in the first place. It also made possible the tracing and identifying of their interventions, especially crucial because discursive intervention does not always result in tangible, spectacular change.

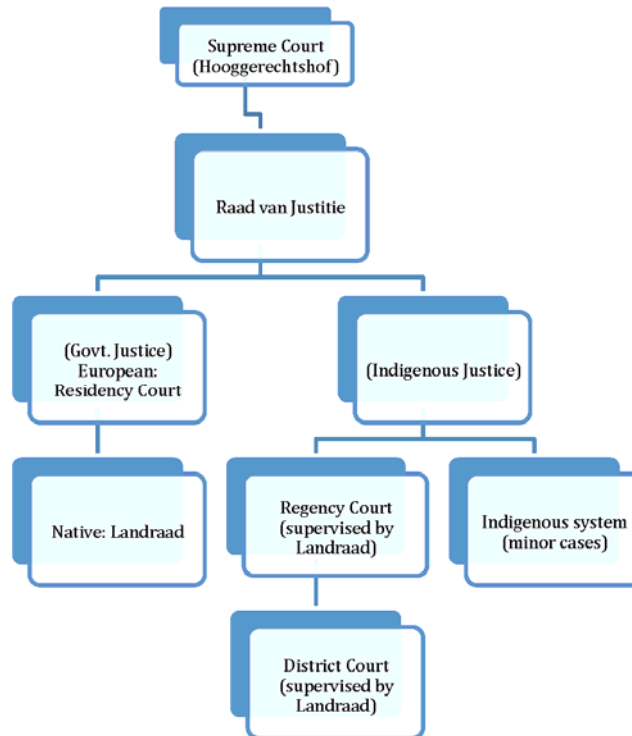
Most of the voices heard here are faint when placed in the larger historiography of Indonesian agrarian evolution. They come from sources that have rarely been accessed despite the relatively easy access to them. They are faint not so much because the subjects were whispering, but because the microprocesses they expressed had largely escaped our attention and acknowledgement. Then again, do colonial subjects' discursive interventions really matter? Do their voices make a difference when the practical result they sought did not take place as the actors had wished? Do these voices matter when they were so faint? Surely we would have heard about them if they were genuinely important? After the long exposition in this dissertation, I have concluded that they do matter, because they are essential in explaining larger processes and bigger structures. They render visible the contour of agency that made it possible to think about large processes such as state formation in other than abstract terms.

The complex processes of state formation become even more sharply defined when we strip the object of our analysis from the illusory, reified state, and allow the subject to take center stage. When the subjects' enunciation and enunciation strategies become the focus of our attention, what emerges is a process of state formation that does not consist of a continuous stream of domination. What emerges is not so much the overwhelming power of the state, but a formation that manifested as pulsating beats, one moment contracting, the next expanding; a throbbing dynamic caused by successive, discrete pounding, never a continuous, steady stream of power. What emerges is a play of power relations in which everyone had and took a role. This is

because colonial subjects were always engaged with the network of power relations while also taking part as the relays of power.

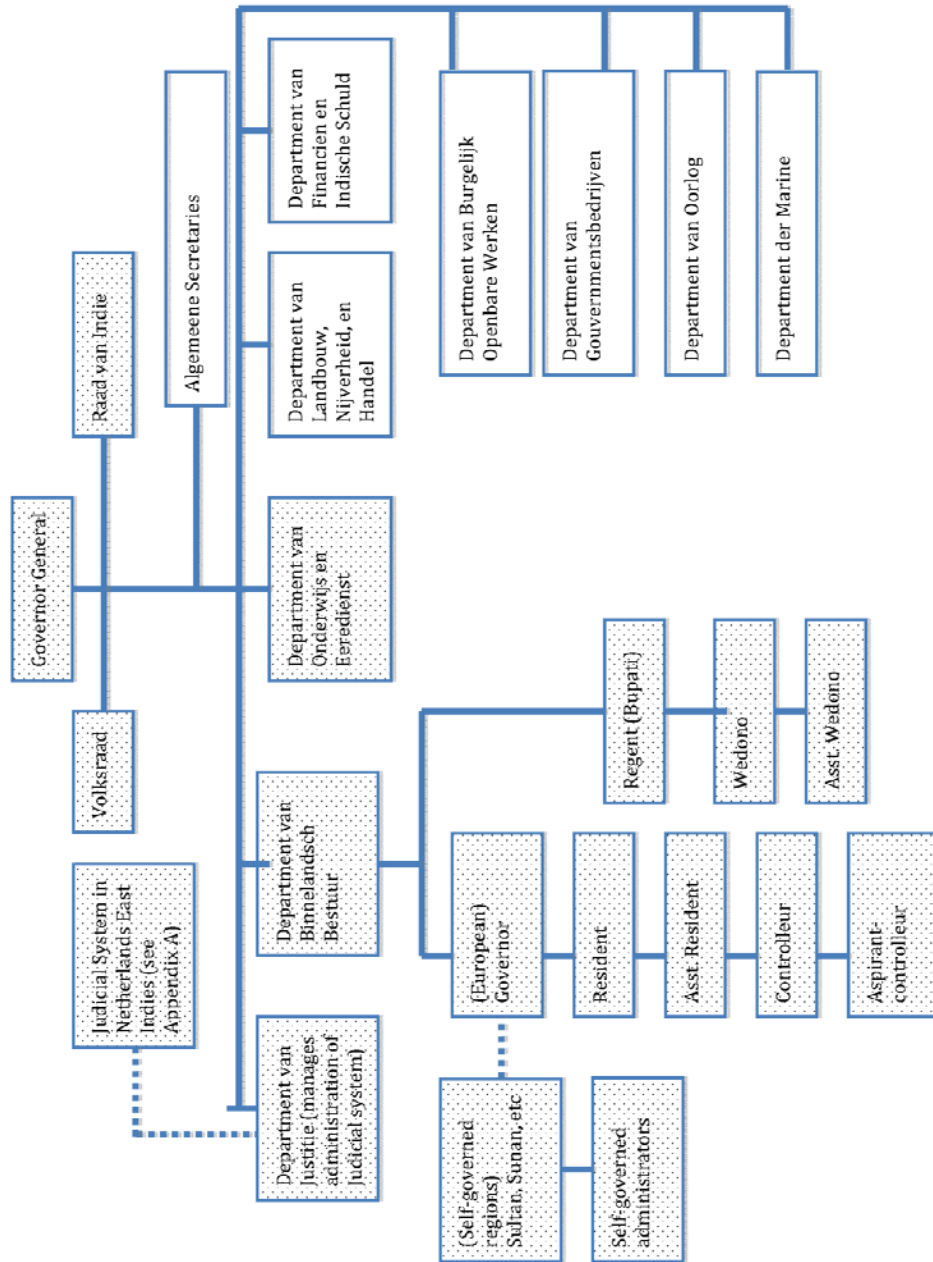
Colonial state formation was always in a state of expansion and contraction, perhaps not rhythmically, but definitely not moving as a steady stream of domination. And I have come to the conclusion that indeed it was laws and legal discourse that were the blood that kept the pulse going. It was through the language of law and legal discourse that colonial subjects were able to wage their interventions in the constitution of an agrarian regime. In this light, law and legal discourse were the vernaculars that held colonial state-systems together, making it appear coherent and united.

**APPENDIX A:
Administration of Justice in the Netherlands East Indies in the 1920s**



(Source: Massier 2008)

APPENDIX B:
Structure of Governance in the Netherlands East Indies in the Late 1920s



(Source: Sutherland 1978; Volksraad Handelingen vol. 1 1929)

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- Deel 1, Overzicht van de Werkzaamheden der Commissie
- Deel 2, Samenvatting van de Gegevens Verkregen Langs den Weg van Conferenties en Besprekingen, Uit Geschrift en Pers
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