

Daniel S. Lev. *Legal Evolution and Political Authority in Indonesia: Selected Essays*. The London-Leiden Series on Law, Administration and Development, vol. 4. The Hague: Kluwer Law International, 2000. 349 pages.

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Scholars interested in Indonesia, comparative colonial law, and postcolonial jurisprudence will welcome this long-awaited collection of Dan Lev's work on the labyrinthine legal system and history of Indonesia. Culled from widely disparate sources ranging from US law journals to *Indonesia*, the articles were published between 1962 and 1996, the period roughly covering Suharto's New Order regime. Lev wrote these pieces as both a historically minded political scientist and as a contemporary observer, tracing Indonesia's legal history from the late nineteenth century to his "present," which started with his field work in 1959 and continues to this day.

Lev tracks the "evolution" of Indonesia's jurisprudence. The legal system is, in his view, the "skeleton of the modern state," which has a "genetic pattern" located in the Dutch colonial period and is evidenced in the marrow-rotten bones of the New Order legal system. Despite curative moments of reform, the Indonesian legal system in the post-independence period has limped along, handicapped by the ineffective enforcement of outdated civil codes and maimed by its subordination to the political regime. Lev's prognosis, however, is far from hopeless (and here I'll stop with the illness metaphor). Because Indonesia's judiciary lost its independence from the executive branch, Lev looks elsewhere for sources of reform. He finds it in the private sector, among advocates and in legal-leaning NGOs, which proliferated in the 1980s alongside the middle classes. This narrative outlining the arc and trajectory of Indonesian law encompasses the twelve chapters that constitute *Legal Evolution and Political Authority in Indonesia*.

Before I go into the substance of the chapters, however, I would like to suggest one way of reading the book, which is not meant to be read from cover to cover. Each chapter stands alone as a unique contribution, which means that there exists some degree of overlap and repetition in the collection. I recommend beginning with chapters 7 and 8 on "Judicial Institutions" and "Judicial Authority" because they provide readers with the broadest introduction to Indonesian legal history, both chronologically and conceptually. These two chapters cover all of the major themes that Lev develops with greater precision in other chapters. For non-Indonesianists, the use of Indonesian terms without supplying a glossary can be challenging, but the terms (all of which are explained in at least one of the chapters) can be looked up through reference to the index. One final point before launching into the book's major themes regards the footnotes. In an era of publishing when editors ruthlessly slash footnotes, Lev's book provides readers full access to the depth of his research through ample notes.

All chapters speak to one or more of the following three themes: law as embedded in its social, political, and historical context; the debate over legal unification versus plural law, especially *adat* or customary law; and legal reform movements aimed at establishing *negara hukum* (law state), Indonesia's version of the *rechtsstaat* or rule of

law. Nearly every chapter, implicitly or explicitly, insists on the necessity of contextualizing a study of law codes and institutions in the political and social history of Indonesia. Lev pioneered this approach to the study of law in newly independent nations (which also applies to the study of law in all polities). While other scholars concentrated on proscriptive codes and legal principles in isolation, Lev articulated Indonesia's legal system with its messier political, economic, historical, and social contexts. Richness and complexity characterize his work as a consequence. At the same time, his study never tips over into the morass of cultural relativism or stereotyping. He attacks, for example, the allegedly culture-bound notion that "Asians generally are prone to avoid conflict" because it flies in the face of Lev's (and my own, in the case of Siam) experience and understanding of conflict and violence, as well as the statistical data, which prove Indonesia to be as litigious as many European states. Chapter 7 on "Judicial Institutions and Legal Culture" most directly addresses the role of cultural differences in dispute resolution. Lev explains anecdotally how his American legal expectations for compensation conflicted with those of his Indonesian hotel owner regarding a dispute over payment for a falling toilet that came close to injuring Lev's friend. In coming to terms with this incident, Lev recognizes cultural differences without ossifying them.

Culture itself, however, never becomes the primary category of analysis, so those readers expecting discourse analysis or cultural explanations for Indonesian law will not find it here. There is no close reading of the legal codes themselves, and very few actual court cases are brought to bear on his study of legal institutions as they articulate with political power. His is a no-nonsense *real politik* approach that many may find refreshing. The state—that is, institutionalized political power—drives Lev's understanding of law and legal institutions. The material economic and political goals of the state, regardless of whether the Dutch or Javanese lead it, outweigh ideological, cultural, and discursive rationales for understanding Indonesia's legal trajectory. This is clear in chapter 1, where Lev argues that colonial law was created by the Dutch to make the exploitation of Indonesia efficient and to control Indonesians. He then traces the continuities between the Netherlands-Indies legal system and that of postcolonial Indonesia "to unveil the colonial skeleton in the New Order closet" (p. 7). The independent state of Indonesia obtained "instruments of repression no less useful to the later than the earlier regimes" (p. 13).

The state, however, faced its greatest legal challenge with national independence, when its leaders (like the Dutch before them) had to come to terms with the decision to either unify all of Indonesia under a single civil and procedural code or to maintain a plural legal system that recognized not only racial categories of people but nineteen distinct cultural zones where different *adat* laws applied. Many chapters address this second main theme of the book, but the chapters on "Colonial Law," "Judicial Unification," "The Supreme Court and Adat Inheritance Law," and "The Lady and the Banyan Tree" treat this debate with the most detail, clarity, and depth. Anyone familiar with Indonesian history knows that perhaps no other state has as complicated and Byzantine a legal system. Lev's familiarity with it, however, cuts through the complexity to present a clear picture of the stakes involved in maintaining or abolishing *adat* law. He addresses it first by explaining the creation of *adat* law policy in the late nineteenth century by Cornelis van Vollenhoven and Barend ter Haar. Van Vollenhoven, in his desire to protect Indonesian local law from the decimating

potential of the modern state, created a policy that placed Dutch judges in charge of deciding local customary law, a policy that caused *adat* law to lose its integrity. Lev, sympathetic to van Vollenhoven's idealism, notes that, "Out of genuine respect for Indonesian cultures, he nevertheless helped to imprison them in a cage of elegant policy that rendered them even more vulnerable to outside manipulation" (p. 21).

Adat courts in the post-independence period similarly hindered the national legal unification of Indonesia and instead reinforced ethnic cleavages, especially outside Java. The unified law available to Indonesia's national leaders and familiar to its few trained judges was based on Western law, which was tainted by its association with Dutch colonial power. The other choice available to them—the pluralistic *adat* law system—may have been equally colonial in creation, but ideologically was understood as indisputably Indonesian. Chapter 4 on "The Supreme Court and Adat Inheritance Law" describes the postcolonial ambivalence felt by Indonesia's nationalist leaders toward *adat* law as symbolic of Indonesia, yet also somehow antithetical to modern national law. Lev also queries the degree to which the national unification of civil law meant, unwittingly or not, the Javanization of law by considering cases involving inheritance for widows. In "Judicial Unification," Lev further illustrates the complexity of the issue with examples from several non-Javanese locales including Aceh, where conflicts ensued between Dutch-empowered traditional authorities in charge of the *adat* courts and the local Islamic opposition, which received government backing against the entrenched elites in the name of national unification.

In addition to the *adat* law system, the Dutch-Indies government bequeathed to independent Indonesia an independent judiciary with an official hierarchy of posts. Lev traces the process by which the judiciary, which was a serviceable and relatively independently functioning entity in the 1950s, declined in prestige as it was subsumed under Sukarno's Guided Democracy and was even more severely constrained under Suharto's New Order regime. Lev refocuses attention on private lawyers, para-professional advocates, and professional organizations, including lawyers' associations and NGOs, which became sources of critique and activist reform. Their goals include independent courts, institutional controls, a freer press, and other reforms that began to make headway only after 1998, with the fall of Suharto.

While consistently holding the various political regimes equally responsible for the decline in the prestige of the judiciary, Lev differentiates among the constituent groups that comprise the public and private judiciary—judges, prosecutors, private advocates, bush-lawyers, and police. The majority of the book's chapters focus on these groups, which is one of Lev's most important contributions to the study of Indonesian law. In "The Politics of Judicial Development in Indonesia," Lev outlines the conflicts that have arisen among judges, prosecutors, and police in post-revolutionary Indonesia and describes the impact of these conflicts on judicial institutions. Judges, who obtained a prestigious position in Indonesian society during the late colonial and early independence period, found their credibility and status falter in the 1950s and 1960s as judicial institutions became increasingly subordinate to the political regime. The decline in status for judges occurred alongside the increase in the role and power of public prosecutors, formerly the peripheral riff-raff of the colonial legal system. Not only did prosecutors demand and eventually receive pay equal to that of judges, they were also positioned to procure large bribes, which increased the attractiveness of the

post to recent law graduates. A second conflict arose between the state police and public prosecutors, based essentially on a similar contest over relative authority and prestige.

In “Bush-lawyers” (*pokrol bambu*), Lev tackles an issue that most scholars of law ignore—the ways in which the poor access the legal system through these para-professional advocates who “translate” the formal legal system into terms that are meaningful to lower-class Indonesians. Similarly, the focus in the remainder of the book hones in on how Indonesian lawyers and NGO organizations seek to address the mammoth problems in Indonesia’s legal and political institutions. The chapter on “Legal Aid in Indonesia” provides a vibrant contemporary example of an NGO, the Legal Aid Institute in Jakarta, which has been committed to radical institutional reform since its establishment in 1971. In addition to explaining the history of legal education, the chapters on “The Origins of Indonesian Advocacy” and “Between State and Society” explain why many Indonesian lawyers have turned to private advocacy rather than working within the government judiciary as a way to promote systemic reform. Finally, Lev, in his remaining chapters on “Judicial Authority” and “Social Movements, Constitutionalism, and Human Rights,” leaves readers with a realistic yet hopeful sense of the role of lawyers in reform. Lawyers may not be the key players in political transformation in Indonesia, but they have framed the debates over legal and political change by placing constant public pressure on the government for reform. This collection of Dan Lev’s articles is an erudite and authoritative volume that will endure as a classic in Indonesian legal studies.