LEGAL PLURALISM AND CRIMINAL LAW IN THE DUTCH COLONIAL ORDER

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In 1642, the governor-general of the Dutch East India Company (Vereenigde Oost-Indische Compagnie, VOC), Anthony van Diemen, promulgated a new legal code for the city of Batavia. At that time, Batavia had existed for little more than three decades, having been founded as a merchant fortress on the ruins of a minor Indonesian trading city by the formidable governor-general, J. P. Coen. By 1642, however, the population of the settlement had been swelled by migrants and slaves. The city needed workers—all the more because of high mortality rates—and it offered growing opportunities for commerce and service industries. The countryside around the city quickly lost its function as a buffer against military attack, and the thick forest gave way to farms and plantations supplying both the growing urban population and a healthy export trade.[2]

The new legal code of 1642, commonly known as the Bataviasche Statuten, had two purposes. First, it provided a set of rules governing the conduct of VOC employees in the settlement; it thus offered a detailed set of rules on proper bureaucratic conduct. Second, it was an attempt to provide a basis for some kind of social order in a rowdy port city and its immediate hinterland, far from metropolitan authorities and with a diverse and constantly changing population. The provisions of the code convey a picture of the kind of acts that vexed the Company authorities: violence between

[1] I should like to thank Eric Tagliacozzo and an anonymous referee for valuable comments on an earlier version of this article. Research for this article was funded by the Netherlands Institute for War Documentation and by the Australian Research Council.

[2] See Leonard Blussé, *Strange Company: Chinese Settlers, Mestizo Women, and the Dutch in VOC Batavia* (Dordrecht: Foris, 1986); and Susan Abeyasekere, *Jakarta: A History* (Oxford: Oxford University Press, 1987).

masters and servants or slaves, smuggling, piracy, drunkenness, murder and assault, promiscuity and adultery, libel, theft of wood, and escapes by slaves. Other criminal activities not covered in the code were simply made subject to the "statutes and customs of the United Netherlands."[3] In the history of colonial law, however, the Bataviasche Statuten are notable less for their content than for the fact that they were designated as applying to all inhabitants of the city of Batavia and of the swathe of surrounding countryside under Company rule. They applied to the Europeans who worked for the Company, as well as to the diverse Asian population: to the Chinese, the Siamese, and the Indians, to the Javanese, the Balinese, and the Sundanese, to the Arabs, the Pampangans and the Vietnamese, and to the dozens of other ethnic groups drawn from the Indonesian archipelago whose members had come to the crowded city as traders and laborers.[4]

The Bataviasche Statuten were promulgated just a few years before the 1648 Treaty of Westphalia, the agreement between European states that sealed the end of the Eighty Years War between the Netherlands and Spain, as well as the German part of the Thirty Years War. That treaty is commonly taken to mark the start of the modern system of international politics because it recognized the sovereignty of the German princes, displacing the Holy Roman Empire—and, by implication, God—as the formal head of the northwest European state order. It meant that, within their own domains, rulers could expect to wield unfettered authority over their people: neither in matters of religion nor in any other matter was another ruler authorized to take a hand in what were now to be regarded as the internal affairs of sovereign states. In turn, international politics ceased to be formally hierarchical and became instead a specialized society of sovereign actors, who engaged with one another on the basis of mutual recognition, limited only by their willingness to subject themselves, voluntarily and revocably, to international agreements and international law.[5]

The Westphalia Treaty, by crystallizing the authority of states at an international level, also contributed to the process of consolidation and homogenization within states. The Treaty highlighted, though of course it did not cause, the process by which European polities such as France and England, Sweden and Spain, turned that general claim to sovereignty over their peoples into real control. In this universalizing process, political, cultural, and social heterogeneity was erased, both incrementally and in sudden leaps, so that an increasing proportion of the experiences of the peoples of Europe was determined in one way or another by the authorities of the central state. All across the continent, though to very different degrees and in different ways, local

[3] Is. Cassutto, *Het Adatstrafrecht in den Nederlandsch-Indischen Archipel* (Semarang: G. C. T. van Dorp, 1927), p. 15.

[4] For the full text of the Bataviasche Statuten, see J. A. van der Chijs, ed., *Nederlandsch-Indisch Plakaatboek, 1602–1811*, vol. 1 (Batavia: Landsdrukkerij, 1885), pp. 472–594. The universalist construction of the Statuten was, of course, limited by the extent to which the laws were specifically directed at VOC employees. The Statuten, moreover, were not intended as an embodiment of principles of justice in the way that law came to be imagined in Europe in the eighteenth century. Nonetheless, a distinction in principle between different ethnic jurisdictions was absent.

[5] As one might expect, historical reality is rather more complex than this simple outline suggests. See Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth," *International Organization* 55,2 (Spring 2001): 251–87.

elites and local traditions and institutions gave way to a growing, though still incomplete, dependence on central polities.[6]

Unsurprisingly, this process was evident also in the administration of law. In any time of accelerating economic, social, and cultural integration between regions, the existence of different legal regimes becomes a matter of inconvenience or worse, leading to powerful practical pressures for uniformity. The elimination of local legal regimes was everywhere linked to the rise of central authorities and the repudiation of local elites and local diversity. This practice of legal universalism also came to have an ideological dimension: it stood for the slowly emerging doctrine of human equality, even though the law was able to accommodate as many exceptions in practice as the doctrine could. The application of the Bataviasche Statuten to all inhabitants of Batavia irrespective of ethnicity, therefore, was very much in the spirit of the age. As it turned out, however, the code of 1642 was the high-water mark of legal universalism in the Dutch colonial order in the Indies. During the three centuries that followed, Dutch authority expanded from a few coastal enclaves to encompass thousands of islands and millions of people, from Sumatra to New Guinea. Rather than applying a single law to this archipelagic empire, however, the Company, and later the Dutch metropolitan government, presided over what can best be called a hybrid pluralist legal system. Although there were important universalist elements in the colonial order, the Netherlands Indies comprised a multitude of separate legal jurisdictions, partly territorial, partly based on race or nationality. When the colonial authorities surrendered to the invading Japanese in 1942, exactly three centuries after the Bataviasche Statuten had been issued, the Netherlands Indies presented a baroque tangle of legal systems and jurisdictions that profoundly affected the attitude of its people to issues of law and order.[7]

Benedict Anderson has argued a strong case for the decisive role of the Netherlands Indies state in creating a framework within which Indonesian nationalism could develop. The colony was a bounded domain, its borders increasingly demarcated and patrolled,[8] a structure that defined the limits of elite careers and intruded into the lives of its subjects to such an extent that politics in relation to the state became bound up with an emerging national identity. The colonial system of ethnic classification, crudely dividing the population into Europeans, *Inlanders* (Natives), and *Vreemde Oosterlingen* (Foreign Orientals) created the basis for an Indonesian identity arising out of the *Inlander* category and thus preventing the important Eurasian and Chinese minorities from fully belonging to the nation.[9] Anderson's insight, however, tells only part of the story. A bitter and enduring complaint of Indonesian nationalists was that the colonial order employed a strategy of

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[6] Eugene Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* (Stanford, CA: Stanford University Press, 1976).

[7] On the Dutch colonial system of racial classification and its political consequences, see C. Fasseur, "Cornerstone and Stumbling Block: Racial Classification and the Late Colonial State in Indonesia," in *The Late Colonial State in Indonesia: Political and Economic Foundations of the Netherlands Indies, 1880–1942*, ed. Robert Cribb (Leiden: KITLV, 1994), pp. 31–56.

[8] Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling and States Along a Southeast Asian Frontier, 1865–1915* (New Haven, CT: Yale University Press, 2005).

[9] Benedict R. O'G. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991), pp. 113–42.

divide and rule. This complaint was not just a response to the last-gasp post-war Dutch attempt at constructing a federal Indonesia, nor to earlier Dutch attempts to stir up discord and distrust within the nationalist movement, but also to the structural fragmentation of colonial society, which was reflected in the institutions of legal pluralism. Colonial Indonesia was an increasingly modern state, which could not help but have some of the integrating effects the sovereign states in Europe had on their subjects, but it was not deliberatively integrating. Rather, both in its internal political structure and its legal system, it devoted considerable effort to keeping its subjects apart from each other. Predominantly Christian ethnic groups, such as Manadonese and Ambonese, which also had relatively high levels of literacy in Dutch, were widely perceived as favored within the colonial order. The colonial state did not just separate Europeans and Foreign Orientals from Natives, but rather kept the Natives, too, under multiple jurisdictions. Around half the archipelago by area (though much less by population) was formally under indirect rule, in which the heirs of precolonial rajas, sultans, and other monarchs governed in their own right, albeit under close supervision from Dutch officials. The colonial authorities even increased the autonomy of these rulers in the late colonial period under the so-called *ontvoogding* (detutelization) program.[10] In other cases, individuals carried with them the privileges and restrictions of a legal regime attached to their ethnicity and governing parts of their lives, wherever they went in the archipelago.

In Europe, the slow shift towards legal universalism was marked by growing support for the idea of a legal code in which all the laws governing society were to be set out clearly for everyone to read. The shift was slow, because legal systems tend to be conservative, but it reached a major landmark in the promulgation of the Napoleonic Code in 1804, which swept away the multitude of local laws and local jurisdictions in France that had survived from before the Revolution. The shift was also marked, however, by changes in the understanding of the purpose of the justice system. Paradoxically, the apotheosis of state sovereignty embodied in the Treaty of Westphalia had given strength to moral and intellectual arguments that the state held a fundamental responsibility to its people, and, indeed, that the sovereignty of the state might be derived from the consent of its people. Part of this intellectual movement was reflected in new thinking about the administration of justice.

This new thinking was based especially on the foundational work of the eighteenth century Italian criminologist Cesare Beccaria, *On Crimes and Punishments* (1764), which argued for a utilitarian approach to the administration of justice.[11] For Beccaria, reliable detection and conviction of illegal acts were essential to deterring potential criminals, and punishment had to be neatly calibrated so that it deterred crime without straying into barbarism. Published only two years after Rousseau's *Social Contract* (1762), *On Crimes and Punishments* reflected both the growing sense in Europe that the legitimacy of the state was, or ought to be, justified or legitimatized by the services it provided to its people and the growing sense that it was possible and desirable to create rules of procedure by government in the interests of justice and efficiency. Beccaria's work underpins the view of contemporary mainstream criminology, which regards crime in

[10] Harry J. Benda, "The Pattern of Administrative Reform in the Closing Years of Dutch Rule in Indonesia," *Journal of Asian Studies* 25 (1966): 589–605.

[11] Cesare Beccaria, *On Crimes and Punishments* (Indianapolis, IN: Hackett, 1886).

a relatively straightforward way as social pathology demanding carefully devised strategies for prevention. This view understands the politics of crime basically in terms of legitimacy: the protection of life, along with property, is one of the most important services that a state can provide to its people, and the legitimacy of the state, as well as the welfare of society, will depend to a significant extent on the capacity of the state to keep crime within acceptable limits. The work of the police, the courts, and other instruments of the legal system is to protect society against internal enemies who are just as real and threatening as external ones. For criminologists, the term "war on crime" is thus an accurate description of, rather than a loose metaphor for, the campaign of the state against criminal activity.

Beccaria's central argument was that certainty of punishment was a much more powerful deterrent than severity of punishment, and that the efforts of the state ought to be directed at a more comprehensive system for apprehending criminals, rather than at wreaking terrible punishment on an unfortunate few who fell into its hands. Excessive punishment, in this utilitarian view, was also likely to be a waste of social resources. On these grounds, among other things, Beccaria advocated doing away altogether with the death penalty. In his view, punishment should be scaled according to the severity of the crime and ought to be severe enough only to deter criminality; the cruelty that had been commonplace in legal systems throughout Europe in the past was, in his view, nothing other than tyranny.

Some forty years before Beccaria wrote, the Netherlands Indies had witnessed a case of the kind Beccaria would have had no difficulty in recognizing as tyranny. In 1721, the governor-general of the Netherlands Indies, Hendrick Zwaardecroon, uncovered what was reported as a plot to overthrow the VOC government in Batavia and to establish a new regime drawn from the local elite in the Company capital, Batavia. There is now some doubt whether such a plot really existed, or existed in the well-developed form that was later reported, but the governor-general's response is well recorded. The alleged ringleader, Pieter Elberveld, was executed horribly. He was lashed to a cross, his right hand was chopped off, the flesh was pulled from his arms, legs, and chest with red-hot tongs, his body was slit open, and his heart was ripped out and presented to him before, finally, what was left of his body was cut into quarters.[12] The punishment inflicted on Elberveld has been remembered because it was harsh by the standards of the day, but brutality, occasionally mediated by clemency, was the dominant characteristic of punishment in all European societies of the time, whether metropolitan or colonial.[13] Punishment represented, in part, a foretaste of the punishment to which God would condemn sinners in the life hereafter, but it was, above all, based on a simple notion of deterrence: brutal punishment of the guilty provided a horrible warning to those who might otherwise be tempted from the way of

[12] L. W. G. de Roo, "De Conspiratie van 1721," *Tijdschrift voor Indische Taal-, Land- en Volkenkunde* 15 (1866): 378; William Bradley Horton, "Pieter Elberveld: The Modern Adventure of an Eighteenth-Century Indonesian Hero," *Indonesia* 76 (October 2003): 147–98.

[13] For more stories of punishments meted out by the VOC, see Donald Maclaine Campbell, *Java Past and Present: A Description of the Most Beautiful Country in the World, Its Ancient History, People, Antiquities, and Products*, vol. 2 (London: Heinemann, 1915), pp. 1074–78. British observers of the Netherlands Indies, of course, took some pleasure in commenting on the presumed greater cruelty of the Dutch in colonial administration, so these cases should be taken as extremes, rather than norms.

righteousness.[14] Beccaria directed his arguments against brutality precisely because it was the standard mode of punishment.

In Europe, Beccaria's writings were widely read, and his ideas profoundly influenced the administration of justice. On the one hand, they contributed to a softening of the punishment regime and eventually to the emergence of rehabilitation as a major aim of the penal system. On the other hand, by emphasizing the need for certainty of punishment, they laid a basis for modern comprehensive policing, particularly the general understanding that the key to prevention was surveillance: that ubiquitous police intelligence would prevent crime by guaranteeing the perpetrators of any criminal act would be identified. This presumption remained strong in the twentieth century and was expressed perhaps most graphically in Orwell's novel *1984,* in which all citizens were under constant surveillance by "Big Brother."

Beccaria's ideas were much slower, however, to reach the Netherlands Indies. As a chartered company—a commercial firm granted quasi-sovereign administrative rights by a metropolitan power—the VOC as an institution sat uncomfortably in relation to the constellation of sovereign states sanctioned by the Treaty of Westphalia, and, as a commercial operation, the Company identified its primary responsibility as being to its shareholders (and, in practice, also to its senior employees), rather than to the peoples who came under its rule in Asia. The implication, which came to be seen as a natural consequence of Beccari's insights, that the state had a natural duty to provide law and order to its subjects was not likely to be welcome to the Company. Like the British East India Company in the Indian subcontinent, therefore, the VOC preferred to preside over a pluralist legal system, in which the administration of justice was left as extensively as possible in the hands of local communities, rather than being gathered into the hands of the colonial state. Law was, above all, a codification of the interests of the Company and its employees. In 1667, for instance, notwithstanding the Bataviasche Statuten, the Company issued a decree authorizing Europeans

> ... to drive off with violence, and even to kill without any adverse consequences, all unknown natives found outside their fences and their houses between half past six in the evening and half past five in the morning, provided that they inform the Landdrost [sheriff] the next morning.[15]

The VOC attitude to the administration of law was thus governed partly by parsimony—there was no profit to the Company in maintaining a comprehensive system of courts to look after the civil interests of its subjects—and partly by a slowly forming sense of the political consequences of taking upon itself the task of making and keeping laws. Tasks that were not related to the commercial mission of the VOC would only draw the institution into potentially conflicting responsibilities.

The VOC's decision to choose pluralism as the underlying principle for legal administration became clear in 1747, when the Company, in response to the expansion of VOC territory in Java, formally decided to retain native law for its indigenous

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[14] Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984).

[15] *N. I. Plakatboek* deel I, p. 95, and deel IV, p. 35, in *Het Recht in NI* XIX p. 355, cited in "Politie," *Encyclopaedie van Nederlandsch-Indië*, vol. 3 (The Hague: Martinus Nijhoff, 1918), p. 441.

subjects outside the cities and established *inlandsche rechtsbanken* (native courts) or *landraden* (district councils) to apply native law on the northern coast of Java. Chinese and other non-indigenous minorities were subject to the same courts, though legal issues within each community were often left to Dutch-appointed community chiefs. With *landraden* sitting only in Cirebon, Semarang, and Surabaya until the end of the eighteenth century, the courts were clearly not expected to become closely engaged in providing justice to the indigenous population of the island. Even in Batavia itself, the universalist claims of the Bataviasche Statuten quickly gave way in practice to a system of legal devolution based on ethnic groups. The different ethnic groups were obliged, or at least encouraged, to live in distinct quarters (*wijken*),[16] and within each quarter the administration of justice was left largely in the hands of an officer appointed from the community to be responsible to the Company authorities. Thus, the *kapitan Cina* (captain of the Chinese) became a key figure in determining justice among Chinese; similar officers controlled the communities of Arabs, Indians, and Natives from other parts of the archipelago. Dutch law served the interests of Europeans. A British visitor to Batavia in the eighteenth century complained:

> Any instances of the law inflicting death is [*sic*] generally upon Malays or Chinese; for there are few Dutchmen that suffer, being brought off some way or other. When I was there, a Dutch soldier having some words with a Chinese merchant, the latter was instantly stabbed. The Chinese chief indeed demanded justice, but I have never heard of this soldier having been tried or punished.[17]

Outside the towns, the VOC depended largely on indigenous rulers. Although here and there the VOC had extended its rule in the archipelago by means of armed conquest, much of its hegemony was based, at least formally, on treaties and agreements with indigenous rulers, who made concessions to the commercial interests of the Company while remaining formally in control of their domains. This process seldom gave rise to any need to replace the legal systems of those indigenous rulers with a colonial system. The Company's most pressing interests were served by what amounted to a practice of extra-territoriality for Europeans—that is, wherever they went in the archipelago, Europeans were considered to be under the authority of VOC courts rather than indigenous ones. The state of law and order amongst the indigenous population was of little or no interest to Company officials.

The attitude of the VOC contrasted with that of its counterpart in India, the East India Company. Although the East India Company toyed with pluralism in the decades immediately after its first major territorial acquisition—Bengal, in 1765—the forces pressing for legal universalism (that is to say, a single law for everyone within the Company's jurisdiction) were increasingly powerful. On the surface, the dominant spirit from early in the nineteenth century was what Mark Brown has called "an invasive Anglicanism whose spirit is perhaps best evinced in Bentinck's abolition of Sati [widow burning] in 1829 on the grounds of its fundamental immorality."[18] Alongside this moral concern, however, was the same practical one that drove

[16] Wouter Brokx, *Het Recht tot Wonen en tot Reizen in Nederlandsch-Indië* ('s-Hertogenbosch: C. N. Teulings, 1925).

[17] [C. F. Noble], *A Voyage to the East Indies in 1747 and 1748* (London: Becket and Dehondt, 1762), p. 89.

[18] Mark Brown, "Crime, Governance, and the Company Raj: The Discovery of Thuggee," *British Journal of Criminology* 42 (2002): 79.

European metropolitan governments to standardize and universalize their laws. It was seriously inconvenient in many contexts for different people to function under different laws within the same jurisdiction. Legal pluralism inevitably created legal complexity that made the administration of laws difficult. Complexity and difficulty, in turn, created legal uncertainty, which was undesirable in a modernizing society. This complexity was especially acute in commercial law, and the need to eliminate complexity and uncertainty was the driving force behind the steady assimilation of Chinese residents of the Indies to European law during the first half of the twentieth century.[19] Just as important, legal universalism did not in any way imply the need for legal equality. As Anatole France memorably put it at the end of the nineteenth century, "The poor must work ..., in presence of the majestic quality of the law which prohibits the wealthy as well as the poor from sleeping under the bridges, from begging in the streets, and from stealing bread."[20] It was a standard feature of universal legal systems that the weight of specific laws would fall unevenly on different social groups. Nothing in a universalist system, moreover, stood in the way of legal discretion, the right of state authorities to decide that some people, and not others, would be prosecuted for criminal acts.

The legal pluralism of the VOC colony had been grounded in practicality. The Company, like other European chartered companies, had a sharp eye on the profitability of its colonial ventures and was wary of the distraction and expense involved in establishing a legal system for all its subjects. More generally, the VOC had come to the practical conclusion that the most straightforward way to rule the Indies was to devolve to other authorities all matters of justice that did not directly impinge on Company interests. As long as the Company existed, the arrangement was a simple one, and courts needed to meet only sporadically. What is remarkable is that the practice of far-reaching legal pluralism remained a major element in Dutch colonial thinking about law until the very end of the colonial period.

The imposition of metropolitan rule on the Indies in the early nineteenth century came about because of the financial collapse of the VOC at the end of the eighteenth century and because of the disruption caused by the Napoleonic Wars, rather than because of any serious metropolitan impulse to take charge of the colony and rule it better. In the early nineteenth century, moreover, the Netherlands was poor and looked forward to the potential for significant income from the colony. At the handover of power, therefore, there was generated little pressure to change the colonial legal system so that it would operate on a more universalist basis. In fact, in 1819, indigenous laws and customs (*inlandse wetten en gewoonten*) were declared applicable to all indigenes (including those in the cities).[21] Although the new colonial authorities were not motivated by purely commercial motives in the way the Company's directors had been, the need to turn a profit from the colony had overriding priority and led to the imposition of the Cultivation System in 1830, in

[19] Patricia Tjiook-Liem, *De Rechtspositie van de Chinezen in Nederlands-Indie 1848–1942: Wetgevingsbeleid tussen Beginsel en Belang* (Leiden: Leiden University Press, 2009); Fasseur, "Cornerstone and Stumbling Block."

[20] Anatole France, *The Red Lily* [*Le lys rouge*](Paris: Mazarin, 1905 [orig. ed. 1894]), p. 87.

[21] Art 121, Reglement op de administratie der politie enz., *Indisch Staatsblad* 1819 nr. 20, quoted in C. Fasseur, "Een Vergeten Strafwetboek," in *Handhaving van de Rechtsorde: Bundel aangeboden aan Albert Mulder* (Zwolle: Tjeenk Willink, 1988), p. 38.

which the main aim was the delivery of profitable tropical produce to Dutch business.[22] The Cultivation System, moreover, depended on binding Javanese peasants to the land and restricting their freedom to change residence or even to travel. Legal differentiation according to ethnicity thus coincided directly with colonial economic interests. Political reform for the sake of abstract principles of legal universalism was not on the agenda.

As communications with Europe improved, and as progressive ideas grew stronger in the Netherlands and even among European settlers in the colony, the Netherlands Indies could not escape pressure to move towards legal universalism and towards the modern doctrine of the state's responsibility to its subjects. Nonetheless, as we shall see, this pressure was not sufficient to erase the dominant pattern of legal pluralism in the colony.

In the 1840s, the colony began to experience an informal campaign for legal universalism, that is, for the application of European law to all sections of colonial society. The most important element in the discourse attacking legal pluralism lay in telling stories of the abuse of power by indigenous rulers, with the implication that closer supervision by the European colonial authorities would improve standards.[23] Thus, for instance, Baron W. R. van Hoëvell told of a rocky cleft in the uplands between Tegal and Banyumas in central Java where, in former times, the indigenous authorities would sometimes dump suspected criminals, their hands bound to their sides so that they could not escape, and leave them there to die slowly of thirst and exposure. The motive for this cruelty, according to Van Hoëvell, was simply to avoid the costs and inconvenience associated with keeping the prisoners in detention.[24] Another colonial official reported how village authorities in West Sumatra had sliced a murderer to death and distributed his body parts to be eaten by the other villagers.[25] Such stories may well have been exaggerated, or even completely untrue, but they contributed to a shift in public opinion among the Dutch in both colony and metropole in favor of legal reform.

The power of these stories arose partly from the absolute sense of injustice and abuse of power that they conjured up, partly from the growing sense that the Dutch

[22] C. Fasseur, *The Politics of Colonial Exploitation: Java, the Dutch, and the Cultivation System* (Ithaca, NY: Cornell Southeast Asia Program Publications, 1992).

[23] In fact, this kind of reflection of the alleged cruelty or inadequacy of native justice was an older phenomenon. During the short British interregnum, the authorities issued a "Regulation for the more effectual administration of justice in the provincial courts of Java," which provided that native criminal law should not be applied when to do so would be in conflict with principles of justice and fairness. See Thomas Stamford Raffles, *Substance of a Minute... On the Introduction of an Improved System of Internal Management and the Establishment of a Land Rental on the Island of Java* (London: n.p., 1814), p. 236. In his *History of Java*, Raffles comments: "Among many others, the following enactments, which were in force in some of the Eastern districts [of Java] when the English arrived, will serve to shew the barbarities of the law then existing, in its operation on the people, and its leniency towards the great." He offers as his first example, "Any person murdering his superior shall be beheaded, his body quartered and given to the wild beasts, and his head stuck upon a *bambu*." See Thomas Stamford Raffles, *The History of Java*, 2nd edition, vol. 1 (London: John Murray, 1830), p. 321. Raffles, like the anonymous author of *A Voyage to the East Indies in 1747 and 1748*, cited above, was happy to report stories that appeared to reflect badly on Dutch rule.

[24] W. R. van Hoëvell, "Wreede Strafoefening Vroeger op Java in Gebruik," *Tijdschrift voor Nederlandsch Indië* nieuwe serie 3,1 (1840): 168–71.

[25] L[ammleth, J. K. D.], "Wreede Strafoefening op Sumatra's Westkust," *Indisch Magazijn* 1,4 (1844): 322–25.

colonial presence in the archipelago should be seen in the context of a global civilizing process. The idea of a *mission civilisatrice* was distinctly attenuated in Dutch colonial thinking; although the Dutch came eventually to refer to their colonies as "*tropisch Nederland*" (tropical Netherlands), they had no more than a modest impulse to turn their colonial subjects into tropical Dutchmen and Dutchwomen. Nonetheless, the thinking of Beccaria, promulgated eighty years earlier, had helped to introduce into European colonial thought in the Indies the judgment that excessive and arbitrary punishment was both tyrannical and wasteful. The broader ideas of social progress, moreover, that were current in European thinking encouraged Europeans in the archipelago to see the indigenous peoples of the archipelago as standing at a range of earlier points on a stairway leading ever upwards towards Western civilization. Some inhabitants of the archipelago, such as the elusive Kubu in southern Sumatra, seemed to be utterly "primitive," caught in an era before the dawn of "civilization," whereas the Javanese were widely considered to be trapped in the mentality of the European middle ages, from which Europe itself had escaped not so long ago.[26] Stories of Asiatic cruelty and excess may have fed an Orientalist sense of the native Other as alien from Western values, but for the colonial Dutch of the nineteenth century, the sense of familiarity was probably just as powerful: the Javanese rulers were a contemporary incarnation of the brutality of Europe's medieval despots, and Java's peoples ought to be helped to escape from them, as Europe itself had escaped.

In part, too, the ideas of a civilizing mission became acceptable because they offered a justification for colonial expansion. For much of the nineteenth century, the Dutch were anxious about the possibility that other powers might establish colonial footholds within the Indonesian archipelago, and in the course of the century, they undertook a concerted campaign to bring the remaining indigenous states of the archipelago definitively under Dutch hegemony. A part of the broader justification for this campaign was the argument that colonial rule would bring some of the benefits of Western law to peoples who had previously been under the arbitrary rule of despotic indigenous potentates. Even in Java, however, where Dutch hegemony had been long established, the argument that delivering law and order to Javanese society in general was both a moral obligation and an essential part of the strategy for sustaining colonial rule gained increasing strength.

The growing opinion in favor of legal reform was not directed only at indigenous authorities. There was a widespread perception that Dutch officials made arbitrary use of undefined powers in a way that was deeply oppressive to their indigenous subjects. In 1867, H. Beth, a critic of the colonial legal system, highlighted the arbitrariness of the colonial legal system by providing a list of crimes and misdemeanors for which colonial officials were recorded as having ordered punishment:

> Being in possession of a suspect horse
> Excessive begging
> Not going to help put an end to a fight
> Marrying off a girl who was too young

[26] Frances Gouda, *Dutch Culture Overseas: Colonial Practice in the Netherlands Indies, 1900–1942* (Amsterdam: Amsterdam University Press, 1995), pp. 118–19.

Theft
Household disputes
Soliciting as a prostitute
Causing death in a fight
Losing track of one's wife
Seduction
Trading in love
Killing a horse
Embezzlement from one's husband
Possession of bad books
Walking around drunken as if one were a great man
Planning adultery
Secret marriage
Attempting divorce
Attempting to commit suicide because of ill health
Wounding oneself
Stomach ache
Not reporting to the police that one has been wounded.[27]

The author sarcastically suggested that flogging someone who had failed to report being wounded might be a homeopathic measure. Beth clearly understood what we might now think of as a Foucauldian point: that there was little significance in the specific acts that were designated for punishment according to this list.[28] Whereas the Marxists see political implications in the specific character of each law, postmodernist theory pioneered by Foucault in *Discipline and Punish*, argues that crime and

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[27] H. Beth, "Rottingslagen," *Tijdschrift voor Nederlandsch Indië* 3e serie, 1,1 (1867): 519–20.

[28] Indeed, the list is Foucauldian in another way. In its arbitrary and idiosyncratic composition, it is strikingly reminiscent of the Foucault's passage in *The Order of Things*, in which he comments:

"This book first arose out of a passage in Borges, out of the laughter that shattered, as I read the passage, all the familiar landmarks of my thought—our thought, the thought that bears the stamp of our age and our geography—breaking up all the ordered surfaces and all the planes with which we are accustomed to tame the wild profusion of existing things, and continuing long afterwards to disturb and threaten with collapse our age-old distinction between the Same and the Other. This passage quotes 'a certain Chinese encyclopedia' in which it is written that 'animals are divided into:

(a) belonging to the Emperor
(b) embalmed
(c) tame
(d) sucking pigs
(e) sirens
(f) fabulous
(g) stray dogs
(h) included in the present classification
(i) frenzied
(j) innumerable
(k) drawn with a very fine camel hair brush
(l) et cetera
(m) having just broken the water pitcher
(n) that from a long way off look like flies.'"

See Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (London: Routledge, 2002 [originally published 1966]), p. xvi.

criminality are constructions.[29] Particular behaviors are labeled as criminal not because they offend against some abstract notion of what constitutes proper behavior or even because they challenge the dominant system. Rather, crime is defined in order to create a tool for control or a license for excess. The choice of action to be designated as criminal is relatively arbitrary; what matters is that there be grounds for treating people as criminals and as potential criminals because criminalizing an action legitimizes harsh action both against those responsible and—in the name of prevention—against anyone who might in future be responsible for such acts.

The point being made by Beth in 1867 was not that the list might be improved by editing it to add or remove specific offenses, but rather that punishment was about power: every colonial official could hold every Native in terror by virtue of his power to impose punishment more or less arbitrarily.[30] The list recorded the workings of a system in which the most innocent of actions might lead to terrible consequences if it attracted the hostile eye of a colonial official. "Terror" is a dangerous word to use in almost any context, but here it has a strictly analytical meaning. Generalized terror rests on an extreme form of discretion, on the power of the state to find any person guilty of a crime, especially of a serious, political crime, and especially when the consequent punishment is execution, torture, or prolonged detention. The essence of "terror" (as opposed to "terrorism," which is a strategy of non-state groups wishing to undermine state authority) lies partly in the severity of eventual punishments and partly in the capacity of the state to criminalize any of its subjects, because the law is loosely worded and because police and court procedures do not give any opportunity for an accused to refute the state's case against him or her. Kafka's *The Trial*, in which the protagonist is unable to find out what accusation has brought him before the courts, makes the same point. In this sense, there is some element of terror in all legal systems, because all of them equip the authorities abundantly with laws that make potential criminals of every person, while leaving the authority to decide whether to investigate or prosecute up to the discretion of power holders. Nonetheless, the extent of discretion has critical importance, and the critics of colonial law were aware of this importance. The key issue was the extreme lack of legal certainty. Modern criminologists are often willing to recognize that the laws themselves may have been created under a variety of influences, which make them imperfect either as a reflection of basic human values or as a means to achieve a social end,[31] but they place great value on the existence of standard rules of behavior, irrespective of their content, because these rules provide a framework for regularized social life. This legal transparency was lacking in nineteenth-century colonial Indonesia.

The first tangible sign that such criticisms were being translated into revisions of policy in the Netherlands Indies came in the form of regulations to limit the use of the so-called *rottingslagen*, that is, beatings with rattan sticks, which had been a standard sentence in the first half of the century. It was a terrible punishment. The victim was

[29] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York, NY: Random House, 1978), p. 139.

[30] Members of the samurai class had something of the same arbitrary authority in Tokugawa, Japan. See Mikiso Hane, *Peasants, Rebels, Women, and Outcastes: The Underside of Modern Japan*, 2nd edition (Lanham, MD: Rowman & Littlefield, 2003), pp. 14–15.

[31] For an introduction to this complex topic, see Steven L. Winter, "Human Values in a Postmodern World," *Yale Journal of Law and the Humanities* 233 (1994): 233–48.

tied to a pole and lashed across the buttocks with a thin strip of rattan, which was sometimes split for greater effect, sometimes soaked in water or hardened in fire. Africans, considered stronger and more bloodthirsty, were preferred for inflicting the punishment.[32] Blood normally began to flow at the third blow, and in the hands of an experienced beater, the rattan stick soon began to bite deeply into the flesh of the victim. Occasionally the victims died, and severe scarring was common. All the worse, in the view of the reformers, was that this punishment could be applied more or less arbitrarily by any local European official, including for such offenses as impoliteness and indifference. In 1844, the colonial government had limited to forty the number of blows that could be struck in a single punishment. In 1848, this limit was reduced to twenty, and the beating of women was banned. In August 1862, the punishment was finally banned altogether, but in that year official records noted that a total of 474,375 rattan blows had been carried out in the colony, most of them in Java.[33]

The increasingly utilitarian approach to law in the Netherlands Indies also led to the abolition of the system that required travel passes for Natives. Under a decree issued in 1816, all Natives traveling from one part of Java to another were required to obtain a permit from their place of origin. This permit was to be checked and endorsed by the local authorities in each major location along the route of travel, and anyone who lacked a pass or lacked the expected endorsements from earlier places along the presumed itinerary could be detained. As an extra means of control, both the traveler whose pass was not in order and the driver of the vehicle that carried him or her were liable to fines of *f*25 (later *f*50), a huge amount in those days (roughly, a laborer's annual wage). The rationale for the measure was to prevent the movement of criminals from one region to another in pursuit of their profession, and the presumption was that anyone who had been unable to obtain a pass must, indeed, be a criminal.[34] During the 1850s, however, the pass system was subject to much the same rationalist attack as the *rottingslagen*. A former Resident of the Preanger-Regentschappen in West Java, Jhr. Herman Constantijn van der Wijck, reported that, in his residency alone, the application of the pass laws for the sake of apprehending a hundred criminals had led some two thousand innocents to spend a total of 20,000 days in prison. In thoroughly utilitarian fashion, he calculated the value of the lost working time to be between 26 and 27 thousand guilders. In addition, he pointed out, in 1856 alone, some 25,080 passes had been issued, covering 120,550 persons (many passes were for groups traveling together), all of whom had to attend the *passenbureau* for the issue of the paperwork. This attendance, he estimated, took 320,000 person days. He did not gauge the additional time taken by travelers to report to the local authorities in each district they passed through, but the calculations he had made were already enough: the colonial government abolished the pass system for Java and Madura in 1863.[35]

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[32] Africans were recruited for colonial service in the Indies from the small Dutch possessions in the Gold Coast, today's Ghana.

[33] For the abolition, see *Staatsblad van Nederlandsch-Indië* [hereafter *Stbl*] 3 March 1866 no. 15; for the description and statistics, see "Twintig Rotan-slagen," *Tijdschrift voor Nederlandsch Indië* 24,1 (1862): 319–22; Beth, "Rottingslagen," pp. 508–22; G. J. van Soest, "De Onveiligheid op Java en de Rotting," *Tijdschrift voor Nederlandsch Indië* nieuwe serie 5,1 (1876): 144.

[34] See Brokx, *Het Recht tot Wonen en tot Reizen*, pp. 50–52.

[35] Ibid., pp. 109–10.

The abolition of the *rottingslagen* coincided, like the abolition of the pass system, more or less with the formal abolition of slavery in the directly ruled territories of the Netherlands Indies, which took place on July 1, 1863. Both initiatives arose primarily from a philanthropic movement aimed at eliminating the worst forms of maltreatment of human beings. In this recognition of some basic human equality of entitlement to decent treatment, both abolitions were a significant sign of universalizing forces in the management of the colonial legal system. The *rottingslagen*, slavery, and the pass system, however, had been only the tip of a vast structure of arbitrary legal treatment for indigenous Indonesians in the colony. Four decades later, spectacular cruelty might have disappeared from much of the colonial legal landscape, but the Diminished Welfare Investigation still condemned what it called the *prentah-wezen* (culture of command), in which Dutch and indigenous authorities could demand services from ordinary Indonesians, even though there was no legal basis for the demand. The investigation also criticized the inequity of a system in which Indonesian suspects could be summoned, searched, detained, and imprisoned by state authorities with minimal regard for proper procedure.[36]

Yet following the institution of these reforms, harsh punishment for minor infractions did not become simply a relic of the past. In 1872, the colonial authorities introduced the so-called "penal sanction" (*poenale sanctie*) as a means of enforcing discipline over indigenous contract workers throughout the archipelago.[37] Although the colonial government abolished this provision in general in 1879, it was reintroduced in 1880,[38] applying only to laborers recruited from outside East Sumatra to work on the plantations there. Under a standard labor contract, the relationship between the two parties is a purely civil one; breaches of the contract by one party may allow the other party to annul the agreement or to take civil action to recover damages. For the plantation managers of East Sumatra, however, neither of these sanctions was useful in dealing with recalcitrant laborers, especially those who ran away or refused to work. The managers wanted the laborers to keep working for low wages; annulling the contract was no use to them, and the laborers had little or no money to be recovered by civil action. The *poenale sanctie* made breaches of contract by a laborer a criminal offense, punishable by the state. It also gave the state the authority to arrest laborers who had fled their workplace and to return them to the plantation forcibly ("*met gebruik van den sterken arm*," literally "with use of the strong arm"). From about 1910, there was extensive discussion in colonial circles over the issue of diminishing the scope of the *poenale sanctie*. This debate was expressed in terms rather similar to those of the *rottingslagen* debate: opponents of the *poenale sanctie* argued that harsh punishments were both ineffective and inhumane. The result was a gradual reduction

[36] *Onderzoek naar de Mindere Welvaart der Inlandsche Bevolking op Java en Madoera: VIIIa Overzicht van de uitkomsten der gewestelijke onderzoekingen naar 't recht en de politie en daaruit gemaakte gevolgtrekken: Deel I Eigenlijk overzicht der afdeelingsverslagen (1904–1907)* (Weltevreden: Visser, 1911), p. 1.

[37] Article 2, no. 27, Algemeen Politiestrafreglement voor Inlanders in Nederlandsch-Indië, *Stbl* 1872 no. 111. This rule applied to all indigenous laborers working under contracts with employers. Before 1872, the Chinese and Indian laborers in East Sumatra were formally subjects of the Sultan of Deli, who delegated his far-reaching powers of punishment over them to the planters. In 1873, however, the workers were removed from the authority of the sultan and placed under the colonial government. The *poenale sanctie* thus represented a diminution of the freedom of plantation managers to discipline their workers, though in practice little may have changed.

[38] *Stbl* 1880 no. 133.

in both the legal scope of the *poenale sanctie* and the extent to which the authorities resorted to using it.[39] But here we see such basic changes in the direction of legal universalism taking place only in the early decades of the twentieth century. No one in Indonesia who was alive when the fabric of colonial rule gave way to Japanese invasion in 1942 could have had any direct memory of the *rottingslagen*, but tens of thousands had had close contact with the *poenale sanctie*, and millions had experienced unpleasant arbitrary encounters with Dutch and indigenous officials.

The limits of colonial legal universalism are also apparent in the debate over the death penalty. Whereas until the first half of the nineteenth century, the death penalty had seemed to be the natural and appropriate penalty for a range of serious crimes, in Europe as much as Asia, the Beccarian impulse was to ask whether it was truly effective as a deterrent and to insist that it be carried out as efficiently and humanely as possible. The abolition of the death penalty in the Netherlands in 1870 immediately gave rise to discussion about the possibility of its abolition in the Indies. The discussion reached its peak early in the twentieth century, in discussions of the new criminal code for the colony.

Year	Number of Persons Executed
1896	13
1897	37
1898	17
1899	15
1900	23
1901	9
1902	15
1903	7
1904	13
1905	29
1906	25
1907	23
1908	10

Table 1: Executions Carried Out in the Netherlands Indies, 1896–1908[40]

[39] See Herman J. Langeveld, "Arbeidstoestanden op de Ondernemingen ter Oostkust van Sumatra tussen 1920 en 1940 in het Licht van het Verdwijnen van de Poenale Sanctie op de Arbeidscontracten," *Economisch- en Sociaal-Historisch Jaarboek* 41 (1978): 294–368; and Ann Laura Stoler, "Sumatran Transitions: Colonial Capitalism and Theories of Subsumption," *International Social Science Journal* 39,4 (1987): 543–62.

[40] Ph. Kleintjes, "Wenschelijkheid der Afschaffing van de Doodstraf in het Algemeene Neergelegde Burgerlijk Strafrecht van Nederlandsch-Indie," *Verslagen der Algemeene Vergaderingen van het Indisch Genootschap* (1909–1910), pp. 169–70. Kleintjes's figures for 1896–1904 were derived from the *Statistiek der*

Since the middle of the nineteenth century, a colonial prescription had prohibited the beheading of Muslims, because this was known to offend religious principles and because, in line with Beccarian thinking, it was felt that punishments should not be made harsher than necessary.[41] In 1907, a correspondent for the *Tijdschrift voor het Binnenlandsch Bestuur* deplored what he described as the frequent botched executions by hanging and proposed instead a return to the traditional Javanese method of execution by stabbing with a *kris*.[42] In that same year, the colonial authorities declared that executions would no longer take place in public.[43] The heart of the argument, however, as in the debate over the *rottingslagen*, was the question of whether the death penalty was so effective as a deterrent as to warrant its continuance, despite its inhumanity, though this argument was supplemented by the question of whether, given that no European had been executed in the colony since 1872, it was possible to justify the evident racial discrimination involved in executing Indonesians.[44] Ph. Kleintjes, one of the foremost advocates of abolition, also pointed out the shortcomings of the legal process in the Indies, especially the unreliability of witnesses, which increased the likelihood of a miscarriage of justice in capital cases. The celebrated initiator of the "ethical" movement in Dutch colonial policy in the late nineteenth century, C.Th. van Deventer, added that it was hard to convince Indonesians that murder was wrong by killing them.[45] Others, however, such as a correspondent for the *Indisch Weekblad van het Recht*, had no doubts:

> In dealing with the natives, we cannot do without the death penalty. It would be a misunderstanding of the real situation, however, to conclude from this that the death penalty should also be retained for Europeans. The European belongs to a privileged caste, and this must remain the case, as long as a few thousands [of us] stand against millions [of them].[46]

This view prevailed and the death penalty thus remained part of the repertoire of the colonial legal authorities until the end and, indeed, continues to be applied in contemporary Indonesia.[47]

The death penalty still arouses strong emotions among both proponents and opponents, and it may not be the best indicator of Dutch colonial reluctance to move towards legal universalism. More telling, perhaps, is the inordinately slow progress of concrete plans to replace the VOC's legal pluralism in criminal law with a single criminal law that, like the Bataviasche Statuten, would apply to all residents of the Indies, irrespective of race. In 1847, the governor-general was instructed by the metropolitan authorities to take steps to draw up a new criminal code for the colony

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Rechtsbedeling in Nederlandsch-Indië, those for 1905–08 from the annual colonial reports. The figures are for the directly ruled parts of the Netherlands Indies only. He noted that the peak in numbers of executions, which occurred in the years 1905–07, coincided with the governor-generalship of J. B. van Heutsz.

[41] Kleintjes, "Wenschelijkheid der Afschaffing van de Doodstraf," pp. 172–74.

[42] J. J. van Aalst, "Doodstraf," *Tijdschrift voor het Binnenlandsch Bestuur* 32 (1907): 284–85.

[43] *Stbl* 1907, no. 455.

[44] Kleintjes, "Wenschelijkheid der Afschaffing van de Doodstraf," pp. 163–204.

[45] Ibid., pp. 188–90, 199–200.

[46] Mr. Winckel (n.d.), cited in Kleintjes, "Wenschelijkheid der Afschaffing van de Doodstraf," pp. 176–77.

[47] See Roeslan Saleh, *Mas'alah pidana mati* (Jakarta: Aksara Baru, 1978); and A. Hamzah and A. Sumangelipu, *Pidana mati di Indonesia di masa lalu, kini dan di masa depan* (Jakarta: Ghalia Indonesia, 1984).

that would apply to all ethnic groups there. The colonial government installed a series of commissions to undertake this task, but they were distracted by other business, and eventually the Dutch government decided instead to introduce a criminal code (Wetboek van Strafrecht) for Europeans only. This code came into effect in 1867 and was matched a few years later in 1872 by a Strafwet voor Inlanders (Criminal Code for Natives).[48] In fact, the difference between the two criminal codes in force after 1872 was relatively small. A few crimes were identified for indigenes that were not specified as crimes for Europeans, but for the most part the Strafwet voor Inlanders was based on the code for Europeans. This formal separation of the two codes, however, reflected the deep-seated colonial reluctance to surrender the principle of legal pluralism, except when forced into it by issues raised by evidence of egregious cruelty or inequality. The process of promulgating a criminal code for all ethnic groups in the archipelago was not completed until 1918, more than sixty years after the project had been initiated, with the issue of a new criminal code, the Wetboek van Strafwet (Kitab Undang-undang Hukum Pidana, KUHP). This new criminal code did nothing to prevent the vast range of arbitrary local arrangements that had a legal character by virtue of support from the local authority of Dutch and indigenous officials. The relative similarity of the two criminal codes of 1867 and 1872, furthermore, masked a significant difference in the punishments that courts could apply to criminals depending on their ethnicity: Europeans might be declared *eerlos* (without honor, meaning that they could not engage in normal commercial transactions) or expelled from the colony, whereas the penalties for indigenes were specified as forced physical labor (chained or unchained) and, until 1862, the *rottingslagen*. Only prison and execution by hanging were designated as penalties for both groups.[49] The culmination of the long struggle for legal unification thus meant much less than it at first appears.

The similarity between the 1867 European and 1872 Native criminal codes did not mean that there was *de facto* a single criminal code in the Indies, because the colonial system distinguished between government, indigenous, and native state legal jurisdictions (*gouvernementsrechtspraak, inheemsche rechtspraak, zelfbestuursrechtspraak*). The Netherlands Indies was divided constitutionally between directly and indirectly ruled territories, the latter consisting of native states (*zelfbesturende landschappen*, self-governing territories), which had been incorporated into the colony without the removal of the former ruler. At the end of the colonial era there were 282 of these native states, each of which administered its own criminal law for indigenes (but not for Europeans), working within frameworks set by the colonial authorities. In the directly ruled territories of the colony, the former sovereign rulers of indigenous states had been removed, or at least disempowered, but, for the most part, their aristocratic former subordinates ruled as the principal agents of the colonial states. The *bupati* (regents) of Java were the most prominent example of these new aristocratic authorities. In many, but not all, of these directly ruled regions, indigenous law also remained in force for Indonesians, though it was administered more closely by the colonial state after 1872. Each of the large islands was thus still a patchwork of

[48] "Strafrecht," *Encyclopaedie van Nederlandsch-Indië*, vol. 4, pp. 133–34; Fasseur, "Een Vergeten Strafwetboek," p. 40; F. von Benda-Beckmann and K. von Benda-Beckmann—Drooglever-Fortuijn, "Rechtspraak: Traditionele en Westerse Waarden in Historisch Perspectief," in *Indonesië Toen en Nu*, ed. R. N. J. Kamerling (Amsterdam: Intermediaire, 1980), p. 133.

[49] Fasseur, "Een Vergeten Strafwetboek," p. 38.

jurisdictions, in which indigenes on one side of an internal administrative border were subject to different laws from those on the other side.[50] Still more important, ethnic differences in criminal law procedure were preserved within the government legal jurisdictions under the new, unified law. There were still parallel European and indigenous courts: for Europeans, the Residentiegerechten (Residency courts) and above them six regional Raden van Justitie (councils, i.e., courts, of justice), while criminal cases involving indigenes were tried in the *landraden* ("land councils," i.e., regional courts). For petty misdemeanors, both Europeans and indigenes came before the *landgerechten* (local courts), a tier of the judiciary established in 1914 partly in anticipation of the unified Wetboek van Strafwet, but mainly in response to indigenous resentment concerning the arbitrary powers of the police and local government under the so-called *politierol*.[51] Even in the *landgerechten*, however, Europeans could only be tried before a European judge.[52] Indigenes also enjoyed fewer procedural protections during house searches, interrogation, and remand.[53]

All legal systems contain at least some elements of pluralism because different categories of people are treated differently when they encounter the police and the courts. Children are commonly distinguished formally from adults, and men sometimes from women. Mainstream criminologists freely acknowledge that there is no universal principle by which the interests of society can be judged, and they therefore allow a cultural, and often religious, component to be introduced in the definition of crime. This is especially true of actions relating to sexuality and reproduction: abortion may be legal within one jurisdiction and illegal within another, on the basis of different but equally coherent moral arguments. A relationship classified as incest in one jurisdiction (such as marriage between first cousins) may be socially preferred in another, and so on. Class, gender, racial, religious, and other distinctions work informally and to different degrees in different systems as pretexts for differential treatment. Colonial systems, in general, differed from metropoles in the extent to which formal legal distinctions based on race, ethnicity, or nationality were institutionalized because colonial orders tended to depend on racial distinction in order to uphold the advantage of the colonizer. The Netherlands Indies, however, was unusual in the colonial world in the extent and formality of its legal pluralism.[54] This

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[50] J. E. Jonkers, *Vrouwe Justitia in de Tropen Strafrecht)* (Deventer: W van Hoeve, 1942), pp. 8–9; A. D. A. de Kat Angelino, *Colonial Policy: Volume II, The Dutch East Indies* (The Hague: Martinus Nijhoff, 1931), pp. 175–93. For a map showing the extensive regions of the archipelago under native legal jurisdiction, see Von Benda-Beckmann and Von Benda-Beckmann—Drooglever-Fortuijn, "Rechtspraak," p. 128; and [J. H.] Logemann, "De Afbakening van de Rechtsmacht tussen Gouvernementsrechter en Landschapsrechter," *Indisch Tijdschrift van het Recht* 147 (1938): 399–427.

[51] The *politierol* (police role) was a register of minor misdemeanors that could be punished by the police without any formal legal process and without the possibility of appeal. Penalties imposed were normally in the form of fines (up to *f*100, later *f*500), imprisonment (up to eight days), or compulsory labor without payment (up to three months). The *politierol* was widely hated because of the scope it gave for arbitrary, oppressive behavior by the police. See De Kat Angelino, *Colonial Policy: Volume II*, pp. 151–52.

[52] During the twentieth century, however, increasing numbers of native lawyers worked as judges in the European court system and thus sat in judgment on Europeans in their own courts.

[53] Amry Vandenbosch, *The Dutch East Indies: Its Government, Problems, and Politics* (Berkeley and Los Angeles, CA: University of California Press, 1944), pp. 193–94.

[54] J. S. Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and the Netherlands Indies* (New York, NY: New York University Press, 1956 [original ed. 1948]), pp. 271–73. Furnivall makes this point explicitly for the British and Dutch colonies. Mahmood Mamdani, by contrast, has argued for the pervasive consequences of legal pluralism in colonial Africa, but his discussion does not provide sufficient

situation can be explained partly by institutional inertia—the assumptions of legal pluralism that were commonplace in the seventeenth century survived into the twentieth—and partly by the relative weakness of the Dutch sense of civilizing missions. The colonial government was unapologetic that its legal system did not treat everyone with majestic equality, and nowhere else in the colonial world was there so complicated a system of multiple legal orders within a single jurisdiction. Nonetheless, the colony's divergence from the principle of legal universalism needed explanation and justification. That explanation and justification came from an essentialist assumption that the cultural differences between Europeans and the indigenous peoples of the archipelago both demanded and permitted a different style of government from that which was expected of states in Europe.

Legal dualism in the Netherlands Indies drew its intellectual strength from the colonial administration of family law. Dutch authorities recognized that matters concerning marriage, inheritance, and authority over children generally had little bearing on colonial economic interests but could arouse powerful emotions among the people if authorities interfered with them. Colonial strategy, therefore, was to recognize, record, and implement every variant of family law that was to be found in the archipelago. Legal pluralism in matters of family and private law raised some of the same universalist issues as had arisen in discussions of criminal law when it came to the rights of women, but arguments for the equality of all men were widely accepted long before comparable arguments about the equality of women and men. After all, these matters related especially to the position of women and children within the family, and even in the twentieth century there was a profound reluctance on the part of lawmakers in the West to allow that relations between individuals within a family ought to be governed by more or less the same principles as the relations between individuals within society in general. In a colony, moreover, where a majority of the population was Muslim, it was a logical position to recognize that cultural difference should be respected in matters such as inheritance rights, age of marriage, responsibility for children, and so forth. The foremost advocate of cultural dualism in family law was the jurist C. van Vollenhoven, who presided over a massive colonial project aimed at collecting basic information on the traditional law (*adatrecht*) of every indigenous ethnic group in the colony. The results were published in the *Adatrechtbundels*, which then formed a corpus of legal practice for the administration of private law in each of the nineteen so-called *adatrechtkringen* (*adatrecht* circles), broader families of *adatrecht* tradition which the Dutch scholars found it convenient and logical to group together.[55] The *Adatrechtbundels* were not a formal codification of traditional

illustrative detail to allow a direct comparison. See Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 1996), pp. 109–37.

[55] The *adatrecht* project was intimately connected with the colonial strategies for dealing with Islam, which, as the religion of the vast majority of the Dutch regime's subjects, had always appeared to be a serious potential source of hostility and resistance to colonial rule. Until the end of the nineteenth century, the general view of the colonial authorities was that Indonesian law was largely Islamic, with a deeply buried substratum of Hindu law and a variable mixture of local compromises with Islamic prescriptions. Van Vollenhoven's contribution was to reinterpret these "compromises" as constituent elements of a coherent local legal system, which he referred to as *adatrecht*. Part of the agenda underlying the codification and implementation of *adatrecht* was thus to put limits on the reach of Islamic law in Indonesia. Nonetheless, the colonial authorities continued to recognize and support Islamic courts in their administration of Islamic family law. See Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal*

law, but rather a somewhat chaotic assemblage of excerpts from travelers' reports, official documents, and translated indigenous texts, grouped by region and, to some extent, by topic. Nonetheless, they provided a convenient corpus of information on traditional legal practice throughout the archipelago. In a colonial environment where the appropriateness of legal pluralism for family law was accepted as given, the argument from family law became an important buttress to a more general pluralist impulse, which had its roots in both colonial parsimony and a doctrinal belief that cultural differences ought to be reflected in arrangements for governance.

The pronounced legal pluralism of the colonial order in the Netherlands Indies contributed to the character of the Indonesian national movement that began to develop in the early twentieth century. The consequence of the pluralist colonial legal order was not that it created a sense of common identity across the archipelago by giving those classified as Natives a common experience of colonialism. Rather, it reinforced the understanding of indigenous people in the Indies that colonialism functioned by denying common experiences to its subjects, by keeping them on a tangle of different legal and social footings. The perception that the principal Dutch political strategy was one of "divide and rule" contributes to a fear of the consequences of division and diversity that has outlasted the Dutch colonial regime. When postcolonial Indonesians have invoked the national motto, *Bhinneka tunggal ika* (literally "They are many, they are one," but commonly translated as "Unity in diversity"), unity has consistently trumped diversity. The enduring power of the rhetoric of *persatuan dan kesatuan* (unity and one-ness) in independent Indonesia has some of its roots in the memory of how the colonial order recruited pluralism and diversity as tools to perpetuate foreign domination.

Perhaps even more important, the absence of universal law, even as a generally accepted ideal, may have had a deep impact on the attitude of Indonesians to law. The colonial system did not just fall short of universalism in practice—it was probably not even the worst offender amongst colonial powers in this respect, and certainly not the worst offender among the authoritarian regimes of the twentieth century—but it repudiated universalism in principle. In so doing, the Dutch colonial order created an environment in which law could not be seen to represent universal values: law was a reflection of identity, it was an aspect of power. This insight raises a sensitive paradox: the awareness that law is embedded in cultural values and political power is valuable to scholarship; indeed it would now be naive to ignore the embeddedness of legal systems. Yet the same awareness is dangerous in social life, because it is an obstacle to the conviction that law can embody universal human values transcending individual interest. Not only did the Dutch colonial state not bequeath its doctrinal respect for cultural diversity to its successor, the Indonesian Republic, but it bequeathed an inexperience with legal universalism and a cynicism about the purpose of the law that remains one of contemporary Indonesia's most serious burdens.

Institutions (Berkeley, CA: University of California Press, 1972), pp. 8–13; and Peter Burns, *The Leiden Legacy: Concepts of Law in Indonesia* (Leiden: KITLV Press, 2004), pp. 1–2.