

BOOK REVIEW

Van Vollenhoven on Indonesian Adat Law. Selections from Het Adatrecht van Nederlandsch-Indië (vol.I, 1918; vol.II, 1931), edited by J.F. Holleman, with an introduction by H.W.J. Sonius. Martinus Nijhoff, The Hague, 1981, under the auspices of the Koninklijk Instituut voor Taal-, Land-, en Volkenkunde (translation series no.20).

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One of the misfortunes of the history of social science scholarship on law is that the magnificent corpus of Dutch colonial research into Indonesian customary (adat) law never became very well known beyond Holland and Indonesia. The main reason was language. Few foreign scholars bothered to learn Dutch, from which little of the work on law was translated. Only in 1948 was Barend ter Haar's compendium (1939) published in English as Adat Law in Indonesia, and Vergouwen's brilliant study of the adat law of the north Sumatran Bataks (1933) did not appear in translation until 1964 when it, like Ter Haar's book, already seemed dated after the Indonesian revolution. Yet no other country in the world can match, in range and depth, the kind of work in legal ethnography that came out of the Netherlands-Indies. It fills volume after volume, most of it untranslated and little used.

More than anyone else, Cornelis van Vollenhoven was responsible for making the study of local law in Indonesian society a remarkable intellectual enterprise. Outside of the Netherlands and Indonesia, however, he was probably better known for his work in international law; his Du Droit de Paix (1932) was published in English in 1936. His name is never mentioned in the same league with Maine, Malinowski, Hoebel and other repertorial greats of customary law research. But he belongs there in the first rank. Van Vollenhoven possessed a powerful intellect, filled with impressive analytical imagination and a deep sense of public responsibility. His lone biography, by Henriette L.T. de Beaufort (1955), has not been translated into English. Eventually another should be done by someone with fuller knowledge of Indonesian social-legal affairs and the politics of colonial policy making. He died young, in 1933 at only fifty-nine, too soon to

wrap up his work with a coda that might have provided us further insight into his mind and ideas.

Professor J.F. Holleman's efforts in putting together this selection of Van Vollenhoven's writings have been olympian, befitting the scholar whom he greatly admires. Much labor of love obviously went into the book. It took longer to bring it out than Van Vollenhoven did to write the original opus. But it is worth it, and the many who participated in the effort, Holleman particularly, deserve admiration for it. The volume is beautifully done. The translations, whose difficulties Holleman describes in his own interesting and devoted foreward, are accurate and elegant. (It is a relief, by the way, to learn from Holleman that Van Vollenhoven's inventive style was as hard to translate as it was for me to struggle through the original years ago.) The excellent introduction by H.W.J. Sonius is intellectually intimate and acute, helpful to the uninitiated but enlightening also for those familiar with the material and the issues. This balanced essay is essential reading for anyone interested in colonial policy towards local law. Bibliographies of Van Vollenhoven's work and that of others on adat law, good indices, and excellent notes all make for a valuable book. For the English reader it provides a solid introduction to the quality and informing spirit of colonial ethno-legal research and legal policy as well as to Van Vollenhoven himself.

The volume will be useful to a new generation of scholars, most of all perhaps in Indonesia, who will eventually develop a fresh perspective on colonial history. A measure of how quickly history moves is that few Indonesians now know Dutch, which has been displaced inexorably by English. As long ago as the 1960s Indonesian law students were reading Ter Haar's book in English, though it has since become available also in Indonesian. It is another measure of change that not many are interested in reading it in any language. Still, the colonial past is fascinating, and in the history of colonial policy the adatrechtpolitiek (customary law policy) that evolved in the early 1900s, the period of the "ethical" policy, was a significant theme, incorporating some of the most subtle and contradictory tensions of the colonial relationship. It is not easy to deal with because the major issues, which looked different then from now, have multiple equivocal solutions. Van Vollenhoven himself was at the centre of many of these issues, into which his own complex views and convictions were injected.

Following professor Sonius' lead, I want to take the opportunity of this review to comment on Van Vollenhoven's adatrechtpolitiek and will say little about his scholarship, though the two are hard to separate. His research work is admirable, as even a

quick reading of the selections on A ceh , Minangkabau and Java will demonstrate. Empirically he took little for granted. His insights, like his language, were rich and subtle and often off beaten tracks, which is what made him great. Van Vollenhoven was not given to grand theories about customary law. He knew too much and had too much respect for adat, and for accuracy, to take that route. Not all of his ideas were useful: for example, the division of Indonesia into the often mentioned, but basically inconsequential, nineteen law areas. His most enduring work was in describing, classifying, and analysing local law, in which labors he devoted himself to understanding - actually *verstehen* in the Weberian mode - the fundamental social assumptions and values from which adat law grew.

It was this concentration on local social organisation and culture, not merely surface rules, that enabled him so effectively to criticize the errors and misinterpretations of nineteenth century colonial legal policy. The same applies for many in that generation of adat researchers, including men of the caliber of Korn, Vergouwen, Holleman Sr., Ter Haar, Supomo, Djojodiguno, and others who were influenced by Van Vollenhoven's ideas and methods. His methods were basically those of the anthropological field worker, who had to know everything about "his villages" - except that, astonishingly, he himself was never really in the field; he made only two short trips to Indonesia. One wonders how this affected his perspective. Did he really understand all that clearly the prejudicial dimensions and forces of colonialism? Can it help to explain, by over-compensation, his devotion to Indonesian tradition? Such questions are important, but in his case probably too simple. Van Vollenhoven learned Indonesian adat from the research reports of officials, whom he helped to instruct in data-gathering methods, and of his students and their students. And he probably learned from Indonesian law students in Leiden, with whom he had excellent rapport. But there was extraordinary genius and intellectual commitment behind his grasp of Indonesian societies and their law-ways. Moreover, another kind of commitment may help to explain the avidity of his study and defense of local Indonesian communities. Intellectually, philosophically, even religiously, he evidently believed that humanity is one, with cultural variations of equal value. His voice throughout is that of an outsider, but it seldom condescends, only towards Islam, against which he shared European and Indonesian biases, is it noticeably (but not simply) hostile.

There were few critics of his scholarship but many of his policy views. Sonius provides a clear and fair account of the controversies. Many of Van Vollenhoven's positions seem filled with puzzling ironies, the more troublesome because they cannot be attributed, I think, to any deviousness on his part. Superb

scholar though he was, Van Vollenhoven was not detached and passionless, or less so at any rate than that other great Dutch student of adat and Islam, C. Snouck Hurgronje. Sensitive to the Indonesian traditions which he studied, he battled all around him against any challenge to their integrity. Yet, not entirely with hindsight, because others in his own time argued the case, Van Vollenhoven's concern for Indonesian cultures did not always serve them well. If from one point of view the ethically inspired adatrechtspolitik was protective, from another it was suffocatingly conservative and at times even reactionary.

All the basic issues had to do with change, not only local adat change, but, more subtly and problematically, the articulation of the many discrete societies into an Indonesian whole. Van Vollenhoven's first major policy fight laid bare the essential questions. Soon after the turn of the century, he successfully opposed an incipient effort towards a common code for all inhabitants of the colony. No lawyer's law for the indigenous people of the Indies, he insisted, because it was not their law. A common code must violate the right of the diverse societies to live by their own values. The contrary view - put by Nederburg, for one - argued in effect that Indonesians must be brought into the modern world, that unified law would make for more efficient governance and give Indonesians an opportunity to compete on equal terms by the same rules with everyone else. Both positions had unintended perverse implications: Van Vollenhoven's would freeze Indonesians out of modern (i.e., European-controlled) concourse; Nederburgh's would make them (even more) vulnerable to exploitation. But on the face of it they were equally defensible, morally sensible arguments. When one reflects on the realism of them, however, Van Vollenhoven's pales. As Sonius mentions, Nederburgh's view had the future on its side. In the independent state, Indonesian leaders, who generally admired Van Vollenhoven, nevertheless waved his ideas aside.

Following that initial victory, the adatrechtspolitik wove a cage around local adat law, not always preventing change - it could not - but heavily biasing the case against it. The results of policy, with hindsight, often were awkward and obstructive. In a few areas, for example, where old customary courts had already died out new ones were established, vesting conservative local elites with a great deal of easily abused authority. Excellent as government supported adat research was, writing down the adat law inevitable had an ossifying effect on it and tended, moreover, to separate substantive rules away from the flexible procedural norms by which they were shaped and adapted in practice. Government courts quite naturally tended to use these studies as if they were legal texts. Even now, half a century since the last major adat research was published, judges in

search of precise adat rules still rely on the old books or understandings passed down from them. None of this was intended by Van Vollenhoven or his supporters in the colony, but it followed easily from the translation of their views into policy.

Van Vollenhoven could not have been opposed to change in principle, but in matters of adat he was obviously not exceedingly receptive to it. Often enough he insisted that change was not foreclosed, even that it was natural and necessary, but usually as a slightly labored afterthought. And in his writings on adat there is only slight evidence of any theoretical interest in change. Why this peculiarly conservative bent in an otherwise committed liberal? There are several possible reasons. For one, he had spent a great deal of intellectual energy demonstrating that Indonesian law was indigenous and not merely derivative from Hinduism and Islam. Responsible for turning around Dutch conceptions of Indonesian legal values, he remained always sensitive to their originality. In part this explains his stand-offish view of Islam, whose influences he conceded but only at the fringes. In addition, his sense of fairness may have inclined Van Vollenhoven to protect Indonesian communities against the onslaught of colonial power. What right, in sum, did Europeans have to force change upon Indonesians?

The question of Islam complicates this view of Van Vollenhoven. It was not simply that Islam was an alien element, like any other, whose influence on adat had been greatly exaggerated by earlier observers. Actually, Van Vollenhoven may have rushed too far to the other side of this argument, underestimating the inroads on local values and legal conceptions that Islam had made. But this question aside, he also feared that any breakdown in existing social orders would work to the advantage of Islam, always a major challenge to traditional adat authorities, not to mention colonial stability and Dutch equanimity. At the end of his discussion of Aceh, at page 122 of the new book, Van Vollenhoven writes: "The destruction of adat law will not pave the way for our codified law, but for social chaos and Islam." No wonder Islamic leaders abhorred the adatrechtpolitiek, which, seen from the inside of Indonesian history, was another strategic victory for the local aristocracies, among others, who had always fought off the Islamic struggle to redefine their social orders. In this picture Van Vollenhoven, whatever his objectives, was an ally in someone else's project. As the colonial administration had an interest in the same project, however, one has to ask whether this had anything to do with the success of the adatrechtpolitiek.

A fair reading of Van Vollenhoven does not tend to a view of him as an adroit political cynic. If anything, he was distinctly

unwilling to come to terms with some awesome realities, no less apparent in Indonesia than in other colonies where change was easily admitted if not encouraged. Van Vollenhoven's political insight was clipped. Like other sympathetic liberals, he could not imagine, or was uncomfortable with, the possibility of an independent Indonesia living under the burden of its own conflicting interests, ambitions, vices and virtues. His respect for Indonesian cultures did not extend to an Indonesia that might choose not to respect them so fervently. At best he was ambivalent about the nationalist movement; an Indonesian nationalist leader who studied in Leiden told me that Van Vollenhoven stopped attending the meetings of Indonesian students when they formed the Perhimpunan Indonesia, the nationalist student organisation in Holland. Sonius suggests that he hoped for a continuing association of Indonesia and the Netherlands long into the future.

This failure of political imagination was different in quality from the attitudes that sent Dutch troops back to Indonesia after the war. But the unwillingness to concede Indonesia command over its own history suggests other paradoxes in the adatrechtpolitiek. Solicitous as it was, Indonesians did not have anything to say about it. It was a Dutch adatrechtpolitiek, indirectly influenced perhaps by the biases of Indonesian allies of the administration, but essentially Dutch originated, debated, and resolved. In addition, however, adat law itself became in some measure a Dutch creation. In a narrow sense, local law was not transformed, of course, but the dynamics of Indonesian societies - their leadership, institutions, economic circumstances, life chances - were inescapably conditioned by the European presence: Dutch enterprise, Dutch officials, an Indonesian administration created, reformed and directed by the Dutch administrative establishment, Dutch policy, Dutch researchers; even the few Indonesian scholars studying adat law in the 1920s and 1930s were supported by the administration and wrote in Dutch. Local adat courts proceeded under the eyes of Dutch administrators and were subject to review by government courts whose judges usually were Dutch. It was they and the researchers and the administrators who determined what was adat law. Van Vollenhoven and others were aware of these problems and yet treated local values and legal rules as if they were somehow devoid of the foreign influence. In many of the major adat studies, including Van Vollenhoven's own, the Europeans seem a distant eminence only. Seldom if ever do these studies dwell on the economic and political fields of force which surrounded the adat communities.

The adatrechtpolitiek did not survive independence. Unity, not diversity, became the anxious watchword of the new state. During the revolution local groups in some areas eliminated their

own adat courts in favour of national institutions, which in one or two cases they regretted later, but too late. Elsewhere adat courts were gradually replaced by government courts after 1950. When Van Vollenhoven remarked cryptically that the future of adat must depend on its own resilience and resistance - to which Sonius rightly asks "resistance to what?" - he must have had an inkling of the immense pressures to come. One such pressure included the students he knew in Leiden, nationalist leaders who had every intention of subordinating the world of adat to an urban, cosmopolitan, internationally-involved Indonesian state. The crux of the adatrechtpolitiek was Dutch administrative power. Once Indonesian political power and economic interests had unencumbered play, local values and structures took their chances along with everything else. There was never any reason to suppose that adat law in Indonesia would fare better than, say, droit coutumier in France, once Indonesia acquired the same kind of state France had.

Van Vollenhoven may have had similar thoughts about the future of adat that are worth speculating about. What I mean to suggest is that, as one source of his concern for adat law, he did not like the modern state much, seeing in it a culturally destructive imposition on the lives of "real" communities. One can imagine him nodding discreetly in favor of current protests against the state. There are glimmers of these inclinations in his writings on adat. But it is in his typically atypical work on international law, Du Droit de Paix, that his antagonism towards the state becomes quite clear. There he was addressing issues of sovereignty and peace, not the preservation of local law, but a connection is not far-fetched. If any of this rings true, Van Vollenhoven was less a conservative on adat matters - though his views were certainly useful to colonial conservatives, both Dutch and Indonesian - than a romantic idealist with slightly radical tendencies, intent upon preserving adat communities above all from absorption into the larger, less beneficent, less "authentic" entity that must eventually obliterate them. In his later years he wrote regretfully about the submergence of Dutch "adat" and English "adat" and the "adat" of other European peoples. Influenced perhaps by the ideas of historical jurisprudence, he appreciated the evolutionary autonomy of local law in terms nearly esthetic; and from this perspective he could only have resented state law, whose purposes were divorced from local structures, interests, beliefs and imaginations.

Indonesians who knew him or read him recognised the paradoxical quality of the famous scholar, who still figures, but evanescently, in the lore of Indonesian law. It is not hard to make Van Vollenhoven out to be a clever version of the basic divide-and-rule colonial manipulator, but few ever do. Apart

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from Islamic critics, with good reason to suspect his motives, others tend to a reflective, respectful mood on the subject of Van Vollenhoven. No one ever doubted his knowledge: he was the sort who they said knew more about their adat than they themselves did. No one doubted his cultural respect and intense interest or sense of principle. But the most ambitious and politically-minded of them also thought him beside the point. Not all Indonesian students in Leiden took his courses. Some insisted that they knew as much about adat as they needed to and preferred instead to study civil and commercial law. Later, as government officials, these same students - and many others, whose views changed after independence - did exactly what Van Vollenhoven had hoped no one would do: they set about making lawyer's law for all of Indonesia.

Indonesian adat law has not disappeared - how could it? - but neither is it taken all that seriously in the national legal order. It is, as Van Vollenhoven implied it would be, on its own. In ironic testimony to his influence, Indonesian lawyers, administrators, intellectuals and politicians still pay lip service to its existence, but little more. Statutes that claim to rely on adat law - e.g., the land law of 1960 - actually sweep it aside in favor of nationally uniform norms. There are courses on adat law in the law faculties, but little interest in them, even among students who will eventually become judges. A few legal scholars and social scientists still do adat law research, but other legal and social-legal problems take precedence by far. New writing about adat more often than not is drawn from old sources and exhausted perspectives. Even in the courts, where adat still is practically relevant, few judges, even when they have time, bother to examine adat realities anew. The Supreme Court, whose decisions in adat issues are its most innovative, has been less inclined to preservation than to change and jurisprudential unification. Significantly, these decisions often have had strong support from local interests in change that appreciate the help from Jakarta.

But if the old adatrechtspolitik is gutted, for good or ill, something remains that may be the most appealing heritage of Van Vollenhoven's work. It is his fundamental respect for local law and values, a truly humane appreciation of human differences that runs against the grain of modern state organisation everywhere. This consideration for local existence shaped an insistent demand that people's values should not be ignored but understood, that state institutions must somehow develop sensitivity to local differences, purposes and customs. Among reform-minded Indonesian lawyers these predilections are still clearly discernible, as they are in Van Vollenhoven's intellectual heirs - including the editor of his works, J.F. Holleman - who carry on

the ethical tradition in their research. There is not much reason to be wildly optimistic about such views, but they need to be kept alive.

Cornelis van Vollenhoven's mind and vision were impressive enough to make even his failures worth serious contemplation. The new book makes him accessible to the wider audience he always deserved.