

ADAT LAW AND LEGAL ANTHROPOLOGY IN MEMORIAM JOHAN FREDERIK (HANS) HOLLEMAN (18 DECEMBER 1915 – 28 AUGUST 2001); WITH A BIBLIOGRAPHY

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Born 1915 in Toeloeng Agoeng on Java, where his father, Frederik David Holleman (1887-1958), was president of the colonial court (*landraad*), Hans Holleman grew up and spent his first school years in the Moluccas and Java. He continued his education in Batavia (now Jakarta) and for some years in Amsterdam. He had first wanted to become a doctor, possibly a psychiatrist or child specialist, but after finishing high school he spent one month with his father on Bali where he “consciously tasted for the first time the full flavour of life in a Native community” (Holleman 1958: 7-8). This meeting between father and son was, as Holleman himself said, a “revelation” that determined the road he wanted to follow and that would give meaning to his professional career. His father had been a judge and later professor at the Law Academy (*Rechtshoogeschool*) in Batavia, was a renowned *adat* law scholar, deeply concerned with the state of the colonial administration of justice in the Netherlands East Indies and in his country of origin, South Africa. His father complained about the South African government, which had been slow to recognise the value of basic indigenous institutions. There was prejudice and misunderstanding, a huge need for a new scientific approach to native laws, and a hard battle ahead to formulate a more liberal kind of legislation in which the basic values of native life were recognized (1958:9). This meeting changed his mind. It made him yearn to immerse himself in the field of law and ethnology, study the nature of unwritten legal orders of native peoples, and engage in discussions on how the administration of justice in colonial settings in which state law regularly came into conflict with legal ideas and processes of the local, African or Indonesian population could be improved. As he later wrote, “it suddenly became more important to explore the inside of

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human society and to know how it lived and functioned, than to confine myself to the anatomy of the human body.” Holleman’s Balinese dream would become reality in two different careers, first as a researcher, administrator and young lecturer in South Africa and Rhodesia, and after 1963 as a professor at the University of Leiden, where in 1969 he was appointed to the same chair that his greatly admired predecessors Cornelis van Vollenhoven, the eminent *adat* law scholar and founder of the Leiden *adat* law school, and later his own father, had held before him.

His academic life started in South Africa. Holleman studied Roman-Dutch Law and Ethnology at the University of Stellenbosch and graduated with a master's thesis on the native legal communities among the Zulu (1938a), based on short research visits to Zululand. After his graduation, he conducted six more months of field research on legal communities and land law among the Zulu in the period 1938-40 and published several articles on Zulu social and political organisation (1940, 1941, republished 1986; see also Kuper 1993). His first attempts to put his knowledge of African customary law into practice ended in frustration. He joined the Union Civil Service, wanting to work in the Department of Native Affairs, but he was given a job in the Department of Justice (1940-1945) and “banned” to a village in the south-western Cape province, hundreds of miles away from the African population (Holleman 1958:11). Disappointed, he quit and joined a film company as art director. Holleman was an enthusiastic and gifted photographer, who in 1938 and 1939 had had photo-exhibitions of his research in Zululand in Stellenbosch. To his great relief, he was six months later offered a fellowship to do research among the Mashona tribes of Southern Rhodesia (now Zimbabwe) by the Rhodes-Livingstone Institute (RLI), the major anthropological research institute in Central Africa (Lusaka). Its director, Max Gluckman, the later founder of the Manchester School of Social Anthropology and one of the most important legal anthropologists of the twentieth century, had devised comprehensive plans for research in Central and Southern Africa (Schumaker 2001). Holleman’s appointment at the RLI was to last for six years (1945-52). He conducted long-term fieldwork, which led to two different kinds of publications. First, he wrote his dissertation in 1950, under the supervision of Isaac Schapera, a lifetime mentor and friend, at the University of Cape Town. The revised version of *Shona Customary Law*, dedicated to his father, was published in 1952 by Oxford University Press, and reprinted by Manchester University Press in 1969.

In another book, *African Interlude* (1958), Holleman wrote about his research in a much more personal way, filling it with anecdotes and exciting case stories. The book showed his great personal and moral involvement in understanding and appreciating the life and ways of Africans, and his attempts to communicate his insights to the colonial administration. More than his purely academic

publications, the stylistically and carefully composed *African Interlude* showed the literary Holleman who during his younger years had written a number of stories and books in Afrikaans under different pseudonyms. In his early twenties he had published several stories in journals and in 1939 (aged 24) he wrote a children's book which his mother liked so much that she decided to send it to the Dutch Royal family in Canada. A note of thanks was received signed by Princess, now Queen, Beatrix. There followed several novels (1938b, 1944), one detective story (1950), and a collection of stories written between 1936 and 1959 under the name of Holmer Johanssen (1963a, partly reprinted 1986c).

Shona Customary Law (1952a, 1969b) presents 'law' as an integral dimension of kinship organisation, marriage, and inheritance. The book does not contain any discussion of theoretical matters or the definition of law. Holleman only provides a brief account of the methods he used. He mentions that a greater part of his material consisted of case materials

which formed a realistic basis for a discussion and analysis of the legal principles involved. The various aspects of Shona law evolved, not as a clear pattern of strictly defined rules, but as a collection of broad concepts and guiding principles, the practical application of which varied with virtually every case in which they were reflected. (1969b: x)

This allowed him to conceive and formulate the general principles of an indigenous system of law, and to reveal its great flexibility as one of its essential characteristics (1969b: x). The book is remarkably self-contained, consisting only of his own research findings. As he writes in his preface, "the fact that I was able to arrive at all my conclusions on the basis of my own field data made me decide to exclude references to the published findings of other students of Shona law" (1969b: xi). He also presented Shona law as a world by itself, refraining from referring to the decisions of the High Court and Native Appeal Court of Southern Rhodesia, except in connection with certain statutory provisions, which had become part of the body of Native Law as recognized in the colony. To incorporate the (often conflicting) interpretations of these Courts on questions of traditional Shona law would have changed the character and aim of the book (1969b: xi). In this regard, he showed the same self-containment in the description of African customary law as Sally Falk Moore (1978a) later was to criticise in Gluckman's writing. It was only later, in postscripts added to earlier articles (1974), that he took up the discussion of ideas developed by Gluckman, Jaap van Velsen and Bill Epstein, old colleagues from his Rhodes-Livingstone Institute days, who had now become the Manchester school. Yet *Shona Customary Law* was a remarkable book. It was the first of the monographs on law that came out of

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the Rhodes-Livingstone Institute, written well before Max Gluckman published his first book on the Barotse judicial process (1955), or Hoebel wrote his book *The Law of Primitive Man* (1954), and before the different versions of the case method were developed that dominated the methodology and research interests in Anglo-American legal anthropology until the late 1960s.

Besides publishing his dissertation, Holleman wrote a number of articles between 1948 and 1962 on African court procedures and marriage, many of which were collected in the 1974 book *Issues in African Law*. Some of these case studies (the Case of the Troublesome Father, the Case of the Irate Headman) belong to the richest and most well-told case stories we have ever read, and we have used them frequently in our own courses. They direct the reader's attention towards the different phases of disputing processes in which legal ideas play very different roles, and to the great significance in these processes of reliable evidence, with, in the case of the irate headman, an unforgettable account of the Careva *mumanjemanje*, a phase of role playing where members of the public take on the roles of plaintiff and/or defendant and try out the plausibility of a range of arguments as to what had happened and what was relevant in terms of Careva notions of plausibility and justice.

But Holleman was not simply interested in issues of law. The period 1954-62 led to a number of publications in which "law" was not the central issue but rather the socio-economic problems of the native population and the resulting problems for the colonial administration. After his period at the Rhodes-Livingstone Institute, he first became Keeper of the Queen Victoria Memorial Museum in Salisbury and later (1954-56) Senior Welfare Officer in the African Administration Department in Bulawayo and Wedza. He carried out research on the increasing urbanisation in Salisbury and Bulawayo and the problems created by 100,000 migrant labourers. These experiences provided the material for his book *Chief, Council and Commissioner* (1969a). In 1957 he moved back to South Africa, to become Director of the Institute for Social Research of the University of Natal, Durban (1957-62). During this period he conducted and directed several research projects, including a socio-psychological research among white mine workers in the copperbelt in Northern Rhodesia (Zambia) (Holleman 1960-61, 1962a, 1964a, 1973a) and on the socio-economic conditions of the native population in Swaziland (1964b). In 1960/61 he was a member of the Mangwende Commission of Inquiry for research on the troubled situation and African protests in the Mreva region (Holleman 1961a, reprinted in 1969a).

In 1963 the first great period of his professional life ended when he accepted a call to Leiden to take up a new chair in the sociology and culture of Africa at the newly established Faculty of Social Sciences. He became director of the Africa

Studies Center (ASC) at the same time, and from 1966-68 also served as director of the Institute of Cultural Anthropology and Non-Western Sociology at Leiden. During this period, he initiated interdisciplinary field work in Tanzania. Resigning both his chair in African studies and his directorship of the ASC in 1969, he succeeded to the chair in *adat* law, which had been renamed as “folk law and legal development” in 1959. This chair had been founded at Leiden in 1877 and had, beside C. van Vollenhoven (1901-33) and F.D. Holleman (1934-39), been occupied by V.E. Korn (1939-58), and J. Keuning (1960-65).

During his Leiden years, Holleman devoted more systematic attention in his publications to the co-existence and contradictions between local customary and state legal ideas and processes of decision making (1973, 1979). He was also paying attention to Indonesia and *adat* law (1971a, 1975b), which in the early 1970s had again become a field for research by Dutch scholars. He spent a sabbatical year at NIAS, the Netherlands Institute for Advanced Study in the Humanities and Social Sciences where he worked on forms of obligation in African and Indonesian folk law and on legal reform and spontaneous legal developments in the Third World. He became more strongly concerned to develop the relations between *adat* law studies and the anthropology of law. In his earlier writing there had been no explicit references to the work of the Dutch *adat* law scholars, even if he implicitly referred to these in the way he presented his findings. It was mainly in his 1973 contribution to the Hoebel Festschrift that he brought together the ideas developed in Anglo-American legal anthropology and the ideas of the *adat* law school, criticising the bias of the ‘trouble-case method’ and enriching the methodological discussions by drawing on the experiences and theoretical discussions of Van Vollenhoven and his own father with what he then called “trouble-less cases” (1973b, republished 1986a). Although he travelled to Africa on an almost yearly basis, he visited Indonesia once in 1983, for lectures and seminars. The publication of a translation of selected works of Van Vollenhoven in 1981 - a major undertaking of which Holleman was the main and most energetic organiser - in a way crowned this part of Holleman’s work as an intermediary between British social and legal anthropology and the heritage of Dutch *adat* law studies.

What should have been the crowning period of a remarkable academic career became a disappointment. While he enjoyed teaching and supervising students, Holleman suffered under the reorganisation, democratisation and increasing bureaucratisation of the university (1981b: 29). Bureaucratic demands for the quantification of scientific work pushed aside appreciation of its significance and quality, and the general atmosphere of mistrust created by these developments greatly demoralised him. He became disappointed and bitter. He did not attract many students, probably because of his intense, overpowering attitude and his

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well-meant yet often sharp critical tongue. Within the social science faculty, he remained a highly respected colleague, yet somewhat of an outsider. His colleagues did not consider his work, and a focus on law and the administration of justice, to be a central field in non-western studies. In the law faculty, he remained marginal as well. He became overworked, had to take sick-leave, and in 1979 retired early for health reasons. He frequently complained that he could no longer write and did not want to write anything that was below his own, high standards. The bitterness increased when the university decided to discontinue his chair for budgetary reasons. Folk law and legal development, though building on a unique tradition that had gained Leiden an international reputation, no longer was considered important enough to warrant a chair. Holleman's valedictory address of 1980 (1981b, 1982) clearly reflects his disappointment, and the feeling of betrayal of the Leiden tradition and himself by his colleagues and the university. This feeling was shared by the community of Dutch scholars interested in folk law and legal anthropology. John Griffiths (1981) called the decision of Leiden University "a culture-historical scandal, short-sighted and unforgivable."

After his retirement, Holleman did not publish much apart from a review of Moore's *Law as Process* (1978b) in 1984, and a preface (1991) to the edited diary of his father's mission to the Philippines where he had been invited by the American Council of Learned Societies in 1931 to give advice about promoting the study of customary law and to co-produce an edition of Philippine customary law materials, which was published by the Van Vollenhoven Institute at Leiden in 1991 (F.D. Holleman 1991, see Van den Muijzenberg 2001: 492.). In addition, some of his earlier writings were republished or translated (1986b, 1986c). In the years before and after his retirement, Holleman was rather withdrawn and no longer took part in public meetings, but he remained an active member of the *Volksrechtkring* (Folk Law Circle), a group of Dutch-speaking scholars who shared his interest in folk law and the anthropology of law. This group had been gathering around Geert van den Steenhoven at the Institute for Folk Law at the University of Nijmegen since the mid-1970s. Holleman remained interested in the work of these younger colleagues, seriously commenting on their work, and kept a hospitable open house for those seeking discussion and advice.

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