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Book Reviews

The Leiden Legacy: Concepts of Law in Indonesia. By Peter Burns. Leiden: KITLV, 2004. xvi, 269 pp.

The Leiden Legacy is a particularly apt title. "Discovery" of Indonesian customary law (*adat recht*), eloquently defended by Cornelis Van Vollenhoven (1874–1932), and its utilization by the Netherlands East Indies government provoked acrimonious academic and administrative debates both within and between Leiden and Utrecht University schools of thought. More important in long-term perspectives, the legacy is part of the relationship existing between *adat* law and the nationalist project, one ultimately leading to the creation of the Republic of Indonesia and *adat*'s ambiguous role in it. The book's subtitle, *Concepts of Law in Indonesia*, is less apt. "Concepts" are limited to those which became *adat* orthodoxy, namely, oral village customary law. Alternatives, as sources of law stemming from the vast corpus of written courtly law or its possibly more useful administrative character, are only mentioned in passing.

Organizationally the work is divided into the rise and fall of the *adat recht* concept. Section A: "The Making of the Myth" reviews its historical construction. More specifically, Chapter 1 introduces Cornelis Van Vollenhoven and his major writings — *Misapprehensions about Adat Law* and *The Indonesian and His Land.* Chapters 2 and 3 focus on the key issue of land rights versus rights in land and the polemics it generated. Chapter 4 adds the issue of *adat* criminal law to the more basic controversy over its civil aspects, both of which were becoming accepted by the Netherlands East Indies government during the second quarter of the 19th century.

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Chapters 5–7 ("Elaboration of the Leiden Doctrines I–III") more consistently discuss respectively *adat* sanctions, examples of the interwoven nature of "the conventional elements of law — the gift, land rights, use and tenure, torts, inheritance" (p. 146) and *adat* tribunals with their implicit procedural rules.

Section B: "Dismantling the Myth" focuses on individual studies from Holland and Indonesia. It brings out both the theoretical shortcomings and its Euro-centric nature whose agenda had more to do with nationhood than the access to or ownership of land which defined the *adat*. More specifically, Chapter 8 summarizes near contemporaneous criticisms of and suggestions for improvements on the Leiden doctrine of *adat* law. Chapter 9 emphasizes the hold *adat* law had on the Netherlands East Indies and scholars thereof. It also takes up the issue that *adat* constitutes an example of "Asian values". Chapter 10 addresses the "hidden agenda", namely, "that its latent function was to forge and anneal the icons of a national identity for the polity emerging out of Dutch colonial state" (p. 238). Chapter 11 concludes the work by suggesting (following Keebet von Benda-Beekman) that *adat* might be more germane to village administration than to law (p. 255).

Burns' eminently readable book raises several broader issues, two of which concern the definition of *adat recht*, the core of the legacy; a third, the *adat* paradigm. The first concerns criteria for defining *adat*. Burns makes it clear that the primary issue was that of land rights in what would become Indonesia. Were these sovereign and alienable as implied by the existence of the Netherlands East Indies colony and claimed by the Utrecht school? Or were they collective and inalienable as proclaimed by the *adat* "discovered" by Van Vollenhoven and his disciples which constituted the Leiden school? According to Burns, was it a question of "Land Rights? Or *het recht van het land* (approximately rights in land)". The issue continues to plague the Indonesian state. In retrospect, access to land appears to have been an unfortunate choice of definition. Documented changes in access to land, at least on Java during just the period of European presence thus automatically reflected upon the veracity of *adat* law,

not the least its territorial applicability. See Bremen and Hoadley, in *The Village Concept in the Transformation of Rural Southeast Asia*, edited by Mason Hoadley and Christer Gunnarsson (London: Curzon Press, 1996). For example, that the Dutch chose to accept Raffles' questionable assertion of sovereign rights to the land in 1816, despite acting on the contrary would tend to mean that the *adat* was then re-invented. Subsequent changes in land-man relations would logically mean a corresponding recasting of the definition of the *adat*.

The second issue is more specifically historical. Where does one set the period for "observing" local custom? *Adat* law studies, at least in its Dutch-Australian version, are overwhelmingly 20th century phenomenon. This tends to ignore the first couple of centuries of, albeit sporadic, Dutch meddling in local law. See Mason C. Hoadley, *Selective Judicial Competence: The Cirebon-Priangan Legal Administration, 1680–1792* (Ithaca, NY: Cornell Southeast Asia Program, 1994). By implication, *adat* law's uncritical acceptance meant closing off other viable alternatives, thus strengthening colonial manipulation of unwritten "customs" through which to rule its subjects. The gap created by rejection of the written and venerable courtly law tradition, itself resulting from Dutch political and economic priorities, was filled by a village oral tradition which was not verifiable by external review. To add insult to injury, those recognized by the Netherlands East Indies government as the official bearers were not the village leaders, who could be expected to know the *adat,* but the *priyayi*, who could not. In any event the *priyayi* had their origins in the court tradition disenfranchized by Dutch preference for *adat* law. In all fairness it must be acknowledged that the authenticity of the *adat* falls outside of Burns' centre of focus on the Leiden legacy. Yet discussion of the "Origins of the Problem" (Chapter 2) could have profited from at least acknowledgement of the impressive corpus of written law stemming from a society which the late de Casparis had claimed was a highly literate one with a long tradition of written learning.

A specific example of the negative results of ignoring the contents of written texts comes from Burns' summary of criticism of the Leiden school. In "Internal Criticism: Roest on the Guilt Factor" (pp. 193 ff.)

it is shown that contrary to the Leiden school's assertion that *adat* possessed a unique set of legal concepts, one so different from those of Europe as to mark off a separate entity, many of the elements of Western penal law could be detected in the *adat*. In an earlier section collective responsibility for penal subjects originating from South Sumatra was noted as being un-researched. In fact, most of these subjects are covered in the *Pepakem Tjerbon*, whose Dutch version was promulgated in 1768. The incompleteness of the Leiden legacy is recognized by Burns, but the texts are seen as only confirming the *adat*, not that they contain another concept of law. The latter predate both Leiden and Van Vollenhoven.

Both the issues lead to the question of the *adat* paradigm. In a strict sense the book's subject — the Leiden legacy and its polemics — requires acceptance of the *adat* concept hook, line, and sinker. In this respect it should be recognized as a piece of intellectual history, one limited to the subject and directly dependent upon the quantity and quality of the secondary literature consulted. Here Burns' work is generous to a fault, providing summaries of the impressive literature on Van Vollenhoven and his work. Yet the book more that once touches on problems of just the *adat* paradigm. Much of the reasoning in its second half makes the reader wonder not whether Van Vollenhoven and his disciples were right or wrong, but why one believed them in the first place? A partial answer to the question lies in the *adat's* usefulness in the project of nationhood. However, its utilization as an instrument for independence does not explain Dutch uncritical acceptance in the early 19th century. The objections noted in Burns' summary of contemporaneous Dutch scholars' criticism and reinforced by modern scholarship would have been equally apparent to Dutch administrators of the time. One answer to the apparent acceptance as law a phenomenon they knew nothing about would seem to lie in the fact that the Dutch needed the *priyayi* more than the *priyayi* needed the Dutch. As a means of governing the millions of "natives" in the colony *priyayi* loyalty was bought by giving them unrestrained and definitely untraditional powers to exploit the subjects of the Netherlands East Indies. Multatuli rightly identified them as

a corrupted class of intermediaries for their colonial masters. What qualified them for power as part of the Indies administration was the Dutch assertion that they were the natives' "natural leaders" who possessed unique knowledge of the village, oral *adat*. Acceptance of the Leiden legacy had more to do with its usefulness to the Dutch colonial officialdom than the eloquent defence of native rights by Cornelius Van Vollenhoven.

Whatever the impact of the legacy on the past, events since the book's original appearance, namely, Indonesia's ongoing decentralization programme beginning in 1999, ensures interest in its contents. The resurgence of interest in *adat* as a governmental instrument transforms the question of authenticity of the *adat*. Whether it be the *adat* of the Leiden legacy, its predecessors in the courtly law of the independent kingdoms, the imagined *adat* community of Orde Baru and Orde Lama, or a new one in Era Reformasi, the issue is sure to generate continued interest.

Mason C. HOADLEY

Mason C. Hoadley is Professor in the Department of East Asian Languages, Lund University, Sweden.