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Myths and stereotypes about adat law

A reassessment of Van Vollenhoven in the light of current struggles over adat law in Indonesia

Context and argument

Academics and politicians have been struck by the dynamics of current legal and political processes which point to a 'revitalization of tradition' in law and religion.[1] In many African states a process of 'rejuvenating chieftaincy' has set in since the 1980s, giving African chiefs a relatively stronger role in the state system. The regime change in South Africa has, contrary to earlier expectations, intensified this trend.[2] Many Latin American states are facing claims for recognition of indigenous peoples' rights (Assies et al. 2000; Sieder 2002). There are passionate discussions about the cultural, legal, and political consequences of the reconstitution of local population groups as 'natives' or 'indigenous peoples'.[3] At the same time, there is a worldwide revitalization of

1 An earlier version was presented as the Van Vollenhoven Lecture 2008 under the title 'Traditional law in a globalising world: Myths, stereotypes, and transforming traditions', held at the Van Vollenhoven Institute in Leiden, 16 May 2008.

2 Van Rouveroy van Nieuwaal and Zips 1998; J. Comaroff and J.L. Comaroff 2004, 2009; Oomen 2005.

3 Kuper 2003; Barnard 2006. On the return of the native in Indonesian law, see Bedner and Van Huis 2008.

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religious laws (Kirsch and Turner 2009; Esposito and Watson 2000; Hooker 2008). These developments are part of a broader tendency towards changes in the configuration of plural legal orders that include the expansion of international and transnational law. Customary and faith-based laws are politicized and elevated to the same rank as state law to counter the previous underprivileged positions within the state.[4]

In Indonesia, adat-based claims acquired full strength after the fall of the Soeharto regime in 1998. With greater political freedom and the implementation of decentralization, local claims to political authority and natural resources are being reasserted on the basis of adat, adat law, or adat societies.[5] Adat in Indonesia has become a generic term to indicate an often undifferentiated whole constituted by the morality, customs, and legal institutions of ethnic or territorial groups. Before the arrival of the scriptural religions, adat also comprised the world of the supernatural and beliefs. The revitalization of adat is most discernible in the prominent rise of adat law, and political and economic claims are based on that law in order to carve out a greater role for adat leadership in village government and recognition of adat rights to natural resources. These claims often exacerbate tensions, and in some regions reference to adat is used to legitimate exclusionary politics and ethnopolitical violence.[6] Scholars have attempted to understand the underlying reasons, historical conditioning and contemporary triggers for these developments.[7] These analyses have rekindled earlier discussions of the 'creation of customary law' in colonial states. Many of the issues discussed then have been sufficiently thrashed out. It is no longer disputed that local rules and procedures were interpreted and transformed through the conceptual language and assumptions of the ethnocentric legal categories of Dutch, British, or French colonialists. Colonization also changed the ways of operation and the significance of local legal orders in contexts outside the colonial courts. To some extent local rules and institutions were also wilfully changed in line with colonial social, economic, and political interests. What was termed and applied as 'customary law' therefore often was a new kind of law, created by colonial courts and through interaction between the colonial administra-

4 J. Comaroff and J.L. Comaroff 2009; F. von Benda-Beckmann and K. von Benda-Beckmann 2007.

5 In some regions, the issues are negotiated in other vernacular terms or in terms of ethnicity, religion, or religious law. For Catholicism on Flores, see Erb 2007; on Sumba, see Vel 2008; on Bali, see Warren 2007; Ramstedt 2009. For different meanings of adat, see Vel 2008:65; Li 2007:337.

6 Wessel and Wimhöfer 2001; Van Klinken 2004; Von Trotha and Foblets 2004; Davidson 2008.

7 F. von Benda-Beckmann and K. von Benda-Beckmann 2007, 2009b; Davidson and Henley 2007; Bräuchler and Widlok 2007; F. von Benda-Beckmann, K. von Benda-Beckmann and Turner 2007; Bakker 2009a, 2009b; Van Klinken 2007. See also Schulte Nordholt and Van Klinken 2007; Holtzappel and Ramstedt 2009; Vel 2008.

tion and consulted local experts.[8] Moreover, local normative orders and the functioning of local authorities had been heavily influenced by laws and regulations of the colonial governments, especially in the fields of agricultural production, market and trade relations, land, and labour relations. What was termed customary law could therefore not be considered timeless, pre-colonial local law, and despite the assertion of an unbroken continuity, actors have actualized, invented, or reinvented 'traditional' legal forms.

Similar points have been raised with respect to the creation of Indonesian forms of social organization and 'adat law'.[9] Critics have mainly pointed their arrows at Leiden scholar of adat law C. van Vollenhoven (1874-1933) and his followers who formed the so-called Adat Law School.[10] Burns (1989), for example, deconstructs the 'myth of adat' and argues that adat law was a Dutch invention led by Van Vollenhoven and his followers, who codified and compiled adat laws in the *Adatrechtbundels (*Adat Law Tomes). Some describe Van Vollenhoven's academic approach and political attitude towards adat law in Indonesia as orientalist, anti-development-minded, and romantic. Many publications on the current revitalization of adat law refer to the creation of adat law in Van Vollenhoven's time, and their assessment of that period shapes interpretations of contemporary developments.[11] Along the way, interpretations of colonial creations of adat law have become perniciously stereotypical and are repeatedly asserted without further questioning their empirical or theoretical basis.

In this article we argue that the critique of colonial scholarship is misconceived in important ways, which hampers a proper understanding of the current revitalization of adat in Indonesia. Firstly, it has been largely based on a legalistic conception of 'law' and 'customary law'. Secondly, the critique tends to make selective generalizations from interpretations of adat in specific contexts, that is, political rhetoric, administrative and court decisions, and legal debates on the character and status of adat and adat law. It does not sufficiently consider what such interpretations might mean beyond these specific contexts. Critics, we argue, have underrated the agency of local people and their intellectual and political leaders and overrated the actual significance of colonial legal constructions of adat or adat law on the legal life of the population. In the third

8 Clammer 1973; Hobsbawm and Ranger 1983; Ranger 1993; Chanock 1985; Roberts 1984.

9 In our research on West Sumatra and Ambon we analysed many of these transformations in detail. See K. von Benda-Beckmann 1984; F. von Benda-Beckmann 1979; F. von Benda-Beckmann and K. von Benda-Beckmann 1985; F. von Benda-Beckmann, K. von Benda-Beckmann and Brouwer 1995. See also Kahn 1976; Breman 1987; Kemp 1988.

10 An edited selection was published in English by J.F. Holleman 1981.

11 Jaspan 1965; Lev 1984; Burns 1989, 2004, 2007. See also the contributions in Davidson and Henley 2007. More recent works that perpetuate this image include Hadler 2008:45, 78 and Hooker 2008.

place, the major points of critique of the Adat Law School's descriptions of adat law and its significance in legal politics and administration are largely anachronistic. Finally, we suggest that critics have chosen the wrong target for their deconstructions. They have largely ignored colonial scholars and courts, who grossly and often quite consciously misinterpreted local normative systems in terms of Dutch legal categories. Instead, they levelled their criticism at scholars who tried to understand the substance and processes of local legal orders and who were aware of the danger of legal ethnocentrism. We suggest that contemporary interpretations of continuities and change in the significance of adat law have been influenced by an inadequate analysis of the past. We argue that some assumptions and propositions of these earlier and contemporary critical deconstructions are in need of re-evaluation. Reconsidering colonial adat law and Van Vollenhoven's work is therefore more than a return to a history long gone by. We will substantiate our propositions with a discussion of the history of the village commons, *ulayat*, due to their central role in both the critique on Van Vollenhoven and on the discussions of the contemporary revitalization of adat law. Fully aware of the impossibility of generalizing for the whole of Indonesia, we focus on West Sumatra, a region with a well-documented and exceptionally sophisticated theory of adat, which has always been a central illustration in all discussions of adat law.

The concept of law: Adat and adat law as an invention of adat law scholars

The alleged role of the Dutch in the creation of adat law has been forcefully argued by Peter Burns (2007) in his contribution to the interesting volume *The revival of tradition in Indonesian politics* (see also Burns 1989, 2004). Following Burns, editors Jamie S. Davidson and David Henley (2007:36) call the concept of adat law developed by Van Vollenhoven 'a confusing myth'. This implies two propositions. One questions whether there could be anything in adat at all that could usefully be labelled 'law'. The other suggests that the term 'adat law' does not reflect the reality of the lives of Indonesians. Both points are amplified by a third reproach that, by speaking of adat law, Van Vollenhoven and his followers drew a sharp line between legal and non-legal aspects of adat.

Adat law and custom

There is no doubt that the Dutch word *adatrecht*, adat law, is a relatively new concept, first used systematically by C. Snouck Hurgronje.[12] He and Van Vollenhoven were well aware of the fact that the term *adat* was used in many

12 Snouck Hurgronje 1893, I:16. See also Van Vollenhoven 1928:23; Sonius 1981:li.

but not all regions of Indonesia to indicate an often undifferentiated whole constituted by morality, customs, and legal institutions.[13] But they observed that within adat there were more or less institutionalized sets of rules and procedures for marriage, property and inheritance, political authority, and decision-making processes, which they discerned as elements of a legal nature. Van Vollenhoven spoke of adat law as 'the totality of the rules of conduct for natives and foreign orientals that have, on the one hand, sanctions (therefore: law) and, on the other, are not codified (therefore: adat)'. He emphatically used this term to emphasize that there was no sharp dividing line between legal and other aspects of adat (Van Vollenhoven 1933:3; J.F. Holleman 1981:23). 'The use of the term adat law has an even stronger claim to preference because it serves to weaken the notion that a sharp and rigid line separates legal usages from other popular usage, or adat law from the rest of adat. The borderline is, indeed, so vague that it is difficult, and sometimes impossible, to distinguish one from the other.'[14] It is difficult to comprehend how Burns (2007:69) could so grossly misrepresent Van Vollenhoven's thinking when he alleges that Van Vollenhoven drew a sharp line between the law in adat and other adat or that he identified adat with '*recht*' (law).[15]

In talking about rules, institutions, procedures, and sanctions as law, Van Vollenhoven thus used a broad analytical concept of law, which is not by definition tied to the organization of the state. There is nothing mythical about such a conceptualization. It is simply a broader understanding of law, akin to later social scientific concepts that do not tie the concept by definition to the state and that allow for the possibility of co-existing interdependent legal orders that have different legitimations and are based on different organizational structures, currently summarized as 'legal pluralism'.

Adat law or customary law

Van Vollenhoven characterized adat law as dynamic and flexible 'folk law' (*volksrecht*) or 'living law' (*levend recht*). He also provided a very thoughtful analysis of the social processes of its reproduction (see J.F. Holleman 1973). Although he is often associated with the German Historical School, he explicitly

13 The generic term adat itself was also an invention, as Van Vollenhoven reported. Muntinghe, a former counsellor of Raffles, was the first to use it as such in 1817 (as cited in Sonius 1981:li). See also Koesnoe 1977; F. von Benda-Beckmann 1979; Geertz 1983.

14 J.F. Holleman's translation (1981:5); Van Vollenhoven 1918:9.

15 We prefer to speak of law in adat (F. von Benda-Beckmann 1979:117). To interpret this as meaning that this is 'not law as such' or 'not law proper', as Burns (2004:254-5) does, is missing the point. This is due to his view that only written rules 'consistently enforced by a sovereign state' are law. Adat therefore by definition cannot be law; it is merely custom (Burns 1989, 2004, 2007).

distanced himself in critical dialogue from this school and the constructions of folk law and customary law that were dominant in European legal systems (F. von Benda-Beckmann and K. von Benda-Beckmann 2009a). He did not characterize adat law as customary law. Neither custom nor official acceptance by the state was a defining characteristic of adat law in his opinion. Thus Van Vollenhoven avoided the semantic trap of 'customary law', which indeed often turns out to be a 'confusing fiction' (J.P.B. de Josselin de Jong 1948). In most state legal systems, customary law is a category defined and validated by legislators, judges, or legal scientists. One speaks of 'customary' rules as law because these rules have been accepted and used since time immemorial.[16] In such a doctrinal legal perspective, only rules and principles conforming to these criteria may be incorporated as law.[17] However, the term customary law is often also used in a much more off-hand sense, a generic term for non-state law independent of its recognition by the state and jurisprudence, often synonymous with folk law, people's law, or traditional law. Such rules and procedures, although called customary, are not necessarily customary in the sense of being based upon an (assumed) continuity of local legal tradition. This use of the term customary law resonates with the socialization of many lawyers and anthropologists not familiar with social-scientific perspectives on law and legal pluralism. In other cases the term expresses an explicitly legalistic and statist conceptualization of law. It is not always clear which meaning of the term is being applied.

The characterization of adat law by adat law scholars thus differed considerably from legal constructions of customary law. Rephrasing adat or adat law as customary law or as custom therefore reveals an implicit or explicit legalistic and state-centred perspective on law. Interpretations of Van Vollenhoven and colonial legal history frequently suffer from the identification of adat law with customary law or custom (P.E. de Josselin de Jong 1980). In Davidson and Henley's collection (2007), for instance, adat law is 'customary law' for Henley and Davidson, Cees Fasseur, and Greg Acciaioli; adat is 'custom' for Burns, Tania M. Li, and Henley; it is 'culture' for Maribeth Erb and Davidson. By contrast, Carol Warren, on Bali, and Renske Biezefeld, on Minangkabau, just speak of 'adat' and 'adat law'.

16 See Van den Bergh 1986:68. The ideological screen of continuity implied in the notion of customary law hid a fundamental discontinuity (Chanock 1985:4).

17 Thus, within the Anglo-African context, non-state rules that do not conform to this criterion of customariness, for instance 'modern innovations', do not fall under the concept of customary law. See Chanock 1985:62, 65. This is a totally different conceptualization than that of adat and adat law in the Indonesian context.

The alleged codification of adat law in the Adatrechtbundels

One of Van Vollenhoven's main legacies is the collection of a vast amount of ethnographic detail published in 45 volumes of the *Adatrechtbundels*.[18] Adat law materials were also systematized in 10 volumes of the *Pandecten van het adatrecht*.[19] In terms of quantity and quality, the information gathered and processed during the first three decades of the twentieth century was unique. These works are thought to show the creation of adat law by 'the Dutch', here meaning that Van Vollenhoven and his followers engaged in codifying and fossilizing adat laws in these *Adatrechtbundels*.[20] This is a strange allegation and one wonders whether these critics ever seriously looked through one or more of the *Adatrechtbundels*. If they had done so, they could hardly have made such an allegation. The *Adatrechtbundels* contain a wealth of the most diverse information on adat, Islam, and history, written in Malay or Dutch, as well as reports on meetings and academic papers. They certainly were not meant to codify the various adat laws nor did they do so.

The question whether adat law should be codified had indeed been debated at the beginning of the *Adatrechtsbundels*, and a number of documents in the first volume (1910) are related to this issue.[21] Towards the end of the nineteenth and during the beginning of the twentieth century, there were heated debates about the desirability of creating a uniform law for the Dutch East Indies to replace the co-existence of different laws for various population groups in order to facilitate economic development. Many recommended the introduction of Dutch law for the whole colony. Others wanted to codify adat law to enhance legal certainty and to allow the government to develop this adat law. Van Vollenhoven and Snouck Hurgronje were declared opponents both of codification of adat law and of extending Dutch private law to the Indonesian population, because it would seriously affect the flexible and dynamic character of adat.[22] They were not looking for an uncontaminated

18 Published in The Hague between 1910 and 1945 on behalf of the Commission on Adat Law by the Royal Institute for Linguistics and Ethnology of the Dutch East Indies.

19 Published between 1914 and 1936 by the Colonial Institute in Amsterdam. The categorization of the excerpts was done by students.

20 Hadler (2008:77-8) writes: 'It was in the early years of the twentieth century that the Dutch began to work with local elites and codify adat law. […] Where adat once had been fluid, redefined yearly by the *nagari* adat council, it became precedent law, bound up in a huge series of easily consulted tomes.' Hooker (2008:75) writes: 'From the 1880s on, data on adat laws were collected and compiled in a massive handbook – the *Adatrechtbundel* – that was updated year by year'. In the 1960s, Jaspan (1965:252-3) had made similar assertions.

21 The Commission of Adat Law (established in 1909) had two tasks, to collect data concerning adat law and to sift these data and comment or annotate if deemed necessary (*Adatrechtbundel* (hereafter AB) 1:13).

22 Van Vollenhoven (1910) did design 'a short adat law code for the whole of the Indies' (*Een adatwetboekje voor heel Indië*), but this was more a codification of adat principles than wholesale codification. See also Henley and Davidson 2007:21; Burns 2004, 2007; Fasseur 2007.

adat of the past, nor did they want to maintain such a thing. Such an essentialist notion of adat is a far cry from what Van Vollenhoven and Snouck Hurgronje saw as existing or as desirable. In fact, they were fighting against this essentialist conception of those who wanted to get rid of adat. 'The country is too good and promising to be turned into an adat museum', Van Vollenhoven (1919:29) wrote.[23] His and Snouck Hurgronje's contention was that adat law was dynamic and changeable. They aptly identified the function of adat proverbs in decision-making processes (AB 1:21, 27) and argued that these often enigmatic aphorisms only became meaningful through the ways in which adat authorities used them in the discussions, demanding explanation rather than giving it. It was therefore impossible to deduce 'the law' from these sayings (AB 1:23). Thus, attempts to codify adat would not make sense. Van Vollenhoven and Snouck predicted that forced codification and subjugation to Dutch law would be counterproductive, because it would foster the conservation of adat law and hamper its development. In their eyes, only gradual development from within the communities in which adat law was generated, though not in isolation, could bring about appropriate social and economic progress without seriously damaging the local social order. Codification of adat would strengthen precisely those features of adat, which the legislator sought to change. Adat law could very well develop to live up to modern requirements, but not via mere imposition. Van Vollenhoven (1933:239) was convinced that oriental ideas could be 'fertilized with Western values'. The *Adatrechtbundels* were built upon these premises.

Van Vollenhoven and the first *adat* law scholars first and foremost tried to capture and systematize the totality of legal universes, ideally of all native peoples, of what they saw as the Indonesian world. Van Vollenhoven's main academic concern was the comparative study of the legal orders of the Indies, as well as the Philippines, the Malay Peninsula, and Madagascar. He tried to identify the common features and internal logic from a great variety of sources, knowing full well that adat was not a rigidly structured, logical, and consistent whole. His descriptions of the 19 adat law circles (compiled between 1906 and 1918) reflect the state of knowledge at a time when knowledge was limited and sources often contradictory. He tried to find common features throughout the Dutch Indies from which concepts could be developed that transcended the idiosyncrasies of one particular legal order, according to what one might call ideal types in the Weberian sense (Lev 1984:149). He made sure that the lacunae in existing knowledge, credibility of certain sources, divergences between rules and practices, and issues of conflict and heterogeneity within adat law regions were documented. For these reasons, his descriptions of the substantive adat laws are no more than a systematiza-

[23] Unless otherwise indicated, the translations of the Dutch authors quoted are ours.

tion of the most diverse sources. His greatest weakness is his treatment of Islamic law, although his elaborate summary and analysis of materials on religious law in the Dutch East Indies show that he paid more attention to Islamic law than later scholars of adat law (Van Vollenhoven 1931:148-202). By far the most interesting is his ideas of the social processes by which adat law is maintained and changed in different contexts, in village transactions and disputes, processes of preventive law care, in court decision-making, and in local and national politics and legislation. It is here that Van Vollenhoven (1931:231-402) and F.D. Holleman (1927) have perhaps made their most important methodological and theoretical contributions.[24]

People's law and lawyers' law

In many respects, Van Vollenhoven was a pioneer of the critique of colonial transformations of local laws through ethnocentric and legalistic categories used by colonial judges and administrators. He and his students persistently emphasized the importance of understanding indigenous laws on their own terms. They regularly criticized the misinterpretations of other writers, parliamentarians, and colonial judges (Van Vollenhoven 1909; F.D. Holleman 1923; Logemann and Ter Haar 1927). They struggled against the inability or outright refusal of politicians, lawyers, and scholars to understand adat in terms of the local population itself, and who instead distorted local concepts, principles, and institutions by 'jamming' them into Dutch legal terminology. The adat law scholars argued that this led to unsystematic, muddled, and distorted perceptions of adat law, suitable neither for comparative work nor for sound policy-making. In order to avoid such distortions, Van Vollenhoven coined concepts such as *inlandsch bezitrecht* (native right of possession), *beschikkingsrecht* (right of avail) and *rechtsgemeenschappen* (jural communities). Van Vollenhoven's critique of Dutch ethnocentrism later influenced discussions about comparative analytical frameworks in the famous Gluckman-Bohannan controversy in Anglophone anthropology of law in the late 1960s. Max Gluckman's work had been characterized as analogous to that of a linguist who attempts comparison by 'jamming Barotse grammar into Roman Dutch categories' (Nader 1965:11). Gluckman had traced the metaphor to Jan Vansina (1965:17) who argues that 'Kuba law is thus different from any European legal system, and to try to define it in terms of European legal concepts is like trying to fit a Bantu grammar into a Latin model of grammatical categories'. The metaphor, however, is Van Vollenhoven's (1909:59): 'It would be a strange sort of nonsense if one pressed the Sundanese language into a Latin grammar'.

24 It was not until the 1970s that similar ideas were developed in Anglophone literature (J.F. Holleman 1973, 1981).

A major point made by Van Vollenhoven was that adat law existed and was reproduced in different contexts. From early on, adat law scholars distinguished between adat law as interpreted and applied in courts and local law operating in villages, between 'lawyers' adat law' and 'people's adat law' (*adat juristenrecht* and *adat volksrecht*). This recognition of the multiple nature of adat law was important. Lawyers' adat law and people's adat law coexisted and influenced each other, but lawyers' adat law did not necessarily replace local law, nor did it preclude adat law from developing and changing in local contexts. What happened in an Indonesian *Landraad* court could change local adat but it could also be reversed in village politics.[25] Drawing general conclusions about the existence of adat law from misinterpretations in the literature and from court decisions would be tantamount to ignoring the complex processes in which adat was reproduced and changed.[26] It would be inappropriate to assume that the misconceptions that figured in courts and among adat law scholars would automatically have had an impact on local people's lives and legal practices. It would be equally wrong to assume that local people's rights, principles, and institutions did not exist simply because judges and adat law scholars did not find them or because they captured and transformed them.

Of course the whole enterprise of setting up a systematic study of the laws of the Indonesian archipelago was also influenced by pragmatic political considerations aiming at improving the functioning of the colonial administration of justice. In the last two decades of colonial rule, the study of adat law became increasingly oriented towards judicial practice. Van Vollenhoven's students wrote comprehensive accounts of individual adat systems, and more specialized accounts of certain fields of law.[27] Barend ter Haar (1937) later developed adat law studies into a positive jurisprudence (*positieve rechtswetenschap*) based on his 'decision theory' (*beslissingenleer*), which borrowed ideas from American legal realism and case law doctrines. Concerning the later years, therefore, the critique that some Dutch adat law scholars contributed to the creation of a lawyers' adat law holds true to some extent, although other adat law scholars such as F.D. Holleman (1938) vehemently opposed this project. Attempts by Van Vollenhoven and his students of the

25 In our own research on Minangkabau and Ambon we have shown that adat law that was interpreted – or misinterpreted as was often the case – and applied in state courts often differs substantially from adat practised in village contexts (K. von Benda-Beckmann 1984; F. von Benda-Beckmann 1979, 1984).

26 This is also a major weakness in many critiques of the creation of African customary law. See Roberts 1984; F. von Benda-Beckmann 1984; Ranger 1993.

27 See, for example, F.D. Holleman 1923, 1927; Korn 1932; Soepomo 1933; Vergouwen 1933; Djojodigoeno and Tirtawinata 1940. For a comparison with the Restatement of Customary Law Project in Africa, see Strijbosch 1980.

Adat Law School to describe and interpret local laws in a manner free from ethnocentric bias were thus not always successful, and Burns's general conclusion (2004:225) that they 'take over, reify, institutionalize and transform indigenous practices and understandings' seems to be grossly exaggerated.

The myth of the myth: Ulayat rights

The concrete example that has always stood at the centre of discussions about misinterpretations of adat is the issue of *ulayat*. A large section of Van Vollenhoven's work was devoted to it and it is a core issue in the critique by Burns and others. Moreover, it is one of the major topics in the current revitalization of adat. In the debate about *ulayat*, Minangkabau adat has served as the prime example. It is for that reason that we have to turn to West Sumatra and the Minangkabau history of *ulayat* to substantiate our arguments.

As in many regions of Indonesia, the part of Minangkabau village territory that was not permanently cultivated and irrigated was under the socio-political control of the council of lineage and clan heads.[28] This part of the village territory, the village commons, was referred to as *ulayat* land in West Sumatra, but other regions sometimes used different terms.[29] It served as a site for collecting forest products, as grazing land, and as a reserve for the expansion of agriculture and horticulture. Villagers had relatively free access to the commons. Sometimes a fee of recognition had to be paid for extracting village land resources. A cultivator could acquire individual rights by converting village land into irrigated rice fields or tree plantations and this right would be inherited by his matrilineal kin. After a few generations this land would accrue to the pool of inherited lineage property. Outsiders were barred from free access, but they could be granted temporary access and withdrawal rights. Village land could not be permanently alienated.

Dutch adat law scholars developed a more comprehensive theory about what they called the *beschikkingsrecht* (right of avail), according to which the right of socio-political control extended over the whole village territory. Permanently cultivated agricultural land, which had become the inherited property of lineages or self-acquired property through new cultivation, had acquired a different legal status, but the right of avail of the legal community remained residual.[30] Van Vollenhoven's ideal type right of avail was character-

28 Van Vollenhoven in J.F. Holleman 1981:137; F. von Benda-Beckmann 1979; Willinck 1909.

29 Kroesen 1874:7, 9; AB 11:77, 115; F. von Benda-Beckmann 1979:142. See F.D. Holleman 1923 on Ambon.

30 J.F. Holleman 1981:287, 431. For more detailed discussions, see Van Vollenhoven 1918:263, 1919; Logemann and Ter Haar 1927; F. von Benda-Beckmann 1979; for Ambon, see F.D. Holleman 1923.

ized by six criteria. Burns and other critics are right in stating that these criteria could not be found throughout the Dutch East Indies. Van Vollenhoven (1928:19, 37) himself was aware of the fact that not all jural communities fulfilled all six criteria. But this does not change the fact that most polities exercised legitimate socio-political control which, analytically, can be captured by the concept *beschikkingsrecht*, understood as a degree of socio-political control.

Apart from these general discussions, it is undisputed that such *ulayat* land existed in Minangkabau. When Minangkabau was officially incorporated into the Dutch colony in the early nineteenth century, the treaties between the Dutch colonial state and Minangkabau representatives stipulated that these rights be recognized and protected. The Dutch, however, quickly broke most of their promises, reorganized village government, limited the number of lineage heads, introduced a system of forced cultivation of coffee, and put access to markets under debilitating constraints. These measures changed the political and economic context under which rights over *ulayat* resources could be exercised. However, in the first phase of colonial rule, the Dutch did not question the rights of village governments and lineage heads over *ulayat* resources as such.[31] They generally accepted Minangkabau property and inheritance adat rules and institutions.[32] In 1873, one year before Van Vollenhoven was born, research on local land rights had been conducted in West Sumatra. Kroesen (1874:3), who conducted the research and who cannot possibly be accused of being an adat law romantic, concluded: 'It may sound strange, yes even unbelievable, yet it became very clear indeed from the research conducted that no piece of land could be shown, however far away in the wilderness, over which not one or other *negri* (village) claimed rights'. And he continued, 'the uncultivated lands belong to the village and are under the *beschikking*, disposition, of the lineage heads who together represent the village, and people holding cultivation rights' (Kroesen 1874:9, our translation).

In the early 1870s, Dutch economic policy in the colony changed. The system of forced cultivation was abandoned and a plantation economy was introduced. This was facilitated by the Domain Declarations legislation that stipulated that land not held in ownership or under ownership-like rights – *woeste gronden*, wastelands – was deemed to be the domain of the state. In West Sumatra, this was regulated in the West Sumatra Declaration of 1874.[33] In the early twentieth century, the issue became a major bone of contention between Dutch administrators, legal scholars, and local population

31 Van Vollenhoven 1919; AB 11:88; F. von Benda-Beckmann 1979; Kahn 1993:191; F. von Benda-Beckmann and K. von Benda-Beckmann 2006.

32 High legal officials, for instance, freely spoke of the 'Malayan inheritance law' in a case disputed in 1860 (*Maleisch versterfregt*), see F. von Benda-Beckmann 1979:424.

33 Reprinted in Logemann and Ter Haar 1927.

groups. Concerning the new land law, adat law scholars from Leiden stood in opposition to lawyers at Utrecht University who promoted the new land law as a basis for economic development.[34] In a gradual process, which Van Vollenhoven in 1919 characterized as 'a century of injustice', local adat rights to village land were systematically curtailed, creating considerable legal uncertainty and much resentment. The usurpation of extensive regions holding vast resources was justified by a peculiar interpretation of *ulayat* rights by colonial administrators. In the Utrecht lawyers' view, only private rights to land resembling Dutch notions of ownership were recognized under the Domain Declarations.[35] Neither the *beschikkingsrechten* of the villages nor the cultivation and gathering rights of the villagers on *ulayat* conformed to the criteria of private ownership. They were regarded as mere 'interests', subject to the state's political consideration of the 'common good', the common good at that time being capitalist economic development by European companies. Since colonial legal logic prescribed that each piece of land has an owner, Utrecht scholars such as G.J. Nolst Trenité (1927), Izak A. Nederburgh (1934) and Eduard H. s'Jacob (1945) argued that it was 'inevitable' that the state became the owner of such resources. A *beschikkingsrecht* of villages, if it existed at all, would have to be regarded as a public right of the village government, which would have been absorbed by the new, overriding public rights emanating from the state's sovereignty. Any public right exercised by village governments over village territories remained subject to the state's rights. By contrast, Van Vollenhoven and his followers argued that such interpretations were based on a fundamental misunderstanding of the nature of the *beschikkingsrecht,* which had both 'public' and 'private' characteristics and therefore should fall under the protection clause of the Domain Declarations. Van Vollenhoven (1919:72) disapprovingly noted: 'The administration only supports those rights that fit well into our categories, the rest are imagined claims or rights which only exist in the imagination of the population'. While not arguing against sovereign rights of the state over these resources as such, the state's assumption of ownership in the sense of private law was a 'transmutation of an undeniable and unchallenged right of socio-political control into an ambiguous and confusing right of ownership' (Van Vollenhoven 1919:103). It is difficult to comprehend how Van Vollenhoven could be accused of treating the *beschikkingsrecht* as 'being private in nature', as Burns (2007:76) does.

34 Burns (1989, 2004) has provided a very insightful analysis of this Leiden-Utrecht controversy. On Van Vollenhoven's attitude towards legal and economic modernization, see also Sonius 1981; Lev 1984; Fasseur 2007.

35 For the most systematic exposition and justification of state policies, see s'Jacob 1945.

Ulayat rights in many rooms

These legal discussions, however, should not be confused with what happened to the Domain Declarations in other contexts. In some parts of the colony *ulayat* land was given out as *erfpacht* or other concessions to Dutch companies. In other regions without large-scale plantations, such as West Sumatra, the regional administration largely condoned or even explicitly recognized the continued existence of the village government's rights over village land, and generally avoided direct interference. Where land or forest areas were given as concessions to outsiders, the agreement of village governments was first sought. The Domain Declaration for West Sumatra was even called the 'secret declaration', because for some time the regional government did not dare publicize or put the text into practice for fear of popular uprisings.[36] Apart from that, many local administrators considered the Declaration simply unjust or even illegal. Gooszen for instance wrote in 1912 that 'without further recognition of any other right the uncultivated land was declared to be state domain. This is illegal (*onrecht*) because land belonging to no one does not exist there, and in particular not in the Padang Highlands.'[37] Moreover, the central government and the local administration quarrelled over the correct legal interpretation and practice.[38]

Academic discussion and legal politics

The discussions about the interpretation of adat law and *ulayat* rights were always much more than mere academic exercises. They concerned the legitimation of political and economic power over natural resources and the question on which law the road to 'development' was to be built. Van Vollenhoven was criticized for opposing the introduction of uniform law and for his insistence on the variety of adat laws, which, according to his opponents, did not have the status of law but only of confusing and imprecise customs. The recognition of such customs as valid law would hamper economic development and legal certainty. The fact that Van Vollenhoven was committed to achieving a better understanding of the local legal orders, that he minded the violation of these laws, and that he did not believe that wholesale introduction of state law would do a better job for economic and political development made him unbearably romantic, paternalistic, and anti-development in the eyes of many. He was denounced 'a Jacobite against whom the Netherlands of the shareholders and East Indies pensioners had to be called to arms'.[39]

36 Van Vollenhoven 1919; AB 11:88; F. von Benda-Beckmann 1979; Kahn 1993:191; F. von Benda-Beckmann and K. von Benda-Beckmann 2006.
37 Quoted from *Pandecten* 1914, I:38.
38 For a case from 1903-1904, see AB 11:88; F. von Benda-Beckmann 1979:261-2.
39 Colenbrander, as quoted by Panhuys 1975:3.

In our view, his critique of the large-scale reorganization of the legal order was less an expression of romanticism than a realistic assessment of the probable consequences of such measures. Criticizing a local population for not being able to live up to the challenges of a modern economy, while at the same time amputating their legal system and denying them full participation in the world economy as well as access to economic facilities and markets, is a misleading and cynical exercise in victim blaming. The Minangkabau, for instance, had had a booming cash crop economy coupled with sufficient rice production before the Dutch invaded the Padang highlands. Economic development of the population throughout the colony was hampered by corvée labour, forced cultivation, oppressive labour legislation, and large-scale dispossession of their natural resources; and certainly not by the fact that their adat law was different from Dutch law. Van Vollenhoven clearly saw the dangers, when he criticized the legal reform plans in 1915, even without the hindsight that we have today after decades of failed law and development projects aiming at supplanting family and inheritance law or land law in (post-)colonial regions and in Indonesia itself. His diagnostic acuity becomes clearer against the backdrop of historical experience and some counterfactual speculations. It would be interesting to speculate about the course of events if, for instance, the Dutch had kept their treaty promises, if they had not issued the Domain Declaration but had recognized the rights of villages over their resources and negotiated development with those who held the rights without curtailing access to markets and credit facilities. What would have happened if the Dutch had declared the whole of Dutch civil law valid for the whole population or imposed a uniform land law based on Dutch legal categories? The fate of the Basic Agrarian Law of 1960 and the repeated efforts to push registration of individual ownership titles, one of the last of which was aided by a huge World Bank project (1994-1999), are telling.[40] Is it reasonable to expect that what hardly works nowadays would have worked a hundred years earlier? Many contemporary critics of law and development rhetoric[41] echo Van Vollenhoven's critique (1933:349):

> There is an impolite Latin proverb which says that the world wants to be cheated. That one wants to be cheated by the image of great organizations in my view seems to come from mankind's yearning for a beautiful panorama of the future. He who paints the largest canvas, he who opens the most wonderful perspective, who most closely approaches a radical transformation of the universe, gets the loudest applause. But nobody asks whether there is a road leading to these goals, or whether this road will be passable in the near future.

40 The Indonesian Land Administration Project (ILAP) aimed at improving the regulatory system, and facilitating and increasing the registration of land. The World Bank also initiated a research project on 'communal land tenure' that was to inquire into the existence of 'communal lands' and devise ways to register them. See Slaats 1999.

41 See, for example, F. von Benda-Beckmann 1989; Quarles van Ufford and Roth 2003.

Contemporary revitalizations of adat and ulayat

Among the most visible and politically important features of the contemporary revitalization of adat in Indonesia are the adat-based claims to village land that is controlled by the state. In the last two decades of the Soeharto regime, adat law and local authority over village *ulayat* had weakened. An ever-rising number of timber, mining and agricultural concessions, leases, and ownership titles had been granted to commercial companies in disregard of the rights of local populations. People rarely dared to challenge the Soeharto regime out of fear of repression, but that does not mean that they condoned the expropriations. In West Sumatra, for example, the Minangkabau population continued to regard the government's encroachment on their *ulayat* as an illegal infringement of their adat rights. The lack of recognition of *ulayat* in agrarian and forest legislation had always remained an issue in provincial and village politics and academic discussions. Apart from rights to village *ulayat*, other less politicized adat rules, principles, and institutions continued to exist, though often changing due to new economic, political, and cultural influences – rules about the validity of marriage, economic transactions, property relations and inheritance, and succession to local political office. The validity of adat law in these domains was and still is largely recognized as valid law in the state court system.

Greater political freedom and the ensuing decentralization policies after the fall of Soeharto led to renewed struggles to regain control over *ulayat*. In Minangkabau the claim for a wider validity of adat was also expressed during the reorganization of village government. Between 1983 and 2000, the older official village organization based on the neo-traditional Minangkabau village, the *nagari*, was replaced with the *desa* model. In 2000, the province of West Sumatra 'returned to the *nagari*', which was widely hailed as a return to adat and adat leadership. In contrast to other regions in Indonesia, the governor and the provincial parliament largely anticipated decentralization. The province enacted a number of framework regulations, though strictly speaking it was not entitled to do so, because legislation fell under the competence of the district as the main autonomous unit (F. von Benda-Beckmann and K. von Benda-Beckmann 2009b:307-9). The legislation was nevertheless accepted as the legitimate basis for district regulations. Reliance on adat and emphasizing specific Minangkabau practices concerning *ulayat* land were a major element in the province's move to distance itself from the 'Javanese' centre of the Old Order regime of Soeharto. In order to reclaim village *ulayat* land, adat law is currently discussed and strategically used in a wide range of contexts and arenas. Many farmers have started to cultivate expropriated *ulayat* land that was formerly used by plantation companies. Village adat councils have negotiated a share of the profits with companies that exploit village commons, including drinking water sources, stones from quarries, and coalmines. Cases seeking

to invalidate earlier state transactions over village land have been taken to court.[42] Adat law is also being mobilized against state legislation and bureaucracies by an alliance of village adat leaders and local governments, a variety of NGOs, university lecturers, and local politicians.

The central government tried to stem the tide of increasing protests against its arbitrary resource policy as well as local protests against land expropriation in the past by introducing a new regulation in 1999 which recognized *ulayat* rights to a limited extent. However this regulation by the Ministry of Agrarian Affairs met with strong protest in West Sumatra. Although it was presented as safeguarding *adat* law communities, Minangkabau commentators spoke of an 'injection to kill *adat* law communities' at a workshop organized on 5 and 6 August 1999 by the Legal Aid Bureau in Padang, because it provided that land that had once lost its *ulayat* status would not regain it.[43] Since 2000, a Provincial Regulation on *ulayat* land has been under discussion, heavily contested between more radical adat interpretations of rights to *ulayat* and more government- and investor-friendly interpretations. In 2008, the provincial parliament finally enacted the Regulation of *Ulayat*, acknowledging the principle that *ulayat* returns to the original owner, but leaving much leeway for exceptions.[44]

There are striking continuities in the struggles over *ulayat* that occurred after the fall of the Soeharto regime in 1998 as part of the revitalization of adat and the earlier struggles in colonial times. Under the Soeharto regime political and economic conflicts, if they could be voiced at all, were also expressed in terms of adat law. This was a safer, although not necessarily more successful, way of defending rights than expressing them in overtly political terms (F. von Benda-Beckmann 1989; Simbolon 1998). There is also a strong continuity in the legal form and substance in which contemporary claims to *ulayat* are made. They often follow the classic Minangkabau adat model, which has been reproduced in more or less the same form throughout colonial and post-colonial history. The model consists of a nexus of the adat law community, the village (*nagari)* or matriclan (*suku*) with the inalienable *ulayat* resources under the leadership of adat elders (*panghulu*, *ninik mamak*) and their village adat council. The protagonists of adat rights to *ulayat* are realists and their aim is to have such rights incorporated into national and provincial legislation. But in order to get this done, adat law is strategically presented as 'pure' adat, uncontaminated by national or religious law. The Minangkabau recourse to adat law is less of an invention than a revitalization and actualiza-

42 F. von Benda-Beckmann and K. von Benda-Beckmann 2006, 2007; Biezeveld 2007; Afrizal 2007.

43 Per(aturan)Men(teri)Ag(graria) 5/1999. See F. von Benda-Beckmann and K. von Benda-Beckmann 2006; Bedner and Van Huis 2008. See also Lindsey 1999.

44 Provincial *Ulayat* Regulation of West Sumatra (*Peraturan Daerah Propinsi Sumatera Barat tentang tanah ulayat dan pemanfaatnya*) No. 16 of 2008.

tion of these rights within the dynamic constellation of legal pluralism. Like earlier struggles for adat law during the colonial and post-colonial history of West Sumatra, these processes cannot be treated in isolation but are part of a broader process in which the relationship between adat, state law, and religious law is being renegotiated.[45]

What is new in the current revitalization processes is the number of actors who are engaged in a variety of arenas (F. von Benda-Beckmann and K. von Benda-Beckmann 2006, 2007, 2009b). Besides adat elders and adat lobby organizations, local NGOs and university professors are also engaged in struggles for *ulayat* land in West Sumatra. The promotion of adat rights is also supported by the work of international and foreign donor agencies involved in transmitting models of good governance and participation. Local communities and their law hold a certain appeal for achieving 'development from below' or community justice.

Continuities and discontinuities

Henley and Davidson's conclusion (2007:22) that 'any continuity with colonial *adatrecht* is illusory' in its generality seems to be unwarranted.[46] Our analysis suggests that mobilization of adat as such may not be as new as some analysts seem to imply (Bourchier 2007:113). Nor is the mobilization of adat law in conflicts over legitimate claims to political authority and natural resources entirely new (Li 2007). However, there may be considerable variation in the legal and political significance of adat rights. This has to some extent to do with differences in demographic structures. In most regions of Indonesia, the revitalization of adat not only involves more than political, economic and spiritual values, but also feeds into identity politics. And this makes the issue so explosive especially in regions that, unlike West Sumatra, have a highly heterogeneous population. Ethnic identity is often coupled with adat law claims to land and local government control, and this has been used to justify exclusion and violence, especially where different population groups have become more intermingled.[47] It is in these regions that concern for a more central role for adat has been most prominent. However, reference to adat or customary law and ethnic identity is often used to justify such politics; it is

45 F. von Benda-Beckmann and K. von Benda-Beckmann 2007, 2009b; Hadler 2008; Hooker 2008.

46 F. von Benda-Beckmann and K. von Benda-Beckmann 2007. Henley and Davidson (2007:36) seem to be somewhat ambiguous here, for they also state that in some areas of social life, and at least in some parts of Indonesia, there is a straightforward continuity of customary community land rights.

47 See contributions in Davidson and Henley 2007; Van Klinken 2004; Davidson 2008. For Minangkabau, see F. von Benda-Beckmann and K. von Benda-Beckmann 2007, 2009b.

rarely at the root of identity politics. Many of the problems are rooted in an abusive government and a failing court system. Reliance on adat has often been a strategy of last resort – the only accepted way of staking out claims that otherwise may be officially legitimate but which for many reasons cannot be pursue (see also Davidson 2007:237). But it is a strategy that in some cases has evoked hardship among population groups that are excluded on the basis of the very adat others invoke to strengthen their position. Worrying as this may be, too great an emphasis on this point tends to eclipse the continuities of adat in terms of kinship, inheritance, and property in these same regions.

In 1999, the older adat law discourse was enriched and partly superseded by demands to recognize adat societies as 'indigenous peoples'.[48] The emergence of the Alliansi Masyarakat Adat Nusantara (AMAN, Alliance of Adat Societies) in August 1999 was a new development which mobilized and raised adat interests to the national level in many regions of Indonesia. This movement attempts to draw its legitimacy mainly from an analogy with the notion of indigenous peoples identified by convention 169 of the International Labour Organization (ILO). The alliance is strongly supported (if not created) by foreign donors and national NGOs.[49] Contrary to the propagation of a pan-Indonesian adat by the then emerging intellectual elite of nationalist politicians in the 1920s, AMAN advocates represent politically and economically marginalized population groups. More prominent ethnic groups, Minangkabau, Balinese, Javanese and Acehnese, do not take part in AMAN – they follow their 'old' strategy by fighting for their adat law, for which they do not need legitimation by international law. More recently, an interesting, Minangkabau-inspired project has made its mark. At the initiative of mainly retired Minangkabau migrants, a new organization was formed in 2006, the Sekretariat Nasional Masyarakat Hukum Adat (SeknasMHA, National Secretariat of Adat Law Communities).[50] This organization also draws on the indigenous peoples and human rights discourse spelt out in ILO conven-

48 Henley and Davidson 2007; Acciaioli 2007; Li 2007; Moniaga 2007; F. von Benda-Beckmann and K. von Benda-Beckmann 2007.

49 Such a mobilization of a pan-Indonesian adat was exceptional. In the 1920s, a pan-Indonesian adat was promoted by Indonesian intellectuals in the Oath of the Young Generation (Sumpah Pemuda), which later would be used as a legitimizing basis in the struggle for Independence (Koesnoe 1977:124). Adat law was proclaimed as the law which unified the whole Indonesian population (Koesnoe 1977:126, 133). After Indonesia's independence, however, the position of adat law vis-à-vis the state and its law (at least for most legal scholars) fell back to the old, colonial situation, in which adat law stood for the ethnic division of the Indonesian population. Koesnoe (1977:156) was the most prominent Indonesian theorist who maintained the view that adat law is more than ethnic group law, and that it still forms the basis and ultimate legitimation of all Indonesian law; even where it is no longer referred to as adat law but as Panca Sila law.

50 In 2008, it was recognized as a 'societal organization' in the sense of UU 8-1985 by the Ministry of Internal Affairs.

tion 169 (Bahar and Suryasaputra 2008). However, it does not claim the legal status of 'indigenous people' for the ethnic group of the Minangkabau as a whole, but for the Minangkabau village, the *nagari*.[51]

While both adat law and indigenous peoples' rights claims are based on adat law communities and stress their rather egalitarian and democratic nature, there is another political-legal discourse that demands authority in the name of former adat-based hierarchical leadership under kings or sultans, the 'return of the sultans' described and analysed by Gerry van Klinken (2007) and Laurens Bakker (2009b). Thus, the range of political adat-based claims is wide. Sometimes they are clad in purely adat terms, in other cases they draw on a variety of registers of which adat is one. The discourses have become more multi-vocal, but they all share a common core: communities and their rights based on their own law.

Conclusion: The critique reassessed

To recapitulate our arguments, first, the example of *ulayat* exemplifies the anachronistic character of the 'right of avail as a creation of adat law' discussion. The various rights in adat over *ulayat* resources that adat law scholars later characterized as *beschikkingsrecht* existed on the ground. Until and extending beyond 1874, these rights were to some extent recognized by the colonial state, decades before adat law scholars discussed and defended them in the first 30 years of the twentieth century. Although local adat rights to village *ulayat* were expropriated in different degrees, they continued to inform local legal thinking and practice, albeit often as 'violated' rights. While the intensity of these claims varied with political conditions, the principles of adat law and institutions on which these claims were based have not changed very much.

Second, the extent to which villages or the local administration could exercise communal rights had little to do with the academic work of Van Vollenhoven and the controversies with his colleagues in Utrecht in the 1920s and 1930s. The actual changes were the result of colonial economic and administrative policies and concrete measures, most of them occurring long before the academic discussions had emerged. The political engagement of adat law scholars did not stop ongoing expropriation. Nevertheless and understandably, colonial administrators and entrepreneurs saw the views of adat scholars as a threat to their freedom to develop and exploit natural and human resources (Burns 2004:67).

[51] In 2009, relations between AMAN and SeknasMHA were characterized by some tension and polite distance; AMAN and other grass-roots activists clearly resented the more government-friendly approach of SeknasMHA.

Third, critics attach too much significance to what was written and debated in legal and political circles about adat law in the first two decades of the twentieth century of Dutch rule, and tend to confuse this with the actual operation of local law. Dismissing adat law described by adat law scholars as something mythical, something that did not really exist on the ground, obscures what was going on in Indonesian villages and the colonial administration before and during these scholarly debates. The actual influence of Van Vollenhoven and his followers on legal practice and politics therefore should not be exaggerated. They were certainly influential in educating Dutch and Indonesian legal scholars, many of whom became judges and higher legal and administrative officials. They indeed helped to prevent codification of a civil law for all Indonesians along the Dutch model, but it would require a great amount of wishful thinking to assume that this might have functioned at all. Moreover, they were not the only ones writing about adat law. In Minangkabau, local leaders and intellectuals have also played a major role in the continuing reproduction of adat and adat law (Kahn 1993; F. von Benda-Beckmann and K. von Benda-Beckmann 2007).

Fourth, it was colonial administrators and lawyers like Nederburgh, Nolst Trenité, s'Jacob and, may we add, Burns himself, and not scholars like Van Vollenhoven and his followers, who most grossly misinterpreted the relation of adat rights to natural resources. Criticizing those who tried to lay bare these misinterpretations as 'creators' and 'transformers' while leaving out of the discussion those who engaged in the crudest distortions of local legal concepts and institutions is turning the world upside down. Moreover, the critics are inconsistent. On the one hand, Van Vollenhoven and his followers are criticized for an 'Orientalist assumption, implicit or explicit in much of the work of the Leiden School, that law, custom, and society in the Indies were governed, and should continue to be governed, by principles radically different from those informing their counterparts in the West' (Henley and Davidson 2007:20), and for the 'limited utility of this East-West dichotomy' (Burns 2007:68). On the other hand, they are reproached for not seeing the fundamental differences between Dutch law and Indonesian law, differences so fundamental that according to the same authors these aspects can only be expressed in dichotomies such as 'law' versus 'custom'. This perhaps is the greatest irony in the ethnocentrism reproach. Those who consciously attempt distance themselves from dogmatic Western constructions of law are accused of imposing a Western concept of law by those who fully endorse the dominant ideological Western concept of law.

Last, contemporary processes of revitalizing adat law claims in local government and resource rights are the latest phase in a long and continuous historical process, starting with the encroachment of the Dutch on the political and economic autonomy of local communities. In other parts of Indonesia the

continuities may not be as clear as in West Sumatra. However, the analysis of Minangkabau *ulayat* suggests that a realistic assessment requires more than relating the current revitalization processes primarily to the writings of the Adat Law School. Such an assessment has to consider the past and current agency of Indonesian actors struggling for resources and power.

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