Part VI: Pluralizing Law / Law's Pluralities – *Die Vielfalt des Rechts*

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

Gerlov van Engelenhoven

Law, Justice and the Problem of Universalizability:

The Case of *adat* Law

Introduction

The following is a brief reflection on the Indonesian legal pluralist concept of *adat*, as a point of entry into that which I regard a central topic of the critique of law: the relationship between law and justice. *Adat* is originally an Arabic term meaning "custom" or "habit," and was introduced by Islamic merchants throughout the Indonesian archipelago from the 1200s onward. The term was used as a way to refer to indigenous customs that could not be incorporated into Islamic law. Therefore, rather than referring to a particular system of laws, *adat* denoted Islamic law's indeterminate opposite: that is, the wide variety of indigenous practices which, other than this generalizing label of "custom," remained undefined. The concept's flexibility of definition was an issue of concern for Dutch colonial jurists at the start of the twentieth century, who struggled to codify *adat* and turn it into formal law.

By analyzing this contradictory struggle to define the apparently undefinable, I aim to show that the case of *adat* is an exemplary case for the critique of law, in that it points toward a fundamental problem of law, that is, its relationship to justice. Jacques Derrida (2002) theorizes justice as an "aporia," a vanishing point of law, something that is never here, but is always to come. He bases his ideas on those of Walter Benjamin (1921), who

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

argues that the problem of justice, for law, is that it cannot be universalized. Justice differs between contexts and is, moreover, in the eye of the beholder. Following the work of Greta Olson (2022), an additional argument is that justice is often more a matter of *legality* than it is of law, that is, more of affect than of reason. Justice and injustice are often *felt* rather than understood or decided. Through my analysis of *adat*'s resistance to universalization, I will develop my argument that the critique of law is the attempt to understand law not in its universal, but in its situational and affective dimensions.

Vollenhoven's Dilemma

The jurist Cornelis van Vollenhoven (1847–1933) was the central force behind Dutch legal scholarship's interest in *adat* at the turn of the twentieth century. At the time, the consensus was that *adat*'s apparent incoherence was a reason to discredit the phenomenon as irrelevant to Dutch law. The premise of the critique was that *adat* as such did not exist, but was a negating term, describing disparate phenomena in terms of what they were not.[1] Vollenhoven started disputing this premise from 1901 onward, when he established the chair of Adat Law at Leiden University. From this position, Vollenhoven and his students, collectively known as the Adat Law School, advocated a pluralistic system of law in the colony, where *adat* and European law would be applied together. Their plea was heard in 1919, when the government adopted a pluralistic approach to colonial law. Article 75 of the government regulation for the colony of that year stated that *adat* should even take precedence over European law in deciding local matters, whenever possible.[2]

1 Burns (1989).
2 Fasseur (2007).

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

However, the project of pluralizing colonial law gave rise to immediate practical problems. The central problem was that of codification. In order to incorporate *adat* into colonial jurisdiction, it had to be translated into an applicable system that would be comprehensible to Dutch legislators. This task was near impossible because of the way in which *adat*'s meanings and functions were entirely negotiable and situational. Vollenhoven himself admitted frequently in his writings that there is no "sharp and rigid line" that "separates legal usage from other popular usage" of the term. In fact, the borderline is "so vague that it is often difficult, and sometimes impossible, to distinguish the one from the other."[3] *Adat* was associated with customs in the widest sense possible, from hospitality rules toward outsiders to questions of guilt and retribution, and everything in between, but differently in each locale, and in each instance researched.

Therefore, codifying *adat* was a contradictory project to the extent that it implied universalizing a non-universalizable phenomenon. Vollenhoven's dilemma was between codifying *adat* and thereby destroying its flexibility, or retaining its flexibility by not codifying it. The first option would turn *adat* into Western law, and would thus defeat the purpose of plurality. The second option would leave things as they were, with *adat* and Western law existing parallel to one another without productive interaction. This would also defeat the purpose of plurality.

Controversy

Despite the contradictory premise of his project, Vollenhoven worked on the codification and the general comprehension of *adat* in all its forms until his death in 1933. His reputation at the time was controversial. Government officials frequently received

3 Vollenhoven (1906), 5.

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

polemic open letters from him, in which he attacked new legislation which they had introduced in the colony. His publications often took on the tone of manifestos, asking for procedures of massive proportions as a way to attempt the impossible: fix *adat* while retaining its flexibility. For example, he suggested to repeal each *adat* codification automatically after a decade or so, in order to respect the changeable nature of the phenomenon in native society.[4] In other words, the only way to codify *adat*, was to start over entirely every few years.

These and similar unusual requests gave him the reputation of a hopeless romantic.[5] One common interpretation of Vollenhoven's legacy is as a self-fulfilling prophecy: *adat law* as a Dutch invention, the forceful integration of practiced custom into written code, turning *adat* into something it was not, namely law.[6] What was invoked as *adat* law by the colonial courts was often far removed from *adat* as practiced in local communities.[7]

Adat as Multiplicity

To me, the biggest issue in translating Vollenhoven's epic project into formal law is that the central question is shifted in the process. Colonial courts of the early twentieth century attempting to incorporate *adat* law into their practice, were interested in the question of essence, that is, of *what?* What is *adat*? What is it supposed to be or do, or dictate? However, Vollenhoven's question was never *what is adat*? It was always *who is doing adat, under which circumstances and for which purposes?* Vollenhoven's acknowledgment of adat's negotiable and situational character

4 Fasseur (2007), 58; Bräuchler (2010), 20.
5 Benda-Beckmann (2011).
6 Jaspan (1965).
7 Benda-Beckmann (2011).

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

resembles the Deleuzian idea of *multiplicity*. This concept "designates a domain where the Idea, of its own accord, is much closer to the accident than to the abstract essence, and can only be determined with the questions who? how? how much? where and when?"[8]

Vollenhoven's work was very much in line with the idea of *adat* as an accident rather than an essence. His understanding of *adat* was as something that only made sense in concrete contexts. For it to work, it had to be invented on the spot by officials endowed with the right to do so by their community.[9] Such practice fundamentally clashed with the idea of colonial courts chaired by Dutch jurists trying to distill abstract, universal principles from these contextual, singular events.

Law and Justice as Multiplicity

As mentioned at the start of this paper, the problem that *adat* posed for Dutch law is thus very similar to the problem which, in critical legal theory, the concept of justice poses for Western law. "Laws require universality", argues Werner Hamacher (1991). "Justice, however, consists essentially in being adjusted to suit situations." Therefore, "just ends always apply to one singular situation alone," which is why "only singular laws may be regarded as just."[10] In other words, justice could thus be seen as a multiplicity too, much like *adat*. The appropriate questions to ask about justice would than not be *what is (in)justice*, but *whose (in)justice is this*; *under which circumstances does it exist and for how long*; *why is it pursued*; and so on. Such questions acknowledge justice's

8 Deleuze (1967), 92.
9 Fitzpatrick (1997).
10 Hamacher (1991), 1144–1145.

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

affective dimension.[11] They acknowledge that justice and injustice are not only in the eye of the beholder, they are in the gut of the undergoer.

Stathis Gourgouris (1997) goes a step further and argues that law itself cannot be universalized, that law is always situational and singular, and only works as a society-wide system because people *pretend* that it can be universalized: "This impossible passage from the personal to the universal" is the moment "of the subject fictionalizing itself as a legal entity."[12] What this means is that for society to function, law's universalizability must be forcefully willed into existence, often despite evidence to the contrary. For example, in Vollenhoven's time, Dutch jurists understood Western law as universally applicable. Yet clearly it was not very applicable in the colonies. Nevertheless, that did not stop colonial jurists from applying their law there. Vollenhoven may have been a rare case of a colonial jurist attempting to move Western law closer to local custom, rather than local custom closer to Western law.

Adat and the Critique of Law

Since Indonesian independence, in 1949, *adat* has followed a long and multifaceted trajectory. It was instrumentalized as a tool for oppressive nationalism by the Suharto regime (1967–1998). It was used as the flagship of regional diversity by several Indonesian human rights organizations during the Reformation Era (1998 onward). It has even become a cultural identity marker for Indonesian diasporic communities in the Netherlands from the mid-twentieth century onward.[13] Despite many attempts at codification and instrumentalization, *adat* has always remained elusory,

11 Olson (2022).
12 Gourgouris (1997), 144–145.
13 Engelenhoven (2021).

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

appearing in new legal and social contexts in whichever form *feels right*.

These insights about *adat* can be used as a way to reflect on law as such, too. Like *adat*, law itself is also not static and it is not universal. Instead, its logic is always based in the needs of whoever is shaping it in a particular time and place, for better or worse. To me, the critique of law is the pursuit of law's limits. It is the ongoing reflection on law's successes and shortcomings, in order to improve it and bring it closer to the needs of a given society. To critique law is thus to approach it as multiplicity, and in context. It is not to explore what it is or what it should be, but to explore who is shaping it, who is executing it on behalf of whom, and in defiance of whom, for which reasons and under which circumstances. Finally, it is to become receptive of law's affective dimensions: what does law do to people and how? What do people want from law and why?

Literature

Benda-Beckmann, Franz and Keebet von Benda-Beckmann (2011). "Myths and stereotypes about adat law: a reassessment of Van Vollenhoven in the light of current struggles over adat law in Indonesia." *Bijdragen tot de Taal-, Land- en Volkenkunde* 167.2 – 3: 167–95.

Benjamin, Walter (1996[1921]). "The Critique of Violence." *Selected Writings: Volume 1, 1913–1926*. Ed. Marcus Bullock, and Michael W. Jennings. Cambridge: The Belknap Press of Harvard University Press. 236–253.

Bräuchler, Birgit (2015). *The Cultural Dimension of Peace: Decentralization and Reconciliation in Indonesia*. London: Palgrave Macmillan.

Burns, Peter (1989). "The Myth of Adat." *Journal of Legal Pluralism* 28: 1–127.

Deleuze, Gilles (1967). "The Method of Dramatisation." *Bulletin de la Société française de Philosophie* LXII: 89–118.

Derrida, Jacques (2002). "Force of Law: The 'Mystical Foundation of Authority'." *Deconstruction and the Possiblity of Justice*. Ed. Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson. London: Routledge. 3–68.

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -

Engelenhoven, Gerlov van (2021). "From Indigenous Customary Law to Diasporic Cultural Heritage: Reappropriations of Adat Throughout the History of Moluccan Postcolonial Migration." *International Journal for the Semiotics of Law* 34: 695–721.

Fasseur, Cees (2007). "Colonial dilemma: Van Vollenhoven and the struggle between adat law and Western law in Indonesia." *The Revival of Tradition in Indonesian Politics: The deployment of adat from colonialism to indigenism*. Ed. Jamie S. Davidson, and David Henley. London: Routledge. 50–67.

Fitzpatrick, Daniel (1997). "Disputes and Pluralism in Modern Indonesian Land Law." *Yale Journal of International Law* 22.1: 171–212.

Gourgouris, Stathis (1997). "Enlightenment and *Paranomia*." *Violence, Identity and Self-Determination*. Ed. Hent de Vries and Samuel Weber. Redwood City: Stanford University Press. 119–49.

Hamacher, Werner (1991). "Affortative, Strike" *Cardozo Law Review* 13.4: 1133–57,

Jaspan, Mervyn Aubrey (1965). "In quest of new law: the perplexity of legal syncretism in Indonesia." *Comparative Studies in Society and History* 7.3: 252–266.

Olson, Greta (2022). *From Law and Literature to Legality and Affect*. Oxford: Oxford University Press.

Vollenhoven, Cornelis van (1981). "Adat, Adat Law, Native Law." 1906. *Van Vollenhoven on Indonesian Adat Law*. Ed. J.F. Holleman. Berlin; Heidelberg: Springer Science+Business Media. 1–6.

https://doi.org/10.5771/9783495989722-265 - am 03.02.2026, 05:44:13. https://www.inlibra.com/de/agb - Open Access -