

Recht en Opleiding



Aanvankelijk was het Molengraaff Instituut gevestigd aan de Nieuwegracht 60 van 1958 tot 1991, vervolgens aan de Nobelstraat 2 van 1991 tot 2012, zie foto. Nu is het instituut gevestigd op Janskerkhof 12.

Inleiding

Universiteiten geven aan een stad status en aanzien. Zij zijn van groot belang voor de economische, culturele en intellectuele ontwikkeling van een stedelijke gemeenschap. De universiteit is altijd zichtbaar aanwezig in en rondom een stad. Dit geldt ook voor Utrecht, met als prachtig middelpunt het Academieggebouw op het Domplein en de studentensociëteit 'PHRM' op het Janskerkhof. De Utrechtse universiteit kent vanaf de stichting in 1636 een rechtenfaculteit. Het recht is een bepalende factor in de Europese cultuur en samenleving, vandaag meer dan ooit. Daarom is het gerechtvaardigd dat Corjo Jansen bijzondere aandacht besteedt aan de ontwikkeling van de Utrechtse juridische faculteit gedurende de afgelopen vier eeuwen.

Het was 07.00 uur in de ochtend, 17 juni 1634. De zon brak langzaam door, toen de hoogwaardigheids bekleders van de stad Utrecht zich vol trots verzamelden op

het stadhuis, in de panden Lichtenberg en Hasenberg, gelegen aan de Oudegracht, nog steeds de plek van het huidige stadhuis en het beginpunt van onze wandeling. Bij hen hadden zich de reeds in toga gehulde hoogleraren gevoegd die waren benoemd aan de fonkelnieuwe Illustre School van de stad. Iedereen maakte zich op voor twee lange dagen. De plechtigheden ter gelegenheid van de opening zouden over een uur, enkele honderden meters verderop, een aanvang nemen in het kapittelhuis bij het Domplein, thans het Academiegebouw van de Utrechtse universiteit, eenvoudig te bereiken via een korte tocht over de huidige Vismarkt, daarna linksaf onder de Domtoren door.

Een opleiding aan de 'illustere school' was te plaatsen tussen die aan het gymnasium en de academie. De oprichting van een dergelijke onderwijsinstelling was voor veel stadsbesturen met pretenties de eerste stap op weg naar een volwaardige universiteit. Hetzelfde gold voor de Utrechtse vroede vaders. Zij hadden daarvoor de steun nodig van de Staten van het gewest Utrecht. De stichting van een universiteit of school was staatsrechtelijk gezien voorbehouden aan de soeverein, de persoon of de instelling die was belast met het oppergezag over de onderdanen. Na de afzwering van Philips II als landsheer in 1581 werd de officiële leer in de Republiek dat de soevereiniteit bij de afzonderlijke Staten van elke provincie berustte. Het recht om een universiteit te stichten kwam, evenals bijvoorbeeld het recht om een vredesverdrag te sluiten en de bevoegdheid om wetten te maken, aan de Staten toe. Het Utrechtse stadsbestuur wist dat het daarom met hen moest onderhandelen om zijn School tot de status van universiteit te verheffen. De steun van de Utrechtse Staten was echter niet eenvoudig te krijgen, omdat de concurrentie tussen de steden binnen de provincie groot was. Het was (en is) aantrekkelijk voor een stad om een universiteit binnen de stadspoorten te hebben. Zij fungeert vaak als een van de motoren van de plaatselijke economie. Amersfoort gunde bijvoorbeeld in het Stichtse Utrecht het licht niet in de ogen en omgekeerd was dat ook het geval. Utrecht heeft uiteindelijk, zoals we weten, de strijd gewonnen.

Het Utrechtse stadsbestuur liet bij de opening van de Illustre School op 17 juni 1634 weinig na om indruk te maken op de leden van de Utrechtse Staten. Om acht uur vertrokken in grote grandeur de burgemeesters, de schout, de overige notabelen en de hoogleraren naar de voormalige kapittelzaal in het kapittelhuis bij het Domplein. De zaal was in tweeën gedeeld. Het grootste vertrek was bestemd voor de colleges van de theologische en de juridische faculteit en kreeg

de aanduiding auditorium theologicum. Het was de bedoeling van het stadsbestuur dat vier van de vijf nieuw benoemde hoogleraren gedurende die twee dagen hun ambt zouden aanvaarden. Het publiek bestond volledig uit genodigden: de Statenleden, de raadsheren uit het Utrechtse gerechtshof (de hoogste rechterlijke instelling in de provincie), de predikanten en de Utrechtse notabelen. De twee dagen in de harde banken van het auditorium gingen heen met het luisteren naar de in het Latijn gestelde redes en muzikale intermezzo's van onder meer de stadstrompetters en een a-cappellakoor. Aan het einde van de tweede dag was er een uitgelezen banket, in calvinistische traditie niet al te copieus.

De Utrechtse Illustre School bood haar studenten drie studies (verdeeld over drie faculteiten, afgeleid van het Latijnse woord facultas, dat 'mogelijkheid' betekent) De letterenfaculteit was bestemd voor het doceren van vakken als klassieke talen, geschiedenis en wijsbegeerte die op een 'hogere' universitaire studie voorbereidden. De twee 'hogere' universitaire studies in Utrecht waren: theologie en rechtsgeleerdheid. Haar inrichting ontleenden de opleidingen aan het gildenwezen, de toenmalige economische organisatie van de beroepen (slagers, bakkers, smeden, etc.). Wie zijn studie had voltooid, kreeg de bevoegdheid om overal zelfstandig te doceren, de licentia ubique docendi. Hij mocht zich tooien met de titel doctor. De juristen sloten zich ook wat betreft hun titulatuur aan bij de gebruiken van het gilde. Zij kozen de titel die het volleurde gildenlid aannam na afronding van zijn opleiding, te weten meester. Pas in de eerste helft van de twintigste eeuw is de doctorstitel c.q. de meestertitel losgemaakt van de promotie. Iedere afgestudeerde, behalve de jurist, kreeg toen de titel doctorandus: hij die nog doctor moet worden. Degene die na het 'afstuderen' een wetenschappelijke proeve van bekwaamheid aflegde in de vorm van het schrijven van een proefschrift, ontving pas de doctorstitel. Vanaf dat moment verschoof de nadruk van het mondelinge karakter van de promotieplechtigheid naar de schriftelijke vorm, het boek. De juristen houden - koppig als zij zijn - hun meestertitel in ere die in hun ogen nog steeds gelijk staat aan de doctorstitel. Vandaar dat het zeer ongebruikelijk is dat gepromoveerde juristen hun doctorstitel voeren. Het verlenen van een graad was overigens niet toegestaan aan een 'illustere school', zoals die in Utrecht, alleen aan een universiteit. Het stadsbestuur van Utrecht hervatte daarom onmiddellijk na de plechtige opening van de Illustre School zijn lobbywerkzaamheden voor de verwezenlijking van een universiteit. Het moest toch de eer van de Stichtse bestuurders te na zijn dat na

de voltooiing van de studie in Utrecht de promotie in Leiden moest plaatsvinden.

De eerste hoogleraren van de Utrechtse Illustre School bleken over het algemeen van uitstekende kwaliteit te zijn: Antonius Aemilius (artes: klassieke talen en geschiedenis), Henricus Renerius (artes: wijsbegeerte), Antonius Matthaeus II (rechtsgeleerdheid) en Gisbertus Voet (theologie). Alleen over Justus Liraeus (artes: klassieke talen) zijn de kronieken negatief. De Utrechtse opleidingen maakten een voortvarende start en kregen bovendien de helpende hand van het lot. In 1635 brak in Leiden de pest uit. Studenten, vooral die in de rechtsgeleerdheid, weken uit naar Utrecht. Dit had tot gevolg dat de Illustre School in 1635 een tweede juridische hoogleraar kreeg in de persoon van de al aan de Franeker universiteit docerende hoogleraar Bernardus Schotanus (1598-1652). De Staten van Utrecht aarzelden na de toeloop van zo veel studenten niet langer: op 16 februari 1636 volgde de verheffing tot universiteit door hun octrooi. Schotanus, de enige hoogleraar die al voor zijn Utrechtse benoeming aan een universiteit had gewerkt, werd rector magnificus. De medische faculteit opende als vierde haar deuren.

De theoloog Voet (1589-1676) groeide weliswaar uit tot de onbetwiste coryfee van de Utrechtse universiteit, maar rechten en medicijnen waren populairder. De universitaire studie kenmerkte zich door de bestudering van een boek: de bijbel voor de theologen, de wetboeken van keizer Justinianus (die leefde in de zesde eeuw na Christus) voor de juristen en het handboek anatomie van de beroemdste geneesheer uit de oudheid, Claudius Galenus (levend in de tweede eeuw na Christus), voor de artsen. Een oud versje maakte de onverbiddelijke aantrekkingskracht van rechten en medicijnen boven de theologie duidelijk:

Rijkdom geeft Galenus en de wet van Justiniaan

Uit andere studies win je kaf, uit deze louter graan.



Academiegebouw

Het kloppende hart van de Utrechtse universiteit was het Domplein dat werd gedomineerd door de Dom, een verkorting van *Domus Dei* (huis van God). De religie was in het vroege universitaire leven nooit ver weg. Dit wordt fraai weerspiegeld in de zinspreuk die de stichters van de Utrechtse Illustre School kozen en die nog steeds vele Utrechtse universitaire gebouwen siert: *Sol Iustitiae Illustra Nos* (Zon der Gerechtigheid, Verlicht Ons). Daarnaast speelden de publieke promoties, anders gezegd de promoties 'more majorum' of 'cum cappa', zich af in de Domkerk. Zij vonden bijvoorbeeld plaats, toen de Utrechtse universiteit 100 jaar en 200 jaar bestond. De doctor kreeg de doctorshoed (de 'cappa') opgezet. Deze hoed was het symbool van de goddelijke bescherming tegen kwaadsprekerij, laster en vervolging. Bovendien kreeg de doctor een penning met de tekst: "*Me doctarum praemia frontium Dis miscent superis*": de beloningen der geleerde hoofden zullen mij doen verkeren met de Goden van de bovenwereld.

De juridische faculteit begon haar bestaan in 1636 met twee hoogleraren. Zij had er tot 1830 in de regel drie. Het belangrijkste vak in de opleiding was het Romeinse recht, in het begin nog uitgesplitst over de drie onderdelen van het Wetboek van Justinianus, het zogeheten *Corpus Iuris Civilis*: de *Digesten*, de *Codex Justinianus* en de *Instituten*. De *primarius*, de oudste in de faculteit, doceerde de *Digesten* en de *Codex*. Hij kreeg vaak ook het hoogste salaris voor zijn openbare lessen (*lectiones*), die hij op dicteersnelheid in de meestal onverwarmde ruimtes van het academiegebouw afraffelde. De gemiddelde beloning aan de Utrechtse universiteit was na een aanlooperperiode ongeveer 1200

gulden per jaar. Het ging in die tijd op de academie (nog) om substantiële inkomens: het gemiddelde loon voor een geschoolde ambachtsman lag in de 17e en 18e eeuw op 100 gulden. Dit bedrag stond in schril contrast met de best betaalde juridische hoogleraar uit het ancien régime, te weten Everardus Otto (1686-1756). Hij ontving uiteindelijk 2600 gulden. Een hoogleraar kon zijn inkomen echter aanzienlijk vermeederen (soms zelfs verdubbelen) door naast de publieke colleges ook private aan te bieden (collegia). Zij vonden in de regel bij de hoogleraar thuis plaats. Een student moest daar meestal een bedrag van tussen de 20 en 30 gulden per jaar voor betalen. De hoogleraren hadden dus ook bijna allemaal de beschikking over een groot huis met collegezaal in de nabijheid van het Domplein. De hoogleraar Christiaan Hendrik Trotz (1703-1773) bewoonde een prachtig pand aan het Pieterskerkhof ('achter de Sint Pieter'), staande voor de Domkerk links de Domstraat in richting de Pieterskerk, in vroeger dagen ook wel het schouwtoneel van promoties en de moeite van een bezoek zeer waard. Na zijn dood verkocht de zoon van Trotz het pand aan een collega van zijn vader, de hoogleraar Meinard Tydeman (1741-1825), voor een bedrag van 7750 gulden.

Hoewel het Romeinse recht op de Nederlandse juridische faculteiten tijdens de eerste eeuwen van hun bestaan bijna de alleenheerschappij had, was dit niet in overeenstemming met de situatie elders in Europa. Het andere rechtsgebied, dat de student daar moest bestuderen, was het canonieke recht, het recht van de Rooms-Katholieke kerk dat niet alleen betrekking had op de inrichting, het bestuur en de ambtsdragers van de kerk, maar ook op juridische onderwerpen zoals het erfrecht en het huwelijksrecht. Om deze reden is het spraakgebruik tot in onze tijd dat een juridische student 'rechten' studeert en bij afronding van zijn studie meester 'in de rechten' wordt.

De beoefening van het Romeinse recht aan de Nederlandse universiteiten geschiedde in overeenstemming met de Europese academische traditie. Zij onderscheidde vanaf de eerste helft van de 16e eeuw twee richtingen: de *mos italicus* en de *mos gallicus*. Kort (door de bocht) gezegd, was de *mos italicus*, de traditionele of Italiaanse wijze van bestudering van het Romeinse recht, a-historisch, teleologisch (naar de strekking van de Romeinsrechtelijke wetsbepalingen) en gericht op het actuele gebruik van de Digesten in de rechtspraktijk. Daarom heet deze richting ook wel *usus modernus pandectarum*. Juristen uit deze richting concentreerden zich op de bijdrage die een bepaald leerstuk leverde aan het geldende recht. De *mos gallicus*, de Franse of

humanistische traditie, was historisch en streefde naar het herstel van het Romeinse recht zoals dat in een bepaalde periode van de Romeinse geschiedenis had gegolden. De vertegenwoordigers van deze richting in de Nederlanden stonden bekend onder de aanduiding 'Hollandse Elegante School'. Van beide richtingen werkte in Utrecht een vertegenwoordiger van Europees formaat. De universiteit wist in 1683 voor een bedrag van 1600 gulden - helaas slechts voor korte tijd - Gerard Noodt (1647-1725) als onbetwiste voorman van de *mos gallicus* van zijn tijd aan zich te binden. Hij kwam van de Franeker academie en vestigde zich in de buurt van het Domplein, in de Zadelstraat (de weg die loodrecht op de Domtoren staat). Het was gelet op Noodts groeiende reputatie in Europa spijtig dat Utrecht hem in 1686 al weer kwijtraakte aan de Leidse universiteit. Dit was overigens niet uitzonderlijk. Het gebeurde wel vaker dat hoogleraren vanuit Franeker, Groningen en Harderwijk al dan niet via Utrecht in Leiden hun eindstation vonden. De vertegenwoordiger van de *mos italicus*, die uitgroeide tot een Europese grootheid, is gelukkig iets langer in Utrecht gebleven, namelijk van 1674 tot 1680. Hij heet Jan Voet (1647-1713). Ook hij zou zijn carrière beëindigen in Leiden.

Het heeft tot het einde van de 17e eeuw geduurd, voordat andere vakken naast het Romeinse recht op het tableau verschenen. Het belangrijkste vak was het *jus publicum* (het staatsrecht). De Republiek der Verenigde Nederlanden trok veel studenten uit de Duitse landen. De oudste variant van het *jus publicum* in het onderwijs was daarom het *jus publicum Romano-Germanicum*, het staatsrecht van het Rooms-Duitse Keizerrijk, vaak gedoceerd door hoogleraren van Duitse komaf, zoals H. von Cocceji (1644-1719), J.J. Vitriarius (1679-1745) en de al genoemde Otto. Het staatsrecht van de Republiek der Verenigde Nederlanden kreeg pas met de aanstelling van Trotz in 1755 zijn eerste hoogleraar. Behalve in het Romeinse recht en het staatsrecht konden Utrechtse studenten zich vanaf het einde van de 17e eeuw scholen in het *jus naturale* (het natuurrecht) en soms het *jus gentium* (het volkenrecht). Het strafrecht kwam pas aan het einde van de 18e eeuw in beeld als universitair vak.

In 1795 bezetten de Fransen de Nederlanden. Heel even dreigde zelfs de degradatie van de Utrechtse universiteit tot 'école secondaire', maar die wind waaide gelukkig over. Mede onder Franse invloed bepaalde art. 28 Burgerlijke en Staatkundige Grondregels van de Staatsregeling van 1798 dat er een Wetboek gemaakt moest worden, 'zoo wel van Burgerlijke, als van Lijfstraffelijke Wetten,

te gelijk met de wijze van Regtsvordering, op gronden, door de Staatsregeling verzekerd, en algemeen voor de gantsche Republiek.' Latere constituties herhaalden de codificatieopdracht. Keizer Napoleon I (1769-1821) had zijn broer Lodewijk Napoleon (1778-1846) tot koning van Nederland gebombardeed. Een blijvende herinnering aan zijn Nederlandse koningschap in Utrecht, dat van 1806 tot 1810 duurde, is zijn stadspaleis op de hoek van thans de Drift en de Voorstraat. Het paleis maakt nu deel uit van het gebouwencomplex waarin zich onder meer de juridische bibliotheek bevindt. Hoewel de keizer zijn broer opdracht had gegeven de Franse wetboeken in te voeren, ging Lodewijk Napoleon zijn eigen weg. Bij Koninklijke Besluiten van 31 december 1808 volgde de afkondiging van het Crimineel Wetboek voor het Koninkrijk Holland en van zijn invoeringswet. De inwerkingtreding geschiedde onmiddellijk na het middernachtelijk uur van 31 januari 1809. De eerste nationale codificatie van het privaatrecht kreeg een paar maanden na de inwerkingtreding van het Crimineel Wetboek op 1 mei 1809 rechtskracht: 'het Wetboek Napoleon ingerigt voor het Koninkrijk Holland'. Art. 4 van het Crimineel Wetboek respectievelijk art. 3 van het Koninklijk Besluit van 24 februari 1809 bepaalden dat het Romeinse recht was afgeschaft, eveneens alle andere plakkaten, publicaties, ordonnanties, reglementen, statuten, octrooien, handvesten en andere regelgeving die betrekking had op strafrecht dan wel het burgerlijke recht. De keizer was des duivels door de afkondiging van deze twee wetboeken. Hij dwong zijn broer tot vertrek. Het Wetboek Napoleon werd al op 1 januari 1811 voor de gebieden op de linkeroever van de Rijn respectievelijk 1 maart 1811 voor de rest van 'Holland' vervangen door een ander - Frans - wetboek, de Code Civil (1804). Het Crimineel Wetboek zou als gevolg van de invoering van de Code Pénal (1810) - benoorden de rivier de Waal - op 1 maart 1811 zijn rechtskracht verliezen.

De val van Napoleon in 1813 luidde niet het einde van de codificatiegedachte in. Art. 100 van de Grondwet van 1814 bepaalde: 'Er zal worden ingevoerd een algemeen Wetboek van burgerlijk regt, lijfstraffelijk regt, van den koophandel, en van de zamenstelling der regterlijke magt en de manier van procederen.' Het Burgerlijk Wetboek en het Wetboek van Koophandel zijn in 1838 in werking getreden, het Wetboek van Strafrecht pas in 1886. De invoering van nationale wetboeken heeft ingrijpende consequenties gehad voor het juridische onderwijs. Was de opleiding tot hun inwerkingtreding internationaal, na hun afkondiging werd zij nationaal: gericht op het bestuderen van het in Nederland geldende recht. Dit had ook gevolgen voor de samenstelling van het hooglerarencorps. Tot

1815 was ongeveer 30% van de rechtenhoogleraren Duits. Dat liep daarna terug tot ongeveer 0%.



Paushuis

Tegen het einde van de 19e eeuw kende de juridische faculteit meestal vier hoogleraren, drie voor de juridische vakken (zo'n 12 in getal) en een voor de staathuishoudkunde, statistiek en staatkundige geschiedenis. Nederland kreeg te maken met de mechanisatie van de nijverheid, de massaproductie van energie, de industrialisatie, de aanleg van snel- en waterwegen, de opkomst van grote economische samenwerkingsverbanden, zoals de NV en (coöperatieve) verenigingen, etc. Deze ontwikkelingen werkten door in het recht. Een enorme diversificatie en specialisatie waren het gevolg. Het resultaat was dat het onderwijs op de juridische faculteit een ander aanzien kreeg. Steeds meer (ook praktische) vakken verschenen op het tableau. Het aantal hoogleraren verveelvoudigde langzaam. De Utrechtse juridische faculteit maakte in deze periode vooral op het terrein van het burgerlijke en handelsrecht een bloeiperiode door. H.J. Hamaker (1844-1911), W.L.P.A. Molengraaff (1858-1931) en J.Ph. Suijling (1869-1962) waren coryfeeën op hun vakgebied. De Utrechtse hoogleraar in het strafrecht W.P.J. Pompe (1893-1968) 'bouwde' met criminoloog G.Th. Kempe (1911-1979) en de forensisch psychiater P.A.H. Baan (1912-1975) vooral na afloop van de Tweede Wereldoorlog een school op, die internationaal bekend kwam te staan als de 'Utrechtse School'. Zij legde de nadruk op de persoon van de delinquent en maakte zich sterk voor zijn bejegening in het strafproces en de strafuitvoering (zie een bijdrage over deze school elders in 'Recht te voet').

Na de Tweede Wereldoorlog deden de massaliteit, de europeanisering en de internationalisering hun intrede. Grote Utrechtse 'helden' werden geëerd met een aparte leerstoel, zoals Belle van Zuylen (1740-1805), de befaamde brieven- en romanschrijfster die een eigen plaats in de Europese cultuurgeschiedenis heeft verworven. De juridische faculteit kreeg qua studentenaantallen, afkomstig uit binnen én buitenland, qua vakken en qua leeropdrachten een geheel andere uitstraling dan voor de oorlog. Zij verspreidde zich als een olievlek over de stad en was daarmee een van de meest zichtbare van de universiteit. Instituten bevonden zich in de jaren tachtig van de vorige eeuw onder meer op Janskerkhof 3 en 16, Domplein 24, Drift 8, Nieuwe Gracht 58-60, Biltstraat 101 en de Boothstraat 6. In deze nieuwe eeuw keert de juridische faculteit echter terug naar waar het ooit allemaal is begonnen, de omgeving van het Academiegebouw, teruglopend vanuit het Pieterskerkhof, de eerste straat links, in de pittoreske straat Achter Sint Pieter (nr. 200), met als laatste huis het zogenaamde Paushuis. De bouw van dit pand startte in 1517 en geschiedde in opdracht van Adriaan van Boeyen. Hij is in 1522 verkozen tot paus. Hij is als Adrianus VI de enige Nederlandse paus gebleven. In 1807 heeft Lodewijk Napoleon vier maanden in het huis gewoond.

Literatuur

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Wandeling

- (1) Domplein, Illustre School
- (2) Zadelstraat, Huis Gerard Noodt
- (3) Janskerkhof 3 en 16
- (4) Boothstraat 6
- (5) Hoek Drift en Voorstraat, Stadspaleis Napoleon
- (6) Biltstraat 101
- (7) Drift 6 en 8,
- (8) Paushuize
- (9) Achter Sint Pieter of Pieterskerkhof

Uitgelicht ~ Willem Molengraaff

(1858-1931)



Portret Willem Molengraaff in de Senaatszaal

Nijmegen was Molengraaffs geboorteplaats. Na het doorlopen van de Latijnsche School begon hij in 1875 aan de rechtenstudie in Leiden. Hij rondde die in 1880 af met een proefschrift, getiteld *Internationale Averij-Grosse Regeling*. Zoals zo veel jonge juristen viel hij voor de bekoring van de hoofdstedelijke advocatuur. Dit nobele beroep verhinderde hem niet stevig aan de weg te timmeren. Samen met zijn confrères Hendrik Lodewijk Drucker (1857-1917) en Samuel Katz (1845-1890) richtte hij in 1882 het *Rechtsgeleerd Magazijn* op. Het tijdschrift had tot doel de ramen open te zetten in het mufte huis van de Nederlandse rechtsgeleerdheid. Molengraaff, Drucker en Katz stonden een actieve rol van de staat in het maatschappelijk leven voor. Het recht moest in overeenstemming worden gebracht met de sociale behoeften van de samenleving. Moraal en fatsoen zagen zij als richtsnoer voor de wetgever en de rechter.

Molengraaffs faam in juridisch Nederland groeide snel. In 1883 preadviseerde hij - nog geen 25 - voor de Nederlands(ch)e Juristen-Vereniging (NJV) over de noodzakelijkheid en wenselijkheid van het onderscheid tussen het burgerlijk recht en het handelsrecht. De slotsom van zijn uitvoerige historisch rechtsvergelijkende tournee was dat er geen sprake kon zijn van een handelsrecht, dat gelijkwaardig was aan het burgerlijk recht. Het handelsrecht was aan het burgerlijk recht

ondergeschikt. Het regelde een aantal voor de handel belangrijke onderwerpen, die in beginsel door de dogmatiek van het burgerlijk recht werden beheerst. Na het preadvies van Molengraaff is de overbodigheid van een afzonderlijk handelsrecht nauwelijks meer betwijfeld. Het heeft toch nog een halve eeuw geduurd, voordat het onderscheid tussen burgerlijk recht en handelsrecht bij wet van 2 juli 1934 (Stb. nr. 347) werd opgeheven.

Een week na de succesvolle verdediging van het preadvies op de NJV-vergadering van 31 augustus 1883 trad Molengraaff als adjunct-secretaris toe tot de in 1879 ingestelde Staatscommissie tot herziening van het Wetboek van Koophandel. Molengraaff kreeg de taak toebedeeld 'het faillietenrecht te behandelen'. Hij toog aan het werk. Zeven maanden later (!), in november 1884, had hij het ontwerp voor een nieuwe faillissementswet af. In 1885 werd hij secretaris van de Staatscommissie.

Op ongeveer hetzelfde moment, op 24 januari 1885, volgde Molengraaffs benoeming tot hoogleraar handelsrecht en burgerlijke rechtsvordering in Utrecht. Hij ging wonen op de Maliebaan, nr. 43b. Zijn oratie droeg de titel: *Het verkeersrecht in wetgeving en wetenschap*. Het thema van zijn beschouwing was het noodlottige dualisme tussen het recht uit de wetboeken en het feitelijke, in de maatschappij levende recht, met name op het gebied van het handelsrecht.

Molengraaff ontpopte zich snel tot een van de gezaghebbendste beoefenaren van het handels- én burgerlijk recht in Nederland. Het artikel, waarmee hij zijn naam definitief vestigde, lag op het snijvlak van beide rechtsgebieden: "De 'oneerlijke concurrentie' voor het Forum van den Nederlandschen Rechter". Het verscheen in het *Rechtsgeleerd Magazijn* van 1887 (p. 373-435). In Molengraaffs tijd van opkomende industriële activiteit was de repressie van de oneerlijke mededinging een actueel thema. Hij suggereerde een later befaamd geworden criterium om dit euvel te bestrijden:

Hij die anders handelt dan in het maatschappelijk verkeer den eenen mensch tegenover den ander betaamt, anders dan men met het oog op zijne medeburgers behoort te handelen, is verplicht de schade te vergoeden, die derden daardoor lijden.

De Hoge Raad heeft Molengraaffs criterium overgenomen in zijn beroemde arrest Lindenbaum/Cohen van 31 januari 1919 (NJ 1919, p. 161).

Vanaf 1889 verscheen zijn omvangrijke Leid(d)raad bij de beoefening van het

Nederlandsche Handelsrecht. Het boek domineerde na verschijning meer dan een halve eeuw dit rechtsgebied. Molengraaff schreef een baanbrekend NJV-preadvies op het gebied van het verzekeringsrecht. Daarnaast werkte hij gestaag door aan de voltooiing van de nieuwe Faillissementswet. Het wetsontwerp werd uiteindelijk op 30 september 1893 (Stb. nr. 140) wet. Zij trad op 1 september 1896 in werking. Molengraaff liet onmiddellijk daarna een handboek over de wet verschijnen: De Faillissementswet verklaard (1896).

De werkkraft van Molengraaff ging die van een normaal mens ver te boven. Naast zijn universitaire werk aanvaardde hij allerlei functies in het bedrijfsleven. Hij werd commissaris bij een aantal bedrijven (waaronder De Nederlandsche Bank). Daarnaast ontplooidde hij zich politiek. Molengraaff werd in 1897 voorzitter van de Liberale Unie, het verband van de progressieve liberalen. Hij was in 1901 een van de oprichters van de Vrijzinnig-Democratische Bond (VDB) en korte tijd eerste voorzitter. Van 1900 tot 1918 was hij lid van de Provinciale Staten van Utrecht voor de VDB. Hij ijverde voor de invoering van het algemeen kiesrecht. Dit achtte hij noodzakelijk voor de verwezenlijking van sociale wetgeving in Nederland. Molengraaff stond bekend als een voorvechter van vrouwenrechten. Hij was lid van het Comité tot Verbetering van den Maatschappelijken en den Rechtstoestand der Vrouw.

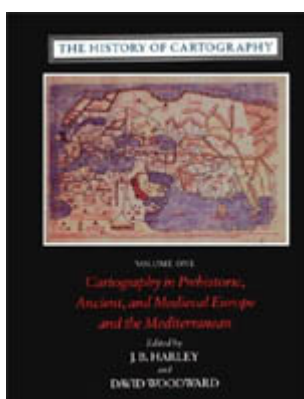
Aan de vooravond van de 20e eeuw was Molengraaff optimistisch gestemd over de vooruitgang en de voorspoed in de tijden die kwamen. Hij had visioenen van het ontstaan van een wereldrecht, dat hij verbond met de eenwording van de mensheid. De nieuwe eeuw bracht hem in 1902 het rectoraat van de universiteit. Als wetgever zette hij zich in 1905 aan het ontwerp van een nieuwe zeewet. Het ontwerp kwam in 1907 af, maar verdween in een bureaula van het Ministerie van Justitie.

Molengraaffs afscheid als hoogleraar kwam voor de buitenwacht onverwacht. Hij nam in 1917 ontslag. De belangrijkste reden hield vermoedelijk verband met het feit dat het huis aan de Maliestraat 1A, dat hij vanaf 1891 bewoonde, hem deed herinneren aan zijn vrouw, die op 28 oktober 1915 was overleden. Daarnaast was hij diep teleurgesteld over het onvermogen van de Nederlandse wetgever. Hij sprak op 8 juni 1917 in zijn afscheidsrede, 'Een Terugblik', bitter over de hopeloze, onherstelbare veroudering van de Nederlandse wetboeken, in het bijzonder van het Wetboek van Koophandel.

In april 1917 kreeg Molengraaff een aanstelling als commissaris-adviseur bij de Rotterdamse Bank Vereniging. Deze betrekking liet hem voldoende ruimte voor het werk aan nieuwe wetgeving. Hij was de motor achter de oprichting van de Vereeniging Handelsrecht. Haar doel was “het verkrijgen van eene handelswetgeving, welke aan de eischen der tegenwoordige samenleving voldoet”. Molengraaff werd in 1919 benoemd tot lid van de Staatscommissie Burgerlijke Wetgeving en voorzitter van de subcommissie Handelswetgeving. Hij nam onmiddellijk het politiek verweerde zeerecht ter hand. Dankzij zijn optreden werd het ontwerp in 1924 eindelijk wet. In 1927 verscheen het eerste gedeelte van zijn Kort Begrip van het Nieuwe Nederlandsche Zeerecht. Molengraaff heeft zich daarnaast met andere handelsrechtelijke wetgeving beziggehouden, zoals het recht met betrekking tot de koopmansboeken, de makelaardij en het wisselrecht.

Molengraaff was in 1925 naar Den Haag verhuisd. De nabijheid van de wetgever joeg hem op. In de lente van 1931 werd hij ziek. Molengraaff overleed op 7 juli in zijn woonplaats Den Haag. Twee dagen later werd hij begraven op de Tweede Algemene Begraafplaats te Utrecht.

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**Allison Meier ~ The Revolution
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Oldest Archive Of Radical Posters



Joseph Labadie (1890)

Photo: Wikimedia

The oldest public collection of radical history completed a digital archive of over 2,000 posters. The Joseph A. Labadie Collection at the University of Michigan Library announced this month that its posters on anarchism, civil liberties, feminism, labor, and other political movements are online for the first time.

“It’s not enough for us to preserve the artifact if people cannot see it,” Julie Herrada, Labadie Collection curator, told Hyperallergic. “Posters are a difficult format because they are fragile and can only withstand so much physical handling, so providing access to these materials while keeping them safe is a complicated process, or it was, until the technology and resources became more readily available to us.”

Read more: <http://hyperallergic.com/the-revolution>

[ii] that contributed to the settlement's trade to settle in their own wards with their own heads and courts. These wards had a certain measure of diplomatic immunity, turning the ports of call into places with an international population. In this context, foreign businessmen and traders became the driving force behind maritime Asia's coastal economy. The geographical position of the urban settlements in the archipelago and their mixed populations has not fundamentally changed in the past two thousand years, as is evident from maps 1 through 2.

The question that arises from this historical continuity is whether the underlying political and economic systems have remained unchanged as well. The answer is partly yes and partly not. Partly yes, because, as will become clear in this chapter, the central organizing factor behind the distribution of coastal cities and ethnic communities has been political capitalism, both then and now**[iii]**. Partly not, because the modern form of political capitalism in Asia, to wit the nationalistic side of the modern nation-state, subjects everything within its borders to its authority and mistrusts foreign businesses and capital because of their excessive power in the world-markets and their danger to the domestic market.

Van Leur's hypotheses in a nutshell

The best way to begin an analysis of the historical lines of power and capital formation in the Indonesian Archipelago and their effects on processes of migration, settlement, and local community formation is to discuss a few hypotheses from the dissertation of the pre-war Dutch historical sociologist, J.C. van Leur (1934). This work considers the millennia-old Asiatic coastal trade, in particular the part played by the pre-colonial Indonesian states. Partially as a result of W.F. Wertheim's 1955 English translation of this dissertation, which was reprinted in 1967 and 1983, Van Leur's analysis also came to receive attention outside The Netherlands.

There are several reasons for discussing Van Leur's analyses of Asia's overseas trade and the accompanying political capitalism. He was the first and is still one of the few Dutch historical sociologists to tackle the history, sociography, sociology, and anthropology of the Asian coastal trade as a single topic. Moreover, his analysis contributes fruitfully to the basic theme of the current book, namely the cultural and ethnic diversity of Indonesia. Van Leur's analysis especially considers:

[a] the historic patterns of the inter-regional overseas trade and

[b] the founding of multicultural urban forms of political capitalism: coastal cities

and states,

[c] the distribution across commercially active coastal settlements in the Indonesian Archipelago of ethnic communities and individuals through spontaneous migration.

Of these three processes he considered the second to be most important. Van Leur combined these three factors in a single hypothesis, namely that pressure by local power-holders lead the overseas coastal trade in Asia and the Indonesian Archipelago to cause urban ports of call, colonies of migrants, and coastal states to come into being along the trade routes.**[iv]**

Also characteristic of pre-colonial Asia, according to Van Leur, was that political leaders were religiously ordained and internationally acknowledged Hindu and Buddhist rulers. The separation of church and state was unknown in Asia's urban political capitalism as was the separation between the state and the economy. This encompassed, moreover, exactly the problem that the West European urban bourgeoisie had been fighting against since the crusades, namely royal interference in civil matters. Research in Asia, according to Van Leur, thus demanded a research plan all its own, namely one that would help explain the continuity of a situation that had existed in the Middle East, the Mediterranean area, and Asia in ancient times as well as in the beginning of the Christian Era It had continued to exist in Asia while being displaced in Southern and Western Europe during the second millennium to make room for the development of urban bourgeois capitalism. This situation could be briefly characterized as the continuing fight by local elites to gain control over and exploit serviceable status-groups like peasantries, manual laborers, artisans, tradesmen, and travelling traders. Van Leur continually characterized this situation in negative terms: 'No "free trade", no "world market," no "export industry," no proletariat, ...' (Van Leur 1934:68ff). In other words, a situation that was in no way to be described and explained in modern economic or political terms.

In this regard he was also interested in the question of the reason that Java's pre-colonial kingdoms of the eighth and ninth centuries had produced such beautiful edifices as Prambanan and Borobudur, when such architectural achievements were lacking outside Java and elsewhere in Asia. A careful reading of his dissertation shows that he proposed two factors to explain this, namely the availability of wet-rice agriculture and peasant labour, and the desire of the Javanese kings for recognition as Hindu rulers. In that framework the cities along

Java's north coast played a logistic and fiscal role.

The terms bourgeoisie and middle class

In Van Leur's dissertation, the term "middle class" hardly occurs. What he does use is the term word "bourgeoisie." He uses this term to compare the Asiatic coastal cities with those of Western Europe of the Late Middle Ages and the Renaissance. If one reads his dissertation carefully, one soon finds that this word was used to refer to the inhabitants of a loose collection of wards inhabited by foreign visitors that in the Asiatic coastal cities lay beyond the walls of the kraton (palace) of the local ruler. The thing that unified these inhabitants as a single economic phenomenon was at the same time the reason for their presence, namely,

(a) the overseas trade in status goods

(b) The services they provided within that scheme for members of the local elite and sometimes also to the local ruler.

Socially, linguistically, religiously and culturally the wards differed enormously from each other, and there is nothing that guaranteed the homogeneity of each ward in terms of region of origin, religion or language.

The core of each ward consisted of travelling traders, business men with a local office and storage, money lenders, sometimes also bankers, ship owners, innkeepers and the like. This mix of residents is strongly reminiscent of what Van Leur's intellectual mentor, Max Weber, had called an 'urban middle class': shipowners, entrepreneurs, merchants, traders and bankers, but also including the professions, farmers and crafts men (Weber 1964 I: 224-225). The only thing was, Weber hesitated to use the word "class" for this irregular assembly.

In his view, the middle class was not a class in the usual sense of the word, but rather a privileged 'Erwerbsklasse' or acquisition-class.

The reason for this is that the Erwerbsklasse is not a social class, because both socially and professionally the middle class is heterogeneous and disjointed. It is neither a class of property owners nor one of producers. Its function is Erwerb or trade, that is to say, promoting the circulation of goods, monies, services, and persons. In that sense, Weber saw the middle class as consisting not only of entrepreneurs, ship owners and bankers, but also of professionals, shop keepers, farmers, and craftsmen.

As I pointed out, in this Weberian sense of the word, local urban middle classes certainly did exist in Asia. Only, they did not administer cities, as had been the

case in Western Europe in the Late Middle Ages and beyond. After all, they were foreign guests of the local rulers rather than self-governing citizens of cities

In classical Western economics the term “middle class” has acquired a very specific ideological meaning, namely one of a class of free civil entrepreneurs whose activities are a series of actions aimed at the formation and growth of capital, based on the proper registration of expenditures and incomes through double-entry bookkeeping (costs and profits). Classic economists consider this class to be the engine behind the emancipation of Europe’s civil society and the industrial revolution and progress that resulted from this. The presence of this class in a country is considered to be an absolute precondition to the development of capitalism. According to Van Leur, this kind of middle class did not exist in Asia, neither before nor during the colonial period, even if the historic urban middle classes in maritime Asia most certainly counted on the formation of capital and on entrepreneurs, merchants and traders in their midst that aimed at the growth of capital. However, not they but the coastal rulers were the driving force behind Asia’s trade-capitalism. And here we are faced anew with Van Leur’s question, why traders and entrepreneurs in the coastal cities continued to virtuously serve the local rulers and did not demand self-determination, as had occurred in Western Europe during the second millennium.

In what follows we will more closely examine the building blocks of Van Leur’s analysis of Asiatic trade and Java’s political economy. At the end of this chapter we will briefly consider the role of European expansion in Asia between roughly 1600 and 1956 C.E. in the decline of the welcome received by foreigners and immigrants in the Indonesian Archipelago.

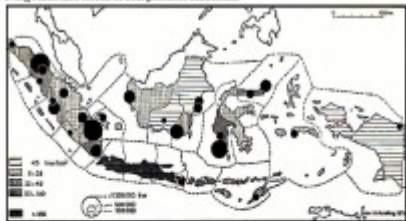
The geographic structure of political capitalism in the archipelago

To properly understand the importance of Van Leur’s analysis of Asiatic trade and Asian political capitalism, we must first consider the geographic structure of the Indonesian Archipelago. The millennia-old pattern of Asiatic overseas trade was based on a series of three navigation routes, namely the Straits of Malacca, the Java Sea, and the Banda and Seram Seas. For as long as local historical sources go back - and that is quite a long time - this pattern had been Indonesia’s import-export zone. Within this zone we still find the great majority of Indonesia’s cities and 100% of her large cities and harbours (compare map 1).

The population of the cities in this zone is multi-cultural as a result of overseas trade and immigration. They are located in densely populated, prosperous

economic enclaves along the major international shipping routes. Map 2 shows the history of incorporation by the V.O.C. and the Dutch East Indies, which shows a comparable pattern of enclaves.

Map 1. Big cities and towns in independent Indonesia.



Map 2. The enclave structure of Dutch colonial possessions and its historical development.



This situation is an inheritance from the past in two ways. In the first place, in the past, even far into the twentieth century, travel meant travel over water, e.g. over rivers and the sea. Roads did not exist or existed only near villages, plantations and cities. What roads there were, were unsuitable for the regular and large-scale movement of persons and goods. [v]

Second, cities only came into existence in places where members of different communities met to trade goods and services, and that occurred at the intersections of the usable water-ways (navigable rivers and sea lanes): at the mouths of rivers. Beyond that there were natural road steads and harbors that encouraged contact and trade (Krom 1931:74-75).

There, foreign traders sold their goods to other, local traders or to local elites. Fellow countrymen sought each other out and settled in ethnic wards. In this way there developed a combination of on the one hand a local, spontaneous apartheid, a spontaneous and natural (primordial) form of urban ethnicity, and on the other a local bazaar-trade. Where immigrant men came alone, sexual relations with local women occurred as well. Local rulers living in fortified palaces or kraton protected this combination of navigation, coastal settlements and trade.

According to Van Leur, this form of leadership had its roots in the nature of the Asiatic trade itself, which in essence was a combination of coastal navigation and travelling traders. The ships were small and were propelled by a combination of rowers and sail. With the exception of the large Chinese junks, which had already navigated the Asiatic seas in the first millennium, these ships had no cargo holds, but secured their freight on deck with ropes, including the provisions and fresh water needed while at sea. It is no wonder, then, that this coastal trade had need of ports of call to take on water and provisions, to take on or off-load traders and their wares, or to find refuge from storms or pirates. All these practical matters called for local safety and political protection, attracting both local and

international political leaders, willing to act as patrons of the ports of call (Van Leur 1934).

An important factor determining the rise of ports of call in the archipelago was the difference in the direction of the wind above and below the equator. If a ship were to sail above the wind, from India to China, and had to enter the archipelago, it moved across the equator where the direction of the wind changed, causing it to sail in the other direction. In the Straits of Malacca this meant that ships were driven toward the coast of Sumatra where the crew had to wait for the next monsoon. When they crossed the equator again, they had to wait once more for the west-monsoon, allowing them to continue the journey to China. All this took much time and a trip from India to China with a stopover in the archipelago could take as much as four years.

With that we arrive at the history of the development of the larger and smaller kingdoms of Asia, which came and went with regularity during the first millennium C.E. The primary source of income for local rulers and kings was skimming the wealth of the passing Asian coastal trade: forced transshipment, tribute, protection money and monetary income, and if these were not paid 'voluntarily,' robbery and plunder were another option.

When it seemed lucrative, these leaders and elites also participated in the trade themselves by commissioning traders (commenda), cooperating with foreigners to make a profit. This led to the development of patronage relationships between local leaders on the one hand, and foreign rulers, strangers and local ethnic status-groups on the other. According to Van Leur, therefore, political capitalism, patronage and ethnicity are the framework within which pre-colonial Asian trade must be seen.

The consequence of all this is that historically we must see Indonesia not so much as an archipelago: a disconnected assortment of islands ruled by local heads and little kings. It was first and foremost a system of waterways with coastal ports of call, places of storage and markets, centres of power, and secondary passages like sea arms and rivers. The islands lying beyond this system were a 'frontier area,' a border-zone with the rest of Asia. This dualistic framework of local Asiatic political capitalism, in both the pre-colonial and the colonial periods, was the political heritage that the Indonesian government had to find a way to exploit after independence.

Small-scale trade and accumulation

In the following paragraphs we will deal with two questions raised by Van Leur's analysis of the historical and systematic relationship between the Asiatic coastal trade and the formation of local power. These concern (a) the Asiatic coastal trade's ability to accumulate capital and (b) its relationship with non-commercial spontaneous migration. Let us start with the first question.

Van Leur characterized the Asiatic coastal trade as small-scale. With this he meant that rather than being an unaccompanied bulk-trade in mass-consumption goods, this commerce was based on the labours of travelling traders moving small quantities of expensive prestige goods, either on the orders of powerful men or on their own initiative. The question raised by this picture is as follows: if in terms of volume the coastal trade was small-scale, how could it have contributed to the development of large, powerful kingdoms like the Sumatran Srivijaya? Very briefly, Van Leur's answer is that during each monsoon, many traders and ships were involved in it, together making possible a relatively rapid accumulation of wealth, comparable to that raised by bulk-transport.

"One is constantly struck by the large number of traders, the bustle on shipboard and in the harbours, the trading voyages with hundreds of merchants. In every port town there were foreign quarters, colonies, courts, fondachi. Trade, still embedded in age-old forms of mutual aid, involved many people grouped according to city and region of nativity and ancestry. The long duration of the voyages made settlements necessary at the 'stages' in foreign lands" (Van Leur 1955:66).

The English translation of the word 'kramer' or 'marskramer' by (travelling) 'peddler' has led to discussion and misunderstanding. 'Marskrammers' are travelling peddlers that carry their wares on their backs. The metaphor of the 'marskramer' is somewhat infelicitous because in English-speaking areas, such persons are nonentities, something the Asiatic traders certainly were not. Van Leur was aware of the modern connotation of poverty attached to the idea of 'marskramer' and posited that:

"It would be completely incorrect to visualize for that peddling trade the picture of poverty it evokes at the moment. Though the trade was a trade in craft forms, it was international trade in valuable high-quality products; though there were comparatively few transactions involving comparatively little merchandise, the value of the turn-over was very high" (Van Leur 1955:67).

This does not take away the fact that Van Leur also was of the opinion that:

“... for a true historical picture one must link that trade with the poorest remnants of the international peddling trade still to be encountered in Europe in the venders wandering from door to door and the hawkers at fairs selling rugs and worthless trinkets. Their goods-in-trade are now for the most part by-products of modern industry, and their trade is a miserable business of begging. Nevertheless it there the related forms are to be found” (Van Leur 1955:63).

Each transaction could yield a lot of profit, albeit that, as was pointed out, this involved a lot of time. Jan Huygen van Linschoten figured that a journey from Holland to China and back would take three years and yield a profit of a hundred to a hundred and fifty percent (Van Leur 1955:64). Given the large number of persons participating in the trade - the harbours swarmed with ship-owners and captains seeking freight, and traders looking for goods - much business was conducted in the overseas Asiatic trade. The crux of the story, however, is that the Asiatic trade was one carried on by rulers and elites, that supplied a market made up of rulers and elites and was based on a hierarchical system in which travelling traders occupied the same position as tenant farmers. It was only with the coming of the Europeans that economic phenomena like “commodity,” free civil entrepreneurship, rational accounting and business methods as well as “bulk trade” gradually became known in Asia, albeit that they were accompanied by ships cannon, soldiers and monopolies.

Post-war critique of the concept of “peddler”

After the war, Mrs. Meilink Roelofs turned against Van Leur’s conception in her dissertation (1962). According to her, numerous powerful, international Muslim trading concerns were involved in the sixteenth and seventeenth century sea trade in Southeast Asia, dominating international bulk-trade on the region’s seas with their large freighters. The Chinese and Indians, moreover, had used large sailing ships with much space for cargo as early as the first millennium. The Chinese junks that first sailed the seas in the eight century C.E. are still a daily phenomenon in Asia. Their cargo space served to transport bulk-freight **[vi]** consisting of imperishable or less-perishable goods like wood, iron and copperware, earthenware and porcelain, as well as rice and tea. Within the archipelago the trading vessels transported bulk and luxury goods between the islands (Meilink Roelofs 1962: 5-7).

Actually, the picture Meilink Roelofs sketches here is reminiscent of the West European overseas trade in the sixteenth and seventeenth centuries, the time of

the major European trading concerns using double-entry bookkeeping that specialized in the bulk trade in spices, sugar, and Chinese earthenware in Asia, and sugar and slaves in the west.

But, if we read Van Leur's dissertation carefully, in typifying Asian trade he was not so much concerned with the size of the ships or the existence of large trading concerns and moneylenders, because as he saw it, Asia had long been quite far ahead of Europe in this area. The ships that were used in the Asian trade varied from small fishing vessels and larger Indian ships to four-mast Chinese junks, with a deck and a crew of two to three hundred men and tens of passenger cabins: ships, in other words, that were clearly meant for the international trade. Asian trade indeed led to the development of trading concerns that were larger than those of the Fugger-concern of fifteenth century Europe and had a more extensive network of creditors (Van Leur 1934: 21, 58, 81, 85).

Van Leur, however, was concerned with the way in which pre-colonial transport took place practically, that is to say, on the level of the travelling trader. Voyages were long and there were many dealers, all moving expensive goods (Van Leur 1934: 71, 91). This phenomenon precluded bulk trade in the sense of unaccompanied, loose mass-shipments from a shipper to a customer. From recent finds in Asian shipwrecks, among others from sixteenth and seventeenth century Chinese junks, however, we know that on the orders of the V.O.C. and other European trading concerns, there was much bulk transport of Chinese earthenware and porcelain. It is imaginable, therefore, that the involvement of the Chinese junks in the European trade also promoted the development of bulk trade by Chinese trading concerns.

Asiatic trade and migration

The second question arising from Van Leur's vision of the Asiatic coastal trade concerns the connection between this trade and migration. The reason for this is that the large geographical distribution of numerous cultural communities in the Indonesian Archipelago, to which among others the Indonesian Republic's motto 'Unity in Diversity' refers, must also have come into being as a result of overseas sea trade. Was non-commercial traffic not connected with the Asiatic sea trade or was there a connection?

In this regard he noted that he saw the trade routes as the channel along which processes of migration took place that had developed in Asia and the Indonesian Archipelago after the last ice age, as well as the reverse. Migration also always

has economic motives. Van Leur differentiated three kinds of migration that contributed to the colonization of the islands of the Indonesian Archipelago after the last ice age, especially of the coastal areas. These are:

- [1] the migration of large groups leaving certain areas and settling elsewhere,
- [2] the migration of individuals, in which especially the Asiatic coastal trade and the settlement of stranger-traders is concerned, and
- [3] the founding of daughter-settlements or colonies of local communities and of new political centres elsewhere in the archipelago (Van Leur 1934:124-126).

The results of the first type of migration can be seen in Minangkabau and Malay colonies: on Sumatra's north and south coast, in the Malay river valleys (Riau), east of the Minangkabau highlands, in the Malay mainland (the Malacca peninsula), in Madagascar, perhaps in Timor, and further in numerous other islands in the archipelago. Also included, furthermore, are the Buginese settlements in South Celebes, Riau and Northwest Kalimantan as well as the numerous Chinese coastal communities in Indonesia.

In Van Leur's terms these are cases of a "people's colonization," consisting of emigrants from a certain part of the archipelago that settle elsewhere. Trade may have played a role in this, but in the end people were especially concerned with starting a new life elsewhere, with or without the retention of the original culture (Van Leur 1934: 124).

The second type of migration brought individual strangers from outside the archipelago to the coasts along the major trade routes, finding shelter in communities (kampung) of their compatriots. These communities had their own administration and leadership, their own system of justice and a certain degree of extraterritorial immunity (Van Leur 1934:124-5). This was the route by which Chinese, Arabs, Indians, Cambodians and all those other traders entered the archipelago. They married local women, either from within their own group or from local indigenous communities.

Finally there was the migration that was accompanied by the formation of new centres of power in the archipelago, such as the Malay coastal states in Borneo, the Buginese states in East Sumba, West Flores, the Riau and Lingga archipelagos, and Bali's control over Lombok (Van Leur 1934:125; compare map 3). Within this third category we can also place the seventeenth century rise of the Verenigde Oost-Indische Compagnie (V.O.C.; the United Dutch East Indies Company), and the takeover of its interests through Dutch colonization at the end

of the eighteenth and the beginning of the nineteenth century.

The historical framework within which the overseas Asiatic trade occurred, therefore, was not purely commercial, but rather a mixture of the overseas migration of peoples and coastal trade on the one hand, and of local and international power politics on the other. It was this mixture that would eventually make the archipelago into the multi-coloured, non-territorial ethnic quilt that it is today. The common factor in this diversity was that the routes taken by the communities, the freighters, and the leaders of expeditions were in fact identical and formed the connecting link between the same areas.

As far as the archipelago's cultural communities were concerned, the final result was two-fold. On the one hand there were the overseas settlements of members of certain home-communities, such as Malays, Javanese, Balinese, Buginese, Makasarese, and Minangkabau, who lived in urban enclaves along the most important waterways of the archipelago's Asiatic trade, such as the Straits of Malacca, the Java Sea and the Banda Sea. On the other side there were the little archipelagos with their own systems of trade and the 'homogeneous' home-communities without overseas colonies that were found in the interiors of the larger islands, the smaller archipelagos and on the periphery of the area in which the Asiatic trade took place. This historical geographic division of urbanized coasts, small archipelagos, and periphery can be clearly seen in maps 1 and 2 of this chapter: from major population concentrations in the West of the archipelago to lower ones in the East and away from the sailing routes.

Banten, a multicultural coastal state

An example of a pre-colonial coastal state is the sixteenth century sultanate of Banten. In the walled royal residence in the coastal states lived the ruler and his court and the political elite. Outside the wall in open wards stood the houses of the foreigners, who together were the clients of the ruler and the elites. Over time some of these cities grew into 'metropolises.' At the end of the sixteenth century, Banten, which was located in the western part of Java, was a transshipment point and terminus for trade in the whole Indonesian Archipelago. The economy of the city of Banten was an international warehouse one, consisting of foreign ethnic communities that were in contact with each other in the market, at home, in the street, and via their local leaders.

The loose collection of foreign ethnic communities that was Banten fell under the local elite with their following, above whom in turn stood a ruler and his family.

Due to a lack of local labour, the Banten elite used slaves. Many foreign traders visited the city or had settled there. In the busy markets one could find Urzen [??] from Khorasan, selling jewels and medicines, as well as rich Gujeratis from India importing linens and tamarind, and Turks and Arab quite experienced in trade. Portuguese, that is to say Indo-Portuguese from Malacca, wore long Persian trousers and walked barefoot. Slaves carrying parasols (payung) to raise their prestige followed them through the streets. They chose their servants from among the different nationalities living in or visiting the city. In this way they always had a translator at hand when visiting strange notables from "foreign" kampung. Also found in Banten were Peguanese, that is to say people from Pegu in South Burma, a strange people that came to Banten every year to trade there. They probably were the importers of the city's elephants that could be hired as work and draught animals.

Malays, and Klings from India were highly honoured, lent money both at interest and for a predetermined fee, the last especially to Abyssinians, who tended to be poor sailors. Klings and Cambayers also supplied many cotton dresses and white cloth that was batik-ed by Bantenese women or was stitched with gold thread. Bengalese especially sold semi-precious stones and cheap goods. The Chinese, finally, occupied the grandest houses in a ward of their own that lay outside the city walls, to the west. Different from the other wards, a wall of wooden posts surrounded this one. To safeguard them from fire and danger, the Chinese were also the only foreigners to live in houses made of stone. Other houses were made of wood. It were especially the Chinese who went in to the interior to buy pepper, Banten's main product, armed with a weighing-beam (Dutch: unster), a stick along which weights could be moved back and forth. About the time that Chinese ships were expected on Banten's roadstead, they brought the pepper to the port city. The emperor of China had bought off the Portuguese who competed with his subjects in the pepper trade, so that the Portuguese could only trade in cloves, nutmeg, mace, sandalwood, peppers, cubeb-pepper, and all manner of medicines for linens imported from Malacca.

The Chinese occupied a strategic position in the area of import. In the first place, they imported the coinage that became accepted throughout Java, namely the picis or pisis, thin lead coins with a square hole in the centre. A thousand of these coins were equivalent to twenty nineteen thirties' cents. They also imported both fine and ordinary porcelain, silk cloths, damask, velvet, satin, silk thread, gold

thread, gold cloth, needles, combs, eye glasses, parasols, slippers, mirrors, fans, beautiful chests, paper, almanacs, gold leaf, mercury, copperware, Japanese swords and medicines.

Chinese exports consisted of pepper, indigo, sandalwood, cloves, nutmeg, turtle and ivory. Chinese living in Banten made gold en gold-plated casks, though these were not as nice as the ones made in Bali.

From Banten everything was distributed around the archipelago. Javanese and others came to obtain cargo in Banten and brought their own merchandise there on the way in. In this way, in Banten one could purchase salt from East Java, palm sugar (gula Jawa) from Jacatra and Japara (the north-cape between Central and East Java), as well as rice from Macassar (South Celebes) and Sumbawa. Rice was something the Bantenese needed badly because their soil would only produce a quarter of what was needed. The area around Banten itself, however, produced ships' supplies like chickens, eggs, fruit, and fish, but no rice. These supplies were so cheap that even the impoverished Abyssinians could afford able to buy them (see Fruin Mees II 1932:39-43).

The syahbandar

Aside from the Chinese ones, there was only one other house in Banten that was made of stone. Even the royal palace was built of wood, although within it there was a large stone vault where the treasury and the royal insignia were kept: the king had much money and many prestige goods and insignia to store. This stone house belonged to the syahbandar or harbour master who regulated trade and storage in the harbour and the city as well as the associated finances and taxes. He was the king's most important advisor in financial matters (Fruin Mees II 1932:39-43).

In general, syahbandars had an important position in all historic coastal states in the archipelago. In their area they controlled goods coming in and going out, as well as arriving ships and persons, monetary traffic and tolls. Aside from this they were the king's most important advisors in these matters.

Some of the governors and harbour masters were foreigners, coming from other parts of the archipelago or from far-away lands. Among them were Chinese, Persians, Arabs, and Indians. Reid, for example, pointed out that many of the embassies sent to China by the famous East Javanese state of Majapahit (14th and 15th centuries), were Chinese. In this connection he mentioned names like Chen Wei-ta and Kaifu Patih Marong (Reid 1995:27). Employing these foreigners did

not give rise to overriding feelings of ethnic dislike among the rulers concerned. In the Malay coastal states along the Straits of Malacca the harbourmasters even had important positions in the court, in some cases to deep in the eighteenth century. Such a syahbandar was Habib Abdoerrachman, an Arab who had been born in 1832 in Hadramaut on the Arabian Peninsula. His career included positions at the courts of Johore and Aceh, his last position being that of governor of Aceh, in which capacity he fought a war with the Dutch. In 1878 he resigned his position and returned to Arabia with his family aboard a Dutch ship. Thus, trade and kingship were connected within the Asiatic coastal trade, also after the arrival of the Europeans in the archipelago. This was exactly the kind of thing that the colonial government tried to bring under control, preferably willingly through 'voluntary' submission, but forcibly through military conquest if necessary.

The difference between Java and Sumatra and Van Leur's explanation for this

Through Van Leur's analysis of the Asiatic trade we now have a good idea of the factors and processes that led to the development of coastal states, political capitalism and multi-cultural coastal cities in maritime Asia.

However, in the post-war literature, Van Leur's work is especially related to what he is perceived to have seen as the exceptional position of Java. According to post-war researchers, Van Leur saw the development in Java since the eighth century C.E. of wealthy kingdoms with a penchant for building as something that could not be explained on the basis of the Asiatic trade, but had to be treated separately.

In his dissertation Van Leur indeed paid attention to the historical puzzle of how it was possible for the kingdom of Mataram to suddenly arise in the interior of Central Java in the eighth century and within a century and a half build a number of impressive Hindu-Javanese edifices, equalling those elsewhere in Asia[vii]. This was all the more amazing, because neither archaeological finds nor the Chinese imperial archives of the time give any indication of a noticeable advent of such a development. Van Leur wondered how this could have happened, and included in his speculations the presence of wet-rice agriculture in the interior of Central Java, which yielded much food and involved the presence of much labour. To this he added the presupposition that the involvement of a large farm labour-force in major building projects like Prambanan and Borobudur would also have necessitated a large army of supervisors and overseers, leading what he has called a "bureaucratic despotism."

According to post-war readers of the English translation of Van Leur's dissertation, this depiction fits perfectly with Wittfogel's theory of the Asiatic mode of production. This latter theory holds that Asiatic rulers had exploited local farm labor: imperial China, tsarist Russia and Stalin's Soviet Union. According to Wittfogel all these made use of a unique technical property of irrigated agriculture, namely its need for externally supervised cooperation. Asiatic rulers were aware of this property and used it to appropriate control over farm labour, which was thus led into a perfect trap. Thus, it was said, Van Leur was a Wittfogelian, and on the basis of this presumption it was concluded that he had formulated his description to make plausible the idea that the accumulation of political power could also take place outside of trade and world commerce (cf. Tichelman 1980: 19 ff.). Moreover, in this way a differentiation developed between Java and coastal states elsewhere, which made it possible to show two developmental routes, namely

- (1) the stationary expansion of a closed agrarian command-economy that developed in Java in the first millennium C.E.,
- (2) the open political economy of the coastal states that arose in Sumatra and other islands and were based on commenda, forced maritime warehousing, protection and slave labour.

Between the nineteen sixties and the nineteen eighties much research was devoted to especially the first idea **[viii]**

However, the abovementioned depiction of Van Leur's vision of Java is incorrect. Van Leur was concerned with something totally different from Wittfogel's theoretical ideas, which he moreover found vague and inapplicable. His hypothesis of bureaucratically controlled infrastructure projects realized through forced farm-labor had only a single goal, namely to answer the question about the economic and political rationale behind the differences in the social structures of Java and Sumatra. In answering this question, Van Leur was in the first place reacting to the hypotheses posited by the historians Krom (1931:88-94) and Rouffaer (1900 I: 306), which held that Prambanan en Borobudur had been built by Indian Hindu colonists. The refined Hindu-Javanese culture that was apparent in the architecture and ornamentation of these edifices in no way resembled anything that had been found in the course of pre-historic archaeological research, namely that it was a society that was to some degree organized politically and:

'practised wet-rice agriculture along with the accompanying irrigation system,

having knowledge of navigation and stars, working metal, bronze, copper, iron, and gold, and probably having access to tame kine. In parts of Java the dead were buried in megaliths in the shape of coffins and dolmen; everywhere in the high mountains of the island, terraces had been created as places of veneration, probably especially ancestor veneration, in which piles of stone with standing peaks and rough statues played a role. ...Generally Sumatra must have shown great similarities to Java, although traces of yet again other combinations and of totally un-Javanese remains can also be found there' (Krom 1931:54; compare Coedès, Les Etats:26-27).

This heritage in no way resembled anything that the two above mentioned edifices and many others in their vicinity had to offer. Van Leur put it as follows: *"The whole early Indonesian culture [in Java, C.H.] was a courtly one, the creation of rulers, the possession and exclusive craft of the hierocracy: monuments (sanctuaries, monasteries, hermitages, burial temples, tower temples, bathing places), literature, theological writings, and the study of law. The whole culture of prince and priest stood towering far above the Indonesian population. It was not its cultural possession. Its function was only to render service and to pay levies. The recollection of the ancient Near Eastern and Indian socrage state or liturgical state constantly comes to mind"* (Van Leur 1955:110).

For this reason, according to Krom and Rouffaer, Javanese court culture must have come from the outside, through a process of Hiduization coming in the train of Indian colonization (Van Leur 1934:121). Krom thought this process had reached completion in the fourth century C.E. and was responsible for the establishment of colonial Indian Hindu states in Java and elsewhere in Southeast Asia (Krom 1931:88). Early on, Krom thought, their influence was limited to the centres of colonization and the upper layers of society:

'It goes without saying that a Hinduization of the lower social strata did not, or hardly took place and that, as one moves away from the centers of civilization, Hindu influence becomes less and less noticeable' (Krom 1931:89).

On this point Van Leur agreed with Krom, but he definitely disagreed with the colonization hypothesis because, as he saw it, it was not based on anything substantial.

In the first place no mention is made of an Indian colonization in contemporary sources, including local ones **[ix]**.

In the second place, the transfer of Hinduism by colonists is not possible according to the Indian caste system. According to Van Leur, this kind of transfer can by definition only have been accomplished by specialists, Brahmans, and no one else (Van Leur 1934:121).

In the third place, wrote Van Leur, the Indian caste system and the ritual primacy of the Brahmans, which governed kingship and local society in India, never took root in Java, which in the case of an Indian (Dravidian) colonization certainly would have been the case (Van Leur 1934: 123-124). This meant that Javanese rulers must have utilized local craftsmen, which would have been farmers, as these were both craftsmen in their daily lives and were abundantly present. Their participation, thought Van Leur, had nothing to do with Hinduism, but rather (a) with the rice agriculture that had since time immemorial taken place in Java on rain-irrigated terraces, and (b) with the traditional relations between ruler and subject: one did what one was ordered to do. Wet-rice agriculture, after all, not only gave high yields per hectare but also made possible a high population density and thus an abundant supply of both food and labour. This labour supply was lacking in Sumatra and that is why we find no Prambanan or Borobudur there.

“The fact that Barabudur arose on Java and not on Sumatra is linked to the fact that the concentration of labour needed could be achieved on Java, in a state with soccage and an officialdom, and not on Sumatra, either in the city on rafts on the Palembang river or in the sparsely populated highlands of the interior” (Van Leur 1955:106-7).

In short, the lack of large-scale local farm labour in Sumatra explains why no major edifices were built there, but were built in Java with its great population density of rice-farmers. This also clarifies why no large-scale patrimonial bureaucracy existed in Sumatra’s coastal districts, but did in the Javanese states: because it was needed in Java and in Sumatra’s coastal states it was not.

This argument was of course also used against Krom’s and Rouffaer’s colonization hypothesis: Indian ideas were readily imported to Java but the labour to realize them was abundantly available there. According to Van Leur, the so-called Hinduization of Java must especially have been a concern of rulers and their courts, and must have been more a magical, theological matter than an institutional one. What he saw as especially attractive to the local rulers here, was the powerful ritual of legitimisation performed by the Hindu priests: *“the*

offerings, the ordination formulae, the classical, mythological genealogy of the ruling house." (Van Leur 1955:99).

Or, to put it in Weberian terms, the Brahmans supplied the Javanese kings and their descendants with hereditary charisma (compare Weber 1964 I:188). To experience this ritual, Javanese kings had Brahmans come temporarily from abroad (Van Leur 1934:127-133). Legitimation **[x]** here means the process through which a ruler could come to call himself a Hindu king, that is to say a king who protected the norms and values of the Hinduism he represented, and displayed to his followers in an exemplary manner (compare Gerth and Mills 1959: 294).

In this process internationally recognized Hindu priests took part, which ritually and magically transformed the local ruler into, and certified him to be a Hindu king. In the process they gave him a monopoly on maintaining the local dharma, the system of justice, custom, ritual practice, law and truth of local Hindu belief **[xi]**. This kingship was further evaluated at set times. As Van Leur saw it, the motivation and architectural expertise for the building of Prambanan and Borobudur must have come from this international context (Van Leur 1934: 127-133).

Why foreign legitimisation?

The question now arises why, according to Van Leur, Javanese kings felt a need for foreign Hindu legitimisation of their rule. Certainly not to impress the farmers, because these were not a legitimising force within Hinduism, either in India or in Java. The only conceivable strategic reason for such a foreign legitimisation, according to Van Leur, must have been the deep impression that the sacral legitimisation of Hindu-Javanese kings made on Indian visitors. In addition, the Indian priests furthermore supplied them with a mythological Indian genealogy (Van Leur 1934: 123-124). The beautiful edifices that the first Javanese rulers had built must have multiplied the impact.

They showed such a ruler to be a proper upholder of law and order (dharma) and a trustworthy protector to visiting ships and traders from international Hindu circles. This kind of recognition, therefore, was good for foreign trade as well, and it moreover indicated that the Hindu king was a trustworthy ally to local rulers elsewhere along the route between India and China. Hinduism at the time was an internationally popular political ideology, something like liberalism is now and socialism was in the nineteen fifties and nineteen sixties: it contained the

discourse for a whole series of diplomatic and commercial exchanges between states and rulers of similar persuasion [xii].

Summarizing, Van Leur defined three criteria for the legitimisation of rulers (Van Leur 1934:127-133), namely:

- (a) recognition by an authoritative foreign religious centre,
- (b) historical recognition by the emperor of China. This last helped in questions of Javanese claims to forced warehousing in the Straits of Malacca,
- (c) the building of prestigious religious monuments and the evident proper treatment of religions. These signs of care were the imposing forecourt of the Javanese states and the 'calling card' for visitors (Van Leur 1934:118, 128-133).

The crucial logistical element in the early phases of the Hinduization and Indianization of Java's royal courts must, wrote Van Leur, have been the Indian trader's wards in Java's coastal cities. Although these traders were no culture-bearers, they did provide the infrastructure for the movement of Brahmans to the Javanese courts, namely ships that maintained the ties with foreign religious centres (Van Leur 1934:122). This they could only do if these centers did not consider them 'impure,' and saw them as adhering to the same religious faith.

In short, the development of Javanese court culture in the eighth and ninth centuries materially could not have occurred without the Asiatic overseas trade between India and China in which, according to Van Leur, the coastal cities of Java, India, Sumatra, and the Straits of Malacca must have played a strategic key role. Or, as he himself wrote:

"Authority and hierocracy, both of them based on the power to exploit the Indonesian agrarian civilization and/or international trade, dominated early Indonesian history politically and culturally. The Javanese states were examples of the first type; Çriwijaya of the second (Van Leur 1955:109).

Although in this passage Van Leur seems to treat Java and Sumatra as different types of political capitalism, the connecting "and/or" logically allows both farmer-culture and international trade to be included, as can be seen in the following paragraph.

The race for EER

The reasoning that Van Leur developed for the early Javanese rulers who desired so much to be ordained as kings by foreign Brahman is a consistent one, which

can be further developed these many years later. Thus, the Javanese example that was discussed above is also valid for the Buddhist kingship pursued by the rulers of the Sumatran coastal state of Srivijaya. After all, legitimisation brought international confidence that these civilized kingdoms and not dens of robbers. They were worth entering into diplomatic relations with and to trade with. One could add to this that both the Javanese states and the Sumatran ones protected a wide range of religions, namely Saivism, Vaisnavism, Brahmaism and Buddhism, evidently ignoring no opportunity to win broad, influential support. As far as the Javanese states are concerned, this must have had to do with a consideration of their strong vs. their weak points. Their weak side was their lack of mineral wealth. Their strong side included their rice-lands, their protection of the religions, and their strategic position on the routes to the Spice Islands of Eastern Indonesia. However these kinds of considerations worked out in the course of history, the fact is, according to Van Leur, that during the second half of the first millennium C.E. a power play developed. Local rulers in Western Indonesia started a race for Emporium, Empire and Religious leadership (EER), which would come to dominate the founding of coastal states and cities in the archipelago, also during the centuries to come. For simplicity's sake I would like to call the three factors behind this run the EER-complex. In Java this complex was connected with the building of monuments: beyond Java this was not the case, or occurred later or to a much lesser degree.

Van Leur discussed the role of the Javanese coastal cities and their coastal trade only in connection with the Hinduization and Indianization of the Javanese states. Van Leur's well known contemporary, Krom, especially discussed their role in the first wave of the Islamisation of Java in the sixteenth century, and the role that the Majapahit's Islamised vassal-states on Java's north coast played in the slow decline and fall of that state between 1470 and 1520.

Provisional conclusion

Reviewing the previous paragraphs, the feeling remains that, however enlightening Van Leur's reconstruction of Javanese royal strategy and the role played by tribute, labour service, 'ethnic' monument construction, foreign relations and coastal cities may be, one thing remains unclear, namely the question of how all of this got started, that is to say before the necessity of foreign religious legitimisation came to be felt and the candidates for central kingship were still warming up. Did the impulse come from within? Or from the cities? Or completely from outside, as Krom and Rouffaer thought? This is an important

question because the legitimisation of Hindu-Javanese kingship had its source overseas, which meant that the Javanese candidates for Hindu kingship must have had essential and lucrative foreign contacts. On the other hand they also exploited the indigenous rice agriculture. This leads us to wonder whether the question of “what came first in Java, agriculture or trade?” is a sensible one, or whether we should think of an inclusive strategy that also took account of foreign lands.

Notes

[i] A port of call is a place where travellers can find temporary lodgings.

[ii] A foreigner was someone who belonged to another community than the own. This could be a village 10 km removed as well as someone from beyond the archipelago..

[iii] “In conformity with liberal thinking, which is interested in separating politics and economics, Weber distinguishes between two basic types of capitalism: ‘political capitalism’ and ‘modern industrial’ or ‘bourgeois capitalism’. Capitalism, of course, can only emerge when at least the beginnings of a money-economy exist. In *political capitalism*, opportunities for profit are dependent upon the preparation for and the exploitation of warfare, conquest and the prerogative power of political administration. Within this type are imperialist, colonial, adventure or booty, and fiscal [... capitalism, C.H].” (Weber 1968-2:66).

[iv] Maps 1 and 2 present a clear picture of this historical distribution of settlements and of the relationship between sea-trade and settlement pattern in the colonial and post-war periods.

[v] A nice analysis of Java’s pre-colonial road network can be found in Indonesian Sociological Studies, Part two, pp. 102 - 120.

[vi] Bulk-freight is an large unaccompanied load of goods sent by a seller to a buyer.

[vii] Among others, Borobudur and Prambanan.

[viii] It is known of regional dualism, which is a specific form of regional inequality, that it tends to become stronger rather than leading the regions to become closer. However, as will be seen, little can be discerned of this in pre-colonial Java and Sumatra. Between 800 and 1300 C.E. they competed for power in the Straits of Malacca.

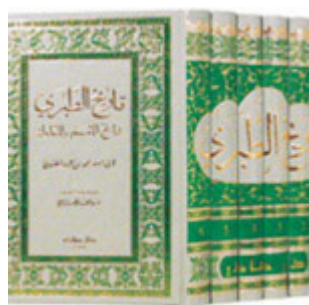
[ix] This is remarkable as the East Javanese chronicle Pararaton in the 13th century makes much of a Chinese punitive invasion in the East Javanese state of Singasari in 1292 C.E.

[x] From earlier royal proclamations from Kutai (400 C.E.) and Central Java (Canggal 720 C.E.) one could conclude that the inauguration as an acknowledged Hindu king took at least three generations after the publication of the first local royal inscription (compare Krom 1931:71-73).

[xi] The concept of dharma is used in an identical fashion in Buddhism (Zoetmulder 1982: 367ff).

[xii] Although Van Leur obviously was not familiar with the post-war discussion about ethnic identity and ethnic markers, it is impossible to resist the temptation to express the suspicion that these monuments were meant as ethnic signs of 'national pride' vis-à-vis the outside world. In this sense they resemble the national monuments that president Sukarno had built in the Indonesian capital Jakarta in the nineteen fifties and sixties (chapter 3). They are also reminiscent of both the monumental houses of the Toraja and Batak ancestral monuments in the way they reflect the pride of the local community vis-à-vis the nation, and to which local leaders and wealthy migrants contribute.

On Islamic Historiography



By Islamic Historiography I mean written material concerning the events of the early period of Islam written by Muslim historians. This material is essential for any major research on Islam but has been continuously discredited by predominantly Western scholars. Therefore, before the study of these texts, an outline of their characteristics and a short discussion about the criticisms of these texts and their authors is indispensable.

Among the problems proclaimed in the criticisms are: the gap between the historical events and their recording, the fact that early historical compilations have not survived and have been paraphrased or summarized in later digests, the problem of the oral origin of many reports, the task of the historian, the incompatibility of non-Islamic sources, forged reports, political influences on historiography, the purpose of historiography and the originality of the historian.

In this paper the criticisms concerning the Islamic historiography and the

answers of the some historians to these criticisms will be surveyed.

The origin, the terminology and the form of the early Islamic historiography

According to Robinson, Arabs produced very little written material before Islam and relied instead on orality.[1]

It seems logical to conclude that the enormous volume of written work which was produced after Islam[2] must be ascribed primarily to the emphasis in various Qur'ānic verses on writing and the stories in this book about the previous peoples and prophets, which encouraged the Muslims to narrate, and reflect and investigate about the origins of those narrations, examples are, the next two verses:

...By the pen and what they write with it.... (Qur'ān 68:1)

*Relate these allegorical stories (to the people) perhaps they might think. (Qur'ān 7:176).*³

The second important impetus seems to have been the traditions of the Prophet of Islam which were to be preserved for the future generations. Islamic Tradition informs us that the Prophet of Islam discouraged his followers, in the initial stages of his mission, to write about him in order to prevent any confusion between his sayings and the Qur'ān.[4]

However the reports about the alteration of this attitude in a later stadium encouraged the biographers to write *Sīra* or biographical collections at the end of the first and beginning of the second Islamic century. The campaigns of the Prophet (*Mağāzī*) and the conquests (*Futūḥ*) [5] were the other historical works, produced in the period between the first works and the later great compilations.

The collections with the modern name for history, *Ta'riḥ*, appeared in the 2nd/9th century.[6]

Their source material consisted of *Aḥbār* which according to Rosenthal means both information and the events and corresponds to history in the sense of story, anecdote (*ḥekāyat*). Later, when the term was used together with *āthār*, it became synonymous to *hadīth*.^[7]

The other sources were the above mentioned *Sīra*, *Mağāzī* and *Futūḥ* works, the books of *aḥbāriyyūn* and genealogical works and oral accounts.^[8]

Thus, the first historical works, as the ordered record of the events of the past, began as a mixture of the above mentioned genres. This is the same multi-faceted character that Robinson says history used to have:

"...coming via Latin from the Greek historia, generally meant 'inquiry'; it earlier

described a variety of genres, including geography, folklore and ethnography, in addition to what we would commonly understand to be history.”[9]

And the way Rosenthal defines history:

History in the narrow sense.., should be defined as the literary description of any sustained human activity either of groups or individuals which is reflected in, or has influence upon the development of a given group or individual....for the modern mind, the general concept of history may, in theory, be extended to include all animate or inanimate matters. [10]

While he also mentions that:

Muslim historiography includes those works which Muslims, at a given moment of their literary history, considered historical works and which, at the same time, contain a reasonable amount of material which can be classified as historical according to our definition of history, as given above. [11]

Thus, history is made up of many elements which together have certain meaning for certain people. This is by no means the denial of general definitions of or theories about history, rather, the emphasis is on the meaning of a certain concept, object or idea in a specific context.

Not only the combination of *aḥbār* and *āthār* became synonymous to *ḥadīth*, but also the form of historical narratives took the form of *ḥadīth*. According to *Dūrī* two perspectives existed among the early compilers: the *ḥadīth* perspective and the tribal perspective. Very soon, the first perspective prevailed which explains why the Islamic historiography has maintained the form of *ḥadīth*, thus, beginning with an *isnād* or chain of transmitters, continued by the report (*ḥabar*).[12]

The problems concerning the Islamic historiography

Islamic history books and Muslim historians have been the subject of both praise and critique. There are problems concerning the historical texts and those concerning the narrators both historians and their transmitters.

One problem ascribed to Islamic historiography is the fact that there is a gap between the time of the events of the early period of Islam and their historiography. Is this gap so long that it can in fact disqualify the whole historiography? It seems that this gap was not considered to be very important when the Western scholars first came into contact with the Islamic sources of the second and third century of Islamic era.[13] Perhaps this was caused by their earlier experiences with other historiographies. The later recording of the events

in Islam had its precedents in other historiographies. For example, according to Robinson: *The gap between event and record in early Islam is relatively narrow compared with our source material for the ancient Israelites, which usually dates from several centuries after the facts they purport to relate.*[14]

Thus the problem of late compilation does not seem to be restricted to Islamic historiography.

Besides, some gaps might never be filled. The possibility that the gap is filled partly if a certain manuscript is found always exists, but I presume that the gaps in historical narrations might never be completely filled and even if they did, they would not answer all the inquiries of the modern researchers. There are then two options left: either to abandon using the available sources or to carry out research with the material which is in our possession. I reckon no researcher in the history of Islam, even those who consider all the material in the Islamic historiography as corrupt, who have chosen the first option.

The other problem concerning the Islamic historical texts is that the above mentioned early works of *mağāzī* and *futūḥ*, have either not survived or survived in the form of citations or paraphrases in later digests and compilations.[15]

But Humphreys states:

The classical compilations of the 3rd/9th and 4th/10th century are not our only resources for early Islamic history, to be sure. They are supplemented in important ways by certain universal chronicles, biographical dictionaries, and encyclopaedias written in later centuries, for these often preserve otherwise unknown citations from early writings.[16]

Thus, fortunately, many early historical collections can be recovered from the later compilations and there have even been attempts, mainly from the Western scholars to recover the original texts from the available sources through source criticism. In source criticism divergent accounts which have appeared in different times or those which have different chain of transmitters are compared. The problem which arises is that they lead to different results.

But there have never been attempts, even with the modern facilities, to compare 'all' the available material on a specific subject. The most historical comparisons, as Leites informs us, are restricted to two or a few Sunnī works.[17] Even an extent project might not eradicate all the differences and contradictions which

are natural when different sources are involved.

Furthermore, the transmission might have a twofold of problems: the problem of prejudice and the problem of authenticity. Concerning the first part, prejudices can never be ruled out, but they are not always difficult to detect, like the example of Šī'ite inclinations of Naṣr ibn Muzāḥim. Concerning the authenticity, unless harder evidence rejects the report, the narration must be accepted as authentic and it can be used for scientific historical research. But also the harder evidence is subject to scrutiny: What is hard evidence? Or harder evidence? Who is going to determine this?

As to the problem of orality in Arabic culture which seems to have continued after Islam and even when the historians were gathering their material, it is claimed that the oral origin of narration discredits historiography. For example Humphreys thinks that *these sources can only be used when we learn more about the oral tradition, the circumstances in which it was committed to writing and the degree of its alteration before they achieved their definitive form in the 3rd/9th century.*[18]

Such expectations from oral transmissions are difficult even impossible to satisfy. Does this mean that the sources can not be used then? Not as far as orality is concerned according to Robinson who argues that history need not be based exclusively or even mostly on written material: *No less an authority than Herodotus...managed to produce a very respectable history mainly on the basis of sightseeing and oral history.*[19]

With other words only reliable material which contradicts the historiography of Herodotus[20] can discredit his historiography. It is interesting to mention that most historians who discredit Islamic historiography, base their research on Greek and Syriac sources which according to Humphreys *are composed a century ...(later).. and their sources of information are obscure at best.*[21]

Robinson's idea complements this part:

If written history shares features with oral tradition, it is still much less pliable than oral tradition, which generally drops out of circulation as soon as it loses its relevance. Revision to history can certainly be made, and new versions can eclipse old ones, but history is only rarely obliterated. In part this is because stone, clay tablets, papyrus, animal skins, paper and other writing materials outlive human memories, but in equal part because it has its guardians-historians- in whose hands material is constantly recycled for later

generations.[22]

Thus, the oral nature of transmission does not automatically discredit a historiography unless the core of the report is lost or the historian uses unreliable or an extremely narrow range of transmitters. It seems that this problem was felt early by Muslim historians although perhaps not soon enough. Two reasons, fabricated traditions and ideological disputes, instigated the development of methods to scrutinize the transmitter. In the science of (*Jarḥ wa al- ta'dīl*) or ḥadīth transmitter criticism, transmitters were divided into categories and transmissions from the reliable sources gained predominance. Since this process came about only later[23] the major problem concerning the transmitters was the authenticity of the transmission, thus, whether a certain companion had really heard or said a tradition). It must be emphasized here that the early collections of (predominantly Sunnī) traditions were collected after they underwent two processes: first, the separation of unique, obscure or impossible details from the core text and second, the precise investigation of every name in the isnāds.[24] This separation without doubt removed many details which were not in accordance with the ideological trends of the time, but it is not possible to decide which of the different accounts of the famous reports, like that of Ġadīr ḥum, for example, is authentic. Some of the later historians, like *Ṭabarī*, were ḥadīth specialists themselves and it is evident from their works, that they have been selective in their source material. But this has not always been the case and historians also used material which was not used by ḥadīth specialists, for example the narrations of the storytellers or *quṣṣaṣ*. Hoyland explains

... while they (historians and ḥadīth specialists) might both use the same source material the historian would be more willing to manipulate the text of reports. He would combine, harmonize, expand, abridge, paraphrase or interpret them,...with a view to the particular position that he sought to advocate.[25]

Using the works of others could lead to another problem according to some critics: the lack of historical insight and originality. Thus, Noth observes the contradictions in one historian's presentation of events in other compilations, in precisely the same respects.[26] But Dūrī and Humphreys, who both have an eye on the specific characteristics of Islamic historiography, believe that in the early period of Islamic historiography, it was *not* the task of the historian to interpret his material. Dūrī writes that since history was regarded as a form of knowledge (*'ilm*) and not individual judgement (*ra'y*), the reputation of the historian

depended on presenting varying accounts or well-known impartial accounts, while dates and isnāds were fundamental element for assuring accuracy. [27] This matter is confirmed by Humphreys who states that the historians' task was decisively *not* to interpret or evaluate the past: *If a would-be historian spoke about these matters in his own words, he would inevitably be regarded as no serious scholar but as a mere propagandist for one or another faction.*[28]

Concerning originality, Hoyland's idea is that the compiler would bring variations in the borrowed material and shape them as he wished and thus, many derivative compilations are in fact more original than they might appear at first sight.[29] So the historians could be considered neither outright plagiarists nor totally original.[30] He thinks that even modern history cannot easily be distinguished from fiction:

It seems to me preferable to regard history and fiction as lying on the same continuum...with scholarly compilations situated at one end and legendary sagas at the other, all to some degree possessing factual reference and semblances of verification, but all to some degree possessing animated by the imagination. This is not to say that Muslim historians knowingly fabricated material, or used fabricated materials- on the contrary, most of the writers ... would have been convinced of the truth of what they wrote- but rather that history requires the mediation of fiction in its treatments of the past.[31]

The theological nature of Islamic historiography is another point of criticism. Not only most reports about the Prophet or the companions and events were considered to have been forged later but scholars like Wansborough believed that Muslims had tried to *create* a specific theology of history, or tended to put a halo around the founder of their religion. It has now become evident that the theory of later invention is untenable since new material has shown the early compilation of many works. But it is true that as Robinson mentions Muslim and Christian historians were more concerned about the history of ideas than about 'what happened'. [32] Without denying that some of the traditions concerning the Prophet of Islam might be biased, Harald Motski writes that this does not make *the sources on the whole useless for historical use.*[33] Robinson even thinks that these biases in the history *can have social and political functions and criticize a social order, a ruler or a state.*[34]

Despite the above mentioned problems which are attributed to Islamic historiography, my strongest motive in using Islamic historiography is the

conviction that no other source may or can replace a people's own historiography. It is always possible to take adventures like: history of Christianity from Buddhist point of view or from Jewish point of view or to wait for more archeological material to be discovered. But when it comes to reliable accounts on history I share this opinion with scholars like Humphreys who writes:

The true contemporary sources (papyri, archaeology, and Christian writings) are tantalizing indeed, but are either fragmentary or represent very specific or even eccentric perspective. An adequate and convincing reconstruction of Islam's first century from these materials alone is simply not possible. That leaves us with the Muslim Arabic literary sources.[35]

It is possible to gather external evidence and compare their information with internal historiography of any people, like the work of Patricia Crone and Michael Cook in Hagarism who tried to reconstruct history exclusively on the basis of non-Muslim sources.[36] Such an attempt shows nothing but how a people was perceived by others, often from remote distances, locally and culturally. Valuable as these sources can be Hoyland does not cease to mention that:

When Blaise Pascal (1623-62) wrote that since Muḥammad worked no miracles and was not foretold he could not be a true prophet, he was simply echoing the judgement of John of Damascus (wr.ca. 730) passed more than 900 years earlier. Similarly, the explanation of Muḥammad's revelation as the result of epileptic fits, found in numerous thirteenth-century and later texts, was already given by the Byzantine monk and chronicler Theophanes the Confessor (d.818).[37]

There is no doubt, however, that any historiography must be studied cautiously and many elements have to be taken into consideration. The influence of the politics on historians' works is one of these elements. There are reports that for example, the Umayyads kept many works, among which of al-Zuhrī (d.124/741), in their library and that he was coerced into writing down his works.[38] From the other side, being pro-'Alid would influence the reputation of the transmitter and consequently the historian. Zamān reports that Ṣīī ḥadīth transmissions were only accepted if they were transmitted through a proto-Sunnī scholar.[39] He also mentions that 'Abbāsīd caliphs even forged 'Abbāsīd isnāds to give their rule the necessary legitimacy, although they were not acknowledged as reliable transmitters and caution is necessary when one encounters a transmission attributed to a ruler.[40]

The important argument brought up by Fred M. Donner is that lack of orthodoxy

in the Islam from the very beginning and the extant Islamic territory made a unique reading of the 'tradition' and 'history' impossible. With other words political influences could not shape a certain position or point of view from India to Spain.[41]

Conclusions

This survey was meant to investigate whether Islamic historiography could form the basis of an historical research. Not only its characteristics but also some problems attributed to it were discussed and my conclusions are summarized as follows:

While in pre-Islamic `Arabia, oral transmission of historical events was prevalent, ordered writing of the Qur`ān and the biography of the Prophet opened the way for the production of more than 590 historical books in one millennium. The preliminary productions dating from the first Islamic century were heavily influenced by the ḥadīth specialists and acquired ḥadīth form, beginning with a chain of narrators followed by the report. In the period between the events and the compilation of the first history books oral transmission was predominant but some of the books of this period can be recovered from later compilations and digests. In later compilations, transmitters' criticism and ḥadīth criticism filtered many reports. The oral nature of the transmission does not make a historiography useless and the theological nature of the historiography is not unexpected from a religious historiography.

No other source material can or may replace a people's own account of the historical events although outsiders' account are useful to conceive how a people was perceived by another.

The repetition of historians of contradictory reports of others has led to the conclusion by some scholars that there no originality in Islamic historiography. It has to be borne in mind that each historiography has its own characteristics. An early Muslim historian had to separate his own idea from his transmission to avoid being regarded as a propagandist.

The influence of politics and ideological inclinations and the possibility of forgery necessitate prudential treatment of the historical material, although they do not discredit whole works.

Hoyland's idea about extremist statements about Islamic historiography, of Gustav Von Grunebaum in 1946 that *the overall objectivity of Arabic*

historiography is remarkable, and of Patricia Crone *The works of first compilers...are...mere piles of disparate traditions reflecting no one personality, school, time or place*, is that they are out of date. He believes that instead of the obsession with the question of authenticity scholars must pay attention to the manner of transmission of an account as well as to its facticity.[42]

Muslim historians considered their work as a serious science and although they used much more material than the ḥadīth transmitters they were careful to use reliable material. This is not to say that fiction or storytellers played no role in their works, rather, that the spirit of the ḥadīth science had made them cautious about their sources and handling of material.

So generally speaking I have to agree with Zamān's idea that the problems with Islamic historiography are problems with almost all ancient historiographies but they do not inhibit historical understanding.[43]

NOTES

[1] Robinson, 2003,8. Exceptions to this are according to Dūrī the inscriptions and carvings in southern Arabia datable from the eighth century B.C. to seventh century A.D.,Dūrī,1983, 14-15.

[2] About 590 historical works in the first millennium, according to Faruqi, 1979, 1.

[3] The Qur'ān translations are from Ṭ. Şaffārzadeh, 2005.

[4] Kamālī, 2003, 77, who refers to M.Şaltūt where he quotes a ḥadīth from the Prophet from Şaḥīḥ Muslim's ḥadīth collection narrated from Abī Sa'īd al-Hudrī: *lā taktubū 'annī...*

[5] Van Dalen and others, *TA'RĪKH*, Encyclopaedia of Islam, 2nd ed., Brill Online, accessed 28/10/2009, 22-23.

[6] According to Rosenthal *Ta'rīh*, ..is a noun which exists in Arabic and South Arabian..meaning 'date' and 'era'. It is mentioned first in Arabic literature together with the stories of the introduction of the Muslim era and is used in a papyrus dated in the year 22 of hijra. ..It then acquired the meaning of 'historical work', and afterwards that of ' history', exactly as history or *Geschichte* may mean...In the meaning of ' historical works', it is used from the second century of hijra onward, in Rosenthal, 1968, 11-14

[7] Rosenthal, 1968, 11.

[8] Dūrī, 1983, 61.

[9] Robinson, 2003, 6.

[10] Rosenthal, 1968, 10-11

- [11] Ibid, 17
- [12] Dūrī, 1983, 22-23
- [13] As mentioned by H. Motzki, 2000,.XI.
- [14] Robinson, 2003, 50.
- [15] Sīra works are the exceptions. According to Dūrī with the works of ‘Urwa ibn al-Zubayr (d.94/712) and Muslim ibn Šihāb al.Zuhrī (d.124/741), in A.A. Dūrī, 1983, p.30. According to Jafri, with the works of Abān (d. ca. 100/718-19), the son of the Caliph ‘Utmān; ‘Urwa b. Az-Zubayr b. Al-‘Awām (d. 94/712-13); Wahb b. Munabbih (d. 94/728-9) which have been studied by Nabia Abbot and others in S.H.M. Jafri, 1989, p.30, Jafri gives this reference for Abbot’s studies: STUDIES IN ARABIC LITERARY PAPYRI (Chicago, 1957-72), I, 5-31;II, 5-64
- [16] Humphreys, 1991, 69-71. Faruqi mentions one example, the pact between ‘Amr ibn al-‘Āṣ and Mu‘āwiya to mobilize public opinion to demand the vengeance for the murder of ‘Utmān from ‘Alī and its text is quoted by Ibn Sa’d (d.230/844-5) showing the name of the scribe as Wardān and the year 38 A.H, in Faruqi, 1979, 188, his reference being Ibn Sa’d, ṬABAQĀT, vol.IV, 254.
- [17] Leites, in Motzki, 2000, 51.
- [18] Humphreys, 1991, 69-70.
- [19] Robinson, 2003, 13.
- [20] Like Sancisi-Weerdenburh and Kuhrt who have their serious objections against the image of Xerxes, the king of Persia in the historiography of Herodotus, reference in the bibliography.
- [21] Humphreys, 2006, 2.
- [22] Robinson, 2003, 13.
- [23] The first work being KITĀB AL-ṬABAQĀT AL-KABĪR of Muḥammad ibn Sa’d (d.230/845) according to Lucas, 2004, 7.
- [24] Lucas, 2004, 73
- [25] Hoyland, 2006, 21-22.
- [26] Noth, 1994,7.
- [27] Dūrī, 1983, 73-75.
- [28] Humphreys, 1991, p.74.
- [29] Hoyland, in J. Bray, 2006, 32.
- [30] Ibid. 40.
- [31] Ibid., pp.17-18
- [32] Robinon, 2003, 12.
- [33] Motzki, 2000, 170-171
- [34] Robinson, 2003, 13.

[35] Humphreys, 1991, 69.

[36] Motzki, 2000, XIII, he refers to P.Crone and M.Cook, 1977.

[37] Hoyland, in H.Motzki, 2000, 276.

[38] Although Durī thinks that these might be echoes of disputations which arose after al-Zuhrī's time, Dūrī,1983.

[39] Zaman, 1997,77 and note 30.

[40] Ibid. pp., 126-127.

[41] Donner, 1998, p.27.

[42] Hoyland, in Bray, 2006, 19.

[43] Zaman, 1997, 25

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