Anachronism, Agency, and the Contextualisation of Adat: Van Vollenhoven’s Analyses in Light of Struggles Over Resources

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This article discusses the conceptual and analytical contributions of the Dutch scholar Cornelis van Vollenhoven to the study of Indonesian adat law. He argued from a politically inspired concern about gross colonial exploitation in the Dutch East Indies that this was based on flawed understandings of local legal orders. This stimulated him to design a conceptual framework to capture the characteristics of these legal orders, called adat law. His perceptiveness to the distortions caused by using Western legal concepts to describe customary laws was unique for the time, and so was his attention to the various contexts other than in disputes in which adat law was used. This renders his work of importance not only for lawyers but also for social scientists. The article discusses the criticism against his academic work and suggests that despite some major weaknesses, some criticisms are anachronistic as they concerned earlier or later scholars rather than the work of van Vollenhoven himself. The article shows how debates about indigenous rights and the decentralisation policies after the fall of the Soeharto regime have stimulated a renewed interest in adat and adat law. It is argued that van Vollenhoven’s conceptual framework is still of use, but only if it is expanded and set into a broader analysis of migration, exploitation, and power relations.

Keywords: Colonial Constructions of Customary law; Adat; van Vollenhoven; Legal Pluralism; Regimes of Land Rights; Struggles Over Resources

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In 1974 Leiden University celebrated the 100th birthday of Cornelis Van Vollenhoven, the founder of what came to be known as the Adat Law School. This article discusses why van Vollenhoven was—and still is—an important figure for the understanding of the complexities of Indonesian local communities and property regimes. He developed his analytical framework against dominant evolutionist thinking and theories of the nation state of the time. At the heart of his work lies the conviction that using legal terminology from one legal system to describe a very different legal system distorts the internal logic and meaning of this system (van Vollenhoven 1909). Therefore a different strategy was necessary not only to serve as a proper comparison, but also lest local communities were dispossessed of their land. The discussion about appropriate concepts then serves to show that his work foreshadowed debates among social scientists about the invention of history and the creation of customary law which started in the 1970s in the African context, but have been held for Indonesia as well. It will be argued that the criticism towards van Vollenhoven is largely misconceived, anachronistic and biased towards the interpretations used in the contexts of courts and state administration. Besides, it underrated the agency of local people and their intellectual and political leaders while overrating the actual significance of colonial legal constructions for the local populations. The article then turns to the way van Vollenhoven’s conceptual framework is used today in public discourse, legislation and struggles for autonomy and control over resources. The question will be asked: to what extent his conceptual framework is still of use today.

Double Motivation: Science and Social Justice

Van Vollenhoven’s work on customary law in the Dutch East Indies stemmed from the conviction that cultures were different but fundamentally equal (Lev 1985, 64). His strong sense of social justice made him concerned about the ways the colonial government dealt with it. In his eyes the government ignored its previous promises, laid down in treaties and laws, to recognise authority structures and land titles (see Lev 1985, 63ff for adat law policies). By doing so, the government acted illegally, as a result of which local populations were deprived of important sources of existence. To counter these policies, a fuller understanding of the local laws was needed. To this end, he began to collect reports, books, court cases and official documents of various sorts, written by administrators, judges, lawyers, missionaries, but also by some Indonesian authors, though they were a small minority. These were published in the Adatrechtbundels (1910–1955) (collections of adat laws), publications of the Commission on Adat law (Adatrechtcommissie), of which he was the secretary until he passed away (Fasseur 2007, 50). He became convinced that the only way to protect the local population from expropriation and to guarantee them a decent existence was to understand the local laws in their own terms. He set out to study the diverse body of literature, in order to discern patterns of commonality and difference among the various legal orders within the archipelago. This convinced him that for the study of individual sets of rules and regulations the vernacular terminology might be
the most appropriate, but that for comparison a set of generalised concepts was necessary. His considerations about the appropriate terminology for description and comparison, and his close attention to the different contexts in which law was used, resonate with similar later debates in the social sciences.

**Analytical Concepts**

At his time there were more scholars trying to understand indigenous legal orders outside Europe and North America. Most of them worked from the perspective of social evolution. They assumed that one could learn the origins of modern law from indigenous laws that were considered precursors of law. German judge, Albert Hermann Post, and law professor, Joseph Kohler, representatives of the *ethnologische Jurisprudenz* (ethnological jurisprudence), were influential scholars that included materials from the Indonesian archipelago in their work (Post 1880; Kohler 1897). In line with their contemporary anthropologists such as L.H. Morgan and J.G. Frazer, they sent out questionnaires based on German legal classifications to missionaries and colonial civil servants in many different colonies around the world (Turner 2004, 130–133). Van Vollenhoven was familiar with the work of these authors and was highly critical of it (van Vollenhoven 1907 in J.F. Holleman 1981, 29–34; J.F. Holleman 1981, 42). He did not share their evolutionary perspective and saw it as the main reason for the confusing answers and why the local classifications did not match European legal categories (van Vollenhoven 1909, 59; Nader 1965, 11; Vansina 1965, 17; Gluckman 1969, 358; von Benda-Beckmann and von Benda-Beckmann 2011, 175).

Description of legal orders in Western legal terms caused serious distortion. Van Vollenhoven followed a different research strategy. On the basis of a careful study of the available literature he adopted some core concepts that had been in use before him, such as adat and *adatrecht* (adat law), the legal aspects within adat that are sanctioned (hence law), but are uncodified (hence adat) (van Vollenhoven 1925, 14; F.D. Holleman 1938, 431). He also designed some new ones such as *adatrechtsgemeenschap* (adat jural community); *beschikkingsrecht* (right of avail), the overarching right of a community; *inlands bezitrecht* (native right of possession), resembling European ownership, but subject to the right of avail of the community (van Vollenhoven 1928, 116; van Vollenhoven in J.F. Holleman 1981; van Vollenhoven 1926, 30). He argued that such concepts highlighted their characteristic properties and were therefore more suitable for capturing the specificities of local legal orders than were the Dutch technical legal terms (J.F. Holleman 1981, xxiii, li: 43, 52, 222; see von Benda-Beckmann and von Benda-Beckmann 2011, 175).

The term adat had first been used for the local, indigenous laws in the Dutch East Indies about a century earlier, by Muntinghe, Secretary-General under Governor-General Daendels, advisor to Sir Stamford Raffles, and later chairman of the Hooggerichtshof of the Dutch East Indies. Raffles and William Marsden both mentioned the term in their work (Marsden 1811, 212). Throughout the nineteenth century the term was repeatedly used (van Vollenhoven 1928, 72, 77, 86, 92). Of Arabic origin, the term
was used in various regions, often in conjunction with local terms such as *bicara* (to talk), *biasa* (usual, custom), *limbago* (institution), and other vernacular words. Taufik Abdullah mentions that in West Sumatra the term was used in the aftermath of the Padri War that raged in the early-nineteenth century between fundamentalist and moderate Islamic groups, to distinguish the principles of Minangkabau matrilineal organisation from Islamic law. Christiaan Snouck Hurgronje had used adat as a generic term, and also coined the term *adatrecht* (adat law): that part of adat that was sanctioned (Snouck Hurgronje 1911 [1893], 22–25; 1893, I: 16, 357, 386; 1893, II: 304; van Vollenhoven 1928, 23, 109, 129).

Van Vollenhoven adopted both terms adat and adat law, but did not follow Snouck Hurgronje’s strict separation between adat and religion. He shared some of Snouck Hurgronje’s fears when he warned that destruction of adat law would strengthen Islam (Snouck Hurgronje 1911[1893], 29–31; van Vollenhoven in J.F. Holleman 122; Lev 1985, 66). However, he insisted that it was not always possible to determine whether a rule was sanctioned at all, or what kind of behaviour could be interpreted as sanctioning. Nor did he always deem it possible to decide unequivocally whether a sanction was legal or religious. These distinctions were gradual, difficult to observe, and in many cases he noted that a distinction between religion and legal aspects of adat was not made at all. More often than not all sanctions were to some extent religious. He also emphasised that adat was not necessarily comprised of a consistent set of rules and procedures that inevitably guided decisions. Instead, much was left to the wisdom of local authorities, who worked on the basis of principles and who always contextualised the issues on which they were to decide.

Van Vollenhoven, with Snouck Hurgronje, also insisted that adat was highly pliable and far from static. Like any other living law, it was subject to change (van Vollenhoven 1912). He pointed out that adat law entailed mechanisms for change, though it is fair to say that he did not offer many concrete examples of such changes and explained that there is ‘only slight evidence of any theoretical interest in change’ (Lev 1984, 151). Changes occurred in response to economic and social change. Assuming that the colonial government was so powerful that it fully controlled the pace and direction of change, and disregarding the agency of local populations, seriously overrated the degree of control of which the colonial government was capable. Local actors from within the communities also generated change, by explicitly enacting new rules, either incrementally or implicitly. Not all communities had clear rules about who was authorised to change adat, but this made change no less legitimate. According to van Vollenhoven, for assessing the agency of actors it was crucial to consider the different contexts in which adat was used. In some contexts, such as courts, the colonial government dominated and developed an interpretation of adat that was applied by the state administration. But outside its confines, adat was reproduced by the local population and their authorities according to different mechanisms, for which van Vollenhoven proposed two additional analytic concepts. One was ‘preventive law care’ (*preventieve rechtszorg*), which referred to the institutional mechanisms by which disputes are prevented from arising, for example by requiring the attendance
of owners of adjacent plots of land in a case of land transaction. The second concept was that of ‘attested observance’ (gesteunde naleving), denoting the prescribed attendance of purposeful witnesses, that is, witnesses that were explicitly present at important transactions. The attendance of such purposeful witnesses served two aims. One was to make sure that the transaction was legitimate and adat requirements had been followed. This was especially the task of adat authorities, such as heads of a kin group or higher functionaries. The presence of authorities and the owners of adjacent plots of land could, in case disagreement about the land transaction arose at a later point in time, testify that the transaction had legitimately taken place (van Vollenhoven 1928, 140; van Vollenhoven in J.F. Holleman 1981, 222; Logemann 1924).

Van Vollenhoven insisted that adat law was not only used in courts, but in many different contexts. The result was that often different sets of adat interpretations coexisted, not parallel and in isolation, but in mutual relationships: what he called ‘lawyers’ adat’, the government’s interpretation, and ‘people’s adat’ with its local understandings (van Vollenhoven 1909; van Vollenhoven in J.F. Holleman 1981, 2, 26, 30; F.D. Holleman 1923, 1938, 440). Court decisions were not always followed. In fact, they were often ignored or even reversed in everyday life (van Vollenhoven 1928, 97, 131, 160). The co-existence of different interpretations continued after Indonesia declared independence in 1945 as Franz von Benda-Beckmann and Keebet von Benda-Beckmann found for Minangkabau adat in West Sumatra in regard to contracts and inheritance practices in the 1970s (K. von Benda-Beckmann 1984; F. von Benda-Beckmann 1979, 1984; von Benda-Beckmann and von Benda-Beckmann 2009, 180, 2011, 176).

According to van Vollenhoven, adat and adat law enabled the study, understanding and comparison of the actual content and working of local normative orders in various contexts. As generic terms, they were perhaps not perfect, but they were able to avoid jamming adat and adat law into European categories that so many civil servants and lawyers were prone to. They highlighted that adat was not merely custom or morality, but entailed law—adat law (J.F. Holleman 1981, xlix). This was important in light of Dutch legal doctrine that stipulated that custom could be recognised or ignored at the government’s whim, while law could not simply be ignored and put aside (J.F. Holleman 1981, 26). To capture basic characteristics of the social and economic organisation of indigenous groups, he proposed two additional terms: adatrechtsgemeenschappen (adat jural communities) and beschikkingsrecht (the right of avail); terms that currently play a crucial role in the controversial claims for recognition of adat land titles. Today the term ulayat, derived from the adat concept common in West Sumatra, is the official Indonesian generic term for what van Vollenhoven called the right of avail.

**Adat Law Communities**

Van Vollenhoven had noticed that governing structures were often layered, including households and genealogical groups of various sizes, only the smallest of which did not
operate autonomously. But throughout the archipelago there existed relative autonomous small communities and smaller or larger principalities that shared three core features: community services, communal budgets and dispute management. He called them ‘indigenous communities’ (inheemsche rechtsgemeenschappen) or ‘autonomous indigenous jural communities’ (zelfstandige inlandsche rechtsgemeenschappen). Later these would be known as ‘adat law communities’ (adatrechtsgemeenschappen) (van Vollenhoven 1909, 3). Such communities were not necessarily territorially organised, though this was often the case. He distinguishes broadly four types of organisation: genealogical groupings, territorial and genealogical groupings, territorial groupings without genealogical communities, and voluntary organisations, but warns that they cannot always be clearly distinguished, that there is much local variation, and that genealogical communities slowly tend to develop into territorial organisations (J.F. Holleman 1981, 45–53). On this basis van Vollenhoven criticised the colonial government sharply for being inconsistent: recognising some but not all adat law communities; and for artificially creating clusters of adat law communities. This created much confusion about authority, dispute management and finances, which seriously undermined effective local governance (van Vollenhoven 1926 [1909], 5).

**Ulayat—Right of Avail**

Two further new generic concepts referred to property relations; inlands bezitrecht (indigenous right of possession), which was coined to underscore that most adat systems did not distinguish possession from ownership nor absolute rights from relative rights characteristic of Western legal systems. The concept showed some similarities with ownership, but remained subject to the right of avail of the community. Far more controversial and politically sensitive was the right of avail, communal property over which an adat community held social and political control, because these lands would be subjected to large-scale expropriation by the government (van Vollenhoven 1926 [1909], 30). Van Vollenhoven noted that descriptions of such rights had been made for Tapanuli (Sumatra) and that Jean Crétien Baud’s and Albertus Jacobus Dumaer van Twist’s surmise of such a right on Java had been confirmed in a Report of April 1867 with the results of research on uncultivated land, commissioned by the government, which had unequivocally demonstrated that such community rights were common throughout Java (van Vollenhoven 1928, 89). Analysing and comparing these rights, van Vollenhoven concluded that none of the adat systems made the private/public distinction in European law that had been fundamental since the nineteenth century in political and legal theories about the nation state (van Vollenhoven 1909 in J.F. Holleman 1981, 184; see also von Benda-Beckmann 2000). It legitimated sovereignty claims and claims to the regulatory authority of the state, in Europe and the US, as well as in colonial empires. According to Dutch legal reasoning, the colonial government had superseded local governments as the sovereign power upon incorporation into the colonial state. The Domain Declarations enacted in the 1870s stipulated that all public rights were assumed by the colonial administration, including rights to
land on which no ‘private’ or private-lie rights rested. This land could be either governed by the government, for instance as forest land, or given out in private ownership, often for the establishment of plantations (Logemann and ter Haar 1927; van Vollenhoven 1928, 89–90; von Benda-Beckmann and von Benda-Beckmann 2011, 178–179; Burns 1989, 2004). Existing ‘private’ rights to land of local populations were recognised to the extent that they resembled ownership rights. The village commons, which constituted the main part of the community’s right of avail and that served as grazing land and for collecting forest products, and as a reserve for later use, fell outside this category. Access was relatively free for villagers, and outsiders could get temporary rights. Many colonial civil servants regarded these common lands as mere wastelands. Van Vollenhoven criticised this usurpation as violating treaties made with local populations and their rulers, and as failing to understand that local adat systems were not based on such public/private distinctions. In his view, many misinterpretations and misunderstandings were a direct result of civil servants using inappropriate European legal terms to capture adat law (van Vollenhoven 1919, 72, 103; 1928, 96). The concept of ‘right of avail’ should serve to demonstrate that adat law communities had authority over common land that was not cultivated, and they held residual rights over cultivated land that was the property of clans, tribes, or individuals. The term highlighted that parts of the total bundle of rights and obligations that in Dutch legal terms might be considered a public right, in local understanding were simply an integral part of a bundle of rights, by which the community governed and could determine how the communal property was to be used. Adopting the term ‘right of avail’ enabled a closer inspection of what such communities’ rights might entail in detail in each individual adat system. Some regions, as for example among the Minangkabau, had a specific term for this, ulayat, a word that has become a generic term in Indonesia (van Vollenhoven in J.F. Holleman 1981, 43–53). But van Vollenhoven was well aware that not every adat system used the term or had an equivalent term for it. What did exist everywhere were notions of rights and governance over the community as a whole and its landed property. The terms ‘indigenous right of possession’ and ‘rights of avail’ therefore, like adat and adat law, were in the first place generic terms, analytical terms for comparison, but they also served political aims. And these aims were to protect local populations against illegitimate expropriation, and not, as was later suggested, to set them up against each other.

Adat Law or Unified Law

During the colonial era, the issue of adat governance and especially ulayat rights remained highly controversial and a sharp debate developed between professors from Leiden and Utrecht University, from where van Vollenhoven and most of his students in Leiden advocated recognition of adat rights, while Nolst Trinité, Cassuto and Nederburgh in Utrecht regarded adat law as an inhibition to economic growth and favoured replacement by modern law (Burns 1989, 2004; Lev 1984, 1985; Fasseur 2007; von Benda-Beckmann and von Benda-Beckmann 2011, 179–181). In their
assessment the latter failed to consider the stifling constraints (such as a lack of access to regional markets and credit facilities) by which this very modern colonial law prevented local populations from operating under the same conditions as Europeans. These unequal legal conditions contributed far more to the lack of economic development than the assumed constraints entailed in adat. Besides the law professors in the Netherlands, liberal politicians and lawyers in the Dutch Indies such as Timon Henricus der Kinderen, Conrad Théodore (Coenraad) van Deventer and Dirk Fock were in favour of a modern, unified legal system (Fasseur 2007). But occasionally criticism against the imposition of Dutch colonial law came also from among civil servants. For example, when the Domain Declaration for West Sumatra was enacted in 1874, regional civil servants kept it secret out of fear of violent uproar (von Benda-Beckmann and von Benda-Beckmann 2011, 178, 180; 2013, 78). David Bourchier mentions that many nationalists saw adat as the primary inspiration for the development of Indonesia’s legal and political system, though most Islamic nationalists were sceptical of the strict separation between adat and Islam. This course was strengthened under Japanese occupation. After Independence, Hatta, Yamin, Soepomo, Djokosutono, Kartohadiprodjo, Hazairin, and even Soekarno in different ways and for different reasons, saw adat as the basis for an Indonesian legal system, but other nationalists, such as Alijahbana criticised the contradictory combination of nationalist modernist ideas and a reliance on adat law. For many this initial enthusiasm for adat soon evaporated (see Bourchier 2007, 115–121). Only a few Indonesian law professors, such as Djojodigoeono, Soepomo and Koesnoe kept an active interest in adat.

From the beginning, a major controversial issue in the debate about the role of adat in Indonesia’s legal system concerned the character of land rights and the question to what extent the Indonesian property regime ought to be based on adat. In 1960 Soekarno launched the Basic Agrarian Law 5/1960 that was to introduce a uniform property regime by which private ownership was prioritised. Agrarian law in general was to be based on adat, but subject to state legislation (Article 5). Adat law communities were recognised only to the extent that they could prove that it still lived according to their traditions and that adat institutions were still operative. Ulayat rights were heavily curtailed and made subject to the state’s regulation and ‘the state’s interest’ (Article 3) (Bedner 2016). This meant, in effect, that there was a closure of the concepts as compared with van Vollenhoven. Over time, numerous amendments and regulations concerning land reform, forestry, mining and agriculture, curtailed these rights further (for West Sumatra see von Benda-Beckmann and von Benda-Beckmann 2013). More importantly, under Soeharto ‘common interest’ was systematically used to serve legal, half-legal and illegal dispossession in favour of members of his inner circle. By the end of the twentieth century, ulayat rights in practice seemed virtually derelict, if not in theory. One of the big surprises was that adat law communities and ulayat rights jumped back to life in connection with indigenous rights claims beginning in the 1990s and with the new decentralisation policies of what was
called the era of Reformasi after the fall of the Soeharto regime. It set off a wave of land claims, but also a new discussion of van Vollenhoven’s terminology.

The Invention of Customary Law

When diverse groups in Indonesia began to claim their adat rights to land, scholars began to reassess the concepts that were used in these struggles. Two different but related questions were posed. One was whether and to what extent the terms adat, adat law, and the right of avail were mere inventions of the colonial government, for which van Vollenhoven was to be blamed (Burns 2007; Henley and Davidson 2007). We have seen that the term adat had been used for more than a century before van Vollenhoven wrote about it. Adat and adat law as generic terms were created by Snouck Hurgronje. Van Vollenhoven had a much more inclusive and nuanced way of using the term. The important point for him was that adat was not mere custom, but it contained features characteristic of law. In other words, there was law in adat, though not all adat was law. Moreover, he acknowledged that adat was not always clearly distinguishable from religious tenets. As generic terms they were inventions, but blaming van Vollenhoven seems to be an anachronism. As for terms like right of avail, indigenous right of possession, supported observance and preventive law care, these were indeed new terms intended to serve capturing commonalities across adat systems that would be misrepresented with European legal terms. In this sense these terms are inventions, generic terms of relatively low levels of abstraction for specific aspects of social life.

A second, related, question is whether the content of the concepts were pure inventions of the colonial government. This criticism harks back at an argument most forcefully made in the African context about customary law in the 1970s. Martin Chanock and others, referring to Eric Hobsbawm and Terence Ranger’s concept of ‘invention of tradition’, argued that customary law was a colonial invention that bore no continuity with a pre-colonial past (Hobsbawm and Ranger 1983; Chanock 1982, 1985; Roberts 1984; van den Bergh 1986; Ranger 1983, 1993). This customary law was too uncritically taken as an authentic rule of pre-colonial political and social organisation, while in fact it was the courts’ interpretation of social organisation that was fundamentally shaped by the colonial powers. Yet launching this criticism at van Vollenhoven is misconceived. This discussion turned around tradition and custom, which suggested long-term unchanged practices. Van Vollenhoven, by contrast, explained the complex processes in which adat was reproduced and changed outside the courts. Moreover, he explicitly warned that codification would take away the very mechanisms of change and reproduction that kept adat flexible and adjustable, and would eventually lead to fossilisation (Fasseur 2007, 58). One may speculate about reasons for the difference in assessment. One certainly had to do with translation: the English terms customary law and traditional authority suggest continuity, where, in van Vollenhoven’s conception, the term adat enabled seeing change as an inherent feature of adat itself. Bourchier (2007) suggests that in Indonesia
many adat scholars have indeed identified adat with a romantic view of a closed and harmonious society. For some, this was a reason to support adat; for others, especially nationalists, it was reason to replace adat with modern law. Another reason why customary law in the African context was regarded as a mere invention may be located in the fact that the power structures in which African neo-traditional authorities operated differed considerably from those found in Indonesian adat contexts. In Southern Africa, for example, the colonial government had established extremely powerful neo-traditional chiefs to rule over large and mixed populations that often were relocated from the places where they had lived before and where older kinds of regulation were no longer observed. The kind of rules made under these conditions and administered in colonial courts deserved the label ‘invention’. Though it certainly is true that in the Dutch East Indies neo-traditional chiefs did gain power from the colonial government, this usually did not amount to the power of African neo-traditional authorities. In many regions their territories and population size were much smaller and degrees of mobility were much lower. These conditions also may have facilitated the insight that adat was reproduced in contexts quite apart from that of a colonial court, a possibility that was not considered for the African context. With the distinction between ‘lawyers’ adat’ and ‘peoples’ adat’ discussed above, van Vollenhoven pointed at the importance of considering the different contexts in which adat law was reproduced.

This being said, there is no doubt that the colonial experience had a deep impact on adat orders. But it was not—and certainly not everywhere—an entirely colonial creation. In some regions the colonial administration had intervened more actively and forcefully than in others. And the colonial interpretations were more important in contexts such as courts than in, for example, inheritance practices, where other influences such as religion may have been more important. To claim that it was all a creation of the government overrates the agency of the administration and underrates the agency of local actors. Van Vollenhoven’s framework and careful comparative analyses made visible where, in which context, and by whom, changes were generated.

Weakness and Omissions

This is not to say that there were no weaknesses in van Vollenhoven’s academic work. His concept of legal areas was problematic as the borderlines between them were often quite fuzzy as, for example, between Minangkabau and Tapanuli. Besides, variations within one legal area might be extremely high as, for example, among the centre and peripheral regions of Minangkabau, or the diverse ways in which Balinese communities were situated in hierarchical political structures and trans-local Hindu relations (von Benda-Beckmann and von Benda-Beckmann 2013; Ramstedt 2008). It also is true that his focus on the internal features of adat communities, and his criticism of the expropriations, made him underrate the importance of the interregional economic and social relationships that many people had cultivated long before the arrival of the Dutch. This prevented him from developing insights in the ways local communities dealt with, or failed to deal with, powerful—and not so powerful—
actors from outside. Van Vollenhoven paid too little attention to migration and the position of immigrants, or to the question of how transactions between people of different ethnic backgrounds were regulated. Besides, the question of how local communities might be protected on the basis of adat from exploitation remained underdeveloped (Sonius 1981, xxxvi–vix; Lev 1984; Davidson and Henley 2007; Otto 2009, 181). This is all the more deplorable since it left open the pressing question regarding which of the two—adat or state law—might have offered better protection against exploitation. It is not at all certain that adat necessarily offered less protection against exploitation, as Isak Nederburgh (1934) had argued. Daniel Lev (1984, 150), for example, suggested that unified Western law probably would have made local communities even more vulnerable to exploitation.

A second major weakness concerned van Vollenhoven’s treatment of Islam, and his reluctance, and that of the adat law school more generally, to study in more detail how Islamic values and institutions had become entangled with other values and adat institutions (Lev 1985, 66).

Some of the weaknesses attributed to van Vollenhoven would be more applicable to some of his successors. For example, the criticism that he held an overly romantic view of a closed, harmonious, unchangeable adat would be more appropriate for later members of the adat law school, in particular Soepomo, who was attracted by German Nazi ideology (Bourchier 2007, 117). Moreover, while van Vollenhoven had used the study of adat to understand the character of local laws, as well as for social justice and protection against exploitation, under Barendt ter Haar the study of adat law took a more pronounced legal turn, and became a positive legal science (positieve rechtswetenschap) to facilitate the government to make decisions. He developed his decision theory (beslissingenleer) as a method to find the underlying legal principles in previous decisions (ter Haar 1937, 5; 1948). Descriptive accounts were now made subservient to pragmatic legal reasoning and adaptation to changing social and economic circumstances. More than the conceptual framework of van Vollenhoven, this legalistic phase of the Adat Law School deserved the criticism of scholars like John S. Furnivall and Raymond Kennedy for having been instrumental in the colonial divide et impera politics (Ellen 1976, 318; Sonius 1981, xxxvi).

Current Importance of the Conceptual Framework

The last issue that remains is to examine to what extent van Vollenhoven’s conceptual framework is still relevant. In the 1990s, groups in Indonesia took up the international debate on indigenous rights in defence of indigenous groups that were marginalised, forced to assimilate and deprived of their sources of existence. Claims for recognition were very influential in former settler colonies such as Canada, Australia, New Zealand, the USA and Latin America. These claims were carried out in national political arenas, courts, as well as in international arenas and within transnational networks of representatives of indigenous communities and lawyers and lobbyists well versed in international law. These efforts culminated in the ILO Convention 169 of
1989 on indigenous rights (Convention concerning Indigenous and Tribal Peoples in Independent Countries of 1989) and the UN Declaration of the Rights of Indigenous Peoples of 2007. These documents granted indigenous peoples the right to live according to their own laws and institutions and to develop according to their desires. In this transnational context much debate concerned the definition of an indigenous people, and the international documents adopted a combination of external characteristics and self-definition. Initially, these indigenous communities were defined as living according to a social order that had been unchanged since time immemorial. Although in the final version of the UN Declaration, the right to change laws and economies was included, the iconic image of indigenous peoples as living under age-old unchanged conditions remained strong. A second important issue was whether such groups constituted a sovereign people in the sense of international law, including the right of secession. Countries with large indigenous populations vehemently opposed such an interpretation, arguing that indigenous peoples have internal sovereignty only.

In Indonesia at that time, local communities living in far-away regions and mainly reliant on subsistence economies were facing powerful mining and logging companies or plantations that were destroying their existence. Under the Soeharto regime they were labelled as the most backward groups (suku terasing) that needed government support to achieve modernity, but had no legal recourse to defend their rights. The interests of the companies were always defined as representing the common good which overrode adat rights. The new transnational conceptual framework of indigenous peoples offered political support to put community rights on the national agenda. The term ‘indigenous people’ was translated as ‘adat law community’ (masyarakat hukum adat), the term used in Indonesia’s constitution based on van Vollenhoven’s concept, but with a somewhat different meaning. Groups like AMAN, the Indigenous People’s Alliance of the Archipelago, with strong transnational links, from the 1990s onwards have been especially active in the eastern parts of Indonesia where mining and logging companies were expelling local populations on a large scale. They emphasised communal territory and the existence of age-old, allegedly unchanged, local governance structures. Tania Li pointed at the danger of this strategy, because it forced these groups into political, social and ecological niches, thus limiting rather than enhancing their agency (Li 2001, 2007; McWilliam 2006; Moniaga 2007; Acciaioli 2007; von Benda-Beckmann and von Benda-Beckmann 2013, 416–418; Davidson and Henley 2007; Bedner and van Huis 2008; Wawrinec 2010; see also von Benda-Beckmann 1997). Shared cultural identity, a defining feature in the international legal framework, sat uneasily with situations of mixed populations (see, for example, Bakker 2009). In the meantime, recognition of adat law communities and protection of their rights to land and forest is regulated by various regulations at different levels (Wanma et al. 2015).

After the fall of the Soeharto regime in 1998, decentralisation policies opened up new debates about the role of adat in local government. This has given rise to a wave of legitimate land claims, but also to new inventions of tradition, as Gerry van Klinken (2007) showed for ‘the return of the sultans’. Terms like ‘adat law community’
and ‘right of avail’ have acquired new traction, especially for land claims. Generating budgets for local communities was, under Soeharto, a matter of maintaining good relationships with higher administrative levels and those in control. Now, local communities have been told that they have to generate their own finances because the government is reducing its contributions. For this new task, villages not only levy taxes, but village commons, ulayat, are an important source of income. That aside, decentralisation policies have promised effective village control over village commons. In line with these policies, it has become both important and feasible to reclaim land that had been expropriated under Soeharto or even before. These policies have also raised the questions about the role of adat authorities in village governance and their control over village commons. The ulayat issue has become a core defining element for local communities. And once again, the question arose, whether adat offers appropriate protection against powerful companies. It appeared that at best it offers local populations some leverage for negotiation. Indeed, some remarkable successes were booked in West Sumatra in the first years of decentralisation when villages negotiated shares in the revenue of Bukittinggi’s drinking water, or in the cement factory in Padang that used their ulayat resources (von Benda-Beckmann and von Benda-Beckmann 2013, 304–328). But there have also been examples in the same region of adat authorities exploiting adat for their own interests (Biezeveld 2007). However, adat offered far less protection against powerful companies in regions with much weaker social structures. In 2014, Law 6/2014 on village organisation introduced a new concept, offering villages the choice to opt for the status of desa adat (adat village) that has a somewhat broader place for adat and adat institutions than other villages. Few villages have opted for this status, because they are unsure of the potential advantages and disadvantages.

Although the terminology of van Vollenhoven appears in many political debates, policies and laws, the meaning is often unclear. Debates about local government and indigenous rights sometimes get mixed. This causes confusion, because not all communities that claim ulayat rights identify as indigenous. Long-term use of their territory and the existence of age-old institutions and adat norms have become dominant defining characteristics of adat communities and adat law communities and serve to legitimate land claims. Images of closed, conservative communities are once again reconfirmed. The focus is clearly on continuity and not on the living, changing nature of adat that van Vollenhoven had in mind. Internal differentiations of such communities and of the structures of property relations have receded.

**Concluding Remarks**

Despite its shortcomings, van Vollenhoven’s work is still of great value and deserves the attention of lawyers and social scientists alike. There has not been an analytical framework better suited to comparing very diverse normative orders within the archipelago and teasing out the commonalities. In this respect he was far ahead of his time. His singular perceptiveness to the pitfalls of an uncritical use of European legal concepts still sets an
exemplary model for comparative work by lawyers and social scientists. We have seen with our discussion about customary law how a poorly selected term in another language may render conclusions—and for that matter policies—problematic. Van Vollenhoven was also ahead of his time for his attention to the various contexts in which adat law was used, and for the actors involved. As for his political views, they were conservative in some respects, but his concern for exploitation on the basis of colonial laws and the lack of social justice was not conservative at all. Many of the criticisms launched at his concepts are anachronistic because they concern work that had in fact preceded him, or entail changes and closures of the meaning of concepts that others made after him. The terms adat and adat law were not his invention. Besides, the criticism that adat law was a mere invention of the government was based on a one-sided focus on government institutions and it neglected other contexts and actors that contributed to the development of adat law. Van Vollenhoven regarded the terms as useful, generic analytical terms to capture a wide variety of normative orders, yet he was aware that the terms were not used everywhere in the archipelago. Some of the terms that he found useful for his analyses have recently shifted in meaning due to transnational debates and to incorporation into numerous successive laws that have been enacted since then. The distinction between adat communities and adat law communities that currently dominates the Indonesian legal and political discourse seems to be an ill-concealed attempt to limit recognition of the rights of local communities. The currently widespread static interpretation of the character of local communities and their law is problematic for two reasons. It forces communities to stress continuity and downplay change. Given the landscape of power relations, this is often the only way to gain at least some control over their lives and resources. But paradoxically this very procedure reinforces the idea that such communities are backward and unwilling to change, thus steering the attention away from the real impediments for constructive change that are often external factors, such as corporate interests, lack of resources, lack of access to markets and credit, a poorly functioning judiciary and imposed decisions from authorities that pursue their own interests.

Van Vollenhoven’s conceptual framework still has much to offer, but it is not sufficient for a full analysis of the extent to which adat systems might be suited for local governance, for the claiming of rights and the provision of protection against exploitation. Paying attention to the internal structures and differentiations would contribute to understanding why, in some cases, local actors have been successful, and why, in so many other cases, adat has not offered the protection people were seeking. But much more is needed. The analytical framework should also be expanded so as to make it suitable for capturing the relationships with external actors, such as migrants, powerful corporations and state agents.

More than 100 years after van Vollenhoven began his work, adat and the state legal system are more intertwined than ever. Thus, such an expanded framework should be put to use in a broader analysis of the way state law and state officials operate and interfere, or ignore the existence of adat structures. This might show how the deficiencies of the state administrative and legal system impact on local communities and their adat, and where and for whom adat might offer protection, who would profit
and who would suffer. In short, van Vollenhoven’s terminology is still useful, but it can only contribute to a full understanding of the possibilities and social significance of adat if it becomes part of a more comprehensive framework and analysis.

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Notes
[1] van Vollenhoven (1901, 1918, 1925). See also J.F. Holleman (1981) for an English translation of a selection of van Vollenhoven’s work. I will refer to this translation as van Vollenhoven in J.F. Holleman (1981), and to his commentaries in the same volume as J.F. Holleman (1981).
[2] Peter Burns, in a number of publications, has criticised the notion of adat law for merely having served as a ‘sacred myth’ in the process of state formation (Burns 1989, 2004, 249–251, 2007, 71). He argues from a statist perspective on law, according to which only a state can have law. It is clear that from this perspective adat cannot be or contain law as van Vollenhoven suggests. But van Vollenhoven proceeded from what later would be called a legal pluralist standpoint, which acknowledges that there is law outside the state (see Griffiths 1986; van Benda-Beckmann and Turner forthcoming).
[3] Memorandum of June 14, 1813 to the Commission-General about the choice between the Dutch East India Company’s economic system and economic freedom, quoted in van Vollenhoven (1928, 21). From 1896–98 a law journal was published with the name Wet en adat (Law and adat) (see van Vollenhoven 1928, 116).
[4] Raffles wrote ‘a code of addat Malaya’ on Malay laws with the help of Malay persons, Arabs, Indians (Voorindiërs) and a person from Mecca (see van Vollenhoven 1928, 15, 25).
[5] It would not be until 1904 that the term appeared in official government documents (van Vollenhoven 1928, 155; see also Sonius 1981, li).
[6] J.F. Holleman (1981, 43) opted for the translation of rechtsgemeenschap as ‘jural community’. The important point is that they are jural communities based on adat. To highlight this, the term ‘adat law community’ has become the common term. I shall further use adat law community in this article.
[7] The Report was sent to Parliament a year later, in April 1868. See ‘Regeeringsonderzoek naar de rechten op onontgonnen gronden’ (Government investigation about the rights to uncultivated lands) Adatrechtsbundel (Adatlaw Collection) xiv(1–11): 149–183.

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