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Customary Law, Legal Consciousness and Local Agency. From Sumatra to Beauvais circa 1100 and back

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Abstract

In this paper I compare two field studies of customary law in action. Minangkabau in Western Sumatra is home to the largest population with matrilineal property transmission rights in the world. I show how customary law, the so-called »adat«, has been an essential part of the identity of this population, next to Islamic law, since the 17th century. Adat was also shaped by the efforts of the Dutch colonisers to write it down. My second case is set in the French medieval town of Beauvais at the turn of the 12th century, when the town was thriving. I focus on one judicial conflict surrounding a water-mill. The document pertaining to this case is the oldest to provide information about customs in Beauvais. This document illuminates the evolving legal consciousness of competing groups in the city and the process by which a medieval judge wrote custom down.

Charles de Miramon

Customary Law, Legal Consciousness and Local Agency. From Sumatra to Beauvais circa 1100 and back

In the year 2000, the local chapter of the Association of Adat Councils from the villages of Minangkabau issued a *fatwa* to settle a long-standing conflict between the village of Lubuk Kilalang and the cement plant of Padang.[1] The *fatwa* explained that, according to the custom of Minangkabau, the village commons could not be totally disposed. Therefore, the *fatwa* invalidated the limestone concession in Lubuk Kilalang commons that the central Indonesian government had granted to the cement company in 1972.

As pointed out by Franz and Keebet von Benda-Beckmann, legal anthropologists and specialists of Minangkabau culture, this judgement reveals the changing balance in Indonesia between European or transnational law, customary law and Islamic law.[2] In 1998, Soeharto fell from power and Indonesia started a transition toward democracy known as the *Reformasi*. One of the key aspects of *Reformasi* is the rebirth of regional identities and the invalidation of concessions granted by the old regime to exploit natural resources. These concessions were seen as a magnet for corruption, channeling illicit wealth to the dictator and his entourage.

National Indonesian law is the child of Dutch colonial law. One of the key rules inherited from colonial times is the Roman concept of *res nullius*. Uninhabited land is *res nullius* under the dominion of the State, which can grant concessions over it. *Res nullius* has always been a favoured tool of expansive empires. From Rome's *limes* to the frontier in the United States and the jungles of the Indonesian islands, colonial powers have used this legal construction to attract settlers and investment in scarcely populated areas. However, according to Minangkabau's *adat*, a word meaning not only customary law but also traditions and rituals, all the land in Minangkabau is divided into clan zones belonging to the *nagaris* (villages at the centre of an *adat* area). In Minangkabau's *adat*, *res nullius* is an impossible concept.

The judgement on the limestone concession in Lubuk Kilalang raises familiar questions for a legal scholar. Who can profit from natural resources? Who manages these resources? Who makes the law? How is power shared between local communities and central authorities? How do cultural and political identities shape legal consciousness? How does custom relate to other legal systems in a pluralistic legal order? These questions appear in different parts of the world throughout history, allowing for comparative analysis. This paper will compare two of these contexts. The first one is Minangkabau. I will explore how Indonesian customary law was shaped by different conflicts relating to Indonesian cultural identity. In the second part of this paper, I will focus on a very interesting document that shows the birth of medieval customary law in Northern France, in the city of Beauvais around 1100.

Minangkabau

During the last part of the 19th century, the Dutch started to venture inland on many islands of Indonesia.[3] The Dutch Ministry for the Colonies in The Hague encouraged the creation of plantations and mines. Dutch bureaucrats crafted a colonial legal code that gave an important role to the concept of *res nullius*. However, very soon some Dutch colonial administrators pointed out that local traditions of property in Minangkabau ran counter to the rules envisioned in the ministry in the Netherlands.[4] This discrepancy initiated a long and divisive conflict among the Dutch colonial elite. One of the central figures of this debate was

1 A longer version of this article with a different angle can be found in Miramon (2011).

2 Benda-Beckmann (2006).

3 Durand (1999).

4 Pistorius (1871).

Cornelis van Vollenhoven, professor of law at the University of Leiden in the early 20th century and a pioneer of legal anthropology.[5]

Van Vollenhoven was one of the leaders of the so-called »ethical movement« linked to the Christian-Democratic Party that dominated Dutch politics at the time. According to the ethical movement, colonial rule should have a moral aim and a »civilised« framework. Colonisers had moral obligations.[6] One is to rule the country according to the law of the natives. It was the duty of colonial administrators to discover this law. Addressing the *Institut Colonial International* at Paris in 1921, Van Vollenhoven waxed lyrical and biblical about his plan:

> Though I know all the legal codes of the world, and though I have all knowledge of Law, and have not respect and love for Oriental customs, I am nothing (see 1. Corinth. 13).

Van Vollenhoven called this law the *Adatrecht*, combining the Indonesian word for »custom« and the Dutch word for »law«. He explained that Indonesia was divided into a number of juridical communities (*rechtsgemeenschappen*) that exist above the basic level of clans and tribes. Each juridical community corresponds to a specific *Adatrecht*. Van Vollenhoven coined another concept, the right of avail (*beschikkingsrecht*), by which a juridical community exerted control over the natural resources of an area of avail (*beschikkingsgebied*). For Vollenhoven, there is a link between the inalienability of the commons and the existence of the *Adatrecht*. Van Vollenhoven's ideas were clearly rooted in the European legal culture of his time. His geographical model of customs was inspired by classical studies of legal history. For France, Henri Klimrath (d. 1837), a jurist well versed in the German Historical School, wrote a seminal work on old French customary law, in which he drew a map dividing France into multiple customs areas.[7] The codification of customary law also has a deep European genealogy. For example, in France an elaborate process of redaction of customs started during the 15th century. It would, however, be misleading to consider *Adatrecht* a mere projection of European customs onto distant Indonesia. Van Vollenhoven's orientalist sensibility led him to view *Adatrecht* as something utterly different that should be described with anthropological tools.

Van Hollenhoven founded a school of *Adatrecht* in Leiden and later in Batavia (now: Jakarta). Between the world wars, this school produced a masterpiece: an eleven volume pandect of *Adatrecht.*[8] The University of Leiden was the only training centre for Dutch colonial administrators, illustrating the *Adatrecht* project's lasting influence. Nevertheless, the project ultimately failed. In the 1920s, one of the top civil servants at the Ministry for the Colonies, Gijsbertus Jan Nolst Trenité, started a competing Institute of Indonology at the younger University of Utrecht with the financial backing of the oil industry.[9] Nolst Trenité led the »realist movement« that argued that *Adatrecht* was too fragmented to be useful and could only hinder the economic development of Indonesia. The exploitation of oil in Indonesia by Dutch companies made the concept of *res nullius* again a very useful tool. After independence, the new government of Indonesia followed the realist ideas and rejected *Adatrecht*.

Much later, the political defeat of the Leiden School was followed by an intellectual one. In the 1990s, legal anthropologists and legal historians started to challenge the concept of customary law. According to critics, customary law is not the law of the people but the invention of a legal expert, for instance a medieval judge or a colonial administrator. These experts transform fluctuating traditions into fixed legal rules that are then labelled as ancient. They impart these laws with a contrived air of comprehensiveness. An Australian scholar, Peter Burns, wrote an aggressive book deconstructing the *Adatrecht* of Minangkabau. Burns called *Adat-*

5 Fasseur (2007) also published in Mommsen and De Moor (1992).
6 For a more general view of Dutch Indonology during the Interbellum, see: Kuitenbrouwer (2014).
7 Klimrath (1837).
8 Pandecten van het adatrecht (1914–1936).
9 Kahn (1993) 187–190.

recht a myth crafted by an armchair intellectual. Indeed, Van Vollenhoven only visited Indonesia twice and for short periods. He wrote his books in the comfort of his Leiden office.[10]

The deconstructionist trend of the 1990s has been very useful in that it has challenged some basic assumptions about customary law. It is now accepted that committing the law to writing is not a neutral process. Customary law is not an isolated artefact but has many connections to other legal systems. The work of legal anthropologists, especially the Dutch School, has enriched our theory of legal pluralism. Nonetheless, Burns's rejection of Minangkabau *Adatrecht* as a myth is not justified.

Limited historical documentation sheds some light on the pluralistic legal past of Minangkabau. *Adat*, in the legal sense, pre-dates colonial times. The word comes from the Arabic »*El'Ada*«, meaning »the custom«. Because Sumatra has mainly an oral culture, the records on the arrival of Islam in the 17th century are scant, but it is clear that Islam did not arrive in a void. Hindu structures were already present.[11] In the 17th century, Islam did not suppress the old structures. Rather, it superimposed a layer above them. Rather than seeing the Minangkabau as the land of creolised Islam, it is more accurately the home of a pluralistic legal order, in which *Adatrecht* constitutes the bottom layer.

There are strong contradictions between Islamic law and local *adat*. Minangkabau is one of the biggest populations in the world with matrilineal property transmission rules, but Islamic law is a patrilineal system, and family law is a very important part of Islamic law. Why did this opposition persist for many centuries? Before Islam came to Sumatra, *adat* was already divided into two different systems. Pluralism and conflicting rules are part of Minangkabau civilisation.[12] At the start of the 19th century, before effective Dutch rule, a civil war, the Padri War, pitted the *Padris*, a reform Islamic movement inspired by Wahhabism, and the local conservative elite against each other.[13] One of the *Padris*' goals was to suppress the matrilineal customs. The *Padris* failed, but this war revealed the role *adat* played in Minangkabau identity. *Adat* was created by local experts, the *Penghulu*, in reaction to Islamic law. It is part of the local identity, and field anthropologists who have interviewed local people are often amazed by their knowledge of *adat* and the elaborate discussions about it. Minangkabau natives have a strong legal consciousness, and it shapes their identity.

Beauvais

Minangkabau is very far from my area of expertise, medieval Europe. What first attracted me to this region was the large and diverse literature about it. Minangkabau has attracted many generations of anthropologists. Each generation has approached it with a different theoretical mindset.

Medieval customary law is also a complex and layered subject. In his article, Emanuele Conte has summarised scholars' conflicting views on this topic since the 19th century.[14] The word custom, *consuetudo* in Latin, has many meanings in Roman law.[15] In the medieval Church, *consuetudo* can denote a local liturgical practice or the rules organising a religious community. *Consuetudo* also often means »tax« in medieval documents. It is, therefore, useless to posit custom as an unequivocal phenomenon across medieval Europe. Customs transcend the limits of the legal order and should not be studied only as a source of law. The ancient view that customs represent the spirit of a tribe, a people or a country has also been justly criticised. Custom is always one layer in a pluralistic legal order. It is more fruitful to study the mechanisms of pluralism than to try to reconstruct some pure core of customs unadulterated by the *jus commune*.[16] This legal pluralism can only be approached in particular contexts. One of these is the city of Beauvais at the turn of the 12th century, when there was a shift in legal pluralism.

10 Burns (2004). See also the reply of Benda-Beckmann (2008).
11 de Jong (1980) 101–102, Kato (1978).
12 Abdullah (1966).
13 Dobbin (1983) and the later Kaum Muda movement: Abdullah (1971).
14 Conte (2016) 234–243 (in this issue) and Gouron (1993).
15 Kerneis (2016) 244–250 (in this issue).
16 Kannowski (2016) 251–256 (in this issue).

The turn of the 12th century has been called the Western Legal Revolution or, more recently, the Big Bang.[17] Whatever the catchphrase used, the standard narrative in legal history manuals today can be summarised as follows. The rediscovery of the Roman legal codes in Italy and the growth of central powers in the 12th century ignited an intense legal transformation in Europe that witnessed the birth of legal education in universities and the creation of a complex learned law system, the *jus commune*.

This narrative emphasises top-down changes. Legal revolutions were initiated by reformist popes and powerful kings, who were assisted by learned lawyers. This narrative understates the importance of bottom-up transformations.[18] My hypothesis is that the so-called Legal Revolution was, first of all, a change of legal consciousness, a concept borrowed from American sociology of law. It accounts not only for legal institutions (judicial courts, judges, professors, lawyers) but also for the role of common understandings of the law among ordinary people and how law can contribute to the agency of different communities.[19] To illustrate my point, I study the evolution of legal consciousness at a local level.

My example is set some years before the Big Bang of Roman law during an earlier transformation: the coming-of-age of canon law. The law of the Church has a long tradition going back to the birth of Christianity. However, for various reasons, at the end of the 11th century canon law underwent important changes that initiated what is called »classical canon law«. The content of canon law did not change very much. What changed was how the clerical elite understood it. This elite started to acknowledge that the Church should be run »according to the canons«. It was a shift of governmentality. One of the most dynamic segments of this elite were the canons, who, compared to monks, have attracted only limited scholarly attention. Canons were originally members of the clergy attached to a large church and were responsible for singing the liturgy and managing the building. During the second half of the 11th century, their numbers, importance and wealth grew. Many members of the Church hierarchy started their career as canons. The regular canons, a more rigid variant, appeared and spread rapidly. Canons shared their name with canon law and were spearheading this change of governmentality that expanded beyond the walls of churches and cloisters to the surrounding towns.[20]

Canons are closely linked with towns. Beauvais, a town in northern France in the Picardy region, is a good example of this linkage.[21] Today it is a rather small town of 55 000 inhabitants, but it was important in the Middle Ages. The history of Beauvais goes back to Roman times, and the town boomed during the Middle Ages. Surrounded by rich farmland, it became an industrial centre for the production of woollen clothes. The fabric woven in Beauvais was sold throughout Europe during the Middle Ages and made the city wealthy. Like most medieval towns, Beauvais was not only an economic centre but also a religious one, home to many churches and abbeys.

The development of Beauvais followed the same pattern as that of many other French towns. Growth started at the end of the 11th century, and a new city blueprint was devised to be slowly filled. The shape of the city then remained stable until the 19th century. The source of Beauvais's growth was the harnessing of water resources.[22] The local river, the Thérain, was dammed and split into several artificial canals. Regular flowing water and hydropower allowed the development of the textile industry as did the construction of watermills. These mills were used first as grain mills and later for fulling.[23]

Growth also has an urban element. What is particular of medieval town growth is that it is generally not a nucleus that expands, but rather multiple cores with different sociological and institutional characteristics that finally merge.[24] In the old city (*civitas*), known in Beauvais as the *chastel* (the zone labelled »C« on the map), the main ecclesiastical buildings are located: the cathedral, the canon houses, the episcopal palace and several other churches. Other cells are gener-

17 Berman (1983), Pennington (2007).
18 C. d. Miramon (2015).
19 Friedman (1986), Ewick/Silbey (1998).
20 C. d. Miramon (2015).
21 Labande (1892), Guyotjeannin (1987).
22 Guillerme (1983) 68–73.
23 Bourgès (2003).
24 Chédeville (1980), Endemann (1964), chap. 6.

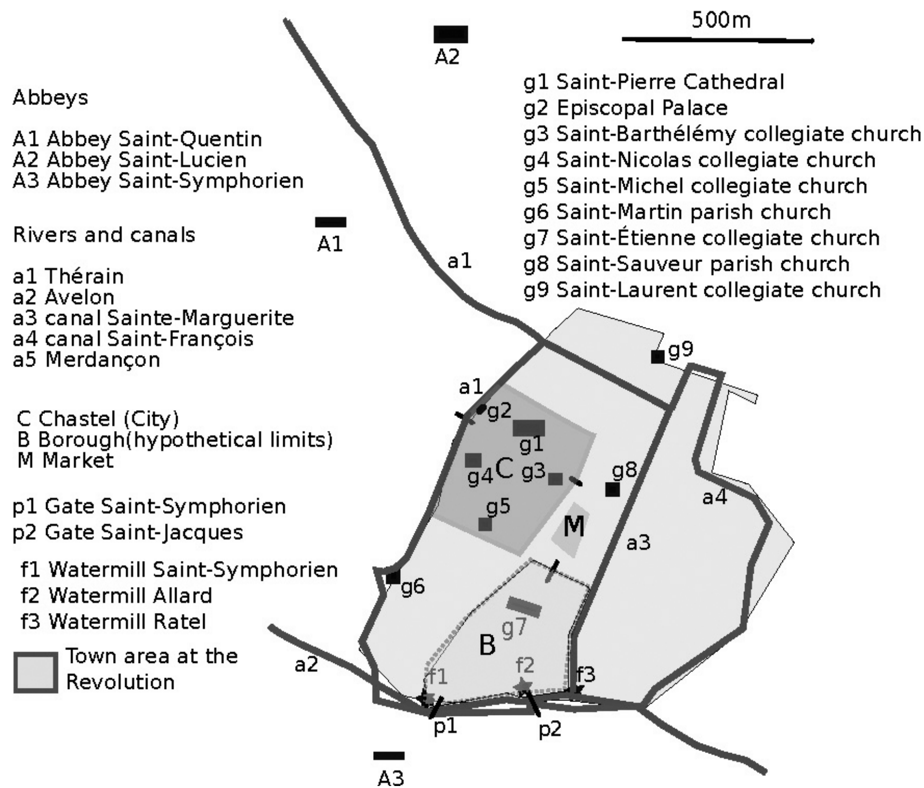

Figure 1: Map of the Town of Beauvais.

ally called boroughs (*burghus*). Boroughs develop around a centre, generally a church, a castle, an abbey or a market. In Beauvais one such borough grew around the Saint-Stephen Church (the zone labelled »B«).[25] The market was located between the *chastel* and the borough. Saint-Stephen's borough is scarcely documented and seems to have had a short lifespan of thirty to forty years, appearing around 1070 and disappearing around 1110. The borough and the city were very close to one another. The rapid growth of Beauvais and a massive fire in 1111 explain why the two elements quickly merged. Nevertheless, a special identity lingered in the old borough. Until the end of the Middle Ages, civic assemblies were held in the cemetery of Saint-Stephen, and the church kept the civic clock, the symbol of the political power of local citizens.[26]

Urban growth also has a legal and political element. The German legal scholar Carl Schmitt famously coined the expression *Nomos of the Earth*.[27] Eurocentric public law has long been obsessed with putting limits, frontiers on the earth. Jurisdictions are enclosed precincts. Towns are fine examples of the *Nomos of the Earth* in that the city and the boroughs exist because they have limits that are generally marked by walls, palisades, canals, rivers. These small gated communities ruled a more extensive space outside. In Beauvais, the space surrounding the city and the borough was a suburb, also called a *bannileuga*, the origin of *banlieue* in French. *Bannileuga* means an area within the radius of one mile subject to urban authority. In English, it can be called a »pale«, a word derived from an old French word for stake, *palissade*.

25 Desachy (1991) 29; Henwood-Reverdot (1982) 6.
26 Carolus-Barré (1883), Henwood-Reverdot (1982) 19.
27 Schmitt (2003).

The etymology of words describing urban spaces relate to frontiers and signposts. Medieval sources also abound with limits. Lately, French historians have researched these limits intensively, showing that many of these limits were drawn in the 11th and 12th centuries.[28]

The Middle Ages are also the age of Church property. Economic growth can often be linked with a church or an abbey trying to make the most of their property. Beauvais and its suburbs housed many churches and abbeys. The main one is the cathedral, home not only to the bishop but also to the secular canons who managed the cathedral trust with a large degree of autonomy. The expansion of these urban nuclei and the consolidation of church property created multiple overlaps and conflicts. Van Vollenhoven's system can be adapted to the medieval burgeoning towns. The different nuclei were juridical communities and the *bannileuga* can be seen as an area of avail. Different groups competed to have their rights of avail acknowledged.

Around 1099, the canons of the cathedral possessed a water-mill.[29] The limited documentation does not say where this water-mill was situated, but an educated guess is that this water-mill was located on the limit of the borough of Saint-Stephen. There the Thérain joins the Avelon, another small river, and the water flows strongly, so it is an ideal place to build a mill. Indeed, three mills (marked as stars on the map) were later established on this stretch of the river.[30] Earlier mills would likely have been located at the same spot. Water-mills were good investments. They were also important for those with exclusive milling rights. According to their place of residence, peasants had to bring their grain to a particular mill. In the Middle Ages, there was no army of administrators to control and tax. The way to make good money with little work was to control bottlenecks, like bridges, markets, and mills.

At the end of the 11th century, the literacy rate in Europe was still low. Churches were the only institutions that kept written records, which gave them a huge advantage in a society that held the written word in high esteem. In those years, the canons of the cathedral made considerable effort, going so far as to forge documents, to prove that they had longstanding ownership of water-mills on the river. They tried to claim most of the milling rights as their own. The canons were clearly skilful in skimming a portion of the economic growth. The result of their entrepreneurial success can still be admired today. A century later, they funded a new cathedral, the tallest Gothic building of the time.

But in 1099, the canons' water-mill faced an obstacle. Some burgesses of Saint-Stephen had built a tannery next to their mill, and tanneries need flowing water. One of the steps in the process of tanning a hide into leather is called »the work of the river«. Hides are soaked in the water for a long time to remove wool, flesh and fat. A system of poles was erected in the river to hang the hides, which disrupted the flow of the river upstream from the mill, diminishing its efficiency.

The canons wanted to end this situation and sought the bishop, but the ecclesiastical context should not be overrated. In Beauvais, as in many other cities in Europe, the bishop had important civil powers outside the realm of religion. The bishop of Beauvais was a count-bishop as powerful as the bishops in Germany. A sentence was passed in the case. The preservation of which is very fortunate indeed, for at the end of the 11th century, there were no stable judicial courts and no judicial archives. The original document has disappeared, but a copy was made by a local historian in the 17th century.[31]

It is a short text that supplies much interesting information. First, it is not the bishop who issued the sentence, but a man called Adam. Adam was a *casatus*.[32] *Casati* were a group of petty urban nobility, vassals to the bishop. Adam was a member of the local gentry and seems to have been a local legal expert. The fact that Adam served as judge and not the more important bishop reveals the changing place of the judge in Western society.[33] Judges were no longer political leaders, but legal specialists. While it is true that eminent locals had been

28 Mazel (2016).
29 A summary of the large bibliography on mills in the Middle Ages can be found in Arnoux (2008), Galetti/Racine (2003), Mousnier (2002).
30 Bourgès (2003).
31 Loisel (1617) 266–267.
32 Guyotjeannin (1987) 108.
33 Jacob (1991).

sitting in court since the early Middle Ages, they were not really sitting as judges but rather as guarantors of a fair trial. Adam, by contrast, filled a new role. He is the voice of law. Legal order had started to separate itself from political order. The bishop was still present, but he sat silently. He chaired the court but left the leading role to Adam.

Adam issued his sentence *pro recto*, in rectitude. One of the main evolutions of legal thought in this period was the growing importance of rectitude and reason. Law and justice had to be reasonable. It was a rather vague concept, but it changed how law and justice are articulated. During the early Middle Ages, trial documents were written by the winning party. These documents, generally known as compacts (*placita*), adopted a narrative format. The winning party told a story: the injustice suffered and the different steps they followed until their opponent's defeat. Compacts provide many details about the judicial process but very few legal arguments. Adam's judgement, by contrast, is structured differently and resembles the practice of lawyers today. He wrote it from the point of view of the judge. Each litigant presented his legal arguments, and the sentence also has the form of an argument. Compacts are voices of justice, judgements voices of reason.

The canons argued that they had been granted a written privilege that their mill not be hindered by poles, planks or embankments. The burgesses of Saint-Stephen countered the argument by pointing out that they had a custom and that these customs had been granted by the previous four bishops of Beauvais. Adam's judgement is terse. It does not give any information about these alleged customs. A contemporary letter of Ivo of Chartres allows us to fill in some of the blanks. Ivo died as bishop of Chartres but started his career in Beauvais, and he knew the place intimately. Ivo described the same conflict with some divergent details. He explained that the burgesses claimed a custom of seizure: if they occupied land for one year without complaint, they would gain property rights to this land. After summarising the arguments of the litigants, Adam issued his sentence. Water has a custom. It is the bishop who possessed the custom of the water. The custom of the water is that it should flow freely. There was space along the river to move the tannery so it would not impede the mill. The bishop was to enforce this rule.

Adam's solution, in itself, is nothing extraordinary. Across Europe, there were many similar conflicts around water-mills and water rights. In northern Italy, judges used the extensive water rights rules that they had discovered in Roman law with similar solutions. First movers had the right to not be hindered by late movers. Those using the river had to design their activity so as not to hinder those already operating a mill or conducting any other activity on the river.[34] To enforce this rule, an authority, here the bishop, assumed the power to police the river.[35] In the late medieval Beauvais, the bishop had a river bailiff who patrolled the river banks and resolved small conflicts between users.

Having sketched the conflict between the canons and the burgesses, one can ask what this water-mill tells us about customary law and legal consciousness in Beauvais? Adam's judgement is the oldest document mentioning customs, which can be combined with Ivo's letter. Read together, these documents reveal conflicting views of what constitutes legal order and customary law.

The cathedral canons' legal consciousness put great emphasis on privileges and written documents. This strategy can be explained. It was a way to ignore the ruinous policies of the recent past. In 1099, the bishop was Anseau. Before him ruled a more forceful bishop, Guy. Guy had waged a long and bitter conflict with his canons. He promoted other religious houses, accused the canons of many ills and diminished their power in the suburbs. He must have helped the borough against the canons. However, the power of the canons was in their archives. The canons had old Carolingian charters and even some historical annals. In the wind-mill case, no privilege has been preserved. This privilege may never have existed. It was perhaps a figment of learned imagination. Old words written on parchment connected the canons to a distant past, far from Guy's ruinous reign.

34 Sarti (2003) 133–137. The classical Roman text is to be found in the Digest: D. 43,13.

35 Control by stakeholders is very rare: van Tielhof (2009).

Ivo's letter depicts a different legal world.[36] Ivo wrote from distant Chartres. He knew Beauvais well because he had been the dean of the regular canon house of Saint-Quentin in the town's suburbs. Later, as bishop of Chartres, he wrote many business letters that were collected and published posthumously, a number of which concern Beauvais. Ivo tried to meddle in local political affairs from afar. He wanted to soothe the strained relationship between Saint-Quentin and the cathedral chapter. He sent a letter to the dean of the cathedral chapter, Hugh, to strengthen the position of the canons against bishop Anseau, whom he considered uncooperative. Ivo brought the conflict back into the canon law system. By labelling the water-mill as church property, Ivo applied to the case the protective rules that abound in canon law prohibiting any encroachment on Church property by lay people. Ivo referred to a rule explaining that a bishop should correct the mistakes of his predecessors. Anseau was, therefore, not bound by the customs that his predecessor had granted to the burgesses. Ivo then used other canons describing an ancient and famous custom in the Church: the thirty-year acquisitive prescription.[37] If a Church foundation could prove that it had possessed a property peacefully for thirty years, the property rights were beyond dispute. Ivo contrasts this old and good custom with the unreasonable custom of the one-year seizure claimed by the burgesses of Saint-Stephen. For Ivo, this extreme custom was a manifestation of communal violence. He hinted at the contemporary communal movement: rebellions of burgesses in some towns claiming a degree of legal autonomy.[38] The communal movement was often directed against local ecclesiastical power. Ivo added a final argument to his letter: the legal power of canons is always stronger than customs or covenants. There is a hierarchy of norms.

Ivo gave the more intellectually thorough solution. As one of the main intellectuals of his time, Ivo left significant works of canon law.[39] He was one of the forerunners of the Roman-canonical *jus commune* of the 12th century. In his world of ponderous codes, glosses and refined legal reasoning, custom could only be relegated to the domain of unlearned rabble. Customary law should be limited and viewed with suspicion.[40] Old canons and old customs are always stronger. For Ivo, custom reeked of mob justice. Good rules are crafted by learned men in schools.

However, Ivo's solution was ignored. Generally, property conflicts between a church foundation and lay people were not decided by canon law but by a local mixed court applying common rules. Church properties were divided between an inner core, the »spiritual«, ruled by canon law and an outer core, the »temporal«, where common law applied. Even though medieval common law bore the mark of the *jus commune* mindset, it never submitted entirely.

The burgesses of Saint-Stephen argued that they had customs. These customs were granted to them by a succession of bishops. The scope of these customs is elusive because documentation is lacking. As mentioned above, the borough of Saint-Stephen disappeared as a separate community shortly after the conflict with the canons about the water-mill. For the burgesses, customs were clearly linked with their collective identity, as in Minangkabau. The one-year seizure that they claimed was outrageous compared to practices of extinctive or acquisitive prescriptions in the Middle Ages that were predicated on a »long period«. The custom of the borough ran counter the common concept of time in medieval law.[41] Burgesses needed to create an identity with meaningful and sometimes violent differences from other juridical communities. The claims in Ivo's letter about the one-year seizure should not be taken at face value. It seems, though, that the borough tried to enforce a counter-rule, as the Minangkabau Adat Council did with its *fatwa* in favour of the village of Lubuk Kilalang. In the borough's legal consciousness, breaking the law became the law.

Finally, let us come back to Adam. Adam's solution is not extraordinary, but his reasoning is

36 Ivo's letter n. 77 is edited in Migne (1844–1865), t. 162, col. 98.
37 Decretum Gratiani: C. 16 q. 3 Friedberg (1879), t. 1; col. 788–796.
38 Vermeesch (1966).
39 Sprandel (1962), Rolker (2010).
40 Waelkens (1982).
41 Mayali (2000).

very interesting. For Adam, the river Thérain has a custom. His job as judge is to find out who is in charge of this custom. For Adam, the world is filled with laws. Every road, river, and community has a law waiting to be discovered. He is like the Dutch colonial administrators who wrote the *Adatrecht* pandects. The law becomes a political tool: a way to rule and pacify the growing town »ethically«. The new governmentality puts the extension of the legal order at the centre of its mission. It takes several Adams to discover the customs as well as authorities able to judge according to the customs, like Anseau, the bishop of Beauvais.

Hostility, identity, and governmentality. These attitudes towards customary law can be found in Sumatra and in Beauvais. Analysing customary law through these conflicting values may still help to address the question of indigenous rights and local agency in a world dominated by transnational law.

■

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