New Guniean Law and Village Courts [1]

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Introduction

This research focuses on three phenomena central to the nature of legal process: speech, ritual and legal ideology. It elucidates the varying roles of these phenomena in the social construction of legal processes, as it unfolds in the Village Courts in Papua New Guinea.

We should recognize that these legal processes are the key to understanding New Guinean law. Certainly, the Village Courts are the result of the introduction of Western law, and have a formal character, so that they are empowered to public sanctions at the village level. However, many conflicts are still resolved outside the public courts. That is, Village Court Magistrates often act at an informal level in the village. Therefore, it can be said that the Village Courts are the main vehicles for the application of customary law, and that they have an informal character in addition to a formal one (G. Westermark 1978, R. Scaglion 1979).

Compared with Local Courts based on Western law, it is the Village Courts based on customary law that Papua New Guinea has needed. The critiques of the Local Courts helped create Village Courts as a new court system. The necessity for courts which enforce indigenous law effectively in the village continues to exist in Papua New Guinea. The understanding of indigenous law remains a significant problem for this country.

In the Western Highlands, the principle of exchange is used for compensation settlement, and political speech represents a drama where veiled justice is clearly displayed. These phenomena mean that New Guinean societies have originally applied their legal principles in a pluralistic legal system. Therefore, knowledge of such indigenous legal processes will facilitate the creation of unimposed law and the integration of custom into the national legal system.

Background on research into New Guinean law[2]

Warfare hasn't ceased in contemporary Papua New Guinea. Rather, if we include numerous small battles in many districts, the number of conflicts has increased. Above all, the Western Highland societies, characterized by large descent groups and developed leadership, face large-scale battles. At present in many districts in New Guinea, tribal warfare continues to

emerge as a significant national problem.[3]

The policy of colonial administration in New Guinea created problems for the administration of justice, compared with more positive policies in Africa. Generally speaking, in many parts of Africa customary law was frequently formalized through provisions for the administration of justice through formally constituted native courts. However, the policy in New Guinea was formulated without considering indigenous law: "Australian administrations in Papua and New Guinea have from the outset vigorously opposed the setting up of tribunals composed of indigenous people administering customary law" (A.L.Epstein, 1974:3). The reason the social situation in New Guinea deteriorated was due to such an inactive policy. In additon, we should realize that research about customary law and conflict in New Guinea was conducted very late, compared with the case in Africa.

Australia, regarding the progressive development of Papua New Guinea as 'sacred obligation', began to place a greater emphasis on her own role in New Guinea's independence than had been done previously. However, after the 1960's in New Guinea, conflicts began to increase. With this serious re-emergence of warfare, a great deal of research was conducted in the 1970's. Factually, M. Meggitt, A. and M. Strathern in

Mt. Hagen, P. Brown in Chimbu, A. Epstein in Rabaul, K.-F. Koch in Jalemo, etc., have given us good material about conflict management at this time. Such studies clarify the cultural background of New Guinean law. For example, when the importance of the exchange ritual in Papua New Guinea became known, we were able to understand the of compensation. Furthermore, the deep relation between land shortage and warfare in New Guinea made us recognize the need for a broad perspective concerning law and society.(4)

Because of considerable research concerning conflict, the amount of legal research has increased in the 1980's.(5) For example, many such studies focus on 'Village Courts' or 'legal pluralism'. With the outbreak of conflict at present regarded as a national problem, these studies are most useful, if focused on indigenous law within the cultural background of Papua New Guinea.

The folk analysis model and indigenous legal ideology

Before explaining the analytic model of legal processes in Papua New Guinea, it is necessary to restate the intimate relationship between 'big men' and conflict. As many scholars have suggested, a big man is a politician with many competitors and at the same time is a 'reasonable man' who can manage

many disputes. The big man, whom K. L. Burrige (1975) called a 'manager', can become "a particular kind of category of understanding, a symbol, one who both embodies and transcends the inherent and recurrent conflicts, whether of action or idea, to which his community is subject, and who reveals to other the kinds of moral conflict in which they are involved "(p.87). Therefore, it is the 'big man' who is an able mediator.

Even though magistrates in Village Courts are such traditional leaders, they are also leaders who must obey the traditional principles of law and order in Papua New Guinea. That is to say, the man with a 'big body', a 'big voice' and a 'big hand' will be able to achieve leadership and solve problems in the processes of conflict and exchange.

Figure 1 suggests that the big man as a folk category is essential to social process, and that his attributes of leadership have a relationship with the three phenomena which are central to the nature of legal process: speech, ritual and ideology. In Papua New Guinea, speech in courts includes the use of multiple metaphors with political meanings, and ritual often becomes the area of exchange (for compensation). Furthermore, the big man who embodies native justice as a legal ideology can manage the varied conflicts. In fact, the concrete place where we can see these three phenomena together is now in the Village Courts or

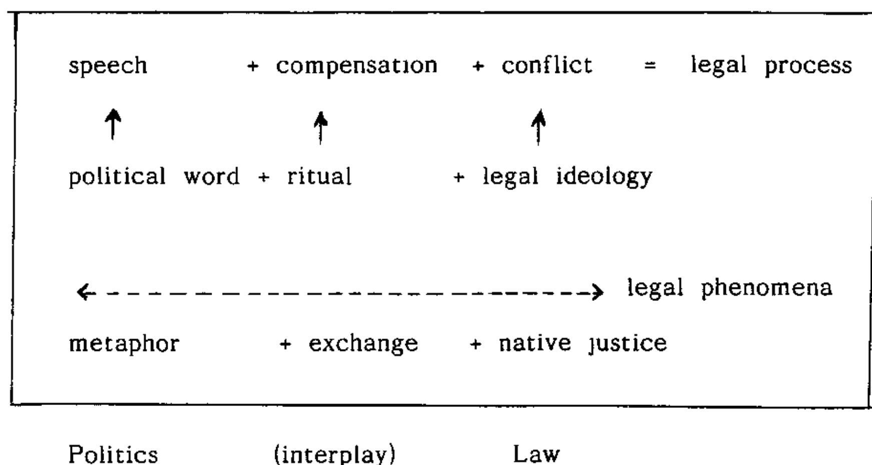
'Kot'.

Figure 1. The Folk Analysis Model of New Guinea Law

(Symbol)

big voice + big hand + big body = big man

(Act and Principle)



In explanation of the analysis model, we can understand the common sense of law in Papua New Guinea. However, the content about it is not still obscure. Though the terms of customary law are very often used to express customary acts and principles, the exploration of legal ideology (consciousness), which makes up common sense, has been very limited, because

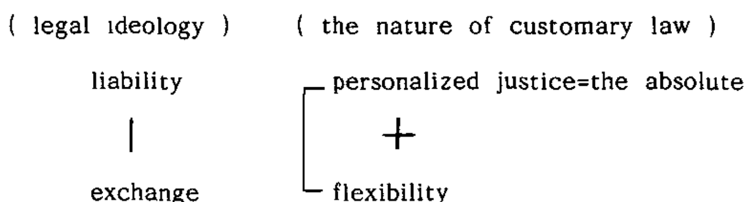
customary law seems to vary too widely in Papua New Guinea. I would like to reconsider the legal deology behind common sense in this country by making use of the analysis model.

We should not distort the content of native concepts by uncritically categorizing them in terms of Western legal ideology. For example, K.-F. Koch clarified the concept of liability among the Jale in Melanesia by analyzing the political organization or transaction. His hypothesis is the following: "In societies with localized descent groups lacking permanent superordinate political integration and without jural authorities, liability tends to be joint and absolute. Both attributes of liability tend to correlate with the necessity of solving disputes by selp-help."(1974:89-90) The concept of liability, which he described, is clearly different from that of private responsibility.

Liability among the Jale clearly reflects the nature of customary law, which R. Scaglion (1985) divided into the following two elements: to be flexible, and to be personalized.(6) The relationship of liability is influenced by social distance and mutual consent is always forced in order to keep the peace. Therefore, its character is certainly 'absolute', and the personalized justice make it possible. On the other hand, the relationship of liability has a process of extension which is flexible. This process must be obeyed by the principle of

exchange. The fact that the extension of liability has a deep relationship with the attributes of pigs as compensation among the Jale means that the method of determining the significance of liability is fluid or that there are various steps in liability. The concept of liability among the Jale is summarized as follows:

Figure 1 (2) The legal ideology among the Jale



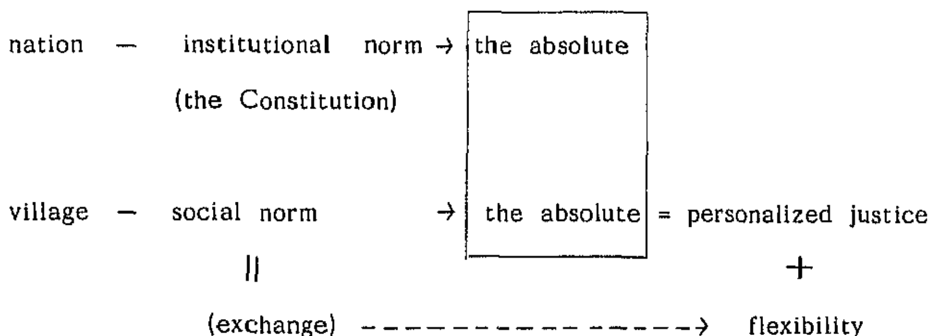
If we can divide the norm or rule into the social and the institutional, personalized justice would be working as an institutional norm to keep the peace, and exchange as a social norm could give the biggest harmonious consent to many requirements at the village level.

Certainly, exchange must be the most useful principle of conflict management in Papua New Guinea. Village people always have to negotiate with the management for the settlement of conflict, by exchanging goods. The performance of exchange can

prove the relationship between the parties, and compensations are often carried out in an exchange ritual (ex. Moka). Generally speaking, the people of Papua New Guinea are strongly attached to exchange. Therefore, it can be said that exchange should be a social norm which makes up a legal ideology. That is to say, even though exchange often motivates village people to conflicts, it can force *the most necessary mutual agreement for* keeping the order in the village. Exchange as a social norm may be absolute at the village level.

These days when Papua New Guinea has to establish itself as a self-reliant nation, it needs an institutional norm with absolute sanctions (the Constitution).

Figure 1-(3) The Duality of the Absolute



To be sure, both institutional and social norms are absolute. However, institutional norms must be based on Western law rather than customary law, because the nature of an institutional norm is different from that of a social norm. While the former should function on strictly defined rules of law, the latter can function widely in both economic and political fields. We will not be able to simply change the customary law for the institutional Constitution at the national level. Furthermore, the other reason why it is difficult to make up the ideal institutional norm is that there are too many customary legal systems in Papua New Guinea: "It is unlikely that a single piece of substantive customary legistlation could be formulated which would satisfy this vast variety of systems "(R. Scaglion, 1985:32).

When we recognize the need for an 'ideal' institutional norm (Constitution), the legal process with original legal ideologies in Papua New Guinea should be reconsidered (see Figure 1). According to R. Scaglion (1985), the basic procedures *for conflict management are relatively similar throughout Papua* New Guinea.(7) Therefore, we can suppose a structured legal process in which New Guinean leaders play the leading part. Needless to say, the new places of law are the Village Courts and the main actors are the magistrates.

For example, all decisions in Village Courts are not

perfectly under the control of an institutional norm, but often influenced by the discretion of the magistrate. In Papua New Guinea, many magistrates tend to utilize the vagueness of norms positively: The strict institutional norm is vague rather than clear, because New Guinean people, who prefer a fluid social norm, cannot easily understand the institutional norms of Western law. Certainly, that the decisions in court have been under the influence of the discretion of the magistrate has led to problems of power corruption and other more difficult ones. However, the discretionary power of the magistrate has succeeded in overcoming all difficulties of the fixed institutions (ex. inadaptability). The success of the Village Courts in this decade would be due to the magistrate's own discretion. In the village, a magistrate who embodies New Guinean law can achieve victory over any difficulties.

The way such an arbitrator solves conflicts must be a 'Papua New Guinean way' because of his discretion with flexibility. It is really the traditional way of the big man. That is, both the magistrate and the big man always appeal to common sense through traditional means to enforce their native justice: The legal process of their conflict management is governed by common sense in Papua New Guinea. In fact, speech with varied metaphors is a special means of appealing

speech with varied metaphors is a special means of appealing their justice, and exchange functions as a social norm. Therefore, a 'strong-minded man' who enforces his native justice can resolve many conflicts in his society.

As we can see a certain 'structured legal process' supported by common sense, we will recognize the importance of the existence of an arbitrator before the law again. Even though the relationship between common sense and native justice (legal ideology) varies widely, decisions of the arbitrator in Village Courts need flexibility, so that we can realize their traditional nature: Flexibility (freedom) in ideology and the absolute (fixed process) in act are not contradictionary but united under 'New Guinean law'. Taking the significance of such an arbitrator into consideration, I would like to state the legal process in Village Courts and their problems concretely in the following section.(8)

Formal legal institutions

Simply speaking, the periods of development of legal institutions in Papua New Guinea are divided into the following (N.Warren, 1976: 1):

the time of the luluai-tultul system

the time of the local government council

the time of the area community and Village Court

Before 1949, a variety of colonially directed political institutions were imposed on New Guinea: small-scale, informal political systems. However, the luluai-tultul system helped to change, so to say, anarchy to strapy (P.Brown). In fact, this system may best be viewed as an extension of the colonial bureaucracy.

However, the Australian policy toward New Guinea changed after 1949, and a network of local government councils were to replace the luluai and constables (S. Staats and E. A. Conti, 1976: 320-1). At first, the council concept was set up to be a step in the direction of responsible local government and authority. But the establishment of this system was so gradual that it needed help in the form of a Local Government Ordinance, which became effective in January, 1965, and which made possible the inclusion of non-indigenous members on local councils. At this time, parallel to the development of this system, Courts of Native Affairs were established; that is, the introduction of Local Courts.

It is clear that we can see considerable development of the legal system in the 1960s, before the time of modern courts. However, it is necessary to note a variety of colonial

policies by Australia, too. According to S. Staats and E. A. Conti (1976:318), though diversity was outstanding in Papua New Guinea, it was only exaggerated by the differential application of colonial policy. In practice, the implementation of Australian policies on local government proceeded differently across the colony. Therefore, we should understand how important 'Australia in Papua New Guinea' was, both in times of the luluai-tultul system and of the local government, in pre-modern legal institutions.

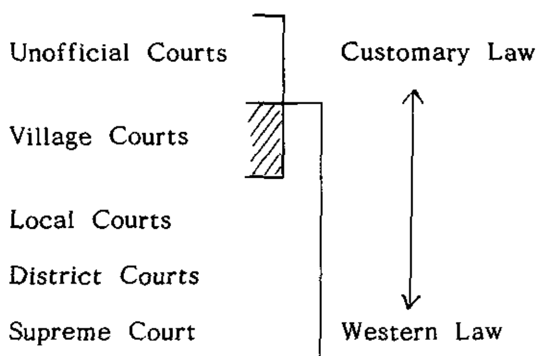
The third period, the time of modern courts, was established through the introduction of Village Courts. The character of this time is that it can be called the time of nation-consciousness. That is to say, the Village Courts system was one step in the progress of the new government in Papua New Guinea.

The outstanding difference between the two former periods and the new period relates to the existence or non-existence of the indigenous persons who have formal power and responsibility at the level of the village. While the power of the luluai or councillor was comparatively informal, the magistrate in the Village Courts should be able to have formal power. Certainly, the luluai or councillor could resolve many disputes at unofficial hearings. However, as stated above, there was a persistent

refusal to grant formal judicial power or authority to such indigenous village leaders during the time of Australian rule. On the other hand, the establishment of Village Courts is a progressive step in the sense that the court officials are villagers selected by the indigenous people themselves. They have a broad jurisdiction, and customary law and procedures form the basis for the operation of the courts (A. Paliwala, 1982:191).

Village Courts actually began operation in 1975, after the Village Courts Act was passed in 1973. This court is 'official', the first truly legal institution at the village level (N. Warren, 1976:5). The achievement of the modern court system, which is illustrated in Figure 2, seems to have been needed in the national consciousness.(9) In addition, the modern court system should carry out the operations under native justice. Criticizing Local Courts in the past means that they did not bring a native justice to villages, because Papua New Guinean people needed a court based on customary law rather than Local Courts based on Western law. Even though the jurisdiction of Village Courts is limited, it is more official than the councillor's courts were, and more practical for using native justice than Local Courts.

Figure 2. Modern courts system in Papua New Guinea



After all, it might be so reasonable that, behind the independence of the new government, we can see the fight of 'the indigenous' and 'the colonial' : As S. Staats and E. A. Conti (1976) state, it was the interplay of two such forces that determined the orientation of the new national government. However, at the present time when the modern court system has been established, the task of establishing a self-reliant legal system is often carried out by the new men who have a consciousness of being a *national elite*. *Though the new men contrast markedly* with the traditional big man, they are truly progressive, and are conscious of themselves as members of an elite taking care of an unsophisticated majority (N. Warren, 1976:4-5). The appearance of such new leaders can be on the establishment of a new national system.

The need for Village Courts and their problems

The necessity for Village Courts is clearly due to the problems of Local Courts, though some people recognize the effectiveness of the latter. However, whether Local Courts have major defaults or not, the reason for the introduction of Village Courts is that each court system tends to operate on the base of different legal ideologies, as stated above. The fact which many persons pointed out in LO BILONG OL MANMERI (ed. J. Zorn and P. Bayne, 1975) [10] means that the majority of people in Papua New Guinea first sought a new indigenous courts at the beginning of the 1970s. In particular, F. Iramu observed the necessity for Village Courts, criticizing the Local Courts system. The problems of Local Courts which he listed in his book (1975:43) were primarily two: The first is the request for trained indigenous magistrates. Certainly, Local Courts had many full-time indigenous magistrates in the field, but they could not perfectly solve problems in which a knowledge of customary law was needed. The second problem is that the Local Court system was alien to the village. That is to say, for the villagers who could not exactly distinguish criminal from civil matters, it was nonsense to hear judgments based on Western Law.

In contrast with this opinion, P. J. Quinlivan regarded the

role of Local Courts as important. By pointing out that the number of courts increased in Tolai, he insisted that Local Courts could really operate at the village level (1975:61-63). Judging from his examples, we could easily understand the effectiveness of Local Courts: They did reach the villagers as formal courts in Tolai.[11]

So far, when evaluating the role of Local Courts, we might have to consider two different opinions. However, it is very clear that, at the beginning of 1970s, people needed the formal power to solve disputes at the village level. After all, the fact that Local Courts, which have more power than the Village Court system, could operate in Tolai made P. J. Quinlivan evaluate them very highly. The essential problem, however, was that a formal court constituted in the national, legal and hierarchical system and staffed by indigenous magistrates and assistants was not brought into existence at the village level until the Independence of Papua New Guinea.

Since many people recognized the necessity for such formal courts in the village, what prevented their establishment?

One crucial answer would be a fear of the Australian administration; that is, as M. Strathern (1975) stated, the problem of power corruption. Particularly in the early years of contact, dispute-settlers exploited their position to their own

advantage. It was undoubtedly the case that at that time fear and ignorance made many people easy prey. Therefore, one of the things the Australian administration feared in the transfer of power was that sanctions to back up village officials would lead to a problem of corruption.

As the situation was changing in modern times (1960s to 1970s), people were no longer so ignorant. For example, some Councillors were accused of directing the outcome of disputes to break up marriages so the divorced wife was then available for them to marry themselves (M. Strathern, 1975:53). At the time, as the Independence Day of Papua New Guinea was approaching, many people undoubtedly needed the right justice with formal power to solve the disputes in the village.

N. O. Oram insists that the real basis for most criticism of the Village Courts may be an argument over the extent to which you can trust the ordinary man to manage his own affairs (1975:68). If so, the problem of corruption must be the first and most important.

In fact, what is now required of the Village Court system? Of course, it is to carry out what the Local Courts can not carry out.

In the establishment of Village Courts, two distinct views were distinguished, so that they would lead to a confusion (N.

D. Oram, 1975:66): "One view is that Village Courts should be little more than the existing village courts with official recognition. ... The other view, reflected in the Act, is that Village Courts should have extensive jurisdiction and power". The options presented in these views seemed to be a significant problem, which was in part common to that of corruption. However, when looking into the role of Village Courts, we should *recognize that the focus of problems is now on the* establishment of a legal system with roots in the indigenous culture.

Since the introduction of Village Courts, a common criticism of that system in general is that the courts in operation often resemble Local Courts rather than the blend of introduced and traditional structures originally intended (R. Scaglion, 1979:116). As many scholars including G. D. Westermark recognize, Village Court magistrates often prefer to use 'Western' procedures, though they tend to follow principles of customary law. However, admitting that such a criticism is true, R. Scaglion made it clear that Village Courts also operated on an informal level. In a sense, his view that the action phases of Village Courts are divided into formal and informal levels means that their reality is a situation of legal pluralism.

If we can acknowledge the effectiveness of Village Courts

on an informal level, we might have to consider the network with unofficial (and traditional) courts more exactly. I think that the crucial problem is now whether Village Court magistrates can use customary law on a formal level, rather than why they often use Western law. As R. Scaglion (1979:128) suggested for the Abelam, "on the basis of 1975 data and Village Court caseloads, nearly 70% of all conflict cases arising in the villages do not enter the formal introduced system in any way".

Village Courts in the Western Highlands

As we know, the big man is very important in all phases of social structure in Melanesia. Traditionally, he is a statesman, mediator and fighter involved in conflict management. With the recognition of the importance of his existence, I would like to investigate Village Courts in the Western Highlands in terms of the three phases of the legal process.

Village Courts were also needed in the Western Highlands in the 1970s. Stated again, the reason was generally the incompleteness of the Local Courts. The rules of procedure in the Local Courts were very sophisticated, though the indigenous magistrates were chosen as staff. Thus, many people in the village could not understand the content of this court because of

the strict formality of the system. Therefore, new public courts were requested in the 1970s.

However, to introduce Village Courts into Papua New Guinean societies including Mt. Hagen was not so easy, because there were problems of 'corruption' of which the Australian Government was always afraid. In the very early days of the colony, the influential man in Mt. Hagen was a bos-boi or tultul, who could use the 'myth of power' (M. Strathern, 1975:54). Though it helped these officials to act in a dignified manner, they sometimes used their power for their own profit. But such a situation was changing, so that the myth was destroyed and their power became weaker and weaker. In other words, new power was, at this time, needed at the village level to settle disputes. In fact, to introduce power with public sanction was the first problem for Village Courts.

The second problem was concerned with the traditional request of 'ik mukl (important talking)' for settling disputes. People in Mt. Hagen stress the value of bringing grievances into the open, but it was very difficult to do it in a formal place because of the metaphorical nature of speech.[12] Before the introduction of Village Courts, the unofficial courts (Kot) recognized the important role of 'talking out'. In the 1960s, many cases of conflict were brought to Kot and were dealt with

by Komitis.[13] Thus the Kot was considered to be part of the official judicial hierarchy by Hageners, but as out-of-court arenas for arbitration and mediation by the Administration. In sum, Hageners needed a place where 'talking out' could work in a simple way in the formal courts.

As R. Scaglion (1979) has suggested, Village Courts have both informal and formal sides for settling disputes. In the formative time of the 1970s, the difficult situation in Mt. Hagen actually called for the formal: the power to enforce public sanctions and a place to bring grievances into the open. On the other hand, the informal functions of Village Courts can operate fully in relation to exchange rituals in the Western Highlands. That is to say, the traditional exchange (Moka) is still alive in Mt. Hagen, so the actions of Village Courts have a close relationship to it, because many conflict management decisions contain the compensations treated in such an exchange ritual.

"Compensation payments are likely to operate effectively only in certain social relationships" (A. Strathern,1975b:185). The relationship which is kept throughout the ritual exchange must be the most significant for such payments in Papua New Guinea. Therefore, insofar as compensation payments are expressed in the idioms of exchange, it is certain that the existence of ritual exchange should make such payments easy on the field of law.

However, the reason why compensation payments are now made difficult is the conclusion of the New Guinean government that compensation payments, bride-wealth payments, and the like should be fixed at a low rate. A low ceiling on compensation amounts was first requested in the Village Courts. If we believe that "Highlanders should be allowed to set and bargain for their own political values in accordance with their existing ideas of appropriate payment"(A. Strathern, 1975b:189), this conclusion by the government seems too simple. The problem of compensation should be discussed in the fluid relations among district groups (Actually, we can re-think the flexibility of customary law here, too.)

At present, the Village Courts keep the customary order. According to V. D. Amnol (1983), with the establishment of this system, traditional obligations illustrated by Moka exchange are formally enforced by law. Because of the need to go to court to enforce such traditional obligations, the traditional exchange arrangements than before (1983:123-4). If the legal system in Papua New Guinea is pluralistic, the present Village Courts in Mt. Hagen might ensure the indigenous law itself, by retaining such traditional obligations. It is the indigenous law concerning exchange that should be the basis for peaceful order in Mt. Hagen.

Conclusion

Considering the historical development of the Village Courts, we can say that they are the result of the introduction of Western law and that they have clearly been established due to necessity or desire for public power at the village level. Local Courts, which helped the Local Government Council, could not satisfy the demands of village people, though this court had many indigenous magistrates on their staffs. Therefore, at the beginning of the 1970s, many people hoped that strong power with public sanctions could exist at the village level. On the other hand, in view of the cultural background of Papua New Guinea, we should recognize that the Village Courts are the forums of customary law and that they have an informal character. Even now, many conflicts are often resolved outside the public courts. The fact that the magistrates of the Village Courts act at the informal level indicates that the Village Courts have both a formal and an informal character, as R. Scaglion (1979) suggested.

Both sides of the Village Courts are concerned with the problem of legal pluralism, because the Village Courts operate in a varied legal culture. In some districts, the Village Courts emphasize indigenous law, and in other districts, Western law.

For example, because of cultural background (exchange), the Western Highlands have indigenous law which the Village Courts should enforce peacefully. In general, many New Guinean societies exhibit such a trend, as the indigenous legal ideology is connected with exchange. The main reason for the close relationships between exchange and indigenous legal ideology is that a central character of indigenous law is flexibility. Speaking concretely, the existence of political speech ensures the observance of indigenous law in the Highland societies. In a sense, legal justice lies concealed in the village, so that metaphorical terms are used to express it openly.

Finally, it is reasonable that the Village Courts should not be bound by formal principles of Western law (R. Scaglion, 1985:38). However, we do not have to ask whether they should be under customary law. What Papua New Guinean societies need at present is the adequate application of customary law or the performance of their own justice.(14) Understanding 'New Guinean law' will make it possible to do so: We can say that the law in this country is really flexible or pluralistic.(15)

Notes

(1) This study was initiated and directed by Dr. Richard Scaglion with his many valuable suggestions. Dr. Keith Brown and Dr. John Singleton made helpful comments and encouragements as well. I wish to express my deepest thanks to these Professors in the University of Pittsburgh.

(2) The reason why I use the term New Guinean law is that customary law in Papua New Guinea is clearly distinguished from that in other countries. As A. Epstein (1974) suggested, one of the major characteristic of New Guinea legal system must be the intimate association of law and politics which is placed on the notion of exchange. By using the term, I would like to emphasize the need for clarifying the concept of customary law in Papua New Guinea.

(3) A. Podolefsky indicated that, although the level of fighting in Enga during 1980 due to the declaration of a state of emergency, it increased again 1981 and 1982 (1984:74-5). When we understand the nature of law and order in Papua New Guinea, it seems that the real problem is still not solved.

(4) We cannot simply deny the ecological explanation that war is the result of land shortages (cf. Meggitt 1977). However, I would like to take notice that P. Sillitoe, who tries to go into the broad theoretical interpretation of war, emphasizes a political rather than an ecological process (1977:80). His insistence impresses on me that war in New Guinea is in a politics centering upon big men.

(5) The next three points, which R. Scaglion (ed. 1983) suggested, indicated future research orientations of legal anthropology in Papua New Guinea: (1) to take note of village courts; (2) to criticize hurried legislation and to seek a deep understanding of indigenous conflict arrangements; and (3) to note broad differences between Highland and non-Highland societies.

(6) In particular, the personalization in customary law means that all people are not equal before the law. Therefore, it is natural that New Guinean law is basically different from Western law which must promise legal equality. In order to understand the

nature of New Guinean law, we should ask the native justice which Papua New Guineans conceptualize. This problem is to ask the relationship between law and social structure.

(7) Recently, R. Scaglion (1985:34), in the legal sphere, suggested that 'Papua New Guinean ways' are distinguished from a 'Melanesian Way', as A. L. Epstein (1974) tried to elucidate New Guinea'law'. Such distinctions recognized the mportance of heterogeneity in Papua New Guinea.

(8) I think that common sense is a premise to legislate scientifically. Therefore, I call the term of common sense the 'supposed common legal ideology' in Papua New Guinea. That is needed to make up the ideal Constitution.

(9) "A major principle behind the Village Courts Act is that, as far as possible, local dispute-settlement processes should be encouraged. The Act's innovation is its attempt to tie these processes into a national system and to provide them with formal power" (M. Strathern, 1975:55). In fact, such a move has encouraged the development of nation-consciousness in Papua New Guinea.

(10) The writers in this book are often persons working in many kinds of courts in Papua New Guinea. Therefore, their opinions seems to be from native people. We must be able to recognize the situations of the 1970s.

(11) In a sense, this district might need Western law. Tolai society had the hard social change in the 1960s or 1970s, leading to the introduction of power which could resolve the disputes, as well as other New Guinea societies. Knowing of varkurai (unofficial hearings) in this district, we recognize a different phase from what P. J. Quinlivan said. Varkurai is an indigenous institution and it is the place of 'talking out' (A. L. Epstein, 1974b:94-95). It is far from a formal instrument, but people in Tolai regard it as due process. A. L. Epstein's opinion is that the indigenousness of such an institution is one character of social life in this district.

(12) In Papua New Guinea, veiled speech used metaphorically has an important role in each society. In Mt. Hagen, the ik ek is the term used for veiled speech. This term means "bent talk", namely, metaphorical speech, and it is basically used in the following contexts: (1) children's games, (2) songs, (3) Moka or disputes in courts (A. Strathern, 1975a:189-190). When such a

speech is used in the last context, it functions as political language, and the big man becomes a great statesman who has a 'big voice'.

In addition, such veiled speech is often seen in Huli or Wiru, in the Southern Highlands District. For example, people in Huli employ much metaphorical speech. The action of 'talk about talk' is regarded as important: Bi (talk,speech). In this society, such terms are also metaphorically used to express the manner in which talk can affect another power. If speech in courts can metaphorically express indigenous law, it is very important to understand New Guinean law.

(13) The Komiti was a Village official who had a secondary role to the councillor. Therefore, his status was low and he wasn't given any significant power, but he handled many cases of conflict. In connection with the indigenous people, the Komiti was clearly much more important than the councillor.

(14) The Constitution of Papua New Guinea is quite clear in stating that customary law is meant to form a significant part of the understanding law of the nation. However, according to R. Scaglion, the codification of customary law is not so easy, and Village Courts can provide a system of justice which can truly develop "through the use of Papua New Guinean forms of social, political and economic organization" (1985:37-8).

(15) In the field of law, the New Guinean way is characterized by the following three phases of legal process: political (in speech), competitive (in exchange), and flexible (in ideology). These natures surely create the absolute of indigenous law and make its procedure flexible.

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