VILLAGE COURTS IN QUESTION: THE NATURE OF COURT PROCEDURE*

By George Westermark**

[*Editorial Note: According to statistics released by the Village Courts Secretariat, as at 30 June 1979 716 Village Courts had been established, and staffed by 3,448 Village Court Magistrates. Fifty-seven per cent of the population resides in Village Court areas.*]

I. *Introduction.*

In 1975 Village Courts began operating in Papua New Guinea, and while there were predictions of a dire end for the system at that time, it appears today that the courts are functioning adequately. Reports of "wantokism"[1] have been published, as well as the misappropriation of fines in some courts, but given the current expansion in the number of courts throughout much of the country, this does not indicate a widespread breakdown in the system. Government officials, academics, and university students have aimed another sort of criticism at the procedure of the courts: they have branded them as "alien"

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* This paper is a revised version of one read to the Department of Anthropology and Sociology, University of Papua New Guinea, Port Moresby. The paper is based on research conducted in the Kainantu District, Eastern Highlands Province, 1977-79. Support for the research was received from the U.S. National Institute of Mental Health (IF31MH07616), the U.S. National Science Foundation (BNS 77-14886), the Bollingen Foundation, and the Department of Anthropology, University of Washington. Their assistance is gratefully acknowledged. I also wish to thank Nancy Williams and Ellen Welsch for reading and commenting on an earlier draft of this paper.

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1. In Pidgin *wantok* ("one talk") is used to refer to a compatriot. Here "wantokism" refers to the nepotistic relationship of court officials and litigants.

or "too Western".[2] This criticism is particularly ironic since the government wanted the village courts to provide a distinctively Papua New Guinean forum; legal planners believed that the new courts would allow for customary ways to be introduced at the lowest level of the national legal system.[3] That the results have not fulfilled the expectations of the planners was demonstrated by comments made in the report of a seminar on "Law and Self-Reliance", organized by the P.N.G. Law Reform Commission, and held in 1976 in Goroka:

> With respect to village courts, it was noted that they have been introduced in Papua New Guinea to give emphasis to the idea of mediation and compromise, and to encourage popular participation in dispute settlement. Indeed, the opinion was voiced at the seminar that village courts should be further strengthened by removing the jurisdiction of local courts wherever village courts are established. However, it was pointed out that the Village Courts' procedures do not always work in the ideal manner envisaged by the organic law. Some Village Courts have used the common law courts, rather than traditional moots, as role models, imposing unduly formal procedures in the dispute settlement process. For this reason it was felt that there should be more emphasis on customary procedures of mediation, compromise, compensation and popular participation, and less on fines and imprisonment, and winner-take-all adjudicatory judgments (Gawi *et al* 1976: 264).

The structuring of the Village Courts by the *Village Courts Act* 1973 does not eliminate adjudication from the courts' powers. It does, however, clearly favor mediation as a method

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2. See Gawi *et al* (1976: 264) quoted below, Paliwala *et al* (1978: 53), P.N.G. *Post-Courier*, 10 May 1978, p. 10. Similar statements were made during the Waigani Seminar, University of Papua New Guinea, September 1978.

3. The Village Courts are set up under the *Village Courts Act* 1973 (No. 12 of 1974).

of handling disputes. While ordering magistrates always to attempt an initial mediation in civil matters, and with the civil aspects of criminal offenses, the Act gives Village Court magistrates jurisdiction over most disputes that arise in the Village.[4] As Chalmers and Paliwala describe (1977: 88-89):

> It is a single village court magistrate acting as a mediator who should perform most of the village court work. Only where the single magistrate cannot succeed should the case go before the full village court which consists of a minimum of three magistrates.

Judging by the seminar statement, my own research, and that of others (e.g., Warren 1976), this dual approach, of initial mediation, possibly followed by an infrequent full court hearing, has not generally been carried out. The Village Courts appear to have taken common law courts as role models, as the seminar suggested, to the neglect of mediation and compromise. In this paper I will address the question of how court procedure has developed, and I will suggest two points for consideration: first, Village Courts are not the only forums operating within village communities, and a thorough analysis of dispute processing[5] must, therefore, include in its examination the style of these other forums and how they relate to Village Courts; second, the authority of Village Court officials and their strategies for handling disputes have been crucial factors in the development of court procedure. In this respect, I find it useful to approach the Village Court and its jurisdiction as what Moore (1973) has called a "semi-autonomous social field". Before discussing these points further, however, I will briefly look at the models legal anthropologists have used in their efforts to analyze styles of dispute processing. Hopefully, an investigation of the current status of these models will shed light on how Village Court procedure can best be interpreted.

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4. *Village Courts Act* 1973, ss. 15-28.

5. I follow Felstiner (1974) in using the term "dispute processing".

My remarks are based on my research in the Agarabi Census Division, Kainantu District. Five Village Courts were studied, on one of which intensive research was focused. However, the results of brief observation trips to other Village Courts throughout the District, as well as the earlier observations of Warren (1976) based on research in the Kamano Census Division, Kainantu District, parallel mine. Therefore, in the paper I will refer generally to the Kainantu Village Courts, noting differences where they seem significant.

II. *Models of Dispute Processing.*

The seminar statement by Gawi *et al*, quoted above, contrasts an ideal of mediation and compromise with the undue formalism of the Village Courts' procedures. The distinction is similar to one made by legal anthropologists who distinguish a "court model" and a "compromise model" in their analyses.[6] Some basic elements of the two models have been distinguished as follows: first, court proceedings are triadic, or involve a third party to the discussion of the dispute, whereas compromise proceedings are dyadic; second, in court proceedings the third party holds coercive power that can be applied to the litigants, a power that does not exist in the compromise proceedings; third, norms are applied within the court, in contrast to the pursuit of interest by the compromising parties; fourth, the court is interested in establishing the past facts of the case, whereas facts are less relevant in the compromise situation; this is because, fifth, the court is interested in resolving a particular trouble case that occurred in the past, while compromising parties are attempting to establish their own most positive position as they see it for the future; sixth, the conclusion of the court proceeding is a verdict, whereas compromising results in an agreement; seventh, outcomes are typically winner-take-all in the court proceedings and, as its name would indicate, compromises in the compromise proceedings.

Recently, however, students of dispute processing have criticized the use of these models. Starr and Yngvesson (1975) point out that the parties to a dispute, including the third party, are likely to have conflicting interests, that these conflicting interests lead them to manipulate their options - to pursue a dispute, seek a compromise, argue for a winner-take-all decision - to their strategic advantage, and that their strategies will change through time. Dispute processing is, therefore, much more complex than these models would lead us to believe. Similarly, Abel (1973) believes that too little is known about the relationships among the qualities of disputes to begin classifying them. The models are based on a limited number of ethnographic examples, Abel argues, and it is premature at this point in our knowledge of disputing to presume that all examples may be subsumed by the two models.

The implication of these critiques is that these models can be theoretically dangerous because they blind us to the range of ethnographic variability, and, therefore, the need to explain that variability. The critiques suggest that we use the models more tentatively, remaining open to the possibility of unique mixes of the models' elements, and, especially, attending to the ways in which parties to a dispute manipulate their options. There is also an ethical implication. By

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6. Abel (1973), Aubert (1963, 1969), Nader (1969), Gulliver (1963, 1969, 1973), and Starr and Yngvesson (1975) discuss these models.

limiting the observer's interpretive framework, the application of the models may deny the cultural creativity of the people whose dispute processing is being observed. Consequently, both those who attempt a scholarly analysis and those charged with the development of legal programs must be cautious to avoid reifying analytical tools.

III. *Village Courts in Action.*

Though the *Village Courts Act* 1973 does not specify that hearings of the Village Court should be held in any one place,[7] in a number of Highland areas court houses have been constructed.[8] In Kainantu the buildings in use today were erected several years before the Village Courts were gazetted. Unlike other regions of the country, Kainantu District had altered its local government structure preceding the introduction of the courts. In 1973, two years before the first Kainantu Village Courts began to function, the Kainantu Local Government Council, in conjunction with the Department of District Administration, organized a system of village alliances, referred to in Pidgin as *Eria Komuniti* ("Area Community"), to form small units of local government a step below the district-wide level of the Council (Uyassi 1975, Warren 1978, Westermark 1978). Associated with their beginnings were the construction of *Eria Komuniti* centers with meeting houses. Village leaders realized that the Village Courts would soon begin to operate, and it was anticipated that the meeting houses would eventually be used for the courts.[9] This has proved true: throughout the District today the majority of Village Court cases are heard within the confines of these buildings.

Upon approaching an *Eria Komuniti* center and court house, one immediately perceives that it is distinctive: the presence of a tall pole flying the Papua New Guinea flag identifies it as a place of government; fences or stones, often painted, border the area; and stone-lined paths and symmetrical plantings of flowers further distinguish it from the typical village setting. The court house itself, though primarily constructed of local materials, is much larger than the ordinary village house. The space within the court house is organized so that officials and litigants are clearly distinguished, and so that interaction with spectators is limited. Officials typically sit at tables facing the litigants, who may either stand or have benches on which to sit. The magistrates and Court clerk sometimes have separate tables, and the table of the magistrates may be on a dais. Village Court peace officers may either stand or sit between the litigants, presumably to avert trouble between them. If they enter at all, spectators are confined to the rear of the court, a space sometimes marked off by a half wall.

These architectural and interior elements of the Courts resemble those of the Local Court located in Kainantu town, the District center;

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7. In fact, the government is opposed to the construction of court houses. See Village Courts Secretariat (n.d.: 2) quoted below.

8. Besides in Kainantu, I have seen such court houses in the Enga, Mt. Hagen, and Tari areas of the Highlands; and I suspect they are found elsewhere as well.

9. The court that Warren (1976: 2) studied began operating in 1974.

and they are matched in this respect by court paraphernalia. The Court clerk is responsible for writing out the orders of the Court in the official Village Court order books provided by the government. He also writes the notes and letters to litigants or witnesses whose presence is requested by the court. The magistrates have official Village Court handbooks that set out the rules of the court. While magistrates can be seen leafing through their handbooks during the course of a hearing, they seldom actually quote from the books.

The order books and the handbooks, along with the Village Court medallions the officials wear around their necks, serve to give the Courts an official aura. Village Court officials expressed the significance of these visible symbols of authority in comments they made to me on the expected introduction of village court uniforms in Kainantu in 1979. One magistrate believed that, "now we are closer to having full power"; a peace officer felt that the uniforms, "will make all the villagers shake when we give them orders". Perhaps their attitude was best summarized by the statement of a councillor, describing for me the difference between the Village Courts and the hearings he previously conducted in the pre-Village Court era: "Before we did not have real courts. Now they have books and a training course and they have real courts."

Behavior in the Court is strictly regulated. A question/answer format is used with magistrates directing questions to litigants and witnesses. Speaking out of turn or wandering to matters that do not pertain to the question at hand are usually prohibited by the magistrates. Similarly, addressing one's co-litigant is frowned upon. In addition, one of the duties of the peace officer is to assure that the litigants follow the directions of the magistrates. If litigants engage in this circumscribed behavior, or show disrespect to the court, hearings are sometimes halted, the matter under discussion postponed, and a contempt of court hearing begun. One magistrate drew this analogy for the proper behavior in court: "Those in court must be like dead men."

The magistrates take a limited view of what evidence is relevant in court. The questions they pose center around the issue brought before the court by the plaintif, and they restrict what they call in Pidgin *bekim bekim kot*.[10] That is, the court will not explicitly consider a dispute which may have preceded the case under consideration and possibly be one of its causes. The magistrates are often heard to say, "You cannot talk about that, that is another case." This rule of relevance prevents a full airing of grievances, but the magistrates believe it is their duty to allocate responsibility within the trouble situation before them. This requires sufficient evidence to determine the facts of the situation and, characteristic of the court model, they are more concerned with what has been than what will be. Also consistent with the court model, magistrates concern themselves little with reconciliation in the cases they hear; instead, they assume that reconciliation is primarily an element of hearings outside the Village Court. The relationship of Village Courts to other forms will become clearer below.

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10. To retaliate against an accusation by making a counter-accusation.

This description of attitudes toward reconciliation must, however, be tempered by the recognition that reconciliation is an illusive process, and while it may not be an explicit goal, a number of actions may lead to that end. Van Velsen has criticized the many writers who have discussed reconciliation in African courts for "their assumption that 'judgment by agreement' and 'judgment by decree' are mutually exclusive alternatives" (1969: 144). He suggests that there are different stages in the judicial process, and that it may only be possible to effect reconciliation at certain stages. In concluding a hearing, there are two decisions made in any court:

> namely a decision as to the relevant facts and the appropriate legal rules to be applied (this is the judgement or verdict) and the decision as to the appropriate sanction for the judgement (this is the award or sentence) (1969: 144).
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> While the first decision is the result of a process of logical reasoning, the decision on sanctions is less logical, more flexible, more overtly susceptible to considerations of expediency, more adaptable to non-legal desirabilities (1969: 148).

The fact that Village Court magistrates exclude the discussion of some disputes from a hearing through their attitude towards relevant evidence does not mean that these disputes are necessarily excluded from their decisions about the case. Village Court officials share information about the disputes they hear, and though litigants before the court may have only one magistrate from their community present, it is likely that all the magistrates are aware of the events surrounding the dispute. Two cases heard by a Village Court in the Agarabi Census Division illustrate Van Velsen's point about the two types of decisions.

In the first case the plaintiffs, parents-in-law of the defendant, were pressing for a brideprice payment. The young defendant argued that, as a member of the Seventh Day Adventist mission, he was forbidden to make such a payment. In the parents' favor was the fact that the *Eria Komuniti* of the litigants, like others throughout the District, had set standards for brideprice payments, yet the magistrates supported the defendant's argument, adding that "the law of the mission is the law of the government." They thus made a clear decision in favor of the defendant. During their remarks following this decision, however, they admonished the defendant, saying that he must help his parents-in-law with money when they were initiating business or ceremonial projects, and the defendant agreed. The magistrates then instructed the parents-in-law that they should return to the court for support in the event the defendant failed to comply with their "advice". In this way the magistrates were able, first, to state that for mission members "mission law" superseded that of the *Eria Komuniti* in matters of brideprice payment; and, second, to ameliorate the effect of the first decision by demanding that the defendant fulfill his affinal responsibilities. Through this second action, they encouraged a reconciliation in relations between the litigants, or, at least, forestalled a further deterioration of those relations.

The second case was brought by a deserted husband seeking compensation from his first wife's new husband. The case was a complicated one, being preceded by numerous other disputes that centered around the husband's failure to divide his attentions and resources equally between his two wives. After many fights with both her co-wife and husband, and several prior court appearances, the first wife had left her husband, and let it be known that she had taken a new husband. In court, the husband argued that as he had taken care of his wife for many years and spent the earnings of his employment on her, he was now entitled to return payment from her new husband. This argument did not find favor with the magistrates who were aware that the husband's negligence was the heart of the problem; but they did not raise this point in rebuttal. Instead, they countered that if he were to receive a payment, that payment must come from his runaway wife's brothers who had originally received his sister in exchange for this wife. And, they added, since his wife had worked for him for many years, and had borne him several children, and since her brothers had made sizeable contributions to the nurturance of those children, it was unlikely that they would require the brothers to compensate him if he brought such a case before the court. The fact that another case concerning custody of the couple's children was then in limbo between the Village Court and the welfare office in town was not mentioned.

Having made their decision and offered recommendations with regard to the husband, the magistrates then turned to the wife and her new husband, whom they said were wrong for having established this new union without first properly ending the first marriage and notifying the Village Court. The magistrates interpreted this omission as an affront to the Court, and they ordered each to pay a fine of K40. When I spoke to one of the magistrates after the hearing, he explained to me that, though they could not order that the husband receive payment, the magistrates were concerned that the husband would continue to be angry, brood over his loss in court, and later cause some new trouble. They had, therefore, ordered the fines to appease the husband, and thus avert the trouble they foresaw.

These cases demonstrate that the magistrates' decisions are not solely centered upon the past as the court model would lead us to expect. While they do apply norms, they are also interested in assuring peace in the future, and by manipulating the two decisions Van Velsen describes, they attempt to accomplish this. And, in their efforts to maintain peace, they may lay the groundwork for reconciliation. Yet it is clear from the magistrates' statements that they do not perceive reconciliation to be their primary objective. Rather, they expect that litigants in the Village Court will be intransigent in their opposition to each other. They say that those who come to the Village Court should at that moment be like enemies, and they call cases where the disputants are too friendly *giaman kot*.[11] Cases where disputants are unlikely to reach an easy settlement of their problem are considered most suitable for a hearing in the Village Court. Because it is felt that close relatives (e.g., clan-hamlet co-residents) will easily finish a dispute once the anger of the moment has worn off, as well as because magistrates feel close relatives should not act as enemies, they order such litigants to attempt

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11. A false case. Warren (1976: 22) gives examples of similar instances.

mediation outside the Village Court. Similarly, minor issues brought by litigants can often be quickly resolved, and magistrates normally send these cases to be heard outside.

Village Court officials, then, are not opposed to the idea of mediated settlements and reconciliation, but they have arrived at their own system for classifying those cases that should be mediated and those that should be adjudicated. Certain cases, because of the social relationship of the disputants and/or the issue in question, are referred outside the Village Court. In analyzing reconciliation, Van Velsen suggested that:

> one may not assume that in small-scale societies the pressure for reconciliation operates, or operates equally, in all courts. In societies with a hierarchy of courts reconciliation may be less important in the superior courts (1969: 149).

This statement aptly describes the situation in the Village Courts. While they are officially structured as the lowest level in the national judicial system, Village Court officials perceive another forum beneath them. This forum is typically less legalistic than the Village Court; it takes place directly outside the court house or in the village;[12] many more people are included in the discussion, both as participants and audience, than the few who meet inside the Village Court; the ideas and events introduced are much more loosely associated with the dispute under consideration. This expanded range of people and relevant evidence leads to what would be considered many irrelevant digressions in the Court. But the hearings exemplify some characteristics associated with the compromise model: a relatively unrestrained exchange of argument and negotiation.

In some respects this forum, which I will follow Warren (1976) in calling the "outside court",[13] fulfills the official Village Court plan that disputes should be mediated before they are brought before a full Court hearing. Yet there are differences. First, though the *Village Courts Act* 1973 intended that a magistrate would handle mediations, peace officers, court clerks and *Eria Komuniti* representatives also act in this role.[14] According to the Act, these hearings are at

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12. I did not observe the proscription on conducting such hearings near the court house noted by Warren (1976: 7).

13. Warren (1976: 13) divides outside courts into two categories: intra-kin group and inter-kin group. As the former constitute the largest number of outside courts, I will discuss only these here.

14. Unlike the court described by Warren (1976: 14), in the courts I studied it was not "any person who commands sufficient respect" who conducted outside courts, but almost always it was a man who held some official position. Nor did I find that magistrates refrained from handling mediations in outside courts (cf., Warren 1976: 22).

times official and at times unofficial. Second, though the Act directs that all disputes should be mediated before they are taken to a full hearing of the Village Court,[15] not all disputes are proceeding through this stage before they are heard. Third, though the officials in the outside court take a less directive stance, they do not withdraw completely from the hearing. They question disputants and they suggest some resolution that they believe to be fair. They often support their suggestion, too, with a threat of what will come in the Village Court if it is rejected. Village Courts will usually inquire about, and follow, the thinking of the official in the outside court, as well as exact penalties or compensation more severe than suggested in that hearing. And, where it was a magistrate who presided in the outside court, a disputant may find the same man sitting before him when be comes to the Village Court. The officials in the outside court use reasoning like the following with a defiant disputant: "When you go to the Village Court you will find that they say the same thing to you as I say to you now"; or, "If this matter goes to the Village Court they are likely to tell you to pay a far higher compensation than I am telling you now." Thus, the officials who participate in the outside court do not disassociate themselves from the Village Court. Instead they make explicit appeals to the coercive powers of that forum in their handling of disputes.

These continuities in cases, participants, and personnel indicate the pragmatic ways that these two forums are related.[16] I believe they also are unified conceptually as parts of one system by the participants. This unity was demonstrated on the part of magistrates for the courts I studied when, after elections were held for new magistrates in October 1977, the defeated magistrates ceased handling both Village Courts and outside courts, and they were replaced in both forums by the victors. In May 1978, the Village Courts Secretariat in Port Moresby learned of these elections, discovered that they had been held prematurely, and ordered that the old magistrates be reinstated.[17] The old magistrates, who had handled no disputes in the interim period, then took up their work again in both the Village Courts and outside courts. From the perspective of those who manage them, the two forums do not stand in opposition as official and unofficial courts. Rather, the two forums have been integrated by Village Court officials, and they serve to support each other.

IV. *Village Courts: The Semi-Autonomous Field.*

During two weeks of May 1978, a training course led by a training officer from the Village Courts Secretariat was held for new magistrates in Kainantu. Some statements made by magistrates during the course reveal their attitude toward the court and their role within it. At an

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15. *Village Courts Act* 1973, s. 20.

16. Warren (1976: 14) refers to these as "potential links between these hearings and the Village Court which indicate a hierarchical arrangement".

17. This election was initiated by the Inspecting Magistrate for Kainantu District.

early session, the training officer stressed in his lectures to the twenty-six magistrates that prior to a full hearing they should attempt to mediate disputes. He reinforced this by saying that this was the way of their ancestors, and that they must uphold this custom. One magistrate questioned this statement: "Don't you mean that this was the way of the *luluai*[18] and councillor?" The training officer, a man from the coast, affirmed that he was speaking of the way of their ancestors, but the magistrate disagreed: "Our ancestors were strong men. They held their courts with bows and arrows." At the end of the first week, during a review of what had been learned in the preceding days, another magistrate asked whether they were permitted to tell people in their villages what they learned from the course. The instructor told him that this was up to them. The twenty-six magistrates were unanimously opposed to spreading this information; they reasoned that it might lead litigants to question the decisions of the magistrates. As the magistrate who raised the topic argued, "It would not be good for everyone to understand what is in the book and then use this to 'eat' us." Towards the conclusion of the course, a third magistrate raised a different sort of question, one unrelated to the specific details of work in the court. His concern was the origin of the Village Courts they were now asked to serve in. Who started them? What country was their home? The training officer answered, briefly, that these were the courts of Papua New Guinea, and the question was dropped. I later asked this magistrate about his question. He explained that these Village Courts were like the councils the Australians had given them years before. They were difficult to understand at first. He wanted to know which country had given them these courts, whether it was Australia, America, or England, and he wanted to suggest that some magistrates from among his group be sent to this origin country to learn the true way to run the courts, just as some early councillors had gone to Australia to observe Australian councils.

The magistrates' statements during the training course reveal two uncertainties: first, in their relationship to litigants from the communities they serve and, second, in their relationship to the sphere of external authority. These uncertainties result, I would argue, from the magistrates' position within what Moore (1973) calls the "semi-autonomous social field". Moore describes such fields as:

> characterized by their ability to generate rules and customs and symbols internally, but [they are] also vulnerable to rules and decisions and other forces emanating from the larger world by which [they are] surrounded (1973: 220).

This approach emphasizes the role of actors generating their own cultural systems within the confines of impinging external forces. Decision-making by the Village Court officials reflects such a situation where, as they have acted as legal middlemen between their own communities and the hierarchy of legal officialdom, they have created a system different from what existed before and different from what was envisioned by the *Village*

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18. Pidgin title for village headmen appointed by the Australian administation. This position was terminated with the inception of the councils.

Courts Act 1973. Their position is best understood within its historical context, focusing upon shifts in the allocation and use of power. Such a perspective includes both changes in the administrative structure and indigenous politics, as well as their interface. I cannot provide a detailed account of these changes here;[19] to mention several critical points will, however, indicate their pertinent aspects. First, the men who today occupy the roles of Village Court officials are, for the most part, the same men who acted in the roles of *luluai*, *tultul*[20], *doktaboi*[21], councillor, *komiti*[22], and other government initiated positions; second, they are responsible for exercising their powers within communities where they hold traditionally defined social, political, and economic links with their neighbors; and third, they do so at a time when there has been a continual withdrawal of external authorities' direct administrative presence in the village. The style predominant in the Village Court, as well as the way the Village Court and outside court relate, I believe, is a response by the court officials to their position in a field structured by these three points.

According to Berndt's (1962) account of the Kamano area of Kainantu, courts began to flourish there during the early stages of contact with the Australian government, in some instances before actual contact had been made.[23] These courts, as Berndt points out, rapidly became a substitute for the more violent methods for resolving disputes that were banned by the Australian administration. Such courts continued under the *luluai*, then the councillor, and though they were unofficial, they had the tacit approval of the administation. More important, *luluai* and councillor, and their constituents, believed that they had *de jure* power to hear courts. The attitude in Kainantu was similar to that which Strathern describes for Mt. Hagen:

> Instead of isolating and withdrawing themselves, dismissing 'law' as something relevant only to official courts, they have mentally structured the present state of affairs so that they themselves and their leaders can behave as though their courts were part of the official system, and something of the role of *kiap*[24] devolves

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19. I will discuss these issues in my forthcoming doctoral dissertation (University of Washington).

20. Pidgin title for the assistant to the *luluai*. This position was also terminated with the inception of councils.

21. Pidgin for aid-post orderly.

22. Pidgin for the assistant to the councillor. In Kainantu this position was terminated with the inception of the *Eria Komuniti*.

23. It appears that this was a Highlands-wide phenomenon. See M. Strathern (1971, 1975) for Mt. Hagen and M. Reay (1964) for the Wahgi Valley.

24. Pidgin title for Patrol Officers. Until late in the era of Australian administration, the *kiap* held both judicial and administrative powers.

> upon councillors. Councillors and *komiti* in this light become mouthpieces for what they interpret to be *kiap* law (1971: 149).

Village court officials do not fail to note the difference in their present courts from the previous work of the councillors, as is clear from the statement of the councillor quoted above. But they do not feel that this is something entirely new. Rather, they have simply acquired greater powers than they previously held. In the present post-Independence era, or in Pidgen *taim bilong mipela* ("our time"), they are responsible for exercising powers that formerly were the province of officers of the Australian administration; and as in Mt. Hagen, councillors, and now *Eria Komuniti* and Village Court officials, refer to themselves as *kiap bilong ples*[25]. Both officials and villagers refer to their court house as their *ofis* ("office"), just as the headquarters for government activities in town is called the Office. And, just as there was first a dual structure of *kiap* and *luluai*, then the separation of Local Court and councillor, it appears that officials have replicated this structure in their pairing of the Village Court and the outside court. Consequently, the officials, who perceive themselves as being the "first line of the government", which is an identity important to their status within the community, have adopted in the Village Court a style that they feel is proper for those administering the law of the government.

Having defined their position as they have, Village Court officials are still faced with the pragmatic problem of enforcement; and it is with regard to this problem that their structuring of the Village Court has strategic significance. Officials must first get both parties to a dispute into court, then manage the proceedings, and, finally, once the decision is reached, obtain compliance with its provisions. Though the magistrates are elected to their position, and it is generally accepted that it is their duty to pass judgment, this does not mean that all those who face the court will comply with its edicts. While litigants might, in the abstract, agree that magistrates can legitimately order community work, fines, and compensation, they are unlikely to comply with court decisions without, at least, a gentle prod. Completing the enforcement process successfully is most difficult both with mature men who have standing in the community and with educated youths, because both are likely to contest aggressively the decisions of the court. They are the ones who might"eat" the magistrates, as the magistrate in the training course warned. Enforcement is also difficult with young males in general, for their greater mobility enables them to elude the court.[26] And the enforcement problem is made more complex when one of the parties to the dispute lives within the jurisdiction of another Village Court, because methods for coordinating the activities of officials for different jurisdictions are undeveloped.

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25. *Ples* is Pidgin for village. This phrase indicates that village officials hold powers within the village parallel to those of the *kiap* within the District.

26. I found compliance with court orders and summonses to be less readily obtained than did Warren (1976: 10).

Unlike the majority of cases that appear before the court, these cases challenge the authority of the magistrates, and it is in these encounters with difficult litigants that the style of the Village Court that stresses elements of the court model is most useful. By limiting the evidence and the number of individuals who may participate in the proceedings, the magistrates can more easily manage the proceedings and match the challenges to their authority; by both announcing their decision in terms of norms ("the law") and using frequent fines, they impress upon litigants that the Court will be uncompromising in its verdicts and will be unrelenting in enforcing them; and by using the outside forum for mediation and reconciliation where it is appropriate, they are able to take a more authoritarian posture in the Village Court. The symbolic weight of the Court style is itself an aid to enforcement, for it evinces the Court's association with the government and therefore the support the officials can call upon from the government. Court officials do not have at their disposal, as remedy agents do in some societies, supernatural sanctions to support their actions, e.g., ordeals or oaths, nor can they resort to corporal punishment as some *luluai* were wont to do in the past. The power they hold mainly accrues from their association with government, and by emulating other government courts they demonstrate that relationship.[27]

This emphasis on the Court's relationship to government has another strategic benefit in the magistrate's management of disputes. It dampens the potential politicization of cases that appear before the court.[28] In the face-to-face communities that typify Papua New Guinea, it is difficult to maintain a focus upon one identity such as that of magistrate. A Village Court official is also a kinsman or an affine, an ally or an enemy, and these other roles naturally tend to intrude in social interactions. Though magistrates normally withdraw from hearing cases involving members of their immediate family or other close relatives,[29] it would be impossible for them to avoid all cases with litigants with whom they have, have had, or may in the future have, significant involvement. Given this predicament, the style of the Village Court cloaks the proceedings with the power of the government. The magistrates and other officials step back from their extra-court identities and don, instead, their administrative identities. It is as if they are saying, "It is not I, the man whose clan has accused yours of sorcery, or the man whose brother is married to your daughter, or the man whose gardens your pigs recently destroyed; no, it is the government, that flag that flies outside, this medallion that hangs from my neck, and

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27. Strathern (1975: 50, ft.n. 7) notes that the differences in ceremonial exchange, customary use of valuables, and perception of leadership roles made a difference in the enforcement success rate of the unofficial courts of councillors in Highlands societies. Such differences also are likely to affect the enforcement success of Village Courts.

28. Kuper (1971: 24) has described the courts of the Kgalagari people of Africa, where relations between litigants and magistrates have had a similar impact on the style of the courts.

29. Magistrates in the court Warren (1976: 11) studied did not limit themselves in this way.

this book in my hand, that judge you."

However, the fact that the power relationship between government and Village Court is important means that, to the extent that that link is weak, the ability of Village Court officials to effect their orders is diminished. Strathern, prior to the inception of the Village Courts, said of the Mt. Hagen area:

> Power is central to the way Hageners perceive the relationship between themselves and the government... If Village Courts, expressly tied into the official judicial structure, are to succeed in making some contribution to law and order in Hagen, their powers must be visible (1975: 54).

The Kainantu Village Court officials clearly recognize the significane of this relationship as well. During 1977, complaints were raised monthly at Kainantu Council meetings about the lack of support Village Courts receive from the Local Court and police in town. Councillors, either carrying the message of their magistrates, or speaking as magistrates themselves, said that the Local Court too often sent back defendants sentenced by the Village Court to imprisonment for another hearing, and they complained that the police do not assist court officials to apprehend those avoiding court sentences and do not aid them in transferring defendants from the village to the town where they are to be imprisoned.[30] At a special meeting of Kainantu Council leaders called to discuss problems of the Village Courts and the *Eria Komuniti* system, the Council President suggested that the Local Court magistrate, who also serves as inspecting magistrate for the Village Courts in the District, meet with people at each *Eria* center and explain to them the penalties for particular offenses so that litigants would not argue with Village Court magistrates about their decisions. He also urged that he warn villagers that if they failed to obey the Village Court officials they would face serious penalties in town. The President's remarks indicate that he, along with Village Court officials, felt that ultimate authority lay with the government, and that all their jobs were more difficult when external support was not forthcoming.

V. *Conclusion.*

My comments in this paper have been addressed to the question of procedure within the Village Court, and this has led me to focus upon the role of Village Court officials. Here I would like to mention that other actor in the court drama: the litigant. Certainly the Village Court would have little to deliberate upon if, as has happened in some countries, litigants chose to ignore the Village Court in favor of other forums. Though plaintiffs and defendants may not be pleased with every decision of the court, they continue to use it actively. This appears to be the case throughout the country. It is certainly true in Kainantu. In one Village Court in the Agarabi Census Division, approximately 300 cases were

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30. Relations between Village Court officials and police have been a source of tension elsewhere in the Highlands, e.g., the Simbu Province (I thank Ron Hiatt, Department of Provincial Administration, for this information) and the Western Highlands Province (see P.N.G. *Post-Courier*, 13 July 1978, p. 13).

heard in one year (June 1977-May 1978); and these 300 cases involved nearly 700 litigants, almost one third of the 2200 in the Court's jurisdiction. Though this is the record of only one court, and conclusions made from it should be advanced tentatively with respect to other courts, the level of use in Kainantu indicates that, whatever question those in national government may have concerning Village Court procedure, the courts are filling an important role at the village level. It is unlikely that they would continue to have a large number of users if they were not handling disputes in a fashion appropriate to local norms.

The attitude of the government is to support "traditional" procedure in the Village Courts. This can be inferred from the following quote taken from a handbook for inspecting magistrates:[31]

> As the aim of village courts is to carry out law and order functions *in a traditional manner*, the Government does not encourage formalities within the procedure or administration of village courts. This means that the Government does *not* encourage construction of Court Houses, issue of uniforms, handcuffs, whistles and batons to Peace Officers, use of rubber stamps by the Court, and display of the national flag or pictures of the Queen at the place of sitting... The reason for encouraging village courts to follow tradition as closely as possible is that the people can see that the court is their own institution and not imposed by the Government. This aim is not helped by using the things mentioned above. It is the job of the inspecting magistrate to encourage village courts to follow their own traditional ways, and not to adopt procedures or use objects which will make the court look foreign to the population it is supposed to serve (Village Courts Secretariat, n.d.: 1-2, original emphasis).

The government position implies the search for a national ideology, the so-called "Melanesian Way", that includes a traditional past short on violence, and long on mediation, compromise, and reconciliation.[32] Most newly independent nations seek to throw off the trappings of foreign rule, and such a goal often can be applauded. Yet, striking a balance between national and local interests that will be beneficial to all is no easy task. A question that those responsible for the future development of the Village Courts might ask themselves is, how does the style of the courts, including foreign trappings, facilitate or hamper dispute processing in village communities? In reaching an answer, they should not ignore the work of officials in the outside courts; and they should be careful to avoid mistaking form for content, or reifying, and basing policies upon, the

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31. I wish to thank Tony Pryke, Village Courts Secretariat, who made a draft copy of the manual available to me.

32. Standish (1978) has analyzed the implications of the ideological question for political leadership.

court and bargain models. A desirable balance between national and local interests will be reached only if policy makers first understand both how styles of dispute processing have been interwoven at the village level and how the results of this mixture are now functioning.

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