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Legal consciousness and the predicament of village courts in a 'weak state': Internalisation of external authority in the New Guinea Highlands

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I. Legal consciousness and village court studies

Legal consciousness is the concept of awareness of the law and it explains why everyone, not just legal professionals, uses the courts[1] (Merry, 1990; Silbey, 2005). There are two characteristic approaches to legal consciousness research. The first is the broad definition of 'consciousness' as a social practice in everyday life, not limited to the domain of linguistic thought suggested by the phrase 'legal consciousness'. The subject is analysed from the perspective of an objective social structure and its internalisation (Silbey, 2005, p. 334). The second is the study of the legal consciousness of ordinary people in

1 Some of the data in this chapter overlap with a short thesis written in Japanese entitled 'Sonraku saiban no keishikika to senryakuteki riyo: Nyu Guinea kochi Enga shu ni okeru keni no kikyu' ['The formalisation and strategic use of village courts: Authority-seeking in Enga Province, New Guinea Highlands'] (Fukagawa, 2012). That thesis focuses on the 'strategic use' of village courts, whereas this chapter includes new data and considers the issue anew from a theoretical framework of legal consciousness.

relation to hegemony. Here, it helps to 'explain the practical determinacy of a legal system that is theoretically indeterminate' (Silbey, 2005, p. 330). Power relationships penetrate objective social structure. Legal consciousness contributes to the reproduction of existing social inequalities.

However, when using this perspective in trying to analyse village courts in the New Guinea Highlands, problems immediately arise. The theoretical framework of legal consciousness presupposes the existence of a powerful state. In Papua New Guinea, it is difficult to say that a solid system has been established about the monopoly of violence by the state and the justification of domination by the realisation of public interest (maintaining order, fairly sharing resources, guaranteeing rights, etc.). Papua New Guinea is even referred to as a 'weak state' (Dinnen, 2001). Thus, we must clarify how the ordinary people perceive a 'weak state' and what expectations they have when using the village courts.

Previous studies on village courts pointed out that, contrary to village court law stipulations, village courts are formalised to resemble modern courts rather than using an informal, custom-based process. The formalisation of village courts is a phenomenon widely seen throughout the country (Goddard, 2009, pp. 90–91). Regarding this phenomenon, previous research focused on magistrates, utilising the two-pronged approach of 'legal centralism' and 'legal pluralism' (Scaglion, 1990, p. 17).

Research based on 'legal centralism' regards the formalisation of the village courts as proof that a modern legal ideology encompasses regional communities. It asserts that village courts become tools for state control, supporting the existing hierarchy (Fitzpatrick, 1980; Paliwala, 1982). Therefore, these studies consider the public's legal consciousness to be no more than a reflection of the ideology of a strong state's rule of law. Furthermore, those studies have incorrectly perceived village court magistrates as dependent, passive beings in relation to the state.

In contrast, research based on 'legal pluralism' considers the formalisation of village courts to be a creative activity that blends traditional mediation methods with modern court procedures (Scaglion, 1979, 1990; Westermark, 1978, 1986, 1991; Zorn, 1990). Among these studies, the interesting point is that magistrates formalise village courts by imitating colonial administrator courts and superior courts, thereby vesting authority in themselves (Westermark, 1986, pp. 136–139). In other words, village court magistrates are not merely subordinate to ideology, but also they appropriate

the authority of both the colonial government and the post-independence state according to their own interests, redefining themselves as active beings and elevating their own social standing (Westermark, 1991).

In this way, research based on 'legal pluralism' in the 1980s through the early 1990s succeeded in understanding the creativity of the magistrates that 'legal centralism' had overlooked. However, those studies were later criticised for assuming a dualistic framework of customary law and modern law and for failing to inquire into the formulation of that framework (Demian, 2003; Goddard, 1996). Moreover, they were criticised for focusing too narrowly on conflict resolution, disregarding various aspects such as the transformation of leadership and the narrative of nation as expressed through courts (Brison, 1999; Lipset, 2004). Such criticism is to some extent valid. However, it should be appreciated that 'legal pluralism' interpreted village court formalisation as the attainment of power by magistrates, and it provided a clear explanation for the gap between village court law—which supposedly respected customary law—informality and the actual practice of village courts.

Rather, the problem with those studies is that they rely on a magistrate-centred viewpoint and do not sufficiently describe how the ordinary people perceive the courts and their magistrates, as well as how they perceive the law and the state. The effectiveness of village courts was questioned early on because of the limited support of law enforcement agencies such as the police (Goddard, 2009, pp. 55–74; Gordon & Meggitt, 1985, pp. 230–236). When studying village courts, we must not overlook the significant question of whether or not the people accept the authority and legitimacy of the magistrates.

Research that analysed informal 'trials' conducted by government officials or police officers in the Highlands region identified that the authority of these institutions was not simply passed on to 'magistrates'. Rather, the people themselves demanded strong legal authority, and read it into government officials and police (officers serving as 'magistrates') (Kurita, 1998). To elaborate on this point, when studying the legal consciousness, it is necessary to focus not only on their view of the state, but also on how and why the ordinary people seek such authority. This chapter will use the cases of the Wapenamanda District in Enga Province in the New Guinea Highlands to ask and answer the following questions. While magistrates

give authority to themselves, in what ways do the people seek that authority, approve or deny it, and in what ways do they use the village courts as related to their consciousness regarding the state and the law?[2]

II. Weakening of 'governmental law'

1. Localisation of the court system

The current village court system was introduced at the end of the colonial period in the New Guinea Highlands. Generally, the courts used by villagers were localised and separate from courts presided over by colonial officials.

The Australian colonial government established a full-fledged governing system from the mid-1940s to the 1950s. Colonial officials, known as *kiap* in Tok Pisin, were the main actors during colonial times. The *kiap* post was all-purpose, with authority in administration, justice and even policing. The *kiap* had physical power in the form of guns and suppressed inter-clan warfare in the Highlands. In the process, the Highlanders came to regard the *kiap* as an absolute authority who must be obeyed.

Thereafter, on the judicial front, the *kiap* became judges in the Courts of Native Affairs and were engaged in maintaining order in the region. The Courts of Native Affairs processed offences and heard civil suits according to summary jurisdiction. Moreover, the *kiap* also engaged in the extrajudicial arbitration of disputes over land borders (Gordon & Meggitt, 1985, pp. 44, 85, 162–163, 186; Hatanaka, 1975, pp. 24–25; Kurita, 1998, pp. 143–148, 157; Strathern, 1972, pp. 43–48).

What is of great interest here is that in Enga Province, *kiap* courts at this time were embedded in inter-clan rivalries. After the suppression of warfare, people filled the gap by quarrelling with other clans through *kiap* courts. Victory in court or arbitration concerning inter-clan land borders was equivalent to the acquisition of land through fighting (Meggitt, 1977,

2 This chapter is based on data collected from fieldwork in a village in the Wapenamanda District of Enga Province, Papua New Guinea Highlands, between May 2007 and January 2009. The population of Enga Province is 295,031; of Wapenamanda District, 53,547; and of the village studied, 1,303 (Papua New Guinea National Statistical Office, 2000). The language spoken in Enga Province, aside from Porgera in the west, is the Enga language.

pp. 153–159). In this period, clan rivalries were settled not with the bow and arrow but by making use of a powerful external authority, represented by the gun-wielding *kiap*.

Under these circumstances, beginning in the mid-1960s, the localisation of the government and the inclusion of Papua New Guineans in government agencies progressed. Then, in 1966, the *kiap* Courts of Native Affairs were replaced with local courts that employed magistrates who had undergone specialised training (Goddard, 2009, pp. 46–47; Gordon & Meggitt, 1985, pp. 79–83). Local courts, facing independence, began employing Papua New Guinean professionals as judges. However, their authority was not accepted as well as that of the former *kiaps*, and the villagers, having no familiarity with modern courts, rarely used the local courts on their own initiative (Hatanaka, 1975, pp. 25–27; Strathern, 1972, p. 55).

To break this trend, village courts were created. This made it easier for villagers to access the courts, and it allowed for conflict resolution in accordance with local conditions (Goddard, 2009, pp. 47–51). However, village courts, from the time of their establishment, faced financial issues and were constantly troubled by noncooperation from administrative organisations and other law enforcement agencies. These issues continue into the present and are considered the biggest flaw of the village court system (Goddard, 2009, pp. 55–74; Gordon & Meggitt, 1985, pp. 224–236). While village courts are easily accessible to anyone, they have limited support from the state and, in this respect, are a fragile institution.

2. Aspirations for power

The village courts were introduced as a court system easily accessible to villagers and able to uphold customary law. By definition, village courts were a system qualitatively different from the Courts of Native Affairs and the arbitration presided over by *kiaps*. Nevertheless, to the villagers of the Wapenamanda District in Enga Province, village courts are positioned as an extension of the courts controlled by *kiaps*.

When I interviewed men aged in their fifties to seventies about the colonial period, they referred to the 'strong law' (*lo keto*) of the colonial government. They said that when Australian colonial officials arrived suddenly in Enga with the overwhelming strength of firearms, they laid down a 'strong law' represented by guns, courts, police officers and prisons. This came as quite a shock to the local people. In an age when men used stone axes in Enga

Province, the *kiaps* gathered the people in village squares and made a display of using guns to shoot and kill pigs from a great distance. They said that during this shocking display, everyone was silent in stunned amazement.

In those days, because people feared the 'government' (*gavman*) as a result of their experience with the *kiaps*, those I interviewed told me that people were extremely afraid of the courts. A man in his seventies who actually went through the court system at that time spoke of his first experience facing a *kiap* in trial, how his body shook and he dripped with sweat as he made his plea. Once, the men in his clan defied the orders of the colonial government and fought against the men of another clan. The colonial officials used the police to arrest those men and, after bringing them to trial, incarcerated them for six months. In Enga Province, there was a practice of naming children after dramatic events such as this. Thus, there are men named 'Prison' (*Kalabus*) and 'Everyone [was arrested]' (*Pebete*) after events revealing the colonial administrators' tremendous power. These events are remembered clearly, even today.

In contrast to the colonial period, from the time of independence to the present day, the 'collapse of the law' (*lo koyapae*) is emphasised. Around the time of independence, inter-clan warfare that had been suppressed during the colonial period was revived (Gordon & Meggitt, 1985, p. 220). The villagers of the Wapenamanda District say that after independence, the state could not control inter-clan wars. Thus, they call the state a 'weak government' (*gavman injapae*). Moreover, Papua New Guinea was facing the problem of robbery, theft, rape and murder by young people in gangs referred to as *raskols* in Tok Pisin (Dinnen, 2001, pp. 55–110), and the cities (especially Mount Hagen) were dangerous for the people of Enga Province. Such incidents are referred to as evidence of the 'collapse of the law'.

In this way, the colonial period is idealised, addressing consciousness that takes a pessimistic view of the post-independence era. When I inquired about colonial-period courts, the majority of interviewees referred to post-independence village courts as well, extolling the strength of the former and disparaging the incompetence of the latter. For example, a man in his sixties stated that in colonial-officer courts, the orders of the judge were absolute and those who gave false testimony were always incarcerated. In contrast, he expressed his discontent with the village courthouse, where no police officers are present and few people follow the magistrates' orders.

Additionally, he said that the magistrates accept bribes and support their own relatives. The corruption and the incompetence of magistrates are considered examples of a 'weak government'.

Nevertheless, the condition of the post-independence state was caused in large part by the colonial situation in which the colony became independent while its foundation as a state was still weak. We cannot necessarily attribute the results to differences between Australian and Papua New Guinean people (Gordon & Meggitt, 1985, pp. 39–69). However, the Papua New Guinean people themselves apply the cultural construct that boils down to 'they [white people] are superior and we are inferior' (or possibly Papua New Guinean magistrates are inferior). They tend to substitute cross-national power relationships at the macro level for issues of morals and the abilities of persons at the micro level (Fukagawa, 2014; Lattas, 1992, pp. 28, 32).

Based on this type of consciousness, *kiaps* and village court magistrates are both considered to shoulder 'governmental law' (*gavmanya lo*), but post-independence village court magistrates are criticised as perpetuating a 'weak government' and are inferior to *kiaps*. That is, they are perceived as not fundamentally different, but village court magistrates are criticised for not having the power that *kiaps* had, and the people harbour serious discontent on that point. To rephrase, they want the magistrates to carry strong external authority.

III. Village courts as 'poison'

This section first gives an overview of how conflicts are dealt with in Enga Province. Next, I will discuss the contrasting narratives of Engan regarding the two methods of dealing with a dispute: mediation and village courts. From those narratives, it becomes clear that the village court is regarded as closer to the 'poison' than the 'arrow'.

1. Mediation and the village courts

Before continuing the discussion on the formalisation of village courts, I want to present a brief overview of how disputes are addressed in the area. In Enga Province, exogamic landownership units called *tata* are the largest unit with regards to warfare and payment of reparations for murder. *Tata* are patrilineal, with patrilocal residence, but they have the flexibility

to actively include non-patrilineal members. This chapter translates *tata* as 'clan' and the subordinate segments called 'single ancestor' (*yunbange mendai*) as 'lineages'.

In the Enga language, the word for conflict is *pundu*, and this includes everything from a quarrel between married couples to inter-clan war. Conflicts arise in some cases by an infringement of rights or aggressive acts, and in other cases by customarily inappropriate conduct or attitudes. In many cases, when a conflict arises, the concerned parties or clan members will bring it to mediation or to the village court.

Mediation in the Enga language is literally translated as 'making words straight' (*pii tolesingi*). During mediation, the interested parties and many others will gather in the village square and a discussion will take place under the management of the clan leader (*lidaman*). Anyone can speak freely during the mediation and usually the speaker will face the crowd and make a speech in a loud voice. Those who make speeches during a mediation are called 'speech-making men' (*agali magu lenge*). Among them, men with excellent speaking abilities skilfully bring disputes to a close by reconciling the interests of the concerned parties. This can earn them fame (*kenge andaki*). They also bring wealth to the clan by drawing significant amounts of compensation from other clans. As a result, they are considered leaders by clan members.

Because leaders have a high reputation, people have a tendency to listen carefully to the things they say. However, the respect of leaders is limited and they do not have the power to coerce the behaviour of others. For that reason, during mediation, they are only fundamentally responsible for reconciling individual interests and summarising the results. Consequently, it is not uncommon for the concerned parties to not be persuaded by the leader and for the mediation to fail.

A village court is known as a *kot* in Tok Pisin.[3] It is said that village courts are used when mediation fails or when the parties are extremely angry or dissatisfied. As I will explain in detail in the next section, trials are conducted inside the courthouse with a small number of participants, the magistrate makes a decision and hands down an order. Magistrates are selected from the clan leaders. Therefore, the magistrates who run the village court are, in reality, the clan leaders who also lead the mediations. However, unlike the

3 The Enga language does not have a word for village court.

mediations, in the village court, the magistrates settle the conflict by issuing an order and, further, the parties expect a clear outcome in court. Although there are no 'formal rules', there are usually five or six magistrates, and there are no positions such as chairman or vice-chairman.

2. Negative assessment of the village courts

People talk about the two types of conflict resolution—mediation and village courts—in contrasting terms. What is frequently emphasised in their stories is that the goal of mediation is an amicable settlement, while the goal of the village court is to win the case. Originally, the Courts of Native Affairs and arbitrations by colonial officials were used as a substitute for the competition of inter-clan warfare. By extension, it is hardly surprising if village courts are perceived as a place for nonviolent competition. The village courts are perceived not as a deviation from the colonial courts but as their direct descendant, because both were imposed by the government.

For example, in the village court, it is said that the defendant and the plaintiff compete to win the case at trial with a 'combination of lies and truth' (*sanbo pii kine pii nyoo mende palipali pingi*). That is, the statements of interested parties as well as witnesses interweave both true statements and falsehoods in order to persuade the court. Not only that, they also say that it is possible to make the magistrates acknowledge a falsehood as truth by using bribes or connections. Consequently, statements that would be criticised as untrue by others during the mediations in the village square are, within the court, considered to be true and thus true statements are considered to be false.[4] As a result of this spin, village courts are considered to be places where one competes to win a lawsuit using dirty tricks.

People stress that deception in the courts and underhanded activities such as bribing magistrates are 'evil deeds' (*mana koo*). They divide 'evil deeds' into two categories. One category is for 'obvious' (*pana*) deeds. For example, face-to-face abuse in public or violence towards one's family would fall under this category. The other category is for 'hidden' (*yalopeta*) deeds such as malicious gossip and theft.

4 It is said that similar events occurred not only in the village court, but also in the superior courthouses. According to people's stories, the amounts of bribes rise as follows: at the village courthouse, 10, 20 or 50 kina; at the regional courthouse, 100, 500 or 1,000 kina; at the high court, 1,000 or 5,000 kina; and at the supreme court, as much as 10,000 or 50,000 kina.

While both are 'evil deeds', 'hidden' acts are considered more malicious than 'obvious' acts and elicit stronger reactions from the opponent. For example, rather than shooting an arrow during an inter-clan dispute, secretly using poison (*toma kai*) is a far worse 'evil deed'. The use of a village court is categorised as a 'hidden evil deed'. Consequently, the village courts are more likely to instil lasting anger and resentment. For these people, the village court is closer to the 'poison' than the 'arrow' (cf. Westermark, 1986).

In most cases, the complaints brought to the village court involve relatives or in-laws. The maliciously competitive acts between relatives or in-laws, over time, arouse shame and feelings of guilt in the parties involved. For that reason, in contrast to mediations in the village square, parties before the village court become unable to look at one another, greet one another or shake hands after the trial. Therefore, it is thought that the courts do not reconcile the interests of the parties but instead make relationships worse.

Finally, there is one more difference of which my interviewees spoke—that is, mediations are something that 'only we' (*naim tange*) conduct, while the village courts are conducted by 'the government'. In reality, village court magistrates are clan leaders. Furthermore, in most cases, the magistrates are the relatives or in-laws of the plaintiffs and the defendants. Under such circumstances, how can village courts as 'government' and the authority of the magistrates be established?

IV. The form and substance of authority

How are village courts as 'government' and the authority of the magistrate established? In this section, we first argue that village courts are 'formalised' by the imitation of colonial administrators' courts and post-independence superior courts, contrary to the provisions of the Village Court Law. Next, specific cases of village courts will be discussed. What becomes clear is the way in which village courts are based on a delicate balance between the perception of the state for Engan and the political conflicts of kinship.

1. The formalisation of village courts

In the stipulations of village court law, village courts are permitted to impose orders for reparations or penalties for civil cases and petty criminal cases. However, their foremost purpose is to peacefully resolve conflicts in accordance with mediation that follows traditional practices (Village Court

Law, Articles 52, 57, 58).[5] The distinction of that provision is that, unlike superior courts, the village court is based on informality and demands adoption of the customs of each local area (Village Court Law, Articles 16, 17, 57, 58; Goddard, 2009, pp. 1, 50–54, 73–74, 88–91). However, contrary to these provisions, the village courts are becoming formalised as they imitate colonial-officer courts or post-independence superior courts.

In the area that I surveyed, there are eight village courts. The clan uses the court in its own village and/or the court in the adjacent clan's village.[6] In each court, there were five to seven magistrates, one peace officer and a clerk.[7] The cases processed in the village courts are mostly land disputes, disputes regarding bride price reimbursement following divorce, disputes originating in theft, and so on. In addition, various disputes are brought to the court such as acts of violence, arson of pigsties, non-payment of remuneration for road maintenance, dismissal of teachers, and other causes.

Aside from processing land-ownership disputes, these generally conform to the provisions in the Village Court Law.[8] In comparison, it is obvious when it comes to the village courts' implementation of place, time and procedure, that there is a different form from that listed in the provisions. First, in the provisions of the Village Court Law, it is prescribed that court may be opened in any place each time it is conducted (Article 9). However, in reality, a courthouse has been built in the village. The courthouse is a one-storey wooden hut. Its roof is made with galvanised sheet iron, which is rare in the village and is only otherwise used on schools and shops. Buildings that use galvanised iron are called 'house covers' (*haus kaba*) in Tok Pisin, meaning modern structures such as urban administrative buildings or superior courts. Inside the courthouse hangs a large Papua New Guinea national flag.

Furthermore, regarding court proceedings, the Village Court Law states that any date and time are permissible and that trial can be commenced as necessary and at irregular times (Article 9) (Goddard, 2009, p. 54).

5 Village Court Law referred to in this chapter is based on the *Village Courts Act 1989* (Consolidated to No. 17 of 1995).

6 The village courthouse of the studied clan was used by two clans. Four magistrates were selected from one clan and two from another. On the other hand, the neighbouring village courthouse was used by four clans. From each clan, one magistrate was selected.

7 The peace officer's role is to pass on directions or orders from the magistrates and assist in reliable fulfillment of court orders. This role is different from that of a police officer.

8 Village courts are prohibited from handling land disputes by the stipulations of the Village Court Law (Articles 43, 58).

However, in practice, trials are commenced regularly every Monday and Tuesday afternoon. A magistrate or clerk will receive a person's complaint, determine the date and time for trial, and issue a summons. If the parties do not appear in court on the date and time specified, the trial is postponed. If this state of affairs continues, by decision of the magistrate, the concerned party will be charged a small fine. Until payment is made, even if the party appears at the courthouse, there is a tendency to not open the trial. These rules are not stipulated by the Village Court Law but are levied by the magistrates personally, and they keep the cash that they acquire for their own personal use.[9]

Moreover, rules for the method of the trial have been established that are difficult to consider as conforming to custom. Trial participants are few—limited to witnesses and a small audience, as well as the magistrate, plaintiff and defendant. When a trial is held, everyone who enters the courthouse must leave in custody the hatchets or bush knives they usually carry.[10] Furthermore, during the discussion, the magistrate sits on a bench overlooking the courtroom giving rapid-fire questions in a commanding tone from above while parties and witnesses are seated on the floor. At this point, conflicting parties and witnesses answer only the magistrate's questions and do not have the freedom to speak. Sometimes, if a person's story deviates from the magistrate's question, they are strictly reprimanded. It takes approximately one hour for a hearing, which is short when compared with a village square mediation (two to three hours), and the case is closed at the discretion of the magistrate.

Judicial sentences are not handed down on the day of trial but are announced one week after the trial. The magistrate stands in front of the village courthouse, reads the concise content of the court order aloud and hands the plaintiff and the defendant each a copy of the order. At that time, the magistrate gives absolutely no clarification of the basis or grounds for the decision. Because the reason for the verdict is not made clear, on the side of the concerned parties, there is a lack of information, making it difficult to question the validity of the sentence.

9 Regarding this point, several magistrates mentioned that the 'fines' belong to the magistrates.

10 This mostly, but not completely, complies with the regulations banning the carrying of weapons (Village Court Regulation 1974, Section 3).

Additionally, disputes that result in a sentence are rarely discussed again in a village square mediation. The reason is that the magistrates, who are also the leaders who run the mediations, dislike overruling their own decisions or participating in discussions that are capable of undermining their authority.[11] Related to this, if a dispute that has already been decided flares up again, and if the same complaint is brought to the village court, a large fine called 'buying a court' (*kot sanbenge*) will be imposed on the parties. The magistrate will not open court until that fine has been paid.

Methods such as those described above are contrary to the spirit of the Village Court Law, which requires village courts to hear cases with informality and to apply the local customs of each area. Nevertheless, villagers generally accept village court procedures, which are seldom the target of criticism.[12] If village courts are perceived as an extension of courts run by colonial officials or of superior courts, this is to be expected. Even now, the ideal type of court judge is a colonial administrator, *kiap*, someone who perfectly embodies the authority of the government.

Based on the above formalities, village court magistrates act as though they are the government itself. This point is apparent in the way magistrates tell their stories. Magistrates use the subject 'the government' when talking about their own actions and present them as the actions of the government. By overlapping themselves with the state, the magistrates emphasise that they embody the authority of the state. It corresponds to the fact that the people call past colonial administrators or present-day individual politicians and bureaucrats 'the government', and use the subject 'the government' when talking about their actions. Not only in Enga Province but also throughout Papua New Guinea, the state is thought of not as an abstract system but as a person. The social construction of such a collective subject is always accompanied by uncertainty (Foster, 2002, pp. 68–69; Golub, 2014, pp. 194–196). Seen from this point of view, the formalisation of village courts could be an attempt to make magistrates a suitable 'face' of the state or 'to make the human actors feasible representatives of leviathans' (Golub, 2014, p. 195).

11 If concerned parties are dissatisfied with the sentence, they can appeal to a higher district court. However, villagers who use the modern district courts are exceedingly few.

12 However, some voice criticism about the 'fines' imposed by the magistrates as based partly on their greed.

2. 'Government' or kinship?

Taking the formalisation of the village courts as fact, this section will use specific cases to discuss how people support or oppose the village courts and how magistrates behave. As mentioned above, from the time village courts were first established, their effectiveness has been seen as problematic. In Case 1 below, in spite of the fact that the plaintiff complains to the court about the defendant, the defendant ignores this and never shows up to the courthouse. The village court issues a summons or an order but in the village, that does not always have validity. Because there are no police stations in the villages, there are very few opportunities for a police officer to visit. Thus, the village court has no physical enforcement power. Therefore, instantaneous violence sometimes surpasses the orders of the village court. In this example, what becomes evident is the reality of the powerlessness of the court and the effectiveness of violence in the village.

Case 1: Disregarding a village courthouse summons

On 14 July 2008, a man brought a complaint to the village courthouse against another man in the same clan regarding a land dispute. He personally handed the other man the summons in the village square. However, the other party tore up the summons on the spot and said that he would not go to the courthouse. Later that day, angered, the plaintiff went alone to the disputed land and destroyed the majority of the crops in his opponent's field. Upon hearing this, on the same day, the other man took his two sons and several other younger male relatives (classificatory sons) to exact revenge and destroyed all of the crops in three different locations belonging to the man who accused him. After that, the man did not summons his opponent to the village court again. Another man from the same clan told me that while the accused man had significant fighting potential with his sons and other male relatives, the man who filed the complaint had almost no sons or classificatory sons. Thus, he had no choice but to withdraw from the contested land.

In this manner, the summonses and orders of village courts are not always obeyed. However, they are not completely disregarded. Rather, they are frequently used, and sometimes court orders are effective. In Case 2 below, the village courthouse is perceived as 'the government' while at the same time, it is considered to act under the logic of kinship. What is essential to understand here is that the magistrates and concerned parties have embedded kinship ties.

Case 2: A magistrate's speech in response to a breach of the rules

During a trial on 1 September 2008, in spite of a ban on carrying weapons, the defendant took a bush knife into the courthouse. The peace officer went to stop him but the defendant lashed out violently. This angered the magistrate, who stopped the trial, threw the defendant and plaintiff out of the courthouse, and gave a speech. While the magistrate criticised the defendant's violation, he emphasised that this village courthouse was recognised by the central government in the capital city and used this fact to persuade the people to follow the courthouse rules. Next, clan leaders (other than the magistrate) made speeches saying that the village courthouse and the police were 'the government', and that if anyone behaved violently toward the magistrates, the police would come to retaliate. Moreover, another magistrate addressed the crowd, saying that because he was a member of the clan, if anyone acted violently towards him, male clan members would retaliate.[13]

In this example, the village courthouse was discussed as though it were 'the government' with accompanying physical coercive power from the state, when in reality, there was no evidence to support that claim. Although there may be peace officers, they do not carry guns or handcuffs and are not different from the other villagers who carry bush knives or hatchets every day.

However, this does not mean that the village court is completely powerless. The magistrate emphasised that the village courthouse not only has the backing of the state, but also is supported through retaliation by clan members. In fact, it is only supported through retaliation by clan members. No support will come from the state. Nevertheless, the village court and its magistrates seek the authority of the state. As is discussed in Case 3 below, in village courts, the question of whether or not summonses and court orders are followed is closely linked to political rivalries inside and outside the clan.

13 In instances such as Case 2 here, there is a tendency to not reopen the trial until the defendant hindering the trial has paid his 'fine'.

Case 3: A trial involving a land dispute between maternal relatives

On 24 August 2008, a man brought a claim against one of his own maternal relatives to the village court. The claim involved a land dispute. The plaintiff was renting land from the defendant's brother. However, the defendant was cultivating a garden on the land without giving notice to the plaintiff, so the plaintiff filed a suit against the defendant. At this time, the defendant's brother, who owned the land, was residing away from the village in the capital city, working as a high school teacher. At a later date, a trial was held and it was made clear that the landowning defendant's brother had told the defendant that the plaintiff was prohibited from using the land. One week after the trial, the sentence was read aloud in front of the courthouse, and the plaintiff lost the case. The result was that the plaintiff was prohibited from using the disputed land.

Behind the scenes, there were circumstances not directly related to the land dispute. There were complaints from the defendant's clan against the plaintiff. For that reason, two magistrates belonging to the defendant's clan colluded with the defendant during the trial. According to the magistrate I interviewed, they were displeased with the plaintiff because he failed to present a proper gift to the members of their clan. According to the magistrate, in the past, when the plaintiff's brother died in the capital city, the plaintiff failed to present a funeral gift (*kuumanda*) to the defendant and his clan members.[14] The magistrate told me that, as revenge, he handed down a sentence in the village court prohibiting the plaintiff from using the land.

In Case 3, the plaintiff lost the case to the defendant who colluded with the magistrates regarding the plaintiff's failure to do his part in an inter-clan gift exchange. During the trial and in the sentence, there were inter-clan politics from outside the court that were not outwardly discussed. Hence, the plaintiff was helpless at trial and had no choice but to follow the court order. However, conversely, it would seem that the defendant had no need to comply with the village court in the first place. This is because with instruction from the landowner, the defendant could have prohibited the plaintiff from using the land without using the court at all. However, it would have been inconvenient for this issue to have been brought to

14 In Enga, a funeral payment comprising cash and pork must be given to the maternal kin of a dead man. In Case 3, the defendant and his clan members were the maternal kin of the plaintiff.

mediation in the village square. At a village square mediation, people with various other interests would attend and there was the possibility that some would be allies of the plaintiff. On the other hand, because the village court involved only the concerned parties and the magistrates, if the defendant could collude with the magistrates behind the scenes, he could prohibit land use with certainty. To that end, the defendant provoked the plaintiff into complaining to the village court by using the land without communication with the plaintiff.

In this way, village courts are inseparable from the village's political rivalries. In every case, the village court is used based on the interests of individuals and clans as well as by a variety of oppositional groups at various levels. It is not always the case of course that courts overwhelmingly win by clear superior power of one party over the other. However, it is safe to say that within the political relationships inside and outside the clan, the village court summonses have validity, trials are advanced and court orders can be effective.

V. Internalisation of external authority and the predicament of the village court

As a consideration of this chapter, the first thing that should be pointed out is the following. First, *kiap* courts were not as ever-present parts of people's lives as contemporary village courts are. Second, it is clear that contemporary forms of manipulation and use of intra-kin violence might well have been characteristic of the colonial era. In consciousness, there is a fantasy of absolute power to intervene at the same time as people have always pragmatically calculated the real nature of that power. The current form has a continuity with the limited nature of the colonial state. The dilution of the authority of magistrates in relation to *kiaps* was about the transition from colonial power to state power (cf. Strathern, 1972). However, what has been discussed in this chapter is not within such a framework, but the connection and disconnection of the fantasy of state power and village politics—that is, different kinds of power relations.

In the past, colonial officials were seen as an absolute authority. The post-independence state has been criticised in comparison with the colonial government for its relative powerlessness and village court magistrates are also becoming targets for that criticism. However, they are criticised

because villagers demand a strong external authority. In short, not only the magistrates but also the ordinary people themselves are the ones who desire the state to be the strong authority outside the village.

This is consistent with the schema that after independence, the people themselves created a person that embodies the external authority based on colonial rule. In the early 1980s, according to a study by Kurita in Southern Highlands Province, villagers solicited government officials or police officers patrolling the region to hold informal trials. These were no more than imitations of superior court trials but the villagers saw them as formal trials. This is because people who had experienced trials by powerful colonial officials, even peripherally, respected the orders from an external authority with even the slightest connection to the government. Naturally, those officials or police officers did not follow local customs and were not able to hand down sentences that were satisfactory to the concerned parties. However, in the context of village disputes, people used the courts as a way to justify their own assertions (Kurita, 1998, pp. 147–149, 156–157).

Kurita's argument makes clear to what extent people demand an external authority stemming from colonial rule and how they confer that authority on specific persons based on their own expectations. The same scheme was seen in Enga Province. However, what I want to focus on here is that Engans confer external authority on persons within the village rather than those outside it (government officials, police officers living in cities).

The magistrates mimic the trials of colonial officials and attempt to frame themselves as having external authority by formalising the village courts. The other villagers use the village courts on the assumption that magistrates do embody some external power. Hence, the formalisation of village courts, which contributes to the authority of the magistrates, is not based solely on the magistrate's creative actions but is more broadly created by ordinary people.

However, the power embodied in the magistrates is not guaranteed by the state and the magistrates themselves are village insiders—namely, clan leaders. In Enga Province, the leaders are respected for their superior speaking abilities but they do not have the power to coerce the actions of others. In the same way, magistrates hand down sentences but the court order itself cannot be strictly enforced. Furthermore, as leaders, village court magistrates are coerced by their own relatives to act as their allies. On the one hand, by meeting these demands, they can maintain their

positions as leaders and the village court receives support from their relatives. On the other hand, however, when the village court answers to political interests based on the logic of kinship and leadership, it deteriorates the magistrates' power, making them easily swayed. Because of this paradox, their attempt to embody external authority is only ever partially successful.

Furthermore, this point is also affected by the fact that the village court is not an equitable means such as the 'arrow'. Taking a conflict to the village court combines malicious and unjust means, as in the 'poison' case. Hence, the village court is evaluated negatively. Competition within clans or with maternal relatives is by no means a rarity. Furthermore, mediations in the village square are seen as political rivalries and behind-the-scenes bargaining is also utilised. However, in mediations, competition and underhanded activities are criticised. In contrast, the village court is a place first and foremost to compete with relatives or in-laws, and it is considered a matter of course that negative, unfair means will be used. Therefore, for them, the village court is not for 'justice' and the state is not the protector of the weak (cf. Merry, 1990, pp. 176–179). What is shown in the village court is the effect of one's own power to defeat the opponent, or the effect of one's own actions against others.

Related to this point, Meggitt, who conducted research in colonial-era Enga Province, reported an interesting case. In those days, regarding arbitrations on inter-clan borders, people attached importance to a judgement from a specific colonial administrator. If another colonial administrator took the appointment, they would file the appeal again and redirect the contest. Every time the colonial officials rotated, the clan that was previously defeated would file a claim against the rival clan, and there was a case in which one border dispute was arbitrated five times[15] (Meggitt, 1977, pp. 153–159). The time frame and setting of this chapter are different, but perhaps arbitrations by colonial officials were used as a powerful tool for expanding their own power (Harrison, 1995, p. 93) and, as such, the legitimacy of these arbitrations was maintained. What we can see in the village courts is also the expansion of their own power based on the logic of kinship, political relationships inside and outside the clan, wealth (including money), physical violence and so on. However, a decisive difference between those arbitrations and the village

15 Most colonial officials demarcated borders at the arbitrations, but not only were the details not recorded, but also personnel changes were frequent. As such, it was unclear whether a colonial officer's predecessor had arbitrated on specific borders and, if they had, what decision they had handed down (Meggitt, 1977, pp. 153–159).

courts is that it was quite difficult for them to successfully manipulate the arbitrations because the colonial administrators were genuine outsiders. In contrast, when external power was internalised and to the extent that took the form of a court, the village court could not help but become invisible 'poison', manipulated behind the scenes, rather than the 'arrow'.

This point cannot be adequately grasped by research based on 'legal centralism' that discusses subordination to the state nor by research based on 'legal pluralism' that advocates for magistrates' creativity. It is essential to understand the context of the post-independence New Guinea Highlands in that while there is no external authority based on the colonial government, such authority is desired. Magistrates are expected to embody external authority and, in the form of the village court, that authority is accepted. However, simultaneously, the magistrate's power is weakened with the use of the court. This paradoxical state of affairs is made visible for the first time through the legal consciousness of the ordinary people. It is certain that what is clarified here is not the hegemony of the legal system but the creativity of Engan. The creativity is aimed at their own power and the evidence of that power, rather than at the legislative system. What is truly sought after is an increase in their own power. It is in this area of indigenous power—different from the study of hegemony—that a new path may be opened in the study of legal consciousness in a 'weak state'.

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