THE SUPREME COURT: A MATTER OF PRESTIGE AND POWER

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What should be the role of the Supreme Court in rural areas of Papua-New Guinea? I have no legal expertise, but should like to comment on the question from an anthropologist's point of view, particularly on the basis of observation of some cases which were conducted in Mount Hagen during 1970.[1]

Perhaps many would agree that judges and magistrates in Papua-New Guinea should be attuned to social as well as legal issues involved in their work. Yet to take social issues into account in framing a judgment cannot always be easy. There is a tension between the necessity to make judgments according to the law and the desirability of taking social factors into account. The tension largely results from a lack of congruence between the indigenous normative order of New Guinea societies and the imposed rule of law administered by governing authorities. I suggest that judges should be particularly aware of this tension and should try to find ways of communicating their awareness when delivering their judgments. It is not possible easily to resolve the problem; but it is possible for judges to lay bare the principles involved in the making of their judgments and so to persuade New Guineans that what they are doing has an overall meaning and purpose. The alternative is to perpetuate and widen the gap between indigenous and introduced norms.

Let me attempt to illustrate what I mean by a case-history from the Mount Hagen area. Dei Council, where I work, contains some 16,000+ people, belonging to a number of different tribes, ranged in relations of traditional amity or enmity towards one another. These tribes vary from over 3,000 persons in number to fewer than 100, and the larger tribes are deeply segmented into different levels of sub-groups, of which the most prominent level is the exogamous, land-holding clan. The neighbouring Council area is Mul, dominated by two large tribes with some 6,000 and 3,000 persons each. Population density is heavy in both Councils, varying from between 80 to perhaps 200 to the square mile. Tribes and clans carry on elaborate bouts of ceremonial exchanges with wealth objects (pigs, shells, Australian money). There are, however, few traditional alliances or even major enmities between Dei and Mul tribes as whole units, although there is intermarriage and some ceremonial exchange between clans along what are now the two Councils' borders. Dei and Mul alliances and enmities

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1 Fieldwork has been done in 1964-5, 1968, 1969, 1970 and 1971 in this area, with the aid of grants from the University of Cambridge, the Horniman Scholarship Fund, Trinity College, Cambridge, and the Australian National University.

were in the past turned in opposite directions.[2]

The Administration set up Local Government Councils in Dei and Mul from 1963-4, and it was suggested that after a few years the two Councils should combine into one, as part of a programme in which wider-level representation of groups by Councillors would be accepted and would contribute to political development in the Hagen Sub-District. Some of the wards inside Dei Council were later coalesced with this end in view. However, there was opposition to the idea of amalgamation. Lack of ties, old or new, between the two Council areas ment that the concept of sharing taxes and making joint decisions about their expenditure was hard to establish. In fact both Councils went ahead with their own separate works programmes; and as both cash income, derived largely from the sale of coffee, and tax rates increased in Dei its Councillors began to feel more strongly that they could stand by themselves.

In September 1967 indifference between Mul and Dei crystallised into outright opposition. A man from Mul knocked down an old pedestrian in Dei, was attacked by angry bystanders and later died from head injuries. The resulting turmoil in Dei led to a swift offer of compensation supported by a fund-raising drive throughout each ward and followed by a large payment in money, pigs, and pearl shells handed over to the Mul driver's kinsfolk at the Dei Council Chambers. The payment was roughly $1,300, 100 pigs, 100 pearl shells, and some cassowaries.[3] Ironically, the death had occurred after Mul and Dei had been pronounced a single electorate for the 1968 House of Assembly elections. The Dei people, in fact, hastened to pay compensation so as to save the election from being ruined by inter-Council enmity.

The election results, however, showed that there was little cross-voting between Mul and Dei. The winning candidate, from Mul, Mek-Nukint, succeeded partly because of his vigorous campaigning but perhaps most significantly because he obtained almost all of the second preference votes of the only other Mul candidate; whereas the Dei votes were split between four candidates, and even the ascendancy of the Dei Council President, Perua-Kuri, was insufficient to enable him to match Mek's solid vote obtained within Mul.

It happened that Mek was related to the tribe of the Mul driver who had died in 1967 and that his own tribesmen were hosts to the driver's actual clansmen, who had come to them earlier as refugees of war. Aware of the potentially explosive situation Mek pledged himself to finding ways of bringing the two Councils together. Perua, defeated in the elections, now also found himself an object of rumours threatening his assassination by kinsmen of the Mul driver—not that he had anything to do with the killing, which ocurred while he was actually away in Australia, but rumours spread that one of his tribesmen had been involved in the killing and that he had consequently been marked out as a target, for he was the "big-man" of Dei as a whole and had raised his Council's prestige vis-à-vis that of Mul. It was apparent that the large compensation payment made had failed to establish friendship and that instead it had precipitated opposition and rivalry on a

2 The names of Dei and Mul were applied by the Administration to local council areas when these were established. Dei is from /ndepana/ = 'forest-land' and Mul is the indigenous term for Mount Hagen, which looms above the territories of the major Mul tribes.

3 I was not in the field at the time in Hagen, but was in Pangia, some 100 miles away.

Council-wide basis. In addition there was some feeling that Perua was being threatened because if he were removed Mek's position for re-election would be more secure next time. When the Hagen Show was held in 1969 Perua was afraid to mix with the crowd and hid inside the grandstand where he felt fairly safe among predominantly European sightseers. Just before the Show he had been intimidated by a pair of thefts: his clothes were stolen one night in Hagen town, while back at his home in Dei a male eagle which he intended to be a Show exhibit was removed from its cage beside his house. Both actions were interpreted as meaning that enemies would shortly destroy him; but while they were regarded seriously by the Council Adviser, they were apparently dismissed as a trifle by a police officer who was called out to investigate.

In July 1970 Perua decided to attend an official event at the borders of Mul and Dei, close to the home of the driver previously killed. The event was the opening of a new police post to serve both Councils. As it came to a close and Europeans left in their cars, Perua motioned to a truck to collect him and a number of pigs which he had received. At this moment he was struck down by an assailant from the earlier victim's group, receiving an axe-blow on his jaw which paralysed one side of his face. He was rushed away by car to Hagen hospital, while news that he had been "killed" was hallooed across the hills to his home. Crowds came out to the Council house. That evening a tribesman of the assailant, who had worked for many years at a plantation in Dei, was axed in revenge for the blow against Perua. He, like Perua, was saved in hospital. (The role of the hospital in preserving lives whose loss would undoubtedly have precipitated an even sharper crisis needs no underlining.)

The two Councils, originally to be amalgamated, now polarised into hostility. There was no travelling or visiting between them—it was fortunate, perhaps, that no network of side roads, which could have been used for sorties by vehicle, connected them. As it was, numbers of Dei cars had attempted to reach points close to Mul in order to mount attacks the night after Perua was taken to hospital. Perua's allies threatened that if the Administration refused to throw out the group of his assailant, which lives near to the Mul-Dei borders, they would do so themselves. Certainly, they would have done so in the past. In the hope of finding a solution, an enterprising officer, who had earlier served as Council Adviser in Dei, set up a Committee of ten representatives from each Council and Mek, the M.H.A., as chairman, to debate the issues. The Committee first toured around and took opinions, which were either piously or genuinely revengeful. "Let the assailants be clapped in an ice-box and stood in public view" was one suggestion. At one of its sessions, after a long and intense discussion, the Committee voted by 13 votes to 8 that the clan-group of Perua's assailant should be taken from its present area and placed further back into Mul. But the problem was to make such a decision stick. The Administration officer pointed out that he had no legal power to order such a move. Mek reported that he was trying to introduce a bill in the House of Assembly with provisions to punish severely persons who undertook revenge killings, but the Dei people viewed his statement with some doubt because of his association with the other side. They, including Perua himself, became bitter at this apparent refusal of the Administration to be "strong", when in the past the Kiaps had manifestly been strong in breaking up fights, jailing people, and ordering them around. The Committee itself was clearly unable to come to

an effective decision: the motion it had passed earlier would not be carried out, it itself had no coercive powers, and on many points it was deadlocked through having equal numbers of members from Mul and Dei and no outsiders. As an "experiment in democracy" it had failed in its immediate objects. It was only the obvious sincerity and oratorical passion of the Administration officer which saved the situation from complete breakdown. Appealing to Dei tribesmen not to revert to using force, he made it clear that although he was angry with the offending groups he could not undertake to remove them.

Perua's misfortune and the confrontation with Mul men which followed it led to a strong increase in the internal solidarity of Dei. When he first returned to Hagen from Port Moresby hospital crowds greeted him at the airport and escorted him back to Dei in a convoy of vehicles, as their first action, there placing him back in his President's chair inside the Council building. Men and women, weeping, clasping him, and orating, surrounded his house for days subsequently.

It was in this atmosphere that the first pair of Supreme Court cases arising out of the attack on Perua was held. Perua's assailant was charged with attempted murder; while an in-law of Perua's who had chased the assailant and beaten him was charged with assault.

The judge in these cases clearly realised the political significance of the actions he was investigating. Indeed, he could hardly have avoided realising that there was a stir of interest in the cases, for on each day of the hearings hundreds of people from Dei came into town and lined up near to the tiny cement court-house in which the trials were held. When he came to pass his judgment on Perua's attacker the judge instructed the police officers to allow the crowd to come as near to the court-house as possible in order to hear his summing-up, and in this he revealed that he was very much concerned that the two Councils should be able in future to live at peace with each other; he knew that a large compensation payment had been made for the first death in 1967, and that this should have been a basis for peace. Now the Councils must find a basis for peace again. His task was to decide on a sentence for the assailant, and he would give him ten years in jail, as a warning to others that they must not attack public figures carrying out duties of their office. If such attacks continued, the country's leadership would suffer. Despite their passing frustration at the constrictions of hearing evidence and applying the law without heed of lengthy, elaborate orations, Dei big-men and Councillors felt that the judge's remarks had been just.[4] The Dei man who had chased Perua's assailant received 8 months.

Between this first and the subsequent hearing of the Supreme Court discussions began on procedures to compensate both Perua and Kerua, the tribesman of his assailant who was attacked inside Dei Council itself. Perua's own tribesmen and their allies raised a large sum of money (over $1,000) quite early on, and looked for ways in which to approach Kerua and offer him compensation. They pointed out that if both men accepted compensation there could be a chance of achieving peace between the Councils. Earlier, Perua had resolutely refused offers of compensation himself, demanding instead that his enemies be removed—if Mul Council raised money it would have to pay it to the Administration, for he himself would

[4] One, however, pointed out that the judge had accepted the assailant's claim to be the true father of the previous victim—a claim which all knowledgeable Dei people rejected.

not accept it. When this stand failed, Perua, who was also advised by a representative from the Public Solicitor's Office that he could sue for compensation if he wished, let it be known that he wanted $2,000 for himself and would also pay money generously to Kerua. It can be seen, then, that by the time the case against Kerua's attackers, who were from Perua's own groups, came up, jockeying over compensation payments had begun to take the place of direct threats of physical force between the sides involved.

This transformation of political idiom, which followed a regular traditional pattern between enemy clans but on a much larger scale, had been facilitated by the fact that Kerua belonged by long association to Dei Council itself, although by birth he was of a Mul group. Hence the Dei people were very ready to collect compensation for him. Why, then, was he originally chosen as a victim? First, because he was accessible and second because he actually came from a clan which was hostile to that of the Dei President's own assailant. By attacking Kerua, Dei men hoped to set the two Mul clans, both of the large Nengka tribe, internally at loggerheads. In turn the enmity between these two clans made Kerua's group more ready to accept the friendship of Dei men.

The judge for Kerua's case, however, displayed little overt interest in the social background to events. I was called by the Public Solicitor's representative to act as an expert witness with regard not to the guilt or otherwise of the accused, but in connection with the length of their sentence. The judge did not allow me to outline the background to the case, since this would be all hearsay. Instead, he instructed me to report only actual conversations which I had conducted with the accused. It was apparent, however, that many simple details of the case were not fully understood by all those involved, and a clear outline of the groups involved would have forestalled such a lack of understanding. The judge also insisted that it had to be proved to him that the questions of compensation and of political relations between the clans involved had anything to do with the question of length of sentence for the accused. At the end he simply declared that the accused had intended to kill Kerua, that the government (not, surprisingly, the law) says this is wrong, and that they must be jailed for three years. To leading Dei Councillors it was clear that this sentence was much lighter than the ten years given earlier to Perua's assailant, but they were puzzled to know what had influenced the judge, since he did not seem to have explained his decision fully. They were even more puzzled that he had said nothing at all about the need to arrange for compensations.[5] A conclusion reached by leaders was that the Supreme Court had no *ik mukl*, "important talk", to make: it was merely concerned with jailing a few men.

Let me look briefly again at some aspects of these cases.

The first point is that what was an important legal issue to the court was of little significance to the Hagen people. Did the attackers intend to kill? Were their attacks premeditated? Much energy was spent in establishing these points, which by Hageners would either be taken for granted or would not be crucially relevant to questions of revenge or compensation in which the real issues of social control centre.

[5] The judge himself could not know that in fact if a heavy sentence were given Dei people were determined not to pay compensation to Kerua after all and to take further action against Mul, so that from the point of view of social control in the area the issue of the sentence was an extremely delicate and important one.

Here, then, we find the lack of congruence between modern and traditional law which was mentioned earlier. To the Hageners what matters is inter-group relations; to the Supreme Court it is the establishing of individual guilt and responsibility that is crucial. This major lack of congruence is more important than other matters, such as the difference in style between Hagen modes of disputing cases and the Supreme Court's solemn treatment of evidence and hearsay.

But the gap can be bridged. It may not be for the Court specifically to make recommendations about settling political relations between groups; yet it is quite possible for the judge to acknowledge the importance of these and not to wave people away in the direction of the Kiaps.

In these cases, as we have seen, mediation through the Mul-Dei Committee, despite sincere and vigorous assistance from an Administration officer, had broken down. The people heard the Supreme Court was coming, and presumed that with its superior power the Court might lay down a solution for them. Their expectations were inevitably disappointed; but although the Court did not have the power to settle issues legally peripheral to its main concerns, it was still within the range of their available choices for the judges to take note of the wider context of the cases and give advice. To have done so would not have overstepped the marks of the Court's power, but it would certainly have increased its prestige.

Finally, I suggest that an awareness of the need to bridge over the gap between indigenous expectations and introduced legal codes could help to provide some integration at the top level of the Territory's court system, where it could be effectively publicised and recognised. Then the courts would have not only legal power but also prestige and influence within a wider set of institutions for social control. In a country like Papua New Guinea as it is today "law" and "local-level politics" cannot be rigidly separated without a potential loss to social order, and judges in courts can, by realising this fact, partly prevent such a loss from occurring.

Postscript

Dei and Mul Councils have, since the Supreme Court cases, been gazetted as separate open electorates for the 1972 House of Assembly elections. What began as a plan for Council amalgamation has thus ended in a more complete political separation between the two areas; and the failure of Mek's stated intention to make peace between Mul and Dei in 1968 may result in an enhanced likelihood that both he and Perua may be elected to the House in 1972, for they will no longer be direct rivals.[6]

REFERENCES

STRATHERN, A. J. 1970. To elect a strong man: the House of Assembly elections in Mul-Dei, 1968. *Oceania.*

1971a. Kiap, Councillor, and Big-Man: role-contrasts in Mount Hagen. In *The Politics of Melanesia,* ed. Marion Ward. The Australian National University and the University of Papua and New Guinea.

1971b. Social pressures on the village entrepreneur. Paper delivered to Fifth Waigani Seminar, Port Moresby.

[6] Some further material on the Mul-Dei situation is given in Strathern, A. J., 1970 and 1971a and b. Arguments on the role of local courts in Hagen, dealing with the question of their social relevance, are being prepared in a detailed study by Marilyn Strathern for the New Guinea Research Unit, and I wish to thank her for discussion on this topic.