The Introduction of a Village Court

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I am indebted to the people of Kumara for their help and hospitality. Most of all among them to the magistrates, police officers and clerk of the Village Court. I am also grateful for information received in discussions with Mr Lanson Gilmore Midung and Mr Kevin Deutrom.

Neil Warren
The Papua New Guinea Village Courts Act was passed in 1973, and came into force in November 1974: the first village courts began to be opened in early 1975. In the very first batch of these, inaugurated in February 1975, was one village court in the Southern Kamano region of Kainantu District\(^1\), well distant from Kainantu town. I shall call the place Kumara.

It is thirty years since the first Administration patrols came to Kumara. Inter-village warfare ceased soon afterwards and luluai and tultul were appointed. Berndt (1962) reports on the exceptional eagerness for holding 'courts' that developed in this region at that time. In 1963 local government councils were set up. It was understood, at least in the villages, that councillors and their ward committee members would take over the task of maintaining order and settling disputes. Councillors and their helpers thus held 'courts' of a kind, as had luluai and tultul before them. The people of Kumara habitually designate time periods by reference to political changes in the manner of social control, regardless of what they are actually talking about. Thus after the time before contact is designated as the time of the luluai/tultul, followed by the time of the council or councillor. Although Kainantu Council flourishes, and there are still councillors, this last period, the council time, came to an end in 1973. The present time-period is usually called the time of the area community and village court.

Area Communities\(^2\) (also called Communities, Areas, Community Areas, Community Councils and Area Committees, conventionally with Pidgin spelling and grammar) are small units of local government which have been set up within the Kainantu Council Area. These are aggregations of villages which have agreed to co-operate in managing their own local affairs. Kumara Community combines seven villages of varying size over an area of about 10 sq. miles and has a total population, including absentees, of 1,965 in 1975. The Community began to function as such in 1973. Its seven villages quite naturally defined the area of jurisdiction of Kumara Village Court when this came to be set up - any other arrangement would hardly have been sensible. This means that the Court tends to be seen

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\(^1\) With independence, Districts have now been designated as Provinces, sub-districts as Districts and patrol posts as sub-districts (see Department of the Prime Minister Circular 87-1-0, June 1976).

\(^2\) For convenience I shall refer simply to 'the Community'. This is what English speakers in Kainantu town tend to say. In Kumara, reference is to eria which means either the Area Community or a member of its Committee.
as belonging to the Community and that the opportunity exists for the integration of political, administrative, judicial and perhaps even legislative functions. Kumara Court began operating unofficially during 1974, supposedly replacing the unofficial courts of the two councillors (the Community extends over two council wards) and their ward committees. It attained official status more or less at the same time as its ceremonial opening in February 1975. There are four magistrates and five police or 'peace officers', plus a clerk to the Court (who is also clerk to the Community), each of whom receives a small monthly stipend. The jurisdiction of the Court is limited in certain ways: for instance, it cannot deal with driving offences, homicide, rape and large thefts. The Court makes out Order papers, whose copies constitute minimal written records. Fines are paid to Kainantu Council. In extreme cases the Court may order the imprisonment of an offender in Kainantu, subject only to the bureaucratic endorsement of the Supervising Magistrate, who does not re-hear the case.

Kumara has a courthouse adjacent to the Community meeting-house and courts are held in one or the other. Here I shall speak simply of 'the courthouse'. All official courts are held here. Sittings are usually in the mornings and early afternoons, Monday to Thursday inclusive, though they may be held at any other time if prompt action is thought necessary. I shall not attempt here to provide an exhaustive account of the Kumara Village Court, but will rather pick out some aspects of its functioning and functions which are of interest. These are by no means confined to strictly legal and judicial aspects.

I. The Court Officials

Process of appointment. The number of court officials was determined by the number of stipends made available. Within this limit the ten offices have been filled according to decisions taken within Kumara, though officially the names had to be approved by the Supervising Magistrate and the magistrate's names gazetted by the government. The single exception to

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1 The term 'peace officer' is unknown in Kumara. Rather, polis is used as also in the Pidgin court handbook. I shall use 'police officer' below. Kumara police officers do however wear a badge which says they are 'peace officers'.
this statement is that one magistrate-designate was persuaded to withdraw by pressure from various Kainantu authorities, as he was already a public servant (aid post orderly). Otherwise Kumara Community has evolved its own appointments and replacements.

Initially a well-attended mass meeting of the Community was held in mid-1974, at which ten officials were elected by vote or acclamation. This meeting was preceded by deliberations among village and Community leaders over who should be nominated. Subsequently, seven of the ten elected officials have been replaced, six of them by the time the Court commenced official hearings. No further election has been held, and replacements have been effected by a small elite group, increasingly the dominant court officials themselves. Nonetheless the commitment to a further election after three years remains. When the Court had been working officially for a short time, the elected clerk was replaced because he was considered to be neglecting his duties. His replacement was already the clerk to the Community, and the two offices were subsequently combined. Further changes were discussed from time to time, but none were implemented so that I shall actually write about a stable set of officials over the first year of the Court. A mediator for land disputes was elected in September 1975, but though sometimes called a jae his position is a quite unofficial one as far as the Village Court or anyone else is concerned.

The rise of new men. The magistrates and clerk are not thought of as representing their individual villages. No trade-off was involved. This is perhaps an advantage of the prior existence of the Community, as at least the elite had had the chance to overcome old rivalries between villages and see who might be the best men for the new jobs. The conception lingers that the police officers represent their villages (Kumara had wanted to appoint one for each village), but village representation will probably become less and less important as the Community develops. Already there are two villages from which no court officials come.

These are not old men. The oldest is a police officer in his late forties (who comes in for criticism because his imperfect Pidgin limits his dealings with some outsiders). The youngest is a police officer in his mid-twenties. The clerk is thirty. The rest are of middle years, 35 to 45, from the age group which now tends to provide the influential men of the Community. Two
of the magistrates are the kind of appointees who might have been expected, in that as tultul, councillor or komiti\(^1\) they have had many years' experience of dispute settlement and unofficial court hearings. One of these two is still a councillor, but does not intend to stand for re-election. Both are well off by local standards, and have long been influential men. One of these two established figures and four relatively 'new men' dominate the activities of the Village Court. They are the other two magistrates, the clerk and the senior police officer.\(^2\) They have held virtually no offices in Kumara before - which means that a considerable number of ex-komiti have been passed over. They are not particularly well off - one magistrate has no cash income whatsoever apart from his stipend - and have none of the flamboyant and assertive style of the traditional big man. They are respected for their shrewdness within the elite, and villagers say that they are good men because they live well, do not make trouble and do not take sides in disputes. The clerk is of a new, rising generation, and easily the youngest member of the Community elite. He became clerk, first to the Community and then to the Court, primarily because he is the most literate adult of reasonable maturity who is a permanent resident. But he has become a very influential figure, and freely admits that big-man status would normally be beyond the potential of a man of his age. All four 'new men' have emerged to join the Community elite partly because of their central position as court officials.

Are these men the 'traditional leaders' who might have been expected to become magistrates? It depends on what is meant by the term. There are in Kumara some recognizable traditional leaders, ex-warriors, who are now in their fifties and sixties. Men of this generation stood down when the councillors were elected in the early sixties, and with one possible exception could not have become court officials. The coming of the Court marks a further denotiation of these aging men, and a further restriction of their influence to their own local groups. The officials who dominate the court contrast rather markedly with the traditional big-man stereotype: they are not especially concerned to make their presence

\(^1\) Komiti were members of the councillor's ward committee (which did not meet as a committee). Their main function was to take some of the burden of hearing 'courts' from the councillor.

\(^2\) One police officer is in charge of the others, and is called Chairman of Police. I believe this office is a Kumara invention, unlike that of Chairman of Magistrates, which is a gazetted position.
felt, they are not aggressive or notably competitive, they rarely make speeches at feasts or hold feasts themselves. Far from being flamboyant, they are noted for their coolness, and some are positively mild. I found it very hard to think of them as 'traditional leaders'. Oram (1975:67) pointed to the misunderstanding that may be caused by the assumption that Village Court magistrates will be traditional leaders exclusively. He added: 'the majority are likely to be the most intelligent and progressive men of mature age in their areas'. For Kumara, Oram is essentially correct. All the same, these men are leaders now, and share with others the traditional task of keeping order, a task which involves them outside the formal activities of the Village Court. They are conscious of themselves as members of an elite taking care of an unsophisticated majority and frequently in private will speak of their villagers in a cynical or paternalistic fashion.

II. The Court

Status and mode of social control. The new Village Court has to be distinguished from other procedures for clearing up social messes in Kumara, past and present. Outsiders with the national legal system in mind, for instance, frequently refer to the 'courts' of councillors and komiti, now supposedly superseded in Kumara, as 'informal' or 'unofficial', even though they were condoned and encouraged from above. Thus because they were not recognized as part of the legal apparatus of the state or its colonial equivalent, they had no legal backing and their decisions could not be guaranteed enforcement from above. Kumara people made no such absolute distinction: they of course knew there were higher courts, but they assumed that a councillor's 'courts' were a natural and central part of his work as councillor and would have been, if necessary, backed by higher authority. Councillors had on occasions appeared to have sent men to prison in Kainantu (the outsider's view would not grant him this power). Similarly komiti assisted councillors and their authority derived from his in a further distinction of level.

The Village Court is 'official', the first truly legal institution at village level. Again, villagers make such a distinction, but without the same sharp qualitative contrast. They can see that an important change has occurred: the Village Court is seen as a development of the
new Community organization, a reorganization of judicial functions, perhaps a new kind of court. There are marked differences between the Village Court and other hearings, past and present. For one thing, there is a courthouse, and when a formal sitting is held people who are not involved in the case do not go inside and take part in the talk, as they have always been able to for other 'courts'. Order papers are written and issued, and even to the illiterate (that is, most villagers) 'making paper' is known to be an element of important transactions (contracts, licences, receipts, and so on). Fines are higher than they used to be. The councillor sometimes sends people to court when they come to him with their problems. Very influential men have been taken to court and fined like anybody else. The well-informed, at any rate, know that fines cannot now readily be pocketed by magistrates as they formerly were by councillors and komiti. Magistrates are proud of their connection with Port Moresby and think of themselves as government employees. Thus the Village Court is rather more official, so to speak, than the councillors' 'courts' were.

There are also many other sessions to do with disputes in Kumara, all called kot. As they are not sittings of the Village Court, an outsider might wish to count them 'unofficial'. The court officials make a distinction in practice along precisely the same line, between the Village Court proper and other 'courts'. Occasionally the unofficial sessions are called 'outside courts', certain of them 'little courts' or 'family courts'. Some of them are of critical importance in the maintenance of order and the restoration of social balance, far more so than the large majority of the sittings of the Village Court. The official/unofficial distinction has some analytic point: for instance, officers of the Court understand that they are forbidden to adjudicate certain matters officially and that these must, therefore, be managed in some other way. It is much more appropriate, however, to represent the analytic distinction as one between different modes of social control. The formal Village Court is a rather purely judicial institution, as it turns out in Kumara: in a narrow sense of 'legal', it represents the legal mode of social control (Falle 1969). It is concerned with the breach of rules and the perpetration of wrongs. Other procedures are much more concerned with the moral and historical complexity of disputes and much less abstracted from the social and political processes of domestic, village and Community life. This distinction,
as put, is of course mine, though I believe the same kind of de facto distinction is made at least by the court officials and the Kumara elite. However, the procedures which may be 'unofficial' to outsiders are not thought of as 'illegitimate' within Kumara.

The formal court. Under the Village Courts Act, and according to the court handbook, the Court may sit anywhere in the Village Court area. In fact, however, formal sittings of the Court are held only inside the courthouse. Magistrates and clerk sit on one side of a large table, the parties to the case on the other, police officers are in attendance. The hearing is conducted in an orderly and solemn fashion. What is said can easily be overheard from outside the courthouse, but it is clearly understood that those who listen are not to make any contribution to the talk inside, and they never do. The Court is thus an enclave within Kumara social life. If required, order papers are written only as a result of such formal sittings. The Court prefers to adjudicate rather clear-cut cases, fixing penalties or compensation. In consequence it is the primary means neither of maintaining order nor of restoring amity.

All other court-like sessions are held elsewhere, even if magistrates are involved. An audience gathers round, no one is in principle precluded from speaking, and quite chaotic discussions are possible, though rare. These 'outside courts', if important, are sometimes conducted near to the courthouse, on the assembly ground; but even so, court officials are uneasy if a dispute which seems unlikely to provide a formal court for the time being is under discussion immediately outside the courthouse. They prefer to usher the gathering fifty yards or so away across the assembly ground, where they may leave it alone or join in as big-men, not magistrates. Those fifty yards make the difference, as it were, between legal and extra-legal goings-on. For the moment, I am concerned only with the former.

In the first full year of its official work, February 1975 - February 1976, Kumara Village Court recorded penalties imposed (for offences) on 97 persons as a result of 46 sittings; 67 persons were recorded as required to pay compensation or otherwise make amends in settlement of disputes, as a result of 53 sittings. Five Preventive Orders were also written, and six Orders for Imprisonment after failure to pay fines
or compensation. These figures, which are the official record, underestimate the actual work of the Court. Some cases were not recorded, by mistake. Extrapolating from the proportion of formal courts that went unrecorded during an eight-week period when I noted all sittings of the Court, I estimate that over the year 125 persons were penalized for offences in 69 cases, and 74 persons required to pay compensation in 58 civil settlements. Secondly, cases in which no penalty or settlement is decreed are not recorded at all—that is, Village Courts are not required to keep complete records. This category includes a number of time-consuming cases which are eventually allowed to peter out, sometimes after several sittings, for want of consistent or satisfactory evidence. Estimating by extrapolation as above, I calculate a total of some 145 formal sittings for the year, not quite three a week. One in every four or five adults in the Community would have been involved in a formal court in some capacity during the year. A number of potential cases are also turned away after an informal vetting, usually by a police officer, who may judge that the case is too inconclusive or too petty for a formal court. The above figures ignore all 'outside' sessions or hearings, including those in which magistrates are involved. They also conceal a rather marked decline in the frequency of recorded cases over time. If tax cases are excluded (and they were a new development towards the end of the year) more than half the offences penalized fell in the first three months of the year; compensation settlements declined less sharply, but still the number for the first three months equalled that for the last six months. Table 1 gives frequencies by month.

Most penalties were for fighting or assault. Including one threat of violence, 80 of 97 persons penalized (82 per cent) had engaged in violent behaviour, and 33 of the 46 cases (72 per cent) were of violence; 17 of these were figths between spouses or co-wives. The remaining cases concerned theft (1), offensive language (1), adultery (2) and tax evasion (9). (Adultery was thus treated as an offence, though the court handbook details it as a matter for civil settlement.) The recorded civil settlements included 24 in which livestock had destroyed crops or other livestock, 8 concerning bridewealth allocation or return, 6 in which pigs had been stolen, harmed or killed, 5 concerning return of money, 4 of infringing land rights and 6 miscellaneous cases; 29, about 55 per cent of cases, were settlements within the same village; the remainder crossed village borders, and 9 of
Table 1. Frequnecies of formal courts by month, 1975-76

<table>
<thead>
<tr>
<th>Offence</th>
<th>Jan 76</th>
<th>Feb 76</th>
<th>Mar 76</th>
<th>Apr 75</th>
<th>May 75</th>
<th>June 75</th>
<th>July 75</th>
<th>Aug 75</th>
<th>Sept 75</th>
<th>Oct 75</th>
<th>Nov 75</th>
<th>Dec 75</th>
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<tr>
<td>Total</td>
<td>17</td>
<td>7</td>
<td>15</td>
<td>7</td>
<td>1</td>
<td>5</td>
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<td>7</td>
<td>3</td>
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<td>3</td>
</tr>
<tr>
<td>VMT cases</td>
<td>3</td>
<td>5</td>
<td>3</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Note: Includes seven cases of tax evasion.
Includes one case of tax evasion.
Includes one case from late February.
these involved persons from outside Kumara altogether. All cases of violence but one (and that a dubious exception) were between people from the same village.

The jural authority of the formal court. For the range of cases it accepts for adjudication, the authority of the Court is almost unquestionable. The most powerful traditional big-man in Kumara has twice been taken to court and fined. Three magistrates, one a councillor, have appeared before their fellow magistrates and have had to pay fines or compensation. Nearly everyone summoned comes to the courthouse promptly. Fines and compensation have almost invariably been paid; even the six Orders for Imprisonment resulted in only two terms of prison, for four of the offenders were helped by their kinsmen to pay up before they actually went to jail. Another had tried hard to pay, having produced K20 of a K30 fine. There was a single case amounting to 'contempt of court', significantly by a young man from outside Kumara: having been tried and fined (for adultery) by the Kumara Court he wrote an insulting letter to the magistrates; for this he was fined again, heavily, by his own Village Court, and paid both fines. Likewise, there was only one instance during the year, of a man who, unhappy with the Court's judgment, elected to have his case referred to the Local Court in Kainantu. He may have been simply saving face for he did not pursue the matter there. No other case was appealed to a higher court.

Some older men would like to see 'bighead' young men and adulterous women dealt with in the more authoritarian fashion of an earlier time. Some of the less well-informed villagers also believe, wrongly, that the court officials must be pocketing all the fines. On the other hand, there are others who realize that the Court's authority may transcend the old criterion of 'strength'. Several young men who believe that unfair settlements are demanded of them by older influential men, without a hearing, have proposed that the matter be settled by the Village Court: the more influential man may allow the matter to drop by not turning up at the courthouse. Even certain aspects of the way some unofficial hearings may be handled show a clear recognition of the higher-level authority of the Court, as will be indicated below.
The magistrates themselves, who of course live side by side with those on whom they pass judgment, insist that there is no personal animosity against them for the work they do, and I heard nothing to the contrary. They in any case have a certain safety in numbers. The average villager who goes to court will feel that his case has been dealt with by four to six officials, including police officers and clerk, not by a single dispute-settler enmeshed in the realpolitik of the village. And it usually has, though only the magistrates' names are entered on an order paper. There is often not the requisite quorum of three magistrates for a formal court; this was so in 49 to 99 formal sittings. For the Kumara Court, this is not a problem given a preference for distinguishing men by competence rather than by office. Police officers may go into the case beforehand in preparing the court; the clerk and the senior policeman may take part in the deliberations of the Court precisely as if they were magistrates. The judgment is in any case not arrived at by vote. In the most explosive situation of the year involving a formal court, three major Community leaders sat silently beside the magistrates during the hearing, knowing that there could easily be further trouble (as there was) and wishing to add their own weight to the authority of the Court. This, to my knowledge, was the only encroachment of the wider realpolitik on a formal court. It cannot be counted a violation of Court rules and although there are some minor variations from the procedures laid down in the handbook which might raise the eyebrows of the bureaucratically-minded, they do not exemplify the sorts of malpractice and corruption that some feared village courts could result in (cf. for example, Bayne (1975:41); Mattes (1969).

Law, amity and order. The court officials are uniquely placed at the centre of Community gossip, so that at any one time they know better than virtually anyone else what are the disputes and tensions throughout the seven villages. However, they do not tend to seek out cases to hear. The police officers would very much like to have uniforms and handcuffs (court officials have simply a badge), but in practice they seldom try to arrest or coerce anyone.

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1 The court handbook instructs that magistrates should not sit when parties to the case are related to them. Kumara magistrates do not in practice bother with this restriction and say it does not matter. It did not seem to me to matter.
Each morning, Monday to Thursday, a sample of the Community elite including most of the court officials gather outside the courthouse. The clerk may do a little paperwork, the remainder talk, smoke and look into any problems that are brought to them. If there seems to be a case for a formal court, one is assembled. If there is no reason for official or unofficial action, the men eventually disperse sometime after midday.

Exceptionally, when there is a fight, court officials go to the scene and usher the combatants to a hastily assembled formal court. Only on five occasions of this kind have court officials unequivocally instigated formal courts. The officials also consider that they - the Court-cum-Community - are bringing the charges against tax defaulters. Urged by Kainantu authorities to penalize defaulters under a Local Government Council rule, they were long hesitant to instigate courts for matters that not only were not going to bring the sky down but over which there was not even a proper dispute. The general practice is that formal courts do not occur unless at least one of the principals brings the case to the courthouse; it will then frequently be screened by officials, usually police officers, to ensure that there is a clear-cut and non-trivial matter for a formal court.

This is true of most cases which result in penalties for offences, in particular cases of violence or assault. In 14 out of 28 cases which were brought to the court by principals and which resulted in penalties for violence, all parties to the case were fined. At least one of those fined would have been instrumental in bringing the matter to court. The motives of these individuals were various and seemed to include a desire to shame others and a desire to put a public end to a dispute. But they may not have been seeking the rather aloof and mechanical form of justice they received: with no obvious decline in the number of fights (only a small proportion of which in any case result in courts), the 14 cases above all occurred in the first half of the year in question, none in the second half. 1

The magistrates prefer to operate a simple rule of jurisdiction: hitting or fighting is a breach of the law and is to be penalized. But some of those so penalized have presented themselves at the courthouse with the

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1 These are recorded cases. My notes show that at least two formal cases went unrecorded in the second half of the year. But other unrecorded cases may have occurred in the first half.
idea of settling a dispute. One case was brought by a man against a married couple as a charge of stealing sweet potato from his garden. The court could not sort out the truth of this matter from contradictory testimony but fined the three for fighting, to which they had all admitted. In another case, a woman took her husband to court because, under mission influence, he wanted to discard her and be baptized recognizing only his second wife in a monogamous union. The magistrates did not attempt to mediate in this dispute but fined the wife, and only her, because she had hit her husband.

The formal court in Kimara may thus be subject to some of the same criticisms as the higher-level courts of which it is a lower-level extension. It applies the law but does not get to the root of disputes which are left to other attempts at settlement as long as these do not include violent self-help. It was of course meant to be a new, lowest level of the official court system. But it was also envisaged by some as a recognition of the existing unofficial system. Iramu (1975:41) said: '... in many areas, unofficial village tribunals already exist in fact. All they need is official recognition and an improved structure to succeed'. In a document issued by the Village Courts Secretariat in January 1976, 'An Introduction to Village Courts', the idea of Courts is described as 'to give strength to the traditional system' (p.2). To decide whether these views are oversanguine, we must see what is left to procedures other than formal courts.

III. Other Procedures

'Outside courts'. I am including under this heading all attempts at mediation or adjudication that are not formal sittings of the Village Court. All 'outside' sessions are public in that anyone may in principle listen and join in: they, therefore, sometimes resemble moots rather than tribunals. Here I divide them into two major categories. The first category may be thought of as a sub-ordinate level of hearings, by adjudication or mediation, confined to disputes within villages and usually within kin groups. These hearings usually deal with matters with which a formal court could deal though not necessarily in the same way. The second category is of wider disputes which cannot be dealt with peripherally, are not handled by the Court and, if critical, involve the Community elite in its peace-
keeping role. No one has authority to adjudicate, and only mediation is possible.

Localized settlement. Many disputes are mediated or adjudicated by men of standing in the villages. All parties to the hearing invariably belong to the same village, and usually to the same kin group within a village. These are the hearings called famili koto if the term is used. Any person who commands sufficient respect may conduct or chair the hearing if he is willing or has a mind to do so. Often he is the senior man in a local kin group. Members of the Community Committee, councillors, ex-komiti (still often addressed as 'komiti') and actual village court officials, including clerk and police officers, are regularly called on to mediate or adjudicate in their own villages as well as to advise on a wide range of problems. Some senior men are at pains to govern their own small domains, and themselves call together the principals to a dispute. For a matter which is considered complex, a feast may be arranged, with ordered speech-making. Discipline may be no more than 'strong talk' from the senior men, settlement may be no more than a verbal undertaking; but financial or other compensation is often arranged, and the adjudicator may collect payments which amount to fines, though these are usually low.

There are certain potential links between these hearings and the Village Court which indicate a hierarchical arrangement. These are the ways in which any of the parties, including the mediator/adjudicator, may decide to invoke the superior authority of the Court. Here are two examples of such links.

(i) One or more disputants may elect to take the matter to the Village Court, which then functions as a kind of court of appeal. In one Kumara case, a married couple and another man became involved in an altercation over rights to garden land, which came to blows. The second man had migrated to the village from elsewhere, but had become a well-established and fairly influential figure in the village and in the Community. The first man had made a friendly arrangement several years before for the migrant to use some of his land, which is abundant. After a previous dispute of the same order, he was now accusing the migrant of taking more and more of his land to plant coffee. Their village, a small one of less than a hundred people, prided itself on its internal harmony and its ability to
deal with its own problems, and to this date none of its residents had
been involved in a Village Court case.

Several people saw the blows struck, including the Community Committee
member for the village. He sat the principals down with a group of villagers
and the whole matter was discussed, centring on the arrangement over land.
The Committee member thought there were wrongs on both sides. The migrant
should not have planted a further garden without asking the owner of the
land, especially after the previous dispute. The husband and wife should
not have insulted and assaulted the migrant. The Committee member was also
aware that the husband (or his father) undoubtedly owned several pieces of
land used by the migrant, and did not wish him to turn the migrant off them.
He proposed that the migrant should keep his new coffee garden, as its owner
had much more land and was not an assiduous gardener. Further, he said that
each man should pay him K10. Thus neither side was favoured, but both were
to make a public payment in settlement of the dispute.

The migrant rejected this settlement and took two witnesses to the courthouse
(about 2 miles away) where the Village Court summoned the husband and wife
to a formal sitting. The Committee member also appeared as a witness. The
Court ignored the dispute over land use altogether. The husband was fined
K30 for assault and his wife K10 for provocative and insulting language.
The migrant was not penalized, as the Court accepted evidence from the three
witnesses that he had acted only in self-defence.

Land ownership may not be adjudicated by village courts; but the Court did
not even try to establish whether land ownership was the issue - it seemed
clear to me that it was not. Whether of ownership or of usage of land,
such cases are notoriously hard to settle, and are always left to 'outside'
hearings by the Kumara Court. This is an example of an 'appeal' from
unofficial to official court, in which all parties had no doubts about
the superior authority of the latter. But it is also an example of move-
ment from one mode of social control to another. The Committee member's aim
was to keep the balance between the two men, taking into account past and
present wrongs on both sides and the likely outcome of favouring one or
the other. (He told me afterwards his view that the migrant was not entitled
to use the land where he was making his new coffee garden). In the legal
made these complexities were reduced to clear cut offences of assault and insult, to the well-attested breach of well-defined rules. The migrant 'won his case', but the dispute was not settled. In fact, the dispute exacerbated for the husband would not speak to the migrant after the formal court and tried to take advantage of his immigrant status to have him expelled from the village. As the people of this small village are all kin or quasi-kin, no one dared follow the customary procedure of helping the couple to pay their fines, for fear of seeming to take sides. K40 was approximately the reported cash income of the couple for the complete year of 1975.

(ii) Another kind of link shows how court officials are prepared to support lower-level hearings and reinforce their effectiveness. Within a local kin group in another village the Community Committee member was a man in late middle age, one of the very few of his generation who had survived a succession of drastic routs in the years before pacification. Though not an important man at Community level, he was accustomed to preside over his more youthful flock in an authoritarian fashion and to adjudicate disputes. He dealt with an altercation and fight between two young co-wives (a very common occurrence, elsewhere often ignored by dispute settlers as trivial and inevitable), fined them K3 and K2, and suggested publicly to the husband that he should divorce one of them. The women refused to pay, and the husband refused to help them to pay. The Committee member consulted the Chairman of Magistrates, who lives in the same village and is its most important man, and together they hatched a plan for a feast to be held to which some court officials would come. Three magistrates and one police officer came to the feast, conducted a hearing there and then, and fined the women K10 and K5. The one fined K10, previously K3, was said to have been a persistent troublemaker. There was no technical reason why this should not have been treated as an official court (it even had a quorum of magistrates), except that it was not held in the courthouse. However the court officials three of whom came from other villages, called it a famili kot, and were explicit that their aim was to ensure that the Committee member continued to be respected as an adjudicator. They pointed out to me that everyone could see the difference between the two levels of fine. The new fines were paid with alacrity, by the
husband, and several weeks later the 'troublemaker' wife returned to her natal village. I believe all who knew about this incident understood that a more powerful authority had been invoked to support a lower-level authority.

Wider disputes and peacekeeping. Disputes between members of distinct local groups, within and across villages, can give rise to quite different problems. The social system provides no natural adjudicator and the immediate incident may invoke previous disputes and grievances involving the same groups so that the conflict ceases to be focussed on a single issue. If fighting breaks out it is likely to involve considerable numbers of people affiliated to the principals. Not all such disputes are so critical: pig trespass, theft, and money debts, for instance, are left to the individuals concerned, and may be taken to the Village Court. Land rights are the most frequent basis of critical disputes in Kumara and everybody knows it. ¹ Matters involving sexual relations and bridewealth are a secondary cause. But two groups with a ranking history of unsettled or half-settled disputes, or led by especially belligerent men, may come to hostile confrontation over smaller issues that would otherwise not cause trouble.

If the principals are at loggerheads and there is a likelihood that the dispute may escalate, the responsibility for mediation and for containment of the dispute is voluntarily taken by those influential men who are able to stand aloof from it. This responsibility used to fall to councillors most of all - often awkwardly if members of their own kin groups were involved. Since the establishment of the seven-village Community in 1973 (i.e. predating the Village Court), a Community elite of big-men - or whatever sample of them can be mustered at a given time - has gradually assumed the de facto responsibility for handling these wider disputes. If the principals are not, or not yet, too antagonized they may press some of these men into service themselves, either by arranging a feast to which big-men are invited or by going to the assembly ground in the mornings and discussing the dispute there. Those I am calling big-men (the term is variously used in Kumara) are in near-daily contact with one another and for any one dispute most of them will be appropriately unaffiliated to the principals. I would count this elite as numbering about 15 men in all, ⁴ or 5 of whom can be almost immediately available; 10 or so will turn up eventually when word

of a serious dispute reaches them. The fifteen includes seven of the
ten court officials. One in fact becomes used to judging the seriousness
of a dispute by counting the number of elite men present, whether or not
they speak. The formal court plays no part unless fighting occurs, where-
upon the combatants are promptly fined: even then, the Court does not
discuss the dispute, only the details of the fight. This in itself may
create a salutary hiatus and de-fuse the conflict for the time being.
In all instances, however, some court officials are prominently and dutifully
involved. I am counting this involvement as unofficial ('outside') as they
do not manage mediation to the exclusion of other big-men and they do not
try to formalize successful mediation as they conceivably could under the
Act. But those who combine official and big-man status, as councillors
also do, seem often to play a special role and, if nothing else, obviously
add gravity to the occasion.

Gravity and solemnity are themselves a gain in preventing matters getting
out of hand. In sharp contrast with the formal court, the big-men will
readily go to the scene of a dispute, for their very presence is a steadying
influence; if, however, the disputants can be persuaded to go to the
assembly ground, so much the better. The ground is neutral, the walk will
cool tempers, more big-men have time to come in from other villages, and
spectators will soon outnumber principals and their allies.

The idea is of course to settle the dispute if possible, but the issues
involved can be so difficult and complicated that the pragmatic aim may
be fairly said to be to prevent or contain violence by talk. Some of the
land disputes that flared up during my stay were basically of many years'
standing and did not seem likely to be soluble by mediation alone. And
yet only a mediatory role is possible: the inflammable tempers of these
situations will not tolerate arbitration. If a meeting goes well it can
be orderly, with a self-appointed chairman, and speeches made in turn
after the fashion of highlands oratory. If no settlement can be reached
the meeting goes on until people begin to slip away, when final speeches
are made exhorting the principals not to fight and an arrangement may be
made for another meeting.
Including two disputes which involved Rumara with neighbouring Communities, but excluding those which were tackled by mediation but never seemed likely to escalate, I observed ten critical cases in 1975-76. Three of the disputes were more or less settled, probably beyond revival in the same form, though not necessarily without leaving grievances which will contribute to the score to be settled in future disputes. One was a land dispute which the skilful exposure (by the councillor magistrate) of a fraudulent claim allowed to be reduced to a lesser dispute which did not threaten the peace. Another arose from an accusation of killing by sorcery, with a threat of retaliatory homicide: this took nearly three months to deal with, including five weeks of near-daily meetings. The whole Community elite and many other men were involved at one time or another. The third, which had come to a confrontation with bows and arrows, concerned premarital sexual relations between a young man of one group and a young woman of another: a deal was eventually made after a long moot on the assembly ground managed primarily by one of the police officers. A fourth dispute, over allocation of bridewealth between two groups with rights in the bride, remained unsettled by mediation but was de-fused by a formal court when twenty six persons were fined for fighting; the dispute could easily be re-opened over another marriage involving the same two groups. I believe the issue of bridewealth allocation would have been accepted for adjudication by the Court had the principals wished to take the matter there. They did not, and were not encouraged to when fined for their offences.

Six further disputes of a critical nature remained unsettled. One was an accusation of adultery with an explicit threat of homicide: it was talked out inconclusively, twice, before a large audience. If adultery could have been established, I believe the magistrates would have heard a formal court in order to prevent assault or homicide, but as it was they were at pains to keep the sessions away from the courthouse. They were nonetheless chaired by the Chairman of Magistrates. The other five peacekeeping operations were all over disputes concerning land ownership and, together with many other dormant land disputes, could flare up again. Mediation may thus not be especially successful in resolving land disputes; but the pragmatic aim of peacekeeping was in fact well achieved. Bows and arrows were made ready twice
but not used for shooting. Minor scuffles apart, only two hand-and-stick fights resulted from these ten critical cases — much more serious injuries were sustained in marital fighting. Three times, help was eventually called from Kainantu — Land Mediators twice and the constabulary once. Again this may not say much for Kumara mediation but it showed the good judgment of the Kumara elite in deciding when matters were likely to go beyond their control. The Land Mediators could not settle the disputes either and the constabulary of course did not try to do so, simply arresting two men.

The letter requesting intervention by the constabulary was composed, after all-night consultations among the elite, by the President of Kumara Community and one of the magistrates, and signed by the magistrate identifying himself as such. At this point a fight with bows and arrows and tomahawks, spreading across four villages, appeared inevitable; absentee members of the groups in dispute had been coming back from Kainantu and Yonki during the night to reinforce their kin. The letter was delivered and explained by another magistrate and a Kumara police officer. The core groups in dispute began scuffling, but were persuaded to repair to the assembly ground, a mile's walk, by a magistrate. There further mediation was conducted, essentially stalling for time, by the Vice-President of the Community and the councillor who is not a magistrate, until the constabulary arrived. Spokesman for the elite in Kumara to the constabulary was the magistrate who had signed the letter. In the four previous days of simmering hostilities, which included a four-hour discussion at a specially arranged feast, half a dozen other big-men had been involved in attempts at mediation. Thus the peacekeeping operation was, typically, a joint one among big-men in which Village Court officials were prominent. 'Official' communication with the Kainantu authorities was always conducted by court officials.

The constabulary, surprised that they were not dealing with a bloody fight, asked why the Village Court could not have handled the dispute. I believe they went away unsatisfied with answers they heard; but the same question may be asked here. Why could not the Village Court, acting officially, have coped with the problems? In brief:
(i) the immediate issue was one of land ownership, which village courts are not allowed to adjudicate;

(ii) the hostilities had in any case ceased to rest on a single issue, for other unsolved disputes between the two groups still rankled, most recently the unproved accusation of adultery;

(iii) a formal court had already fined fourteen persons for fighting arising from this dispute, with no sobering effect whatsoever; and

(iv) the Court has very tenuous policing powers.

Certainly, the groups could have been left to fight and then fined by the Court, always supposing they would have submitted to its authority. But if there had been fighting on the scale predicted, the constabulary would have had to be called in anyway. And it would have been irresponsible of the elite to give up trying to prevent a fight in which death seemed possible and serious injury inevitable. There was, after all, no serious fight - and to me and others, there had seemed no possibility of stopping it. However puzzled the constabulary were, their arrival and their arrest of two men de-fused the situation. I believe the Kumara Court could have tried serving Preventive Orders; but, to my knowledge, this action was not considered. To say that the formal procedures of the Court could make more of a contribution to peacekeeping operations is one thing; to wish the Court to take over the peacekeeping function altogether is another. Well aware of the touch-and-go quality of their peacekeeping, the Community elite decided in early 1976 to request that a member of the constabulary be posted to live and work permanently in Kumara.

IV. The Court and the Community

The formal activities of the Village Court do not make up a large share of the total of procedures for social control in Kumara; nor, perhaps, a crucial share, with respect to either harmony or order. But is one to expect otherwise? Could, and should, the Court do more in its official capacity? Living in a Kumara village, one quickly becomes aware that there are plenty of disputes and problems that could potentially be brought to
court but are not; some of them, over bad debts for example, seem to go unresolved indefinitely. One also knows that anywhere in the world a court of law deals with only a fraction of the theoretically actionable wrongs, crimes and disputes that occur; fewer still if its jurisdiction is specifically circumscribed. Other agencies than courts deal with many such matters - or they may not be dealt with at all. Are we to count the Kumara situation as any different?

Some of Kumara's unofficial procedures are the very attempts at mediation that the Village Courts Act is specific in encouraging. In fact, the Kumara distinction between formal courts and all else is very much more rigid than the Act envisages. The Act states the primary function of Village Courts (significantly in its Division on Mediators Jurisdiction) as 'to ensure peace and harmony...by mediating in an endeavouring to obtain just and amicable settlements of disputes'. Mediation may officially be exercised by a single magistrate - the requirement of a quorum of three is relaxed - but a settlement agreed is to be recorded and enforced as a court order. Kumara court officials do not know the Act, but these sections of it are correspondingly reflected in the court handbook (Pidgin version, pp. 5-7) - perhaps without as great an emphasis as in the Act.

The Kumara magistrates, in formal court, have a strong preference for the more authoritarian position of the adjudicator. In two formal sittings, the principals wanted to settle for an amount of compensation agreed between themselves but less than the amount decreed by the magistrates. In both cases the principals were kinsmen. They were sharply rebuked by the magistrates for, as they put it, wishing to turn the Court into a 'family court'. The magistrate's compensation figure was allowed to stand. Mediation is generally left to non-magistrates in all but the most serious cases, where magistrates operate as big-men, and is regarded as 'outside', unofficial. Settlements reached in out-of-court mediations involving magistrates are never recorded as court orders. This may not in practice

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1 There was actually one formal courthouse sitting with all four magistrates and clerk present that was wholly devoted to mediation. This court was anomalous in almost every respect. None of the principals lived in Kumara and one came from another part of Papua New Guinea. For different reasons, all were afraid to have the matter heard in the Community of their residence. The eventual agreement reached - to effect a marriage - was not recorded and hardly recordable as a court order. In this instance, the Kumara courthouse provided a forum for mediation because no alternative was acceptable to the principals. The agreement was that a man should marry his wife's sister - an act forbidden by local custom.
be very important as, being agreements between the parties, their lack of enforceability is unlikely to present a major problem; however, agreed compensation has often been difficult to collect in the past.

It is in being so passively adjudicatory that the Court defies the spirit of the Act. Just as court officials are themselves loth to instigate courts for offences short of serious violence, so they do not offer themselves as official mediators - even when a dispute is formally before them as a case of assault. As I read the Act, magistrates are not precluded from official mediatory jurisdiction even in matters of land ownership, for restrictions apply only to compulsive jurisdiction, i.e. adjudication. In cases with an explosive quality, they could combine an offer of mediation (to be conducted in the courthouse if need be) with Preventive Orders against violence, making it clear that imprisonment would automatically follow fighting.

The Court could thus do more than it does. But for it to do so would require a change in its character and in the division of Kumara social control which is unlikely to come about spontaneously. With the advantage of hindsight, it seems an inappropriate aspiration that village courts should amount to the official recognition of an existing unofficial system of moots and tribunals. Other procedures, however unofficial, will not wither away if their functions are necessary and the Court is unable or unwilling to take them over. If the drop in the frequency of formal courts over the first year means anything more than the loss of an initial enthusiasm (and it may not), it could indicate a growing acceptance of the Court's legalistic and, therefore, limited role.

There is a paradox involved. The Court truly works successfully as a legal institution, but by this same token is not readily able to provide

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1 This may be a loophole in the Act, if not intended by those who drew up the legislation. Even if it is, the Village Courts Secretariat might seriously consider taking advantage of it, and encouraging village courts accordingly. Cf. Oram (1973:44): 'If land disputes are to be settled quickly, they should be initially heard in village courts. Native courts deal successfully with land cases in the British Solomon Islands Protectorate'. Care would have to be taken over the manner in which the settlement is to be recorded.

2 A Preventive Order, if disobeyed, may be followed directly by an Order for Imprisonment. One of the five Preventive Orders served in 1975-76 was to instruct a man not to insult or assault another man (the senior police officer). This arose out of a dispute over division of garden land.
what is effected by other procedures. It applies laws and decides settle-
ments with enforceable authority and without corruption, abstracting itself,
as an institution should, from the mesh of Kumara society. Even apart from
the initial impetus given by the training course for court officials and
the specification of general laws in stereotyped form in the court handbook,
there is probably an inevitable tendency for legal institutions to 'ration-
alize' their procedures: thus they properly - that is, it is proper to
the legal mode - reduce idiosyncratic disputes of great moral, historical
and perhaps political complexity into artificially narrow instance of the
violation of general rules, if they can. In the service of 'justice' - a
concept inherent to this rationalization - there are of course gains, es-
specially when the weak are pitted against the strong, or when the partic-
to a dispute are not closely involved with one another so that it is already
a rather isolated event in their lives. But the ideal of restoring amity
or social balance in the particular situation may - again, quite properly
be lacking from the legal mode of social control. Matters may in ex-
treme instances actually be made less harmonious, as when a delicate
marital problem or a misunderstanding of an originally amicable arrange-
ment over land are in the legal mode made over into cases of assault and
nothing else. Kumara people are quarrelsome and disputatious, and often
threaten each other with court charges; but they are not litigious in
the sense of using or manipulating the law and the courts to their own
ends. Practically no one but the court officials knows what is in the
court handbook. A legalistic court, however, may very well develop litig-
iousness in the long run: the man who 'appealed' the land use case to
the Village Court had spent much time sitting outside the courthouse over-
hearing sittings, and probably knew that he could transform his own case
into one of assault against himself. He is thus, for Kumara, an early
mutation of the litigious type. His opponent, currently bemused by the
legal process, may yet realize that he can take the issue of land usage
to the Court as a civil matter and perhaps get his own back.

In what ways does the Village Court strengthen the existing system?
The Court is obviously stronger in that its formal judgments are not
only sanctioned by the threat of enforcement but have the minimal con-
text of bureaucratization so as to check that penalties and compensation
are paid. According to the councillors, there used to be persistent
difficulties in getting the compensation of some settlements paid, or paid in full. Now there is not the same problem. The Court is probably at its most effective in dealing with settlements between relative strangers, some of whom would previously not have found a suitable arbiter. It can also take prompt and authoritative action against violence, and thus contribute to peacekeeping. It is accessible compared with other official courts.

However it is as much in its functional as in its formal aspects that the Village Court has strengthened the overall system of social control. It has enlarged the Community elite, and its officials, the most regular attenders, always form the nucleus of the elite gathered with other gossipers at the courthouse in the mornings. The officials are the centre of a communication network for the Community and, as I have tried to illustrate, play a prominent role in the troubleshooting activities of the elite. Their big-man power to do so is increased by their status as officials. To some extent, they oversee the unofficial system, support it, and may act directly to strengthen its authority. They are in a position to make comparisons and become aware of which villages, and which parts of which villages, are sources of trouble: at meetings and even at parties they will harangue the mature men of those places for not keeping their domains in order. In this way, too, they stimulate an improvement of unofficial procedures.

I would say, therefore, that the Village Court has considerably strengthened the existing system while formally replacing not very much of it. Had the Area Community not come two years before the Court and evolved its own elite, certain features of the situation would have been different, especially with respect to what I have called the peacekeeping role, which might have fallen more exclusively to the officials themselves. But the officials would have taken longer to get to know and trust one another and it would in any case be unrealistic to expect the official procedures of the Court to be able to manage the peacekeeping role. It would also be unwise not to draw on all the elite talent available for these delicate situations.

For the future, there is the distinct possibility, mentioned above, that the Court will stimulate a form of litigiousness among the shrewder villagers.
There is also the possibility of something amounting to local legislation. The Community Committee has passed several rules which can influence the Court's decisions. For instance, the Committee has decreed that the teacher or aid post orderly may summarily shoot a pig which is found spoiling their gardens. The father of an illegitimate child is to pay the mother K30 per annum for its keep plus school fees. A man who commits adultery is to be fined K20 - increased at a subsequent meeting to K50. This latter 'law' has an important implication, as it defines adultery as a criminal offence, in effect - whereas it is specified in the court handbook as a civil matter for compensation. The two formal cases of adultery heard in 1975-76 resulted in fines of both the man and the women involved - K25 each in one case and K20 and K15 in the other. Treating adultery as an offence was very reasonably justified by taking it under Offence 7 in the Pidgin handbook: Sapos wampela man o meri i bagarapim gutpela sindaun long ples...... (a translation of the English version: 'If somebody disturbs the peace in the village.......'). This is an exceptionally 'open' law which may in practice incorporate 'custom' and 'local legislation'. Similarly, it is more or less left to the magistrates themselves to define the nature of local disputes and to specify 'wrongs' according to local custom: the handbook simply lists some examples of possible causes of disputes. Thus there is scope for the Community Committee to act as a quasi-legislative body.

This provision for 'customary law' can in practice allow for the guidance of social change. For instance, the Community elite has several times informally discussed the possibility of allowing any uncontrolled pig to be shot with impunity by anyone, that is, with no compensation payable to the owner. The purpose would be to compel people to keep their pigs in pens instead of letting them wander free. So far there is only partial 'legislation' on this matter: livestock damaged or killed by vehicles on roads are the responsibility of the owner and do not merit compensation. Another Community rule allows a vehicle to be impounded whose owner is sued for debts unpaid in connection with the vehicle. And, a little puzzled by the status of 'government laws' such as those banning card-playing and re-selling of beer - laws which they have no intention of applying themselves - the magistrates have decided among themselves that these become relevant to the Village Court only if the Community Committee
first endorses them. There is plenty of scope for monitoring of this kind and the Court is likely to develop in the context of the Community. If one accepts as inevitable the unofficial status of much that goes on, the combination of the two institutions has undoubted advantages.
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