
Chapter Seven

Conclusion

Inappropriateness of the Introduced System

Commonalities of social control

Within traditional Papua New Guinea societies there were common principles of social control and dispute settlement which were concerned with the social context and the social relationships within which the act complained of occurred. Offences committed in traditional society could be divided into two kinds: offences against the religious code and offences against human beings. Responses to the latter could be further divided into two categories: self-regulation, and self-help or retaliatory action. Self-regulatory forces which prevented wrongdoing included public opinion, shame, socialisation, and reciprocity. The most important of these was the rule of reciprocity defined by Lawrence (1969, p. 27) as 'where mutual obligations entailed by a relationship are observed, each party will derive material advantage from the other'. This rule permeates all relationships within traditional Melanesian culture. Reciprocity was derived from cooperation through the reciprocal exchange of goods and services which functioned as the currency of a subsistence economy. Cooperation between groups and individuals worked to build inter-dependencies. Individuals were tied together by this system of obligations and cooperation. Assistance and support could be found amongst those who satisfied the obligations which were built up in relationships. When individuals failed to meet their obligations they would be met with the withdrawal of all cooperation from other individuals and group members.

Moral obligation was only acknowledged when effective relationships had been established. The number of individuals to whom a person was morally bound was limited by the number of groups and individuals with whom one had established mutually beneficial relationships. Beneficial relationships were those where material gain by both sides was easily attainable. Outside of these established relationships no moral obligation existed since there were no advantages to be derived.

Self-help or retaliatory action was used when self-regulatory forces were ineffective or when there was no binding moral relationship already in existence. The strength of the retaliatory action was dependent upon the closeness of the relationship between the two parties. The closer the relationship the more restrained the response. The more remote the relationship the harsher the response and the greater number of people involved in the retaliation. Relationships were valued and any retaliatory action which weakened the in-group against external threats could not be tolerated. This code of conduct was necessary if groups were to survive.

The type of retaliation depended on the principle of equivalence which dictated that the extent of reprisal would be determined by reciprocity and through achieving a state of equilibrium. Once balance was achieved, justice was seen to have been accomplished. The goal of traditional techniques of dispute settlement was to restore balance between the disputants and repair damaged relationships. The payment of compensation often worked to achieve this outcome.

The Bena Bena had what Read called a distributive system of morality. Moral obligation within the clan was dependent upon the social relationships which existed between the individuals involved. Judgment about the wrongness of the act was reliant upon the closeness of the relationship and if it was close, upon the need for internal cohesion for the survival of the group. Outside the group, the mechanisms of social control revolved around the insecurity of the clan caused by unrestricted warfare and the constant struggle for survival. Social institutions involving the men's house and the men's secret societies were devised to teach the young men about the importance of strength and warrior abilities.

Within the Arapesh culture the importance of building cooperation and obligations through establishing relationship ties with relatives, trade friends and marriage was emphasised. Group survival was dependent upon the maintenance of these relationships. Internal conflict was avoided at all costs. Where it was impossible to avoid internal conflict, the Arapesh developed indirect mechanisms of social control which functioned to displace responsibility for hostility and aggression onto outsiders such as the Plains sorcerers. Within the group the tamberan and the ano'in relationship worked to keep the disputants separated. These methods of dispute settlement reflected the Arapesh need to maintain their personal ties and obligations to relatives and allies. Responsibility for violence was attributed to the victim who was required to pay compensation for his/her part in the incident. This assumed provocation as the cause for emotional and violent outbursts. Self-injury was used to invoke feelings of shame in the offender. Sophisticated mechanisms of social control were developed by the Arapesh in order to avoid confrontation or any possible harm to their important relationship ties.

The highly individualistic and sophisticated Tolai developed mechanisms of social control which reflected their emphasis on profit and accumulation. This was particularly so in the institution of kamara which worked to involve innocent third parties in disputes to revenge prohibited acts, especially acts which involved property loss. Kamara functioned to compensate for the lack of solidarity whenever individuals needed the support of other group members since no Tolai could count on the undivided loyalty and support from his group members. Internal Tolai mechanisms of social control involved religion.

The Orokaiva divided their mechanisms of social control into those that involved external groups and intra-group members. Extra-group morality involved warfare. Vengeance and pay-back were honoured traditions and retaliatory wars continued until equivalence and balance was achieved. Intra-group social control was governed by the 'otohu' values taught to group members as children and as initiates. The distance in relationship between disputants dictated the response to conflict. The closer the relationship, the more tolerance and restraint was exercised. This reflected the necessity for group cohesion in the face of constant external threats. Intra-group mechanisms of social control were relatively sophisticated and emphasised personal injury and shame to create sympathy for the victim by the offender. The resolution of such disputes occurred when the offender, feeling sorry for the victim, offered a compensatory gift. The offended party reciprocated by giving the offender a conciliatory gift so that friendly relationships were once again restored and internal solidarity assured.

The colonial experience

The Australian and German colonisers introduced western law and western systems of justice. Germany introduced the luluais and tultul system of appointed local leaders to represent the German Administration in their communities, settle minor disputes and report more serious offenders to the German authorities. Patrol Officers (kiaps) were the emissaries of the colonial Administration and brought the laws and regulations of the foreign systems to the village people. The Australian Administration adapted the German system when they took over after the first World War. They introduced the Courts for Native Affairs in New Guinea after 1923 which were modelled after the Courts for Native Matters in Papua. Under this system Resident Magistrates in Papua and the Patrol Officers of New Guinea were given judicial powers to hold Court in the rural areas while on patrol or in the out-stations using the Native Administration Regulations which empowered them to enforce the Administration's regulations and policies in the villages. Appeal could be made under this system to the Supreme Court of either Territory. The Patrol Officers and Resident Magistrates dealt with minor civil and criminal matters. Court held by the Patrol Officers was sometimes on an

informal basis and sometimes the kiaps encouraged the locals to settle their own disputes based on mediation and negotiation and the local customs.

In the 1960s the Australian Administration abolished the separate court system and introduced the Local/District/Supreme Court system which was set up to handle cases of all races and was intended to integrate indigenous people into the system as Magistrates. The kiaps were replaced by the Local Courts which were mandated to deal with minor offences. The Local Government Councils were also set up during this period to administer local community affairs. They were not given the power to settle disputes but some held their own 'Courts' anyway.

The Administration utilised the Christian Missions to assist in the goal of pacifying the indigenous peoples and to instil Christian values in an attempt to replace the traditional value system. Since western law is based upon Christian principles and values the Administration and the Missions were able to work toward these goals. The German Administration hoped the Missions would be successful in instilling the Protestant work ethic in the locals so that they would have cheap labour for their economic ventures. The Australian Administration encouraged men to accept indentured labouring contracts through the kiaps and did not rely directly on the Church to assist them. Both Administrations relied heavily on the missions to provide health care and education to the people.

After Independence the Government kept the western system of justice intact. However, it introduced the Village Courts system in an attempt to fill the gap created after the abolition of the patrol system and as a means of integrating custom into the formalised system of social control. The Village Court system emphasised mediation and customary ways of settling disputes, such as compromise, community participation, compensation and 'talking out the dispute'. It could exercise judicial powers when all attempts at mediation failed.

The Government introduced a probation system which has attempted to integrate aspects of the traditional techniques of social control into the procedure prescribed by the western court system. Probation Officers attempt to achieve this integration by ensuring that the stories of both sides of the dispute are related to the Court in their Pre-Sentence Reports; by attempting to investigate whether or not a compensation order is required under custom before the aggrieved party will see the dispute as being settled; and by seeking to involve the community in the 'rehabilitation' of the offender by appointing a Voluntary Probation Officer to supervise the probationer within his/her own community. The objective of using volunteers in the system of supervision is to reinforce the community's traditional role in upholding the cultural values expected of its group members.

Law and custom

The relationship between law and custom is crucial when examining the impact of western formalised legal systems on custom-based societies such as Papua New Guinea. Custom, or inner controls, is the internalised belief system based primarily upon cultural conditioning, and, for custom-based societies, may reflect the survival needs of the group in question (Pospisil 1978, p. 63; Hart in Lloyd 1985, p. 406; Yabsley 1984, p. 4). Outer controls, or codified law, include rules and regulations which are externally imposed on the individual or group by one or more persons, who have enough power and influence to coerce the less influential members of the society or group to submit to the imposed rules (Pospisil 1978, p. 30). Law can also be based on custom (internalised control systems) but this is not required for the particular rule to be classified as law (Hart 1961 in Lloyd 1985, p. 406).

In the relationship between law and custom, law is most persuasive when it is based on the groups' internalised beliefs, and, in the case of custom-based societies, the customary system of social controls (Yabsley 1984, p. 7). When no contradictions exist between the inner and outer controls, compliance with the external laws is strengthened. Law is less effective when it is not based on the society's internal point of view about what customs and practices will best serve the interests of its members. This is so because the group members cannot see the relevance or significance for their lives of the introduced legal code. Therefore, the commitment to abide by these rules is diminished. If coercion is involved, most individuals within society will eventually conform. However, the presence of coercion does not negate the confusion which arises from the inherent inconsistencies between internal beliefs and external controls (Yabsley 1984, p. 6).

In Papua New Guinea the colonial Administrations failed to take custom fully into account in the introduced system of justice. Melanesian notions of traditional dispute settlement and the different value system were not fully accommodated. However, the kiaps 'unofficially' took some customs into account by encouraging the locals to settle some of their own disputes, using custom which neither they, nor the Administration, considered repugnant. The kiaps permitted the locals to settle disputes which were based on customs unfamiliar to them (Townsend 1968, p. 120). There were exceptions, especially in matters concerning women. In such cases the kiaps regularly interfered in the customary solutions. When the separate Court system was abolished and the kiaps' judicial powers were handed over to the Local/District Courts the separation between the customary techniques of social control and the introduced system of justice became acute. Even though the Local Court had some power to recognise custom by adjourning any matter which it felt might be resolved by mediation, and, where appropriate, the Customs Recognition Act could be applied by the Courts, the gap between the two

systems widened and as Downs states (1980, p. 152): '... There was now a broken link between the central Government and the village people which local government could not replace ... Reversion to modified forms of traditional custom was inevitable when the Administration failed to provide a rural judicial system'.

Above all, the individual in Papua New Guinea is rooted in the community. It is the group which is important and not the individual members of that group. The introduced system of justice deals with individuals and not with groups and therefore fails to address the obligatory and reciprocal needs of the groups involved. An example of this is the issue of compensation. Compensation cannot be ordered by the introduced Courts other than by the Village Courts, except for certain summary offences and most recently, for adultery and enticement. Yet, traditionally, the injured party could not consider a wrongful action dealt with unless it retaliated against the offending party or exacted some form of compensatory payment. Without the payment of compensation the incident or transaction remained economically unsatisfactory to one side of the dispute and inevitably led to reprisal. A compensation payment was regarded as an act which worked to repair the imbalance between the two groups and to restore the social relationships. Any system of social control in Papua New Guinea which fails to integrate this essential act of 'balance' will run the risk of not satisfying the disputants.

Traditionally, the guilt of individuals was determined by the fact that people *believed* that they were guilty and was not necessarily based on evidence (accusatorial system) or truth (inquisitorial system). The appropriate justice system for Papua New Guinea is one which takes mediation and traditional mechanisms of dispute settlement into account. Melanesians are less concerned with the truth, than they are with issues of compromise and saving face. Lawrence (1970, p. 42) notes that:

... as there is no separate and centralized system of authority—no state—law or social control is, in Barnes' (1961) phrase, 'politically active': there is no impartial justice. Decisions are based on other factors—the factors he [the lawyer] would dismiss as irrelevant, extra-legal: considerations of patching together social relationships, very often irrespective of what we should regard as individual rights.

The traditional systems of leadership were severely undermined during the process of pacification and colonisation. The people became more reliant on the kiaps to settle their disputes rather than depending on their leaders to mediate and make such decisions. In the post-independence period the leaders have less control over their group members as their powers of leadership have been undermined. The absence of an authority to settle disputes appropriately and quickly has resulted in a great deal of frustration.

Custom is alive and vital in Papua New Guinea in the post-Independence period. It must be tied to the legal system if that system is to have any success at all. Since Independence, the Government has introduced two systems of social control in an attempt to reconcile the imported western system with the needs of this developing country and its custom-based society. These systems have a number of characteristics similar to that part of the colonial system represented by the kiaps. Probation and Village Court attempt to bridge the gap between custom and law. It has been argued that the Village Courts have effectively emulated the western court system especially in procedure and setting (Paliwala 1977, pp. 167-8). Unfortunately, this has meant that the Village Court does not really meet the immediacy needs of the traditional system. The Probation system, in its attempt to integrate custom into the western court system, has after a fashion, made use of the patrol system started by the kiaps. Inherent within the system of supervision, Probation Officers regularly visit rural probationers and their appointed Voluntary Probation Officers who help supervise their own community members who break the law. The philosophy of the Probation system in Papua New Guinea reflects the law/custom debate by focusing on the relationship between law and custom and attempting to integrate customary social controls into law.

In modern day Papua New Guinea not all custom can be condoned by the state. Traditional payback killing for example, could hardly be endorsed. Nevertheless, there are changes that could be made to the legal system which would make it more relevant to the people. Procedurally, the state could incorporate the traditional techniques of mediation, community participation and 'talking out the dispute' more effectively into the imported system. Additionally, as the INA/IASER Report on Law and Order in Papua New Guinea recommends, jurisdiction in most civil cases could be given to the Village Courts (Clifford et al. 1984).

Substantively, the Courts could be given the power to make compensation orders for most cases which came before them in order to satisfy reciprocity demands. Other kinds of customary sanctions might be difficult to incorporate into the introduced system. Shaming is one example that might become sensitive but the main objective is to establish reciprocity between the disputant groups. The Papua New Guinea Law Reform Commission Report No. 11 on Customary Compensation (1980) argues that the Courts should have power to order groups to pay compensation to restore the balance.

Traditional systems of justice were not always objective or fair, especially to women. They also lacked due process to safeguard the 'rights' of individuals. The implementation of some traditional sanctions and techniques of social control is not without its difficulties because of Papua New Guinea's western style Constitution with its human rights provisions. (The Papua New Guinea Constitution contains a number of

rights and freedoms including the right to full protection of the law which is in effect a due process guarantee. It also includes a guaranteed right to bail 'unless the interests of justice otherwise require'.)

Traditionally, reprisal for wrongs was swift and violent. During the colonial period, the kiaps made decisions on the spot about the disputes raised during their patrols. In the introduced court system this speed has been lost due to procedural delays. One way of taking account of custom is to have the modern court system respond more quickly. This would decrease the people's frustration and satisfy some of the traditional perceptions about the appropriateness and pace of judicial sanctions.

Women and Social Control

The position of women in traditional Papua New Guinean societies was determined almost entirely by the fact that they supplied the labour for the production of food. Also of significance, however, was the system of descent and the rule of residence. Matrilineal horticulturalist societies have been demonstrated to have internal political stability (Martin & Voorhies 1975, pp. 227, 229). This stability was combined with fertile ecological systems which minimised the need for internal economic competition. There was a large degree of internal cooperation between groups of related women within matrilineal groups using the matrilocal rule of residence, since the men (who marry into the group and are therefore considered 'strangers') were often required to journey long distances to fight wars (Martin & Voorhies 1975, p. 227). In their absence women hold the control over resources so that the group's common property and human well-being can be safeguarded. Polygyny was not prevalent in matrilineal societies using the matrilocal rule.

Due to a declining trend in the number of matrilineal societies, some matrilineal groups have adapted their rule of residence to the avunculocal rule (which requires the bride to move to her husband's mother's brother's land) in order to keep their matrilineal descent system. Thus, related women are dispersed and become the strangers within the group they marry into. Matrilineal societies using the avunculocal rule, change the group which controls access to the allocation of resources and wealth from women to men (Martin & Voorhies 1975, p. 227). The incidence of polygyny increases with such a shift as the society becomes more competitive and concerned with the accumulation of wealth. Polygyny functions to increase productivity, and therefore wealth, in production systems without benefit of the plough or paid labour (Martin & Voorhies 1975, p. 232). Polygyny results in women labouring on individual plots of land and being placed in a position of competition with one another for the attentions of their husband. There is little cooperation between women.

The avunculocal rule of residence gives women from matrilineal societies the same status as women in patrilineal groups which use the patrilocal rule of residence, although in matrilineal groups the bride's relatives continue to have obligations to her. Women from groups using the patrilocal rule move to their husband's kin's land and become strangers within the group. Competition and the accumulation of wealth is prized in patrilineal societies and women are valued for their reproductive capabilities and for their labour. Patrilineal societies compete over limited resources which often results in extra-group warfare (Harris 1975, p. 348). Group survival necessitates the centralisation of groups of men and the emphasis on customs which value male solidarity and strength in preparation for the constant threat of warfare. Relationships between men and women are significantly influenced by these factors. Control over women by men is maintained in both types of descent systems.

Polygyny was present in all four groups studied although in practice it was not prevalent amongst the Orokaiva and Arapesh groups. Its greater prevalence in both the Tolai and Bena Bena cultures reflect their systems of achieving leadership and their preoccupation with the accumulation of wealth. In the Orokaiva and Arapesh groups, leaders functioned to redistribute the wealth as equitably as possible and a more egalitarian society was developed. These societies appear to have had some matrilineal derivations since they both developed customs which worked to protect women from potential abuse by their husbands. Affinal kin in both groups continued to hold an interest in the welfare of the woman.

The position of women of the three patrilineal groups was influenced by the patrilocal rule of residence which made women strangers within the group to which they married and meant that men viewed them suspiciously until they had proved their loyalty by producing a child (particularly a male child) (Martin & Voorhies 1975, pp. 237-8). Male group members feared the 'insidious' powers of women which threatened male strength.

An examination of the systems of social control and the position of women of all four groups reflected their position within the general social organisation of their respective societies. The competitive Bena Bena and Tolai groups gave women no expression in their systems of social control even though they were often victimised by these systems. Internal relationships within the Orokaiva and Arapesh groups were less competitive and women were more valued. The exchange of Orokaiva, Arapesh and Tolai women functioned as an extra-group social control mechanism which worked to ally men with outside groups and reduce warfare. Bena Bena women were not used in this way since mechanisms for extra-group relationships remained undeveloped other than for the use of unrestricted warfare. Consequently, married Bena women lost all ties with their affinal group, which upon the woman's marriage, abdicated all responsibility for her.

Internal Bena Bena relationships between men and women were significantly influenced by the need for survival since male solidarity was critical if the group was to endure the constant threat of warfare. Women were seen as having a divisive influence on the loyalties of men and therefore as a threat to group survival. The Bena Bena culture developed male institutions which functioned to teach the required male characteristics symptomatic of a warring society. Within these male institutions, men were taught about male dominance and superiority, that women were 'nothing' and had 'no value'. Initiates were also instructed to fear women for their polluting abilities, as well as the dangerous consequences for men who spent too much time in their company. Consequently the relationship between men and women was fraught with antagonism and aggression. Violence toward women was a recurrent theme in traditional Bena society. A woman alone was considered as a natural target for rape often by several rapists.

Arapesh women were valued, assigned an equal role in procreation and were respected for their part in the process of 'growing' children. Women became the blood-ties between groups of men. An individual's blood was considered the property of the woman's relatives and any spillage of either men's or women's blood required a payment of compensation to the mother's brother. Child betrothal was the observed marriage practice, and created trusting, if not paternal relationships between husbands and wives. Women were not killed if the men's secrets or the 'tambran' were accidentally revealed to them. Instead they were sworn to secrecy. Divorce was realised through a contrived abduction thus making women collaborators in the decision to go to war with another group. Violence toward women was not prevalent in the non-aggressive Arapesh society. Rape was nonexistent since sex with wives (which was based on a trusting relationship) was considered dangerous enough if taboos and restraint were not followed. Sex with other women was fraught with the dangers of sorcery.

Tolai women were restricted from having any involvement in the men's secret societies which controlled the Dukduk and Iniat institutions. These institutions were a significant source of wealth for men. They functioned to monitor and penalise the misbehaviour of group members. Women were often the victims of these social control mechanisms and faced severe punishments for acts considered to contravene the Tolai moral code. Women were subjected to a great deal of violence from men; including husbands and male relatives. Disciplining women through corporal punishment was an accepted practice. Wives who objected to ill-treatment from their husbands and wished a divorce were not encouraged by their relatives who did not wish to repay the brideprice. They sometimes beat her until she capitulated. If a woman committed adultery or was believed to have committed adultery she was sometimes killed.

Women provided the labour, the profits from which the Tolai accumulated their wealth. Their role was one of extreme subservience.

Orokaiva women were generally valued. The marital relationship was relatively cooperative although domestic violence was used by husbands for the purpose of disciplining their wives for failure to fulfil their duties. The culture shamed men who 'excessively' disciplined their wives. These men were considered to be bad men who had failed to adhere to 'otohu' values. The payment of '*bi-dorobu*' to the groom's relatives after the payment of brideprice, worked to protect women from 'excessive' ill-treatment from their husbands since their relatives still maintained an interest in her well-being. Women were included in initiation ceremonies and were not required to avoid discovering male secrets relating to initiation and the men's house. Adulterous women were killed or stoned. Relationships between men and women reflected the flexibility of the Orokaiva system and their affable internal relations.

Amongst the western laws introduced to Papua and New Guinea Administration were a number of Regulations which significantly affected women's lives.

In the Native Administrative Regulations the Australian Administration treated customary marriage and divorce as lawful except when the couple had been married by the Christian Church. They stipulated that the custom of the wife's group regulated the divorce. The Administration retained the right to arbitrate in customary marriages where women were being pressured to marry someone they did not choose (Native Administrative Regulations 1924 Section 65(2)). Kiaps were permitted to intervene in cases where the woman had been 'educated in European surroundings' or had 'acquired European ways'. One of the effects of their interference was the introduction of a new law called '*laik bilong meri*' (what a woman wants) and kiaps sometimes went as far as to ignore the wishes of men when women informed them of who they would like to marry in court.

The Patrol Officers had a significant impact on customary marriage since they tended to treat marriage and divorce as an individual contract rather than as an exchange between two groups (Reay in Epstein 1974, p. 207). In divorce, the return of brideprice was seen as the final act concluding the marriage. This failed to recognise that the brideprice was distributed amongst relatives and other clan members to reciprocate for past obligations. When the kiaps treated divorce as separate from clan relationships, they did not account for the difficulty involved in returning an equivalent amount of goods to the original brideprice. Traditionally, this difficulty had worked to deter the incidence of divorce.

The kiaps treated women as jural equals to men and consequently, significantly raised the status of women within the system of social control (Reay in Epstein 1974, p. 207). This change was especially significant to the Bena Bena and Tolai cultures where women had little recourse in the

systems of social control. Women were given the same rights to take complaints to court, to own or sell property, to lay civil claims, and to sue for divorce. As Downs states (1980, p. 154) the '... courts seemed to Melanesians ... to have a biased regard for the status of women ...'. The traditional penalties for adultery were replaced with a three pound fine or imprisonment for six months or both. A man now had to face the kiap if he attempted to discipline his wife through traditional ways.

The Administration also introduced policies which allowed women to become employed in Administrator approved job positions, especially in domestic areas. They were prohibited from working in what the Administration regarded as unsuitable female positions such as mining, seafaring or jobs which involved heavy physical labour.

Orokaiva and Arapesh women were less affected by these changes due to their relatively higher status within their societies. Yet the prohibition of traditional penalties for adultery certainly had an impact, especially for the Orokaiva who had traditionally killed adulterous women. However, the effects of these changes were not all positive. The Orokaiva abandoned the practice of *'bi-dorobu'* which worked to protect women from ill-treatment. They gradually became dependent on the kiap to settle marital disputes and this traditional protection for women was lost. In all four groups, the incidence of divorce, adultery, and of children born out of wedlock increased. These changes had a devastating effect on marriage stability and led to family breakdown.

Pacification had an important impact on the four groups especially the Orokaiva and the Bena Bena whose cultures were very warlike. The change from war to peace impacted on the relationships between men and women. Many of the traditional ceremonies and rituals which taught the prescribed relationships required for a warring group were abandoned soon after the cessation of war. Bena men began to spend more time with their women. The Arapesh were less restrained in arranging the elopement of women. Interestingly for the Arapesh culture, pacification decreased the danger for sorcerers travelling the trade-paths and had the effect of increasing the incidence of sorcery. The means of achieving leadership within all groups changed after contact and this had a significant effect on their systems of leadership.

The missions were successful in weakening traditional value systems and they were able to increase the options available to women. They were particularly influential in changing attitudes toward the choice of marriage partner, brideprice and polygyny. They also succeeded in encouraging groups to allow some of their women to receive an education. Both the Administration and the missions worked to raise women's status. They were, however, in conflict on occasion about how to achieve this goal. The missionaries prohibited converts from practising polygyny and this had the effect of leaving discarded wives with no support especially since those abandoned were often the older women who had less opportunity

for re-marriage. They were also against brideprice, dancing, and divorce. The kiaps were less rigid in their approach toward changing these traditional customs although they also favoured their eventual change.

After Independence the Government's introduction of the Village Court system and the Probation system has also had an effect on women. The Village Court system in Papua New Guinea decides on cases which come before it on the basis of the appropriate custom. However, many of these traditional customs are predisposed toward the male point of view. Traditionally women were accorded less status than men and many of the customary ways, especially those to do with customary family law, create marital imbalance. These customs include those concerning brideprice and polygyny. Most disputes involving women which come before the Village Court involve family problems. Most of these problems have to do with domestic violence, desertion, adultery and sexual jealousy. All of these either directly or indirectly involve men.

Women are attempting to use the Village Courts to help raise their marital problems in a public forum. Since the Village Courts are often reluctant to hear family problems except when they involve divorce or violence because they feel they are too minor for their Court to have anything to do with, this suggests that women are resorting to the more public Village Court forum because they have failed to be satisfied at the informal level. Since sex-related cases most commonly involve assault the degree of violence toward women satisfies the Courts' seriousness requirement.

When women appear before Village Court Magistrates they are at a disadvantage due to their inexperience in the public sphere and to the demands of some cultures (such as the Tolai) of maintaining proper respect behaviours toward the very men they are opposing in court.

Village Courts order women to pay fines and compensation which they frequently cannot pay. These women serve the default time in gaol instead, leaving their families and communities behind for the duration of the default period. This sometimes results in further hardship, especially when their dispute has involved assaulting their husband's new girlfriend in public. If sent to gaol, these women have difficulty in maintaining their position in their homes once they are released.

Village Court Magistrates have been noted to insist on 'an excess of traditionalism' on women who come before them (Paliwala 1982, p. 222). This was in contrast to their attitudes toward most other disputes in which Magistrates appeared willing to compromise custom in favour of westernisation.

Women in all four groups were shown to have expressed some dissatisfaction of their treatment by the Village Courts. They have come to view the imported Court system as a more objective forum for them to raise their disputes. Some women expressed their dissatisfaction by appealing the decision of the Village Court.

The Village Courts do not regularly offer any assistance in the form of counselling or support to the women who require such help. If they do offer their advice it is given in the public Village Court forum which causes the woman embarrassment and shame.

The Probation Service has attempted to assist women who come before the Local and District Courts by relating the woman's side of the problem to the Magistrate in the Pre-Sentence Reports. Since women who come before the imported court system are often afraid and confused the Probation Officer acts to vocalise her point of view so that the Magistrate can consider both sides. In making their recommendations the Probation Officers often consider the customary practice of making a payment of compensation. Yet, if a woman is unable to pay, the Probation Officer will report this to the Court and perhaps recommend a condition of community work to satisfy this traditional requirement.

Probation Officers have been less likely to involve the community in the supervision of women's cases by appointing Voluntary Probation Officers. This appears to reflect their own interest in providing counselling and support to female clients. Since women are mostly involved in domestic disputes and this kind of dispute usually could not be described as 'criminal', one of the Probation Service's main goals in relation to women is to help keep them out of gaol. The Probation Offices dealing with Bena Bena and Tolai women have been largely successful in persuading the Courts that Probation is a more appropriate disposition in family related cases. Those Offices dealing with Arapesh and Orokaiva women have been less successful but this is partly attributable to the relative newness of these Offices and to the fact that these women come from cultures which have traditionally valued women more. These groups are relying on the Village Courts to deal with family cases or on informal methods. Nevertheless, in the present day it is disturbing to find that domestic violence against women is increasing as compared to its incidence during traditional times.

The Probation Service regularly deals with cases of domestic violence. During the Probation period attempts are made by Officers to counsel the couple to help prevent future attack and to stabilise the family situation. The counselling is done privately so little embarrassment is experienced by those concerned. Since domestic violence is endemic in Papua New Guinean cultures, and the campaign against domestic violence is relatively new, Officers appear to be reluctant to check that the men are not continuing to hit their wives. This is partly the result of a general attitude of unwillingness to interfere in domestic violence cases until they reach a crisis point and also to the need for training in how to supervise and counsel such cases.

There has been a dramatic improvement for women in their status and in their rights *within the system of social control* since traditional times. Since the traditional period, women's status within the justice system has

changed from being 'jural minors' to that of 'jural equals'. Yet the introduction of the Village Court system has meant that in that forum, women have returned to their previous status of 'jural minors'.

Aspects of the accusatorial system have worked to improve women's status within the system of social control. Women have done better under the introduced system because the system requires that accusations made against offenders are proven. Traditionally, proof was not necessarily required. It seems evident then, that the imported system has contributed to an improved status for women. Despite this conclusion, however, the system still treats women as dependants of men and as such, subordinate.

An examination of the relationship between law and custom pertaining to Papua New Guinea women reveals an interesting twist. As has already been demonstrated, the imported system was inappropriate for Papua New Guinea cultures because it did not fully take custom into account. Yet, ironically, these imported laws (outer controls) have provided the mechanism for partly freeing women from some of the extreme controls which have been exercised over them through custom (the system of inner controls). Custom in Papua New Guinea has not remained static. It has been influenced through contact with other cultures, economic systems, religion and systems of social control. Attitudes toward women have taken the longest to change.

As Papua New Guinea society continues to change, and women's roles also change, it will need to adjust itself to meet the new problems which arise reflecting those changes. Probation is in a position to help women meet these new problems by adapting aspects of both custom and the imported system. This is especially true in the urban settings where the loss of community is more acute.

As has been demonstrated through descriptions of the four traditional groups, traditional Papua New Guinea was a society replete with violence. Traditions and customs are still very much part of the fabric of Papua New Guinea society especially in the rural areas where the majority of the population still live. It follows that contact with the colonial Administration and Independence have not eradicated traditions which command or permit the use of violence. Indeed, violence against women in the forms of domestic violence, rape and gang rape continue unabated.

Despite the differences in the cultures of the country (and these are illustrated in the four groups) there are clearly commonalities which, if properly analysed and adopted within the legal system could contribute towards a system more appropriately Papua New Guinean. This proposal has implications for the development of justice policy in the country and commonalities such as reciprocity and mediation can be creatively used to render the system more appropriate to the needs of the country.

Probation has been demonstrated to have had a positive effect on the status of women. However, further work needs to be done on the overall effect of Probation Orders on for example, husband and wife

relationships, reaction from the community, and reasons for breach of probation orders. It is considered however, that of the introduced sanctions for social disorder, Probation must continue to be developed, researched and generally nurtured, as it currently represents the only sanction capable of meeting the needs of people.

Probation has had a positive effect on the status of women in that an intermediary, the Probation Officer, is permitted to assist in ameliorating the often harsh judgments of custom. The Probation Officers themselves are functioning as agents of change in bringing techniques such as counselling into play to settle marital disputes.

It is unfortunate that a woman has to be convicted of an offence before she can receive the benefits of a probation sentence. Perhaps there is scope for probation, in a modified form, to be used in the Village Court as a means of bringing to that forum the reality that excessive traditionalism is not the most appropriate way to deal with the problems caused by the rapid changes in society that have occurred and continue to occur in Papua New Guinea.

Contemporary justice policy emphasises the settlement by the community of its own disputes. In Papua New Guinea, programs which place the onus on the community have been implemented. The Village Court system and the Probation system (as it is adapted to the needs of Papua New Guinea) surely reflect contemporary solutions to problems of law and order. It is ironic that whilst western states try to turn back to community values and community support, countries such as Papua New Guinea are still firmly rooted in a traditional society based on that very same community. The challenge for Papua New Guinea is, in the words of the Preamble to its Constitution, to honour and 'acknowledge the worthy customs and traditional wisdom of the people' and at the same time, discard those customs and traditions which all societies would abhor as being inconsistent with 'respect for the dignity of the individual'.