A NOTE ON VILLAGE COURTS IN PAPUA-NEW GUINEA*

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Unlike Professor Pospisil I am not an expert in the law of this area but by chance I recently came across an unpublished article by Paliwala containing information relevant to our topic today.[1] So I would like to make some additional remarks relating to one aspect of the present situation of administration of justice in that part of the island which was under Australian colonial rule until it gained independence in September 1975. From the work of the Law Commission of Papua and New Guinea it can be inferred that customary law and traditional perceptions and beliefs should have a greater role in the criminal justice system than they had before. But the administration of criminal law has not been left to a purely traditional machinery which is out of the sphere of state control. The example of the village courts illustrates the trends nicely.

During the colonial period there were two kinds of courts at the lowest level: the Court for Native Affairs (the official institution) and the traditional customary court which applied customary law in the traditional fashion. These customary courts operated unofficially without support or recognition from the Australian authorities; yet despite the lack of state-backed power to impose sanctions they still managed to settle disputes and to maintain peace and order in the village. In contrast to the African situation, these courts were never institutionalized. The arguments against formal recognition, summarized in the Derham report (1960),[2] reflected a lack of respect for the indigenous legal system and the belief in the superiority of British justice and a clear notion of what was desirable for the colonial administration. However, there was a tacit acceptance of unofficial dispute settlement institutions by the authorities.

In 1971 a change of attitude became manifest when an official report recommended the establishment of village courts.

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There was said to be a sort of vacuum in the village law and order machinery resulting from a deterioration of the position of the political leaders in the communities (luluai, tultul). Concern for the survival of the unofficial dispute settlement system and the supposed breakdown of law and order created the desire to bring the traditional machinery under control. In addition it was hoped to reduce tribal fighting in the Highlands through strong state-backed social control mechanisms with a wide criminal jurisdiction. These recommendations resulted in the enactment of the Village Courts Act 1973 and the establishment of village courts the following year. These courts, which were to be under state control, were intended to replace the traditional informal machinery. They are staffed by magistrates who are chosen from the population of the village concerned. As Paliwala points out, the village leadership has an important influence on who becomes a candidate. The typical magistrate therefore is generally an important middle-aged member of the clan with good relationships and links with institutions outside the village. He is advised by a clerk mostly more literate than himself.

The village courts have been given both civil and criminal jurisdiction (penalties limited to K 50 fine or 1 month community work.) This division between the two branches of law is one innovation which is alien to traditional concepts of dispute settlement. A further feature of the new situation is the backing of the state given to the courts. They have been given the power to imprison a defendant who does not pay his fine or disobeys an order for community work, compensation etc. But despite the existence of these courts, whose primary function, as described by the Village Courts Act, is to "ensure peace and harmony by mediating in and endeavoring to obtain just and amicable settlements of disputes", the unofficial traditional machinery of social control is apparently still working, though to a lesser extent than before. The official village courts have succeeded in becoming the dominant device for social control in the rural areas. But the whole new style surrounding modern dispute settlement procedure seems to have alienated these courts from the people. The sessions take place in a courthouse, where audience participation is impossible. In criminal cases it is no longer the voluntary decision of the parties which determines whether an affair gets to the court, but rather peace officers who decide to take trouble-makers to court. The authoritarian attitude of magistrates is increased by their power to imprison their fellow villagers. In addition uniforms and other symbolic state paraphernalia contribute to the alienation. Nevertheless, Paliwala reports that the

introduction of the village courts has had a considerable impact on social control at the village level. The village courts have been accepted by the villagers and are described as considerably more efficient than former dispute settlement machinery.

NOTES

[1] Paliwala, A. 1979 Law and Order in the Village: Papua New Guinea Village Courts. Paper given at the Cambridge Criminological Conference, July 1979.

[2] Desham, D. P. 1960 Report on the System for the Administration of Justice in the Territory of Papua and New Guinea (unpublished).