LEGALITY OR LEGITIMACY: HAGENERS' PERCEPTION OF THE JUDICIAL SYSTEM

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Introduction

New Guinea has attracted several studies concerned with indigenous motivation, especially in relation to economic development. This article is concerned with motivation of a kind: the extent to which the imposition of "law and order" has been accepted by one Highlands community (Mount Hagen). There is much more involved here than the historical question of how and when the Australian Administration gained and established control in various parts of the Hagen area, as it has done over the Territory as a whole. The adoption of a notion of "law" has brought about changes which affect individuals not only in their direct dealings with the Administration but in their dealings with each other. Hence the reference to "motivation": how far do people see relevance in the introduced system, operate it, regard themselves as part of it?

Little attention is generally paid to the precise way in which people have adapted themselves to "the law". Strong efforts are made to introduce and foster ideas congenial to economic or political advancement; but in the field of law there is apparently little need to set up special bureaus, agencies or committees. Existing institutions can be imported: a courts structure, police force, corrective centres. It would be untrue, of course, to suggest that there is no interest at all in how far the "rule of law" may have taken root. In Hagen[1] at the moment a mounting crime rate, especially of crimes with violence, and breaking and entering, is causing anxiety among officials. But it is more or less assumed that the courts and police themselves will continue education as to what the laws entail, and that changes in the pattern of crimes can be relegated to the kinds of troubles with which governments are used to dealing. Urban conditions, drink, broken homes and so on are seen to create familiar, if regrettable, "social problems" for which pre-existing institutions can again be brought in, in the form of more vigilant policing, welfare offices and such like.

What seems to be left out of the efforts that go into combating these problems is precisely the appreciation that genuine "law and order" can stem only from an acceptance of its value. Fear of sanctions can never be the only factor which keeps most of the people most of the time law-abiding. Lawrence[2] has labelled the forces which tend to prevent "wrong" action as "self-regulation". There must be an imperceptible grade of regulation from personal self-control to compliance with pressures exerted by the family, close kin or friends, to sanctions wielded by the community. This is as true

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1 Mount Hagen, in the New Guinea Highlands.

2 Lawrence, P., "The state versus stateless society in Papua-New Guinea" in *Fashion of Law in New Guinea*, ed. B. J. Brown, Butterworths, 1969.

of New Guinea as of Australia. The difference is that in Australia there is a keen appreciation of a contrast between settlement in or out of court, and of the point at which it is appropriate to turn to lawyers; whereas in New Guinea, traditional judicial operations are bound up with politics, kinship obligations, religion and so on. This has been said often enough. But its implications need to be spelled out. It means, for instance, that one cannot just dismiss the informal settlement of disputes among kin or neighbours as being always similar to the kinds of private agreements which go on outside Australian courts. At least it ought to be a subject of investigation how far people themselves nowadays regard the settlement of domestic or local issues at home as judicial matters of the same order as conflicts which bring in the specialized judicial institutions. In Australia the courts are probably a last resort in marital quarrels, since informal settlement is felt to be more appropriate to the relationship. But in Hagen, on the contrary, it is thought appropriate that procedures operating in courts should prevail in the settling of many of what Europeans would call "private" issues. This has bearing on the way people relate themselves to the introduced judiciary. It is also of considerable practical importance. We have become familiar with the idea that the migratory wage-earner whose home obligations are borne by his kin, and who can still look to the home community for eventual social security, is in effect being subsidized by the rural community.[3] At least in Hagen it would be fair to say that the judiciary is very heavily subsidized indeed by indigenous peace-keeping institutions.

It is not of course a completely one-way process. In fact, as we shall see, Hageners imagine they are following an Administration mandate in many of their unofficial settlements, so that the official judiciary operates as a sanction at these levels.

Before giving some description of these interrelations, brief reference needs to be made to one or two theoretical points. Indigenous styles of settlement often seem repugnant to Europeans. Revenge procedures (payback) are abhorred as primitive, financial transactions in the settlement of issues as at least mercenary if not corrupt. Whether or not one might wish to change the form these methods take, attention should be given to the *notions* that lie behind them. These are often precisely the imperatives to abide by rules, to resolve conflicts, to punish law-breakers, that lie also behind the rule of law.[4] Such concepts are there to be utilized. Ignoring or even decrying them is not only wasteful but dangerous. People have a need to operate some sort of dispute-settling institution at all levels[5] in a way that they do not "need" economic development or a national constitution. It is a need that is felt strongly in Hagen: the minutes of the Local Government Councils are peppered with requests for official Council participation in the courts. Commonsense is enough to tell people that the Administration has not the staff nor the interest nor the skills to delve into every quarrel (and no government agency does this anywhere). It is therefore meaningless to inform them that their settlement procedures are wrong or bad or primitive; one may add that the Administration might even be on shaky ground

[3] See Ward, R. G., "Internal migration and urbanization in Papua-New Guinea", a paper delivered to a seminar on population growth and economic development, Port Moresby, 1970.

[4] Brown, B. J., "Justice and the edge of law: towards a 'people's court'" in *Fashion of Law in New Guinea*, ed. B. J. Brown, Butterworths, 1969.

[5] Oram, N., "The development of Port Moresby, what and who are its problems", a paper delivered to A.N.Z.A.A.S. Congress, Port Moresby, 1970.

saying that the concepts on which they are based are contrary to those of the official judicial system.

Discrepancies between traditional New Guinea and European notions of crime have often been noted. Fenbury[6] presented a gloomy view of the present lack of relationship between official and unofficial courts. And an outsider looking at Hagen might indeed point to very real functional differences between traditional methods of dispute settlement, Hageners' present modifications of these, and the official judiciary. But this is not a viewpoint Hageners readily take. In fact they regard their modifications of traditional methods as contributing to the development of a modern, progressive society, and as stemming from the *lo* which Europeans have introduced. They recognize differences of custom (between themselves and Europeans), but far from seeing their unofficial courts as distinct from the official court hierarchy, treat them as part of it. Nor do individuals shrink from bringing their troubles to the Kiap, the police, the Local Court magistrate, the welfare officer. In fact, these agencies are used extensively. The paradox is that these attitudes have developed both because of and in spite of the Administration. Stemming from this, quite critically, is the wide gap that exists between Hageners' perception of their role in the official judicial system, and the Administration's perception of their respective positions.

Hagen is interesting, then, because we are not dealing with an outright clash of principles: on the contrary, Hageners have made an effort to adjust themselves to what they think are Administration requirements. It is therefore illuminating to see just what common ground there is between their and the Administration's view of the judiciary.

Background

This account is concerned with the local rather than the higher courts and with Hageners' own means of dispute-settlement.[7] When disputes are nowadays brought to the notice of local government Councillors or their assistants, Komitis, Hageners speak of *kot* (Pidgin English "court"), and their nomenclature will be adopted. Where necessary, one can distinguish between unofficial and official courts. It is also necessary for the purposes of analysis to consider at times all the formal bodies to which Hageners turn with their troubles as comprising a single dispute-settling system, of which the courts form a part.

Finally, reference should be made to the events that are going on in Hagen at the time of writing (June-July 1971) in which armed clashes have followed a fatal car accident. Hagen, as is true of other Highlands societies, has a great potential for violence. But this should not be confused with lawless behaviour. The anxiety that Hageners express over the functioning of the official and unofficial courts is precisely related to a recognition that hasty recourse to violence must be kept under control. It is the reaction of the rest of the population, rather than simply the criminal actions of particular individuals, which is significant (is the act condoned or denigrated?).

Given the political climate of Hagen and the fierce competition that exists between rival clans and tribes, any dispute may escalate to a point where clans face each other in political confrontation. One of the very real functions of the unofficial courts is to dampen down this political potential, or

6 Fenbury, D., "Kot bilong mipela", *New Guinea*, Vol. 1, pp. 61-6 (1966).

7 It is adapted from a rather longer study in preparation which will appear as a *New Guinea Research Bulletin*.

at least play it out on a small scale. Overt physical injury between political groups, however, is beyond the scope of these unofficial courts as they are at present constituted.[8] Indeed, the Administration has arrogated to itself the right to deal with homicide. Homicide and poisoning accusations, as well as territorial aggression, comprise an extremely sensitive area, therefore, and one in which dissatisfactions with the official judicial system are likely to have the most serious consequences. This, however, is largely outside the scope of the present article.

Settlement Procedures

Hageners did not have any traditional system of courts—that is, any specialist institutions that gave persons authority to adjudicate in matters of dispute. Nevertheless, in their handling of trouble cases they did recognize three processes which in combination could give rise to a court-like situation. These were: non-violent confrontation of disputants willing to "talk out" rather than fight out their grievances; interference of "big men" as arbiters or mediators; adjustment of claims through compensation payments. These were only some of the traditional methods (others included self-help backed by threat of force or armed retaliation). But changing conditions have lent them prominence today in their approximation to features of official institutions.

Traditionally, offences were seen as, in the main, actions against individuals, or collectivities of individuals, rather than against "society" or "humanity" as a whole. There were no crimes for which a person would be prosecuted *per se* that did not also take into account the necessity to remedy an injury inflicted upon another. There were, however, situations in which general outrage would be expressed, although it remained the case that specific individuals were the most offended. Wayward and capricious behaviour on the part of women was often viewed by men as a threat to some of their crucial social arrangements (such as affinal alliances) and what could be interpreted as aggression on the part of women—flagrant sexual promiscuity or administration of poison—brought down retaliation that had strong punitive elements. While the notion of punishment is not foreign to Hageners, there was no specific body which could administer punishment in a disinterested way. It was simply an element, of more or less prominence, in the satisfaction sought by offended individuals.

Retaliatory action might take a variety of forms: simple complaint, threat of drastic action such as suicide, a demand for material satisfaction, counter-injury or full-scale assault. The nature of the reaction depended not so much upon the type of offence (e.g. whether it was theft, arson or adultery), as on its relative scale and on the relationship between offender and victim. A minor theft between brothers might be glossed over, whereas a major one would be cause for outrage; between persons distantly related satisfaction might have to be made in either case. Particularly where the aim was restoration of a relationship, it was inappropriate for the disputants to aggravate their troubles by hasty recourse to violence. This still holds if reconciliation is an issue, but it is between close blood kin or members of a single clan that supernatural sanctions reveal most clearly the view that acts of retaliation in the form of fighting, assault, abuse and so on, simply compound the

[8] And the same is true for most of the urban crimes that are worrying Hagen police today.

offence. Such retaliation threatens fundamental ties out of all proportion to the original offence.

In disputes concerning persons of different clans who were not related through marriage or did not have close residential ties, the notion of what was a proportionate or "just" (*kapokla*) retaliation varied with political relations. Between friendly clans (allies and minor enemies) effort to achieve some reconciliation or at least a *modus vivendi* led to willingness on the victim's part to accept compensation without inflicting further punishment on the offender, and desire on the offender's part to make a generous settlement. Major enemies, on the other hand, could not resolve disputes to mutual satisfaction; individual offences were likely to be overshadowed by the long-standing imbalances of past conflicts. Almost any trouble could become a pretext for armed attack, and once conflict had begun other issues such as unavenged homicide swung into focus. It is thus impossible to predict what counter-action would follow, say, a theft of bananas, without knowing not only the social relationships between thief and plaintiff, but the recent history of relations between them or where relevant between their groups.

Traditional procedures for gaining satisfaction can be ranged along a continuum according to techniques of persuasion. This is an illuminating scale to choose, since the Administration has centralized major use of physical force, and thus limited what traditional processes are still effective. Main points in the continuum may be summarized as follows:

1. The two parties may reveal the cause of their complaints about each other, and patch up their quarrel on the grounds of this revelation.

2. Agreement to patch up a quarrel may be marked by an exchange of goods or a unilateral payment which restores the balance between them; such payments are sometimes made under duress and in only grudging acknowledgment of the need for "reconciliation", as in response to threat of desperate action from one or other side.

3. Demand for compensation may be refused, and the plaintiff resort to force to seize what he considers adequate recompense, or secretly plot revenge, or see the attack on himself (and/or his fellows) as justification for launching warfare. In the course of fighting the offender and his clansmen will "feel" for their crime.

At any of these stages, an individual might be helped by others, or persons act in concert to seek satisfaction for what is interpreted as a common injury. In the past, when people met to discuss settlement they were often accompanied by a number of supporters, and the meeting would attract spectators. (Such assemblies were *ad hoc* arrangements: there was no regularly convened body before which disputes could be brought.) At any of these points, too, "big men" might interfere, in some cases encouraging conflict, in others actively trying to impose restraint. Modern accounts of things as they were in the past attribute to "big men" the characteristic of especially encouraging people to come to peaceful settlement through material compensation. There was thus a tendency for three elements to go together: verbal negotiation, intervention by prominent leaders and resolution of the issue through payments.

Features of these are relevant to the modern unofficial courts. Hageners feel it is important not simply to resolve conflicts, but to eradicate tendencies towards further conflict, in short, to eradicate the feelings of revenge. Parties in dispute should demonstrate their desire, if not for personal recon-

ciliation at least for termination of hostility. To this end it is most crucial that the disputants make a clean breast of the issue concerned, and (as Hageners put it) "dig out the talk". Issues ("talk", *ik*) that are not brought into the open will only erupt later. People conducting a court nowadays are often anxious if they suspect that the root of the matter (*pukl*) has not been brought to light. For this reason they are sensitive to the kinds of stories people tell, do not necessarily accept statements on faith and expect that people will resort to tricks.

Pukl ("root" or "base"), can be used of links between people or things, including causal relationships. It is more than a statement of fact: it connects events in a manner that suggests their explanation. In the judicial context it could be glossed as "truth". Judicial truth in Hagen is the revelation of a person's motives, and thus also of his state of mind (*noman*). The "reason" (*pukl*) for an angry gesture lies in the person's reaction to whatever provoked it.

This has a number of implications. In searching for the "root of talk" people are concerned to trace out reasons that lie at the back of actions, and thus have a wide frame of reference. The interconnection of events, and the relationship between provocation and retaliation are well understood. It is also understood that, for the purposes of making some settlement of the dispute of the moment, the ramifications of an issue may have to be truncated. Nevertheless the disputants may be given their head and allowed to enlarge upon their grievances. In informal courts nowadays only a number of these will be selected for final consideration, but the actual process of "talking out" itself is seen to have intrinsic value. Talk reveals the disputants' attitudes and feelings, both as they were at the time of the offence and as they are now in prospect of a settlement. Criticism comes into play chiefly when, it is said, the parties begin "fighting" with speeches–*ik ndip onom*, "the words catch fire". Not only are others afraid that incendiary tirades will in fact incite those present to battle, but the function of talking (to reach compromise) has been lost: both sides are reduced to defending their position and attacking the other just as though they were engaged in combat. For this reason too much talk is considered dangerous.

The ideal confrontation leads at some point to an admission or confession. This is referred to as "good talk" (*ik kae petem*). A thief admits he stole from a garden; a girl her intention to leave her husband. Once this has been revealed appropriate action can ensue. Sometimes people continue to deny their involvement in a dispute. One might suppose that this would have a similar effect, since no wrong can be proved between the two parties. But in fact a confession is always felt to be the more satisfactory outcome. The process of talking over an issue, extracting statements about people's state of mind and making adjustments in the light of this knowledge, is more rewarding for all concerned (except for the defendant and his supporters) than a successful upholding of a denial, which may look too much like stalemate or a blocking trick. From this point of view, a person who initiates a public airing of a dispute makes the assumption that the other party is guilty.

The process of getting to the bottom of a matter is often assumed to be difficult, and "big men" who conduct the enquiries play an important part. These are men, renowned for their verbal skill, familiar with the arts of persuasion, who have the prestige to influence persons to come to peaceful settlement. It is also true that the really able "big man" of the past held

himself to some extent (as he saw it) beyond the petty troubles which plagued little men He was characterized as a "peaceful" or "cool man" [9] It was in his interest to be seen to be generous, and to be able to rise above annoyances that caused vengeance anger (*popokl*) in others [10] Such an individual tended to have wide personal networks, and thus not only be interested in a broader range of disputes than would affect an ordinary man, but where he had attachment to both be able to use his links to mediate between two sides

Today, Councillors and Komitis enact roles similar to that of the "big man' in dispute hearings [11] Like the traditional "big men", they are rewarded for the often time consuming trouble they take over cases, as indeed will be others who have assisted or taken part They receive something from the compensation payments which terminate the dispute, or are given a gift by the successful plaintiff Commensality, however, had little part to play in settlement procedures It was not Hagen custom (except under certain circumstances) for the accused to share food with the accuser and signify reconciliation in this way rather, this is signified in material transactions, an exchange of goods or a unilateral payment Even if the goods are consumable (e g a pig), the person donating them does not take part This is for two reasons—

(1) His desire to end the dispute is shown in the generosity with which he makes the presentation, and this incidentally gives him a base from which to recover some prestige

(2) Payment is also seen as loss and gain—the victim is compensated and the wrong doer punished

Compensation payments were always regarded as an alternative to the use of force Payments fall into two main categories (i) restitution, where amounts equivalent to the value of a stolen item, damage to property or a previous debt are returned, and (ii) what may be termed reconciliation payments, which are paid where the injury has no cost in material terms, but where a breach of norms must be recognized or relationships brought back to some equilibrium Adultery, incest, quarrelling and all kinds of offensive behaviour including assault fall into this category

Where restitution is demanded, reconciliation items may be added on to the original amount Thus, after the theft of a pig, the thief may return a similar pig (*kumøp*, 'restitution'), and then a further article "to shake hands" (*ki titimbil*) with the owner Reconciliation" is perhaps not the best term to use where a person has to be cajoled, pleaded with, perhaps even brow beaten, into finding a "generous" compensation But the handing over of the items is taken as a general admission of who has the right in the matter and an acknowledgment that a *modus vivendi* must be found A limit is imposed on people's requests, for they recognize that forcing too generous a compensation from someone may only build up his resentment which has to find some outlet later

In the case of quarrels which are followed by a mutual desire to patch up differences, payments frequently take the form of a reciprocal exchange, for adultery, assault, theft and pollution offences they are usually unilateral In

9 Strauss H *Die Mi Kultur der Hagenberg Stamme im ostlichen zentral Neuguinea* de Gruyter & Co 1962 p 211

10 Strathern A J *Rope of Moka* Cambridge University Press 1971

11 Strathern A J Kiap Councillor and big man role contrasts in Mount Hagen in *The Politics of Melanesia* ed M Ward, 1970

either situation, a person agreeing to provide payment will appear to be admitting his fault (or the fault of the person for whom he is liable, as when a husband pays for a wife's delicts), though afterwards he may phrase his actions differently, pleading that he was sorry for so-and-so and wanted to end the trouble, so made the payment, though it was not his fault.

One of the very real difficulties with which Hageners nowadays have to grapple is the accommodation of *all* disputes within a peaceful reconciliation framework. This can no longer be restricted to the circle of kin, friends and allies with whom it is directly in one's interests to come to peaceful terms. Forcible termination of warfare has meant that a considerably wider range of persons (ex-enemies, strangers and Europeans) have to (for the purposes of settlement) be put into the "friendly" category. Some of the difficulties this can lead to have been detailed elsewhere.[12] It is precisely in terms of the new *lo* brought by the Administration that Hageners find an idiom in which to express the necessity for peaceful settlement.

Official Courts and Out-of-Court Settlement

Hagen was first explored by Europeans in 1933. Its urban centre, now the headquarters of the Western Highlands District, is rapidly expanding. As elsewhere in the early years of contact, the brunt of judiciary functions fell upon Kiaps.[13] Now Hagen has a resident magistrate and an indigenous Local Court magistrate, and most of the sub-district has been formed into rural police zones.

Hageners regard as dramatic the changes which brought about the cessation of warfare. Strong and consistent emphasis was given by Administration officers of the time to the importance of introducing the abstract concept of the rule of law, not so abstract either on some of the punitive patrols. These are reiterated today in the summings up of magistrates. Given the practical necessity to obey the Administration's orders on the use of force and violence, the idiom of "law" appeared attractive. One of the ways in which prominent men relate themselves to the Kiaps is a comparison in these terms: "I am like a Kiap, I am a man of law." But Hageners had conflicting impressions of Kiaps: they were strong men who both imposed and also introduced them to the new law, who both insisted on their terms and also offered considerable benefits. This ambiguous behaviour had the familiar qualities of big-manship. A by-product of their reaction to the advent of the Kiaps was their welcoming *lo* as something which made a fundamental difference to their way of life (as in the curtailment of violence it did), and this goes with a denial that they had anything like law before. An overemphasis on their former "uncontrolled" state by comparison with now is one area of common ground at least that they share with many Europeans.

Hageners' initial contact with courts would thus be through the Kiaps, persons who were also encouraged to personally arbitrate or mediate in "matters of simple routine" on an informal basis. Kiaps in turn were told to encourage and support the authority of recognized headmen, and gave approval to headmen who settled minor disputes themselves. From

12 Strathern, A. J. *Women in between* (in press), Seminar Press.

13 Local officers of the Department of District Administration, who are still Australians in the main. Although the training and appointment of indigenous magistrates is proceeding with some rapidity, Kiaps still have extensive judicial functions in most areas of Papua-New Guinea.

the official point of view, these men were mediating in out-of-court settlements just as Kiaps did on patrol.

It was in the wake of the Kiap that Hageners saw the arrival of specialist officials: an independent police force, the full-time magistrates, the welfare officers. Although Hageners are fully aware of the different functions of these officials, they are not so aware of the legal and constitutional relationships between them. Neither police nor welfare officers have any judicial powers. As well as the full-time magistrates, however, specially appointed Kiaps do have the power to hold local courts. In relation to their judicial functions, magistrates are associated with courts which have certain prescribed areas of competence. Outside the court, in a non-judicial capacity, magistrates and Kiaps may assist at the mediation of disputes, as may also other authorities such as the welfare officer or missionary (and in certain circumstances the police), and local persons of note such as Councillors or Komitis. These agencies are linked together, not in the same procedural fashion as are the local, district and supreme court, but rather as a network of bodies with alternative solutions to offer.

It seems that the vast majority of cases brought before the official courts are of a criminal nature, that is, prosecution follows complaint that an ordinance or regulation has been breached. These include theft, adultery, assault and all kinds of offensive behaviour, as well as more novel crimes such as driving under the influence of drink or contempt of court. The number of civil complaints handled by the local court in an official capacity is minute. One major category of complaints classified by the Administration as civil and which are a constant source of concern for Hageners are issues arising over marriage, divorce and bridewealth. This was an area which traditionally was a frequent focus of disputation. Officials prefer to see these matters dealt with out of court.

A Hagener with a "civil" problem can involve a succession of persons to assist in out-of-court settlement.

He (H) may take the matter to a Kiap (K) who refers it to welfare (W)

or H ——→ M(ission) ——→ W(elfare) ——→ L.C.M.
(Local Court[14] Magistrate)

or H ——→ L.C.M. ——→ W ——→ W elsewhere

or H ——→ M(ission) ——→ L.C.M.

and so on.

There are two processes here: the point at which the complaint is fed into the network (H ——→ Kiap, L.C.M. etc.), and the manner in which it is carried along the network, that is, referred from one authority to another, (L.C.M. ——→ W).

Movement between the authorities is not entirely random. Some moves are unlikely to occur. Thus, Welfare, Kiap and L.C.M. are unlikely to refer back to Missionary. Normally the track does not double back on itself if it becomes extended beyond two parties (e.g. W ——→ L.C.M. ——→ Kiap ——→ W ——→ L.C.M. would rarely occur) although complaints may be referred back and forth between two persons (e.g. L.C.M. ——→ W ——→ L.C.M.). This occurs for example, where a L.C.M. refers a suit for divorce to Welfare to see if reconciliation is possible, and if it proves

[14] Local courts are the lowest in the hierarchy of courts in Papua-New Guinea. They are presided over either by Kiaps or indigenous magistrates trained at the Administrative College in Port Moresby.

not to be then the case is returned to the L.C.M. for ratification. These limiting features show that problems are not handed on indefinitely. Settlement may be reached at any point of the network, that is, mediation be carried out successfully by any of the agencies. But it can also happen that no settlement at all ensues, and the case is withdrawn by the disputants. Not only may cases be withdrawn, but disputants can "jump" the network. Thus an individual may go first to the L.C.M., but if he is not satisfied then go on his own initiative to the welfare office, rather than having his case formally referred to the office by letter. In a sense, the various agencies act as appeals against each other, in that a complaint can receive further hearing before another body (although there is of course no formal revocation of previous decisions or advice). Occasionally people come to the welfare office, for example, because they are dissatisfied with judgments handed down by a Kiap (as in the case of a woman who has been refused recognition of divorce), or because further action is needed (e.g. the local court has recognized a divorce, but problems arise over custody of children). The agencies may also appeal to each other to strengthen their own decisions. In a case where a husband fails to appear before the L.C.M. in settlement of a maintenance claim, the wife can be given a letter to take to the welfare officer, who himself may write to a Kiap of the man's area to order him to appear for an interview.

Disputants are thus provided with alternative authorities, who tend to highlight different aspects of their problems. The agencies acknowledge that civil disputes are likely to be involute, with many sides to what appears to be "the problem". Occasionally different parties to a dispute may even capitalize on the situation by each approaching a different authority. In practical terms referral means that the disputants have to continue reassembling (usually on different days) as they present their case to different persons, and for reasons of inertia disputes may be dropped.

All this is very different indeed from the formal court system, where

(1) Transfer from police to local court to further court takes place in a highly specific context and will usually be one-way.

(2) Once a case becomes the basis for prosecution it cannot be withdrawn by the litigants.

(3) A "solution" or "settlement" of some kind is inevitable.

How are disputes introduced into the network in the first place? Any individual can approach one of these authorities. Initially, a complainant is probably told to gather all the relevant parties before the complaint can be dealt with by the Local Court magistrate. The latter is reluctant to deliver immediate decisions in civil complaints, and if agreement does not seem to be emerging from his discussions with the principal parties, he will suggest that they all go away for further deliberation, and only if no agreement is in sight after such attempts, will he adjudicate on the affair. Sometimes he sends the case back several times.

All this is foreshadowed in the manner in which the police siphon cases brought to them: they themselves may refer matters back to the Councillors to settle. Debt and marriage cases were cited by the police staff at one rural police station as the kinds of issues which they might recommend be taken either to the Kiap or sent back to the Councillors for discussion. It is also from the point of view of political education that the Kiap, Local Court magistrate and welfare officer all give open support to the Councillors, hop-

ing to build up these figures as responsible-minded persons who will make fair mediators or arbiters. Thus it is possible for a Councillor[15] to approach the Local Court magistrate and request a summons to make an accused person appear at the court-house. In effect this may operate as a summons to pre-court mediations held in the court-house precincts. The Local Court magistrate also listens to reports brought to him by Councillors of mediations which have followed an initial hearing by himself.

Councillors and Komitis

To give an idea of some of the qualities which Hageners themselves look for in their Councillors and Komitis, I refer to speeches made on the occasion of a local election for Komitis ("Ward Committee"). There were ten candidates for election within one tribe, for either four or six places (people were not sure), following announcements of a proposed reduction. This particular ward had eleven existing Komitis, the plurality being directly related to its composition: a number of small units were scattered over a wide geographical area, each needing some representation. Competition thus arose as to which units would "win" a Komiti this time. Anxiety was expressed that some units would be left leaderless, and who then would supervise Government work? And who then would there be to hold courts? Public speeches held on days preceding this election and on election-day itself stressed the amount of often thankless work which Komitis had to do, and constantly mentioned demands made on them to settle disputes.

An ex-Councillor pointed out:

> "Being a Komiti is not a cushy job: you Komitis don't just sit down and eat and think of your own business or your house (i.e. your own affairs)—no—you always have to be settling disputes (lit. 'running after courts', *kongon kot ile pip rok mint anderemen*). Whether it is a pig or a hen people steal or if there's a case of adultery or whatever, you have to settle it. I used to be a Councillor, and I didn't stay in one place, I just 'ran after courts' and 'ran after Government work', matters to do with work only, and could never take a breath."

A young man, who described himself as an "ordinary chap" i.e. he was not a Councillor or Komiti, said:

> "Before we elected Councillors and now in the same way we are electing Komitis, and we should choose from among the old Komitis. What do new men have to offer? They have one kind of work: to settle disputes, and the men who settle disputes are here. What new work has arisen that we should elect new men? Only one law exists for Komitis —to settle disputes."

Here, as in common parlance, Hageners referred to Komitis and Councillors mediating or otherwise settling disputes as "hearing courts" (*kot pili*).

> "You Komitis" [said one of the elected, naming the winners] "must think carefully as you take your Komiti badges. I too must realize that I am someone who holds office (Pidgin *namba*), and must take thought as I put on my badge. Councillor N. is like a no. 1 Kiap, like the D.C., and we Komitis are no. 2 Kiaps. And we Komitis—you must not quarrel with your wives, fight with your brothers, be angry with your father,

[15] The same applies to a Komiti.

you must take good thought and hear courts (*e pilik kae etek kot pilei*). . . . If we fight or quarrel we shall lose (i.e. at the next election). If we hear courts badly and anger people then when the election comes up we shall fall, so think well and always observe this: do your work properly."

Having said that a Komiti should set a good example in lawful behaviour, he then told the people that they should in the first instance bring their troubles to the Komiti they had elected, and only bother the Councillor in the case of big issues. If the Komitis were unable to conclude settlement, then they themselves would refer the case to the Councillor.

The reference to hearing courts well is to the Komiti's qualities and his ability to achieve genuine settlement, rather than to possible pandering to his immediate supporters. Indeed, it was said that people judge a Komiti by his impartiality, and someone who is seen to help only his own friends or take advantage of the troubles brought him, will find that he is not re-elected.

People were further told to bear in mind the oratorical qualities of the men they were about to elect. They should be men who had "good talk". This refers to two things. In the first place, a Komiti's talk must "go straight"—he gives due consideration to troubles which are brought to him, shows an understanding of the issues and deliberates on the consequences of the actions he recommends—not like a child (as it is put) who gabbles insignificantly and utters the first thing that comes into his head. He is responsible for "his people" and must care for them in the same way as a "big man" looks after the place. But he is more than a traditional "big man". Like a Councillor he is someone who acts as a "wireless" between the people and the Kiap, "carrying talk" to and fro. In particular, a Komiti will have to know how to take cases to the Kiap and be able to speak in the face of the Kiap without shame. For this reason his talk must be strong.

Komitis, like Councillors, are thus given a double anchoring. On the one hand they act in their local community like big men; on the other they are linked to the Kiap system. Komitis are described as being involved with Government work (*Gavman kongon*); they are *Gavman røpwue*, Government helpers, or *Gavman komiti* as distinct from *Misin pren* (mission-friend). This link with the Government is as important for their standing as persons who settle disputes, as are their big man qualities. The assumption is that settling disputes will inevitably bring them into contact with Kiaps and the official courts, so they must have some knowledge of white men's ways. It is also an assumption that one of the tasks of a Councillor or Komiti is to bring to the people the "law" of the Government, and that the relevance of this should penetrate to the smallest trouble which arises.

Council meetings provide occasions on which Councillors attempt to sort out their precise relationship with the Kiaps. A frequent topic of discussion is their respective roles in hearing courts. Councillors and Komitis both of course lack any official magisterial powers. The original *Native Local Government Councils Ordinance* (1954-1960) authorized Councils to "maintain peace, order and good government" in their areas, but did not endow persons with any specifically magisterial duties. In the current *Local Government Ordinance* (1963-1970) even this authorization has been excised, and the main business of Councils is rendered as the control, management and administration of the Council area. At Council meetings, the

Council itself may bring up the question of "hearing courts", and point out that Councillors cannot technically hold court proceedings, cannot levy fines and cannot act as policemen.

This message runs parallel to (and perhaps sometimes obscures) official encouragement of Councillors and Komitis to act as mediators in out-of-court settlement. Over and again the Council minutes record an adviser recommending that Councillors should cope with minor troubles themselves, and the Councillors' own appreciation that Kiaps are often too busy to be able to deal with every case. Apart from discussions over specific problems, such as divorce rates, bridewealth rules, theft in the town, and such like, questions about courts were raised at 12 of the 44 general meetings held by Hagen Council between March 1967 and October 1970. Basic to all these was a concern as to how disputes should be most effectively handled. Some discussions were held on procedure—suggestions that there should be a ruling so that Councillors could hear courts (from the official point of view, mediate disputes) in relative privacy or that there should be some limit on the number of times a case could be heard. Others centred on sanctions which Councillors had at their disposal: the idea was put forward that policemen or Local Court magistrates should be stationed at each patrol post; another that courts (mediations) be held in the Council chambers or a special court-house, and a resolution was adopted to appoint a number of duty Councillors to assist at the official local court hearings.[16] Finally, a frequent question was, given the officials' limited capacity, what kind of complaints should be taken to the Kiap, or to the Local Court magistrate? Several requests were also made by Councillors that these officials should set aside definite times at which they could be approached by Councillors and Komitis bringing them cases to settle.

The recommendation of the Council advisers, taken up as a recurrent theme by Councillors, was that major offences should be dealt with by the sub-district office or L.C.M. or be taken to the police, while minor offences should be settled by the Councillors and Komitis. Individuals differed no doubt in their terminology, but Pidgin records of meetings as written by the Council clerk show a free use of the term *kot*. One Kiap is recorded as complaining that people should not trouble the sub-district office with *pipia* (rubbish) *kot*, over debts, women and pigs; another that *liklik* (little) *kot* could be settled at home. Discussion on the Councillors' side also was often couched in terms of the *kot* (mediations) with which they had to deal. Although *kot* can refer to no more than "trouble" or "dispute", it is ambiguous in this context. A common interpretation put on discussions of this kind is that Kiaps welcome and support the efforts of Councillors and Komitis in hearing "courts", especially ones which can be concluded easily, and that in doing so they are carrying out work for the Government.

The word *kot* crops up in another important context. Three current terms, by origin Pidgin but absorbed into Melpa, refer to categories of compensation payments: *baiim opis, baiim kot, baiim lo* ("to buy office . . . court . . . law"). These are not direct translations of Melpa categories (for which Pidgin phrases can also be given); rather, they can be used generally

16 A resolution was made by Dei Council in 1965 to establish a "Council Court" comprising two members who would sit in the Council house on a set day of the week. Explicit support for this came from the Council adviser. By 1970 there were three such Councillors ("duty Councillors") whom the present adviser encourages to sort out minor disputes (marriages, debts, pigs); he will back a Councillor's decision where it is a fair one. I heard them referred to as *seaman* (chairman) *bilong kot*.

to refer to any compensation settlement in the specific circumstances of it having been agreed upon through a court, whether heard by a Kiap, Local Court magistrate, Councillor or Komiti. *Baiim kot* is correct local court language for "court fine", and Hageners in their formal mediations use all three terms for payments which are decided on in the course of settlement.

The terms have an official resonance about them. *Baiim kot* refers to unofficial court proceedings conducted by Councillors, and to the local court and the fines it imposes, in the same way as the term it is now superseding, *baiim opis,* referred to the sub-district office and the fines which Kiaps used to demand. *Baiim lo* is also a newish term and has direct reference to the fact that dispute-settling agencies are concerned with keeping the law. In the same way as big men "give talk", modern Councillors and Komitis "give lo" (*lo ngonom*), when agreement is finally reached. They may lecture the wrong-doer on the folly of his actions, or tell the plaintiff that even though he is now receiving compensation money, were he to do the same thing then he too would find himself having to pay damages.

When a case is taken to the local court, the aggrieved party may say, "If he is not going to make a payment to me, then he can go to jail." This is not simply a sanction ("You will go to jail if you do not pay me") but recognizes an equivalence between the two alternatives open to the defendant, which is based on the Hageners' own notions about punishment. In addition to the distinction between restitution and reconciliation items in compensation payments, there was often a notion that such a payment was compounded of at least two further elements, in that it should both satisfy the complainant and (indicated in the same or an additional item) punish the offender. The phrases *baiim kot* or *baiim lo* are often used to express the idea that a definite wrong has been committed, apart from injury or damage to another person. This is fully supported by what Hageners see of the workings of the official courts, which give weight to punishment. In the past, punishment existed through other means than the compensation of the plaintiff (e.g. through retaliation) and in a sense these are what the official courts provide. Someone unable to gain monetary compensation will nevertheless express his deep personal satisfaction if his complaints result in the offender having to go to jail or pay a large court fine. A kind of equation thus exists between payments made for "breaking the law of the Government" (which should bring punishment) and the traditional custom of specifying parts of a compensation payment as recognition both of the fact of injury and of the wrong of the perpetrator. Breaking the law also fits into Hagen concepts that bigger compensations should be paid if the trial has been a long and difficult one—because the wrong-doer fails to admit to what he has done.

In awarding compensations, and suggesting that extra items should be given in addition to an initial payment, some Councillors may stress the importance of reconciliation and preventing future troubles, others that such impositions are a punishment on the offender. These two principles are both aspects of "law and order", and by using the rubrics *baiim kot* or *baiim lo,* they remind people that in maintaining law and order Councillors and Komitis are agents of the Government.

It is not possible to indicate all the circumstances under which disputes are taken to Administration agencies. An affair that dissolves into an impasse, or is argued into one, is typical. Councillors or Komitis then appeal to a Kiap or the police, or say they will do so in an effort to persuade the disputants to accept their verdicts. They suggest that these persons are

likely to be much more severe than the Komitis and Councillors are themselves, so it is in everyone's interests to have the affair settled at home. Komitis and Councillors see themselves as supported by the Kiaps, police or Local Court magistrate. Someone who does not heed their recommendations compounds his wrongs by acting as a *bikhet* (Pidgin "bighead"), and lays himself open to threats from the Komitis that they will raise the amount of compensation he has to pay, or else that they will jail him (i.e. take him to an official court, where if his wrongs are proved he may have to go to jail). Going to jail in such circumstances is looked upon as an equivalent of the extra item a man pays for "breaking the law" and in the eyes of some Councillors and Komitis an element of the law-breaking is failure to co-operate in the unofficial court hearing.

The Komiti who can make someone yield and pay compensation where others have failed, shows "strength". This may be referred to quite openly, and sometimes Komitis or Councillors take up a difficult case because of its challenge to their skills. If the person in the wrong refuses to come to a settlement and the Komiti takes him to the police or other authority, it is further evidence of the Komiti's strength if these authorities support him, either ordering the man to follow the Komiti's own recommendation or else meting out their particular punishment. The Komiti may speak of himself as "winning".

The contest of strength is played out with police, Kiaps and the Local Court magistrate as allies. It is by no means the case that Komitis and Councillors are the only people to test their strength in this way. An ordinary person may choose to by-pass the local officials and take his complaints straight to the police station. ("I shall jail you!") Such action is likely to be regarded by the other party as a direct challenge, so that he reacts by a show of stubbornness on his own part. A person who professes to have been willing to meet the other's complaints with a small compensation, when faced with such aggressive behaviour will become aggressive in turn: "Let us see if he is strong enough to speak to the Kiap—if they send out a policeman to fetch me, all right, they can jail me. I am not afraid of jail. But I am going to be strong too, I shall pay him nothing." People often say in such situations, "Well, we'll see what the Kiap/policeman/Local Court magistrate says, and if they decide to jail me they can." In other words, although the plaintiff may regard the jail sentence as a sign that the authorities are acting in his favour, the defendant may regard it as an inevitable repercussion which emanates from the outside and cannot therefore be regarded as victory for his opponent. He submits to the authorities, not to the other man's strength.

It is not uncommon, then, for disputes to be taken to the official authorities in some spirit of aggressiveness. This may stem from the state of impasse that the argument has reached, or from the Komitis' or Councillors' frustrations in trying to negotiate a settlement, or be something of a hostile act by one of the litigants. Significantly, the action of taking such cases to the authorities is seen as a move to *contain* this very aggression. Appealing to the authorities may itself be an expression of aggression, but the course of action is non-violent.

The authorities are seen as appropriate agents to turn to when feelings are on the verge of erupting into overt aggression,[17] often when all other

[17] I do not suggest that appeal is made to them in every such case.

sanctions fail. This fits in with the Administration's injunctions that major issues, such as fighting, wounding, and so on, should be reported to the police straight away. Hagen society provides institutional forms in which feelings of aggression and revenge can be directly and openly expressed. Indeed, secret harbouring of grievances is discouraged, while open expression of them is to some extent positively encouraged. An observation to be stressed is not that such feelings exist, but that they are recognized and on the whole coped with. It seems to me quite beside the point to dismiss recourse to courts as part of the old game of politics and therefore as evidence that no Australian legal values have been assimilated.[18] What *is* the point is that there has been fairly successful deflection into non-violent channels.

With the emphasis of the official courts on criminal complaints, a large body of disputes must necessarily be settled out of court. It is interesting that Hageners regard many of these as worthy of official adjudication and do not see much relevance in the civil-criminal distinction. Finally, there is a direct interplay between heavy Administration penalties for violence and the efforts of Councillors and Komitis. Without the latter law and order would be no more than on the surface; without the former, as things are at the moment, Councillors and Komitis themselves would have very weak sanctions.

The Two Models

At the moment in Hagen there is a gap between Hageners' model of the present legal system, and the Administration's (and informed Europeans') model. Hageners visualize a hierarchy of personnel: at the bottom are Komitis who handle minor issues, major ones being left to the Councillors; matters too large for them to handle are taken to Administration officers or other local magistrates;[19] these persons may themselves transfer cases to higher officials or to the "big judge". At each stage in the hierarchy, however, the person handling the case does so by reference to "law", certain standards observed in the imposition of punishment, and so on. From the point of view of the Administration no such hierarchy exists: there is a sharp dividing line between local leaders who may take it on themselves to mediate in village disputes as a function of their general prominence, and knowledge of custom, and persons with the authority of magistrates who hold courts in order to ensure the maintenance of order in the light of the Criminal Code and Territory Ordinances. Administration officers are aware that local Councillors speak of themselves as "hearing courts", but such acts are technically illegal, and they criticize many of the procedures which Councillors follow. In short, the Administration regards the official judiciary with its personnel specially entitled to hold courts as qualitatively different from out of court mediations conducted by local persons of note; whereas the premise on which many Councillors and Komitis settle disputes is a joint participation in a single system along with officials such as Kiaps. They fit themselves into what they consider to be a single hierarchy of authority and consequently subscribe to apparently common values. This is possibly one source of their acceptance of the Administration's dispute-settling agencies and the idea of law.

Hageners make extensive use of the judicial facilities offered them. Why

[18] Lawrence, P., *op. cit.*

[19] Whether because they prove difficult or because they have been told to take such and such a type of case to Kiaps.

should this be so? Not only should we ask why are civil complaints taken to the authorities, but why should disputes of any kind be so readily taken? (In spite of official encouragement, it could have been that only a small proportion of obviously criminal offences came to official notice.) The answer has to do with this very model: the fact that they do not see Councillors' courts and Kiaps' courts in terms of a dichotomy but in terms of a continuum. In the same way as Komitis deal with small matters which are taken to the Councillor if they cannot be solved, so the latter takes difficult cases to the Kiap. It is a continuum of process (the transfer of cases from one body to another) and also of authority: Councillors and Komitis regard themselves as acting with the Administration's approval and authorization.

The Hageners' point of view has several repercussions.

1. Councillors and Komitis take on themselves duties they have no right legally to perform (settling criminal matters, imposing fine-like payments).

2. This is because they think of themselves (and others think of them) as doing the same kind of job as magistrates, though on a smaller scale. It is pertinent that Hagen big men should want to regard themselves as comparable to other figures with obvious power.

3. The hierarchy of authority is seen to invest certain individuals with the right to act in the Kiap's name; but it is not an exclusive hierarchy. In the same way as the ordinary man always has the possibility of establishing a partnership with a big-man over some transaction or other, so many people feel that they can approach Europeans and tap the higher sources of power. In their terms it needs some "strength" to do so successfully, and consequently demonstrates the individual's own power. Hence the official judiciary is drawn right into Hagen life—officials are sought out as allies to interfere in local disputes.

4. The official judiciary, far from being an alien body, is regarded as very relevant. Hence Hageners' on the whole positive response to requests that certain matters should be reported to the police etc.

5. The notion of a hierarchy is satisfactory to them since it corresponds to the general relationship of superiority-inferiority between Europeans and themselves while at the same time providing a chain of personnel down which superior strength can devolve. This is a fair image of relations between officials involved in settling criminal matters. However, Hageners apply their model too generally. In civil dispute settlements, as opposed to criminal, we have seen that the various Administration agencies tend to operate as a *network*, in which (through referral) they may include Hageners themselves. But Hageners try to use persons in the network to settle disputes as though they were still ordered *hierarchically*. This is a source of frustration.

6. These factors partly account for the plethora of disputes brought to the authorities' notice and can be predicted to increase as the agencies expand. Paradoxically, this contributes to the Administration's concern with growing "lawlessness". It is the same paradox that leads them to blame Councillors who hold "courts" or impose "fines" for behaving unlawfully. (To the Administration, Councillors' attempts to settle criminal cases may be classified as "taking the law into your own hands"; whereas the Councillors think they are seeing that the disputants don't do this.)

In Hagen usage *lo* refers to many different things. There are three salient clusters in this context.

1. Specific rules, such as Council rules (which Hageners call *lo*), the edicts and decisions of particular persons (Kiaps, Local Court magistrates), and orders about conduct (e.g. carrying weapons) which are thought to come from the Administration and (recently) the House of Assembly.

2. Style of conduct in general, which approaches the Kiap concept of "law and order", and stresses peaceable behaviour, and in addition, peaceable intentions. The *lo* of type 1 specifies certain regulations which must be adhered to if law and order is to be maintained, but the concept of law and order itself is more embracing. It corresponds to Hagen notions about the desirability of people with common interests living together in at least ostensible harmony.

3. A whole style of life. Here *lo* means "custom" rather than "orderly behaviour" as in 2. Hageners see themselves as having been transformed by the arrival of Europeans and as now living under the dispensation of "law". This is one of the ways in which they interpret facts of social change. *Lo* in this sense is linked with notions of advancement, progress, development and business enterprise.

All three clusters of meanings derive directly from teachings of the Administration. Hageners have been forced to recognize the applicability of certain rules; to abandon warfare and observe more restraints on violent behaviour than in the past; and to acknowledge that along with economic development law is one of the benefits that European rule has brought them. Yet all three have little bearing on law in the sense that Kiaps use it when they dismiss the possibility of Councillors hearing courts as "unlawful". Law in this sense refers to a constitutional arrangement whereby the authority to act in certain ways is allocated among a number of offices. Within the judiciary, only specified persons may hold courts. As we have seen, the Hagen model of the authority structure is very different. It would be fair to say that few of them appreciate the constitutional relationships between Kiaps, Local Court magistrates, the police and so on. Their own perception is in terms of functions (which kinds of troubles particular officials deal with) and in terms of power (the relative sanctions at their disposal). Legality in this context is obscure to them. It is also probably the case that *lo* in the third of the Hageners' senses (as listed above) is obscure to most Europeans. This has evolved from Hageners' experience with Europeans, their being told that their own ways were bad and that inter-personal violence hinders progress. It fits with the appropriateness of new officials (Councillors, Komitis) dispensing Kiap laws (senses 1 and 2).

Part of the Administration's own model is the distinction between major and minor troubles. Major troubles are handled by the official judiciary, minor ones by "the people themselves". In practice this largely corresponds to a dichotomy between criminal and civil offences. By dismissing unofficial settlements as "private mediations", Kiaps underestimate the law-keeping functions of Councilors, even occasionally belittle dispute settlement as a "waste of time" because it disrupts other activities (e.g. road work).

There is in actuality greater discrepancy than the Hageners' model allows between the official and unofficial courts as far as their functions go. The result is dissatisfaction with the way Kiaps handle certain cases, and criticism of Councillors from Kiaps, although on the part of Hageners these dissatis-

factions do not often generate discontent with the system as a whole. They nevertheless give rise to some misunderstanding. Councillor courts are consciously modelled on those of the Kiaps, but in the absence of specific instruction from the latter derive their procedure largely from traditional methods of dispute settlement. Their central emphasis, indeed, is on the settlement of disputes, that is, on the investigation of issues which have led to trouble and the patching up of damaged relationships. An important component is the talk by which individuals display their positions and reveal the root of the troubles. I have said that we must distinguish the existence of feelings of revenge and aggression from their expression in violent behaviour. Law and order in the Administration's terms can surely be said to exist if violent behaviour is controlled, even though the feelings are still there. Hageners, however, tend to think that if feelings are not brought under control as well then there is always the possibility of violence. Their traditional dispute-settlement procedures were aimed to this end to some extent, and it is this they find lacking in the official judiciary and which on occasion gives rise to grave anxiety.

Kiap courts, on the other hand, are largely concerned with the maintenance of order the breakdown of which is threatened in any infringement of the Criminal Code or Ordinances. They afford certain advantages to underprivileged persons (e.g. women can report beatings directly to police). But it is also the case that the presence of a relatively impersonal agency may encourage individuals who feel like it to push their claims beyond what is normally considered reasonable. It was always recognized that a balance had to be kept between pushing one's own rights and recognizing the rights of others. Possibly an effect of the Administration agencies is to encourage expressions of personal rights at the expense of efforts to solve problems in relationships.

The fact that other bodies—the welfare office and the various churches—actually handle civil complaints, and Kiaps and other Local Court magistrates do mediate informally in such cases, leads to some confusion: the general emphasis of formal court dealings can leave people who think they should have been participants puzzled if not dissatisfied. For the point is that Hageners *think* the official courts work in much the same way as their own, that the system works better than it does. They attribute to the Kiap end of the continuum the same dispute-settling functions which their own courts have. Experience shows them, however, that certain cases must lie outside the competence of the Administration (prominently poisoning disputes): ofter the parties to an issue begin by applying to the courts but when the official reaction is so wide of the type of reaction they expect, the discrepancy between the competence and procedure of courts and their own way of doing things becomes too great; this is especially so when major political issues impinge on criminal cases. For the majority of cases, however, (i) the potential political issues are never allowed to develop, and (ii) the discrepancies are not of a gross enough order to give rise to more than minor irritations and dissatisfactions (e.g. that the parties were not allowed to "talk", or that police or other authorities did not move in to punish persons who should have been convicted). This is really the obverse of the coin: having accepted by and large the legal system as introduced by the Administration, the process of assimilation of norms and understanding of procedure has necessarily resulted in these mixing with traditional notions of dispute settlement: and there is a tendency to attribute to the legal system functions

it cannot discharge, or to misinterpret its powers as more embracing than they are.

The fact that Councillors have few official sanctions at their disposal is relevant here. Councillors and Komitis regard themselves (and other people regard them) as in fact more automatically operating Administration sanctions than they really do (they expect that Kiaps etc. will support them if they bring in cases, see themselves as "jailing" people when a case is given in their favour). The threat to take a difficult case to a Kiap is itself a sanction —and one which depends for its effectiveness on the general acceptance of the fact that the Administration is likely to support the Councillors' and Komitis' point of view. It also means that Councillors and Komitis have to fall back on the kinds of constraints which existed traditionally—recommending compensation payments, shaming an offender, trying to get rid of revenge-anger through reconciliation procedures—hence (partly) their concern with people who "bighead". Bigheads put their (the Councillors' and Komitis') position to the test. Thus we can see the importance of Councillors and Komitis stressing their personal "strength" in dealing with trouble cases: they are still in reality operating in a context where settlements have to be negotiated and are not formally guaranteed by the judicial system.

While Hageners are aware of the superior sanctions which Kiaps and magistrates can draw upon, they also attribute to them some of the personal "strength" that Councillors and Komitis must have in order to settle disputes, and expect the authorities to be able to draw on this in all kinds of situations. Hence disputants are often disappointed in out of court mediations that they do not get the kinds of ready answers they get on other occasions. There is a more or less tacit agreement by disputants that they will abide by the decision of a Local Court magistrate, for example, in mediations, because they see him as a magistrate rather than a mediator, and were he to pronounce on cases rather than refer them back for consideration, his word would probably be accepted as it is in criminal proceedings.

Hageners may, even in criminal cases, hope for a more automatic response from the agencies than is sometimes given. Most troubles are "pre-selected", that is cases brought, for example, to the police, are often ones which for some reason have foundered at home and proved impossible to settle. Although agencies in the referral network for non-criminal offences sometimes make the effort to see that all aspects of a question are thoroughly explored, in fact they are often approached for *decisions* rather than for further attempts at reconciliation: the disputants would like a judgment since they have often exhausted other means (e.g. attempts at reconciliation) themselves before reaching the agency. One sometimes even gets the impression that mediatory action is not really considered appropriate behaviour for these Europeans. It is also true that the presence of the official agencies probably influences the threshold at which disputes are seen as impossible to settle (the more difficult access to these agencies is, the more likely that local solutions will eventually emerge). Their presence (including that of the police) sometimes acts as a catalyst to home settlement, since one traditional solution, of just withdrawing and refusing to come to a settlement, has become a more remote possibility. Given that cases are often brought which have already been to some extent argued over but have reached deadlock, agencies such as magistrates perform a very real function in providing *some* solution, valuable because of its arbitrariness and thus for the present terminating, if not solving, the dispute. It is not so

important in these contexts that the magistrate should have a full understanding of the facts. A partial understanding may enable him to give some kind of decision, and this may be all that is wanted.

Although Hageners see Komitis, Councillors and Administration agencies in a single line of authority, in fact different requirements are made of these. They do look to Councillors to provide dispute settlements of a quasi-traditional type (and may be explicit about this: "You must consider the ways of our ancestors as well as of the white men"); while they look to Administration agencies to provide judgments and decisions as they provide other directives for behaviour. But things are not as simple as this. We have seen the importance of the new law and new procedures in Councillors' settlements, and Councillors are expected by Hageners to make recommendations not inconsistent with Administration policy. Moreover, Administration agencies are *also* looked to for some of the kinds of solutions that were imperative traditionally. Dissatisfactions can arise precisely because all that is given in official courts is an arbitrary judgment, and no attempt has been made either to get to the root of the matter or to recognize the rights of the injured party or that the issue may have broad political ramifications so that some symbol of reconciliation is required.

These inconsistencies in Hageners' expectations are a product of situations of change. New requirements are made (to keep the law, and not fight, which means a higher expectation that disputes will be settled, an arbitrary termination here being better than nothing), while old problems still arise (disruptions to social life and grievances between persons living in close contact have to be resolved, people's intentions have to be estimated, feelings of aggression and revenge coped with).

Legality or Legitimacy

The discussion in this article is relevant not only to the way in which new ideas have been introduced to and absorbed by this Highlands society, but to the whole question of how far the Administration is, as well as being accepted, also accorded some legitimacy. How far they welcome Administration interference in dispute settlement and how far they seek to exploit or exclude it would seem to be a testing point.

We have seen discrepancies between the Hageners' model of the legal system and the Administration's model, and discrepancies in the way in which official and unofficial courts in actuality approach dispute settlement. The Hageners' model represents to some extent a combined attempt to accommodate notions of law and order along with the sovereignty of the introduced Government. Instead of isolating and withdrawing themselves, dismissing "law" as something relevant only to official courts, they have structured the present state of affairs so that they themselves are part of one system, and something of the roles of Kiaps devolve on their Councillors. Seeing Councillor and Komiti in this light means that the latter become mouthpieces for what they interpret to be Kiap "law". Nevertheless, while they all uphold a single law, the Kiap has powers of enforcement which Councillors and Komitis lack. They are keenly aware of this, and "borrow" as much power as possible, as when they threaten to take cases to the police. In fact, the Kiap is seen both as a man of law and as a man of force. At the back of the Kiap is his power to call in the police; he can threaten jail; it is remembered that some people were killed in the past. Submission to control is not the same thing as an admission that the Kiaps are *right*, but on the

whole, in the context of the courts, Administration pronouncements have become acceptable. The Kiap's power can be harnessed as it were to have relevance for inter-personal relationships. The norm of law also has positive attraction in a situation of enforced peace because of its association with ideas of progress and modernism, and with norms that feed into this derived directly from the traditional judicial system. Acceptance is facilitated by the fact that since Kiaps and Councillors are seen as part of a single system, law does not remain an abstract concept, but can be operated and manipulated in social situations, and thus acquires value. Only when major political issues blow up and the system is seen as inadequate to cope with problems that Hageners think are there, is the legitimacy of the Administration to act questioned.

The implications of this state of affairs are more far-reaching than one might at first imagine. Hageners have not grasped the importance of many of the procedural rules of the imposed legal system. It is also clear that, in its continued insistence on the illegality of Councillors' actions in holding courts, the Administration does not realize perhaps to what extent the notion of "law and order" has in fact been accepted. Marie Reay[20] has written of political advancement that it "can be more fruitfully assessed through examining the acceptance or rejection of particular political ideas than the presence or absence of legitimacy in respect of total political systems". It seems that the Hageners' absorption of judicial and legal ideas can be assessed on both fronts: on the one hand the notion of "law" has wide currency, and the abstract principles of law and the maintenance of order are frequently enunciated; on the other hand the total legal system, it is arguable, does indeed have legitimacy for them. But paradoxically, its legitimacy derives from the fact that they have restructured it, with the result that their view of the legal system is very different from the Administration's. Yet it is the very nature of their conception of it, as legitimately involving Komitis and Councillors as well as Kiaps, which bulwarks their acceptance of the Administration in this sphere. It is arguable that the actions of Kiaps and other Local Court magistrates in holding courts are valid in their eyes partly from the fact that they can be accommodated within a single system along with Councillors and Komitis.

There can be a genuine acceptance of principles without full endorsement of or even understanding of procedure.[21] Hageners have only a partial understanding of the total judiciary in constitutional terms, but a full understanding of the need to maintain "law and order". The crux is, what weight is going to be put on the legality or illegality of Hageners' own attempts to respond positively to the new law?

Hageners, in fact, are over-sanguine in their view of a single judicial hierarchy informed by the notion of "law", and sometimes have unrealistic expectations about its capacities. Indeed, they see judicial action necessary in contexts that the Administration may dismiss as trivial. The Administration probably underestimates Hageners' attempts to accommodate it (the Administration) within a single system, and the absorption of "law and order" as a dogma of modernism. For the settling of a large number of trouble issues (there are exceptions) there is no doubt that the Administration courts have legitimacy for Hageners, even if not for the same reasons

20 Reay, M., "Roads and bridges between three levels of politics" in *The Politics of Melanesia*, ed. M. Ward, 1970.
21 Reay, M., *op. cit.*

that they do for Australians It would be a pity if, in continuing to dismiss Hageners' efforts as illegal, the Administration began to lose some of the legitimacy it has been accorded.

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