‘Mipela Makim Gavman’: Unofficial Village Courts and Local Perceptions of Order in the Eastern Highlands of Papua New Guinea

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**Abstract:** In remote villages of the Eastern Highlands of Papua New Guinea, where official village courts and other state institutions are absent, local leaders routinely hold unofficial village courts to maintain law and order. They base their decisions on local perceptions of order and justice, all the while emulating elements of state justice and constantly referring to the state as the source of their legitimacy. As these unofficial judicial institutions historically emerged as a convergence of local patterns of leadership with colonial concepts of order, they neither form a completely new nor completely autochthonous method of conflict settlement, but are an example of para-statehood, in which local leaders take on state functions in the absence of the state.

**Keywords**

Village Courts, Dispute Settlement, Leadership, Para-state, Papua New Guinea
Introduction

‘Mipela makim gavman’ – ‘We represent the government’: Three members of a village committee in Bibeori, a Southern Tairora village in the Eastern Highlands of Papua New Guinea, used these words while delivering their ruling on a dispute in the community. Despite their affirmation that they are the local representatives of the government, the three are not, in fact, authorised by the state to hold court and hand down verdicts. In the absence of official village courts or other state institutions with legal authority in this remote area, the members of the village committee are nevertheless widely acknowledged within the community to be the only guarantors of law and order. During fieldwork in Amaira and Bibeori, two remote villages in the Okapa and Obura-Wonenara Districts of the Eastern Highlands Province of Papua New Guinea, I have witnessed several similar gatherings on village squares that participants and spectators call ‘village courts’.

Figure 1: Village Court in Amaira

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In this article, I use the example of these unofficial village courts to examine how, in settings without official state presence, local order is nevertheless articulated by reference to the state. Building on how local leaders perceive their role, their notions of order, and their relations to the state and official institutions, I will show how they emulate certain elements of state justice and blend them with their own practices in dealing with conflict. Although they usually manage to maintain local order, they still feel it is insufficient and complain about their inability to enforce their decisions. Local leaders also express a clear desire for an increased state presence, which they believe would support them and thereby relieve them of the need to negotiate the conflictual relations that often encumber their own efforts to maintain order.

This desire can itself be socially situated through a history of these unofficial judicial institutions, as they emerged as a convergence of local patterns of leadership with colonial concepts of order. The pre-colonial political environment characterised by frequent armed conflicts between polities encouraged and even necessitated the emergence of powerful war leaders (Watson 1971). This offered colonial authorities obvious individuals upon whom official titles and judicial powers could be conferred. These local ‘strong men’ then quickly appropriated and transformed the judicial powers that were accorded to them (Berndt 1962). With the slow disappearance of state institutions in these areas, local leaders have retained these powers and continue to operate state-like institutions in a mostly non-state setting.

The concept of order used in this article is influenced by discussions in legal anthropology and focuses on the handling of disputes and conflicts as a prerequisite for a durable order, so that violence (and thus in a sense disorder) is held at bay. Klute and Embalo (2011, 3) are not the only ones to assume that ‘… all social orders – state and non-state ones – have to cope with violence in order to assure durability. Hence, they must develop regular modes of conflict resolution’. The occurrence, regularity and effectiveness of dispute settlement thus form a litmus test for the durability of any order. Focusing on conflict resolution as a site where order is created furthermore allows for a nuanced understanding of order as a process and not as a state. This emphasis on order as the antithesis of violence is at the same time not to neglect the fact that violence itself can follow certain rules and regulations, or to imply that only a society devoid of violence can be seen as ‘orderly’. After all, ‘order is not so much found in the absence of violence in such societies, as in the appropriate nature of the response to violence, and in the ongoing processes of containment and adjustment by which people react to and limit its effects’ (von Benda-Beckman & Pirie 2007, 6). I will start this article with an ethnographic account of an unofficial village court and show these processes of containment and adjustment to violence, before analysing the relevance of this for anthropological understandings of order.

The Coffee Pulper Dispute

Friday, 26th of May 2006. It is market day in Bibeori, a village of Tairora speakers in the remote Lamari River Valley in the Obura-Wonenara District, Eastern Highlands Province, Papua New Guinea. Every Friday, the inhabitants of this village, mostly adherents of the Seventh Day Adventist Church (SDA), would congregate the day before Sabbath to hold a
little village market on the central village square, a piece of flat ground along one of the spurs running down from the high mountains of the Kratke Range on which the village is situated. Women are usually among the first to arrive in the early morning fog, taking up spots at the edges of the square, sitting down and starting to spread out their goods for sale: vegetables, fruits and mushrooms from their gardens or gathered in the forest, boiled corn, peanuts, sweet potatoes or fried dough balls for a quick snack, or then goods from the far-away town, little packets of rice, sugar or salt, little bottles of cooking oil or bundles of coloured strands of acrylic wool for weaving the ubiquitous string bags. After a while, men start arriving too, and more and more people gather on the square, gawking at the wares, buying a few things for a few toea or kina if they have a bit of money in their pockets from selling coffee. It all adds to a bustling scene and everybody enjoys the first few rays of the sun slowly piercing the morning fog. As soon as a large group of villagers have assembled, standing in clumps chatting or idly sitting around the edge of the square, one man after the other steps into the middle of the square to address the assembled village and delivers public announcements (called toksave in Tok Pisin) concerning communal work, church matters or the newest political developments.

These men are either the eminent men of the village, the so-called ‘hauslain lida’ (village leader), all older, prominent and well-to-do coffee planters and the only owners of houses with corrugated iron roofs, or younger, but still mostly middle-aged men, who are elected members of the self-organised village committee of Bibeori. They are referred to as ‘komiti’ (komiti in Tok Pisin can refer both to a committee and the committee members). Among them is a woman, the sole female member of the committee, who also stands up and makes an announcement. The komiti act as the deputies of the village councillor, the sole official representative of the people in the lowest administrative level of the state, the Local Level Government Council (LLG). The Lamari Rural LLG in the Obura-Wonenara District, where Bibeori is located, is composed of 29 such councillors, each representing one village (or LLG ward), and is responsible for the administration and maintenance of roads, schools and health infrastructure in an area covering roughly 1000 km² with about 15,000 inhabitants (National Statistical Office 2002). In the neighbouring Okapa Rural LLG in the Okapa District, where I also conducted fieldwork, wards usually encompass more than one village. The system of komiti ensures that each village (in Okapa LLG) or each larger settlement within a village (in Lamari LLG) is represented in the administration of the ward. These komiti are non-salaried members of the village or ward administration. They are elected by the population in the Lamari LLG and appointed by the councillor in the Okapa LLG. The Organic Law on Provincial and Local Level Government stipulates that each LLG ward should have a ‘Ward Development Committee’, whose task it is to draw up a ‘Ward Development Plan’ as a form of bottom-up planning for socio-economic development. In Bibeori, the komiti are not aware of this task, but do assist the councillor in ensuring ‘law and order’ and running the small, recently opened three-class school and the medical first aid post. Both these institutions have been set up not by the state, but by two different churches.
After the various public announcements on that market day, three komiti stepped into the middle of the square and announced that there will be a ‘hauslain kot’, a village court, to be presided over by them. The claimant in this court case was a man from the nearby Northern Tairora village of Nompia, who came to Bibeori to sue two men from Bibeori for slander. The insults in question took place during a heated argument between the two parties over the ownership of a hand-cranked coffee pulper. The three komiti now asked the claimant and the two defendants in succession to state their case. Both defendants saw themselves as the rightful owners of this machine, because they are, respectively, son and brother of the late original owner, and had through a small contribution to the original purchase of the machine acquired a permanent right to use it. The claimant in turn is the son-in-law of the same owner, as he had married the sister of the younger defendant. He felt unfairly treated when the two defendants refused to compensate him for his substantial efforts in caring for the late owner when he was sick, and for his contribution in arranging a proper burial after his death. When the two defendants then also prevented him from using the coffee pulper for pulping the coffee cherries from coffee trees belonging to his wife in Bibeori, he took the machine with him to Nompia. When the older defendant sent the younger defendant to Nompia to reclaim the machine, a violent verbal conflict erupted between the two. The younger defendant called the claimant a pipiaman, a rubbish man, who took off with the machine, an insult that the claimant considered particularly grave considering his constant efforts to help his affines in Bibeori. The claimant in turn had threatened to give both the younger and older defendant a good thrashing if they would ever return to Nompia. This considerably hampered the defendants’ mobility, as Nompia lies on the most direct route to Kainantu, the regional town where coffee could be sold, and consumer goods bought. During the court proceedings, the two defendants were thus rather conciliatory, and in the end even agreed that the machine should remain in the possession of the claimant in Nompia. The case was thoroughly discussed, witnesses were brought forward, and, after the court was satisfied with all the answers and had asked all those present whether what had been said was the truth, the three komiti shortly conferred and then turned to the public. They admonished everybody not to follow this example and warned both parties that the conflict should immediately stop with their verdict. They demanded that both sides publicly shake hands and pay compensation to each other for their respective participation in the argument: the defendants together were to pay 50 kina (about 17 US$) to the claimant for slander. The claimant on the other hand had to pay compensation to the defendants too, as he had insulted and threatened them. His compensation payment was set lower at 20 kina, as his insults were deemed less injurious and more justified, as he only started to swear after his brother-in-law had insulted him first. The money was then handed over on the spot in a significantly ceremonial way: both sides gave their contribution of compensation money plus an extra five kina each as court fee to one of the komiti, who counted it publicly, took out the ten kina court fee to be shared among the komiti, and then laid the rest of the amount on two piles (of 20 and 50 kina) onto the outstretched hand of one of his colleagues. This other komiti held his other hand high above the first and declared that this hand symbolises the law of the state of Papua New Guinea, and that both parties were thus subservient to the law. Both defendants and the claimant then took their part of the compensation and shook hands, still underneath
the outstretched hand of the komiti. In his announcement of the verdict, the komiti used the striking words ‘mipela makim gavman’ – ‘we represent the government’.

State and Para-state Order

Despite the pronouncement that they represent the government and thus state order, these komiti are not in fact constitutionally authorised to hold court and hand out verdicts. That non-state actors like these komiti take up state functions in situations in which state institutions are not or no longer able to fulfil these functions is a phenomenon that has also been observed in Africa. Anthropologists and sociologists working on the deinstitutionalisation of state rule in Africa have noticed that non-state political actors often arise to fill the void left by the state to create new, alternative forms of order, sometimes coexisting, sometimes in competition with the state (Neubert 2011; von Trotha 2000, 2011). Neo-traditional local leaders, particularly chiefs (Klute & von Trotha 2004; Rouveroy van Nieuwaal & van Dijk 1999), vigilante groups (Grätz 2007; Harnischfeger 2003) or a combination of both ( Förster 2009) are some of the most dominant actors that take over central political tasks from the state without a legal mandate to do so. They settle disputes, fight crime, even enforce a monopoly on violence, thereby carving out ‘islands of order’ (Neubert 2011) and assuming aspects of ‘para-statehood’ or ‘para-sovereignty’ (von Trotha 2000, 2011). This leads to situations, in which multiple and at times conflicting forms of
order jostle for supremacy, disregard each other or become interlinked. Concepts such as ‘polycephaly’ (Bierschenk 2003) or ‘heterarchy’ (Bellagamba & Klute 2008; Klute & Embalo 2011) point to the fact, that the state is only one of several political actors attempting to guarantee order on different levels, and shine a light onto the processes by which orders are constituted in the first place. Unofficial village courts in Papua New Guinea uphold a similar para-state order, as they exist alongside state institutions that consistently fail in the same task.

Papua New Guinea is an ideal case for investigating transformations in statehood and political order. It is a state that since independence from Australia in 1975 has continuously lost the ability to project power over the whole of its territory; whose infrastructure, especially the road system, is slowly decaying (Dornan 2016); and whose health and educational system in the more remote areas would have long collapsed if not for the engagement of church organisations (Hauck et. al 2005). Representatives of state agencies are almost completely absent in these remote villages, apart from sporadic vaccination patrols by the Department of Health and an election patrol every five years. Villagers are correspondingly disillusioned by the state (Eves 2017). Authors like Sinclair Dinnen (1998, 2001) speak of Papua New Guinea as an endemically weak state, which has lost control over core state functions, such as the maintenance of law and order, and which responds to increasing levels of societal violence by resorting to ever more violent and militarised means to uphold order. In the cities, criminality is rampant, and in the rural areas in the highlands, conflicts often escalate to armed altercations, and even into small wars between villages and clan alliances, which nowadays are also connected to parliamentary elections. Those in the city who can afford it purchase security on the free market through the booming security industry, while the traditional clan structures are seen as the only guarantors of security in rural areas (Dinnen 2001). This weakness in institutional terms is paradoxically coupled with a centrality of the state as the most important controller of resources, sparking heavy competition over the control of government (Dinnen 1998). Nevertheless, Dinnen (1998, 57) asserts that ‘even though it may be unusually important in materialist terms, the PNG state has by no means secured its predominance within the national society,’ and classifies this configuration in Migdal’s (1994, 27) terms as ‘dispersed domination,’ whereby ‘neither state nor any other social forces has established an overarching hegemony.’

The legal system that should uphold state order consists of two distinctively different institutions. On the one side is the usual hierarchy of formal state courts, starting with the District Court, then the National Court and finally the Supreme Court, which administer justice based on the Constitution (which acknowledges custom as one domain of law), the legal framework of the state of Papua New Guinea, and concepts of British common law, supported in their task by the uniformed constabulary. On the other side are the official village courts, which also incorporate ‘customary law’ or traditional concepts of justice. These village courts were introduced in Papua New Guinea shortly before independence in 1975 after the passing of the Village Court Act 1973, in an effort to adapt jurisprudence to local conditions and to bring it closer to the people (Goddard 2009; Scaglion 1990). The introduction of village courts was a conscious attempt to combine ‘traditional’ elements with ‘modern’ institutions, and they can thus be considered a sort of ‘neotraditional’ institution
Village courts have legal authority over smaller criminal offences and civil cases, and their reach encompasses several villages. The court officials (magistrates, peace officers and clerks) are to be elected from the local population, should receive a rudimentary training in their tasks and are then appointed by the Minister for Justice on a permanent contract. They are to receive remunerations for their work; a small monthly salary (Goddard 1996; 2009). Studies have shown that village courts vary widely in how they integrate custom and law, but it is generally acknowledged that they can be quite effective in solving most local conflicts (Demian 2003; Goddard 2009; Westermark 1986, 1991), and that they can be an important avenue for women to find redress (Neuhaus 2009; Scaglion 1990).

In the more remote regions of the Obura-Wonenara and Okapa Districts, however, no village court has been introduced yet, mostly due to problems of finance and geographical remoteness. The district court responsible for the Obura-Wonenara District is located in the district headquarters at Aiyura in the north of the district, which is at least a full day’s travel away from Bibeori and other villages in the Lamari River Valley. Since the 1980s, the police have no longer been physically present in the area and have no longer intervened in cases of criminality or organised armed conflict between villages, even when asked to do so. The state is thus neither able nor willing to enforce one of its most important functions, the protection of its citizens through a monopoly of violence and efficient judicial and police institutions. The urgent need to keep law and order and to resolve inter- and intra-village conflicts remained, however, and so local village leaders have taken up these tasks. Neither councillors nor komiti have any formal judicial authority (Podolefsky 1990), and they are perfectly aware of this lack and deplore it in informal discussions. The councillor of Amaira even attempted to receive official permission for holding courts by approaching a judge of the National Court present at the swearing-in ceremony for councillors and asked him whether he could give him official authority to hold courts on the village level. His request was denied, however, and the judge pointed out to the councillor that it would be against the law to hold unofficial courts. At the same time, councillors and komiti see themselves as the only guarantors of a local order, and they thus continue to hold these unofficial village courts in an attempt to defuse tensions, which could escalate into violent conflict within and between villages.

Due to the lack of state presence and recognition, these unofficial village courts thus share many aspects of ‘para-statehood’: they are innovative approaches by local leaders to solve conflicts in a situation where state agencies are no longer able to do so. They perform state functions without being constitutionally authorised to do so. They do not, however, distance themselves from the state, nor do they see themselves necessarily as non-state actors.

**Innovations of Order on the Local Level**

The komiti explicitly refer to the state and state law when pronouncing their verdict. They even embody the law through the symbolic gesture of the raised hand that is supposed to represent state law, to which everything is subordinated. This creates an extra sense of sacrality to the handing-over of compensation money, and gives more weight to their verdicts, as they are seen to be guaranteed by the state. The komiti are not just mediators, who negotiate with both parties over the amount of compensation sums, as had been documented
by Podolefsky (1990) among the Simbu in the mid-1970s, and which would correspond more closely to the traditional role of pre-colonial big men. They are real adjudicators, similar to the official village court magistrates, who hand out verdicts and set compensation sums according to their own standards.

They also base their decisions on a sort of codified and written law: both in Amaira and Bibeori, the councillors on their own initiative have put together a little ‘law book’. It consists in both cases of a typewritten or printed out list on a few sheets of rather scuffed paper with the most common offences and the corresponding compensation payments or penalty fees. The list for Bibeori is minutely detailed, and – as with all lists – can itself be considered as an attempt at creating order. The list starts with serious violent offences, for which different fines are levied depending on the weapons used: 150 kina for the use of guns, 100 kina for bow and arrows or axes, and 50 kina for unarmed violence. The list continues with ranked fines for theft (100-30 kina depending on what is stolen), robbery (200 kina) and rape (400 kina), adultery (300 kina) and premarital sex (150 kina), followed by lesser offences like swearing, slander, and spreading lies, as well as disorderly conduct in public by drinking alcohol and playing cards, each carrying fines between 20 and 50 kina. At the end is a list of compensation sums to be paid in case of destruction of forest, grassland or coffee gardens, this time ranked by size, so that one large coffee tree is worth 12 kina, a middle-sized one 8 kina and a small one 4 kina.

This law book is an attempt by the councillor and komiti at appropriating important symbols of the state, namely literacy, formality and codified laws. This formality is clearly shown in the preamble of the Bibeori list of offences:

The authority [this refers to the ‘Bibeori Village Authority’ mentioned in the header of the list] has strong support from law and order, and now makes public all the trouble that occurs too often within Ward Four. If you break the law, you have to pay a fine, if you don’t pay this fine, the authority will get you and bring you to the police station and put you to court.²

This formality is further emphasised by the signature of the village councillor at the end of the list, and a stamp from the Lamari Rural LLG. The councillor of Bibeori mentioned that he originally wanted to print a little booklet instead of just a few loose pieces of paper, so that it would look even more official, but that he didn’t have the money for it.

The Bibeori list of offences not only appropriates elements of state order, but even appeals to a religious – or more precisely biblical – sense of order, in that the preamble also mentions the ten most frequently occurring offences by admonishing readers not to engage in them. With the formulaic ‘no ken’ (similar to ‘thou shalt not’ in English) in front of all these offences (for example: ‘no ken stil – thou shalt not steal’), and the fact that it enumerates

² Original in Tok Pisin: ‘Authority igat strongpela sapot long law na order na nau putim ples klia ol trabel isave kamap too mas insait long ward four (4) na sapos yu bukim [sic] lo, yu mas baim fain, sapos yu no baim fine authority bai kisim yu igo long police station na kotim yu’.
exactly ten offences, which then had to be further subdivided in the actual list, the preamble of the little ‘law book’ of Bibeori very much resembles the biblical ten commandments. Furthermore, two of the offences, drinking beer and playing cards, are directly influenced by the strong stance of the locally dominant Seventh Day Adventist Church against drinking alcohol and gambling.

Asked about his motivation in putting together such a list, the councillor mentioned that he wanted once and for all to warn the population about the level of fines and compensation payments, in order to deter people from committing such offences. The amounts for the compensation payments and fines were fixed in public discussions on the village square in a sort of basic democracy. The list at the same time also serves to regulate and standardise the dispensation of justice by the komiti, and thus to protect them from any accusations of favouritism or corruption. I have observed, however, that in most cases, and also in the example given in this text, the amounts fined differed sometimes significantly from those postulated in the little law book (compensation for slander was set therein at 30 kina).

The unofficial village court thus represents a curious mixture between state and non-state forms of dispute settlement. The state aspect is apparent in the formalism of the proceedings, starting by the spatial arrangement of claimants, defendants and komiti, and the fact that only one side is permitted to speak at a time; interruptions by the other side are not tolerated. That the komiti are not just mediators that seek to find a mutually agreeable solution between both parties but adjudicators that set fixed amounts based on codified law, sometimes against resistance of one of the parties, also is clearly a tendency of state forms of dispute settlement. The non-state aspect of dispute settlement on the other hand is evident by the efforts of the komiti not only to get to the basis of the case of slander, but to delve into all other unresolved conflicts in the relationship between the parties to the dispute, in order to bring them out into the open and thus start healing the rift in the relationship between the affines. The ownership of the coffee pulper was thus investigated in depth, ascertaining minutely who contributed how much towards the original purchase of the machine. The whole proceedings thus took over two hours to conclude. This apparently went too far for the claimant, who after a while complained that he brought a case of slander to the court, and that the court should limit their investigation to this aspect of the case. If the defendants wished to challenge his ownership of the coffee pulper, they should bring him to court on a separate charge. This episode demonstrates that the form and processes of such courts can be challenged and are thus constantly being negotiated: while the komiti attempted to delve deep into the underlying issues and thus employ a more conciliatory approach, the claimant demanded that the court investigates according to formal rules, similar to the official district courts. The verdict itself corresponds more to local, non-state concepts of justice: payments of compensation paid from both sides to the other side, ranked according to the gravity of the offence. This in effect is a pushing back and forth of money, which balances and repairs the damaged relationship between the affines.

In interviews and informal conversations, the councillors and komiti always represented themselves as the extended arm of the government and emphasised their close collaboration with official state institutions. In Amaira, I was told that if a person was unhappy with the
decision of an unofficial village court, they could appeal at the official village court in the nearby Northern Tairora area, or at the Aiyura District Court. As the magistrates of these courts and the police would sympathise with the difficult situation of the councillors, they would mostly accept and affirm the verdict of unofficial village courts. In some cases, police would even advise people to settle a certain case on the village level. The unofficial village courts thus operate in some kind of legal grey zone: on the one hand, their authority to adjudicate has no constitutional basis, and at least the National Court judge approached by the Amaira village councilor sees them as illegal, while more local officials, the policemen and district court magistrates in the nearby Northern Tairora area, well aware of their own limitations, tolerate and even support them. Appeals to these official institutions are exceedingly rare, however, as people unhappy about sentences handed out by the unofficial court just prefer to ignore them.

Councillors and komiti in fact often complain about their limited power to enforce verdicts. It often happens that the accused do not show up on court day, or that those found guilty continuously postpone the date of payments of their court debts or compensation payments, or outright refuse to cooperate. Social pressure is then often applied on such people, sometimes even by their own kin. The village councillor of Amaira has come up with an innovative approach to ensure that all parties show up on court day. He had appointed a slightly mentally challenged man as komiti and assigned him the task of informing the defendants the night before that they would have to appear at the court the next day. As another Amaira komiti explained, that person was ideally suited for this task: he ‘knows no shame’ and because of what is described as his intellectual disability, he cannot be argued with. Once ‘programmed’ with a certain task, he will stop at nothing in stubbornly pursuing it. He follows the defendant everywhere, does not react to any excuses or prevarications, and pesters him until the defendant backs down and shows up at court. As this special komiti is at the same time completely harmless and non-violent, any violence against him would be considered morally wrong. This reduces the danger of a violent escalation in the case of a summons of an intractable person, even more so as this special komiti is also tasked with ensuring that all participants to the court show up unarmed.

If social pressure is unsuccessful in bringing defendants to court or paying their fines, cooperation with state institutions is actively sought. The councillor of Bibeori told me that he would go together with the complainant to the police post at the district headquarters to report a refusal to show up or pay the requested fine, and to get an official summons or then lodge an arrest warrant. The policemen that I talked to confirmed that such cooperation exists. It does not extend so far, however, that the police would follow up these summons or arrest warrants with an arrest in remote areas. The impassability of roads and lack of money for fuel are mentioned as the major obstacles. This means that those with outstanding arrest warrants only face a risk of arrest if they travel to Kainantu. This risk is slight, because the police seldom initiate arrests and are usually informed by others about the presence of the wanted individual. This means that arrests only happen if the claimant and the accused meet by chance in town, and the claimant then informs the police or brings the accused directly to the police station. A person with an outstanding arrest warrant could then be arrested and held in a holding cell until the councillor and the claimant could give testimony against the
defendant in the district court. This method thus seems more theoretical than real. According to the councillor, there are quite a few outstanding arrest warrants, even against prominent and economically active persons who regularly travel to Kainantu. It seems that this method is more advantageous for the councillor, as he is relieved from collecting the money and can put the responsibility into the hands of the police and the claimants, advising the latter to hurry to Kainantu when they realise the defendant intends to travel there. This clearly shows that the effectiveness of these unofficial village courts has its limits, and that their enforcement powers, despite their collaboration with state institutions, mainly rest on local mechanisms of social control within a village.

There are further limits to the efficacy of these unofficial village courts. Some conflicts, often involving sorcery accusations or conflicts over land between villages, are too complex and conflictual to be heard or even mediated by village officials. The task of the unofficial village courts to keep order and to ensure peace within and between villages has also become increasingly difficult in the last 30 years due to the increasing weakness of the state and unfavourable socio-economic developments. This has led to the resurgence of warfare in some areas in the 1980s and early 1990s, lengthy bouts of armed violence costing lives, which could only be quelled after several months if not years. While most of the wars in the 1980s were still conducted with traditional weapons (bows and arrows and wooden shields), this changed in the mid-1990s, when homemade shotguns and automatic firearms became increasingly available. Wars could no longer be contained, as higher death tolls led to violence spiraling out of control (Schwoerer 2017). Councillors and komiti often try their utmost to prevent such an escalation. Most of them had participated as teenagers and young men in the lengthy wars of the 1980s and early 1990s. The current councillor in Amaira for example had been one of the main persons involved in ending the last war, when he was just a 27-year-old church leader. Since then, he had been tirelessly working together with men of his own generation in quelling any recurrence of armed violence. When he was elected councillor, he had met with local church leaders and other young men of his generation that he appointed as komiti, who agreed that their younger generation should take over, as the older generation was held responsible for starting the wars. That the task of the komiti and councillor is difficult has been demonstrated by an incident that happened in Amaira nine months after I left the village: sorcery accusations between two hamlets led to a one-day fight with guns, and the inhabitants of one hamlet were driven off and had to find refuge among kin in other villages, before the councillor and his komiti were able to stop it.

Most villagers thus explicitly wish for a stronger engagement of the state. All councillors and komiti were unanimous in their desire that the official village court system with salaried magistrates and village peace officers should be extended to their areas. This would mean a loss of influence for them, but the current state of affairs is also not satisfactory, as they sometimes find it hard as elected officials to give out verdicts for fear that they might damage their chances of re-election (if for example an influential village leader is brought to court, as has happened in a case I observed in Bibeori). Councillors had petitioned the provincial government several times already to extend the village court system to their area, but every time they were rejected because of a lack of funds. It becomes clear then, that the people in these remote parts of the Eastern Highlands who take recourse to alternative forms of dispute
settlement do not defend their local order against an imposed state, but that they explicitly long for a stronger engagement of the state, provided that the state appoints local people as magistrates, who are familiar with cultural characteristics and local conditions.

To return to the expression of the Bibeori komiti: ‘mipela makim gavman – we represent the government’: It is emblematic of the institution of unofficial village courts, because only through the actions and the self-representation of the komiti does the ephemeral entity of the state take form and become tangible and perceptible to the local population. The constant references to state law and state authority and the demonstration of their links to official representatives of the state serve to legitimise the komiti as local representatives of the state and thus make their verdicts unassailable. This also means that in the minds and perceptions of the people, state order, even in remote areas of the Highlands far away from state presence, is the only possible frame of reference, the only possible concept, which makes effective dispute settlement possible. Only by creating a link between their own locally created non-state legal order and state order does their local order gain legitimacy and authority. It also seems clear that the komiti in effect appeal more to an ideal notion of the state and state order, than to the actually existing state, which is too weak to effectively intervene and settle disputes itself. At the same time, by presenting what they do as part of state order, they also make it appear as if the state is more effective than it actually is, and thus “naturalize the state” (Migdal 1998) in the minds of the people.

The Persistence of the Colonial Leviathan

The unofficial village courts are not completely new institutions, but at the same time, they and the local judicial concepts they are based on, do not represent completely autochthonous ‘traditional’ institutions. As Spittler (1980a, 1980b) has shown for peaceful methods of conflict settlement in Africa (the cliché of the ‘palaver tree’), most of these apparently ‘traditional’ institutions are a colonial development, a new form of conflict settlement ‘in the shadow of the Leviathan’, after colonial states had already forcefully constrained previously practised forms of violent self-help. This also applies to the unofficial village courts and the basic tenets under which they operate. They have a considerable history reaching back right to the beginning of colonialism in the Eastern Highlands, but no further. They emerged in the late 1940s and early 1950s as a convergence of local patterns of leadership with colonial concepts of order. The councillors and komiti in effect continue a tradition over sixty years old, and are not only aware of, but even explicitly refer to their predecessors in the colonial system.

Pre-colonial forms of leadership in the Eastern Highlands follow Feil’s (1987, 89-111) so-called ‘despotic’ type of leadership. ‘Strong men’ achieve positions of status and authority through superior capabilities and talents in warfare, sorcery and diplomacy. This contrasts with the ‘Big men’ more prevalent in the Western Highlands, whose authority also rested on the skillful accumulation and redistribution of status goods. The number of ‘Strong men’ within a group was not limited. One or two clearly designated leaders usually occupied rather stable positions at the very top, while the ranking among the other aspiring men was hotly contested. The status of these leaders could fluctuate with their fortunes in war and decreased
with old age and waning strength (Berndt 1971, 390; Hawkes 1978; Hayano 1972, 216-218). Particularly powerful individuals succeeded in expanding their influence beyond their own local groups and created a fragile web of alliance and personal following between several local groups. Such dominant and often aggressive men were also feared within their own group, as they could sometimes use erratic violence to pursue their goals, and they could become ‘despotic’ and flout certain societal norms. Strong leaders were thus not only tolerated, but even encouraged to rise over the comparatively egalitarian social order, as their manifold political alliances, military exploits and warlike reputation also strengthened their own local groups (Leininger 1966, 89; Watson 1971).

When the Australian colonial officers (called Kiaps) in the 1940s and 1950s extended their control over the previously uncontacted village communities in the Lamari River basin and started to pursue their strategy of pacification, they always attempted to find out who the influential village leaders were. As these often stood out quite clearly, they were then quickly appointed as luluai and tultul – official village heads and contact persons for the Australian Kiaps, and at the same time lowly subalterns in a system of direct colonial control. When the colonial powers banned violent forms of conflict settlements, and reacted with police powers, prison sentences, and in a few instances deadly force to those still pursuing violence, conflicts had to be settled differently (Schwoerer 2014). Kiaps always offered themselves as mediators, and if they noticed any offences against the colonial law, they were quick to hand out verdicts in their simultaneous role as magistrates in so-called ‘Courts of Native Affairs’ and then brought those convicted to jail. This combination of administrative, judicial and police powers in the hands of a single Kiap ensured swift justice and can be seen as the ultimate expression of colonial order (Gordon 1983).

The Eastern Highlanders quickly adopted the idea of court and court hearings. Berndt (1962, 311-318) documented the formation of embryonic courts even in areas outside official government control: an offended person would call together a group of men including the local leaders, who then discuss the case and negotiate on settlements or punishment. This was a novel way of settling conflicts, one in which coercion, threats of force and violent self-help were substituted by settlements reached by common discussion. Rather quickly, an unofficial system of village courts started to evolve out of these initial embryonic courts, in which Papua New Guinean policemen – often unbeknown to their superiors – as well as official and self-appointed luluai, tultul and mission bossboys started to hold court and hand out verdicts of corporal punishment, forced labour or compensation payments, based on the example of the Kiap courts (Berndt 1962, 318-327). The local population's acceptance of these courts and their mechanisms of enforcements rested on the one hand on scant knowledge about the actual role and extent of the authority of village officials, and on fear of the colonial officials and the police. Decisions by village officials were thus accepted, because everyone thought they had the backing of the Kiaps. Furthermore, village officials even threatened to bring cases to the police or the Kiap if the disputing parties would not accept their verdicts (Berndt 1962, 321; Gordon 1983, 211; Westermark 1996, 307). On the other hand, they were also accepted, because strong and aggressive leaders are valued and recognised, and because these courts upheld traditional norms and values, operated according to local understandings of
justice, and because the punishment was often deemed more acceptable than that handed out by a sentencing Australian Kiap (Berndt 1962, 322).

These courts were thus an effective means to keep order and prevent conflicts from escalating, especially in more remote areas far away from patrol posts, where Kiaps were not readily available as mediators, and where the distance to the next police post was just too far. Kiaps had an ambivalent attitude towards these courts (if ever they became aware of them), as can be seen in the following excerpt from a patrol report:

In many areas it was found that village officials have a tendency to hold private courts presided over by themselves. I do not know what official policy is on this matter but I have tended to encourage it, but only in cases of a minor nature where at times more satisfactory settlements can be arrived at than if heard in the C.N.A. [Court for Native Affairs]. However, this situation is now getting out of hand in as much that cases of a serious nature are now being settled amongst themselves, cases which do require a hearing before a C.N.A. and are being deliberately hushed up. No doubt the culprits quite enjoy a settlement in kind and are not perturbed by the chances of receiving a term of imprisonment and also the Luluai or Tultul has his prestige increased by his role as a peacemaker, while perhaps lining his own pocket from bribes (Wiltshire 1958, 25).

While Kiaps informally often tolerated unofficial village courts, because these upheld public order and relieved them of the tedious task of attending to all disputes, regardless of severity, they also recognised that these courts in effect subverted their own function and contravened their own standards of law and order. As most Kiaps were too far removed from everyday village life to be able to efficiently curtail alternative means of dispute settlement, however, unofficial village courts flourished and survived the transition from the luluai-tultul system to the system of Local Government Councils with councillors in the late 1960s and the following independence in 1975 without much change (Westermark 1996, 307). The councillor of Amaira explicitly referred to this line of descent from the colonial luluai. When asked about the legitimacy of his judicial powers, he answered that since the official village court system had not been instituted in the area, he still follows the old system of the Colonial Australian Government. This statement also reflects a widespread nostalgia among the older men and women for the ‘good old days’ of the Australian Colonial Administration. Almost everyone I spoke to wished that the Kiaps would come back, and people had an almost visceral hatred for Michael Somare for ‘pushing for Papua New Guinea independence’ and ‘throwing out the Australians’.

The historical dimension of the unofficial village courts explains why councillors and komiti continually stress their connections to the state. They follow the example of their colonial predecessors, who ensured that their verdicts were accepted by threatening to otherwise involve official state institutions. Without a constant evocation of the state, these informal courts might well lose their legitimacy (or at least their verdicts can be more easily ignored), because their representatives cannot fall back onto a traditional pre-state legitimacy as is the case with neo-traditional chiefs in Africa. The idea of settling disputes through courts is
relatively young and had only spread after the arrival of the colonial state. This also means that without a general acceptance of these unofficial courts, conflicts could be (and partially are) again solved like in pre-colonial times (which is only about 65 years ago) – with violent self-help in the form of interpersonal violence or inter-village wars. To consider unofficial village courts as ‘new’ forms of para-statehood belies their history, however, just as they do not define themselves in contrast to the state or tie in with older, pre-state forms of order and authority. The actors instead legitimise themselves in spite of the absence of state institutions through the state (a state that is both spatially and temporally distant), to be able to keep order and settle conflicts on the local level according to their own rules and norms, which are already influenced by an earlier colonial history when the state had been much more present on the local level.

This paradox is thus similar to the one encountered by Alan Rumsey (2006) in his analysis of different models of articulation of indigenous and exogenous socio-cultural orders, when he concludes that not all aspects of everyday life in New Guinea Highland groups can be said to be indigenous or fully indigenised, as people constantly engage with other people’s heritage. As he states: ‘Other people’s articulations across what we see as cultural difference may downplay the extent to which these are based on “their own categories, logics, understandings”, in such a way as to confound the terms of our distinction between the indigenous and the exogenous’ (Rumsey 2006: 62). Similarly, the difference between non-state and state orders is starting to dissolve and unravel when taking a historical perspective into consideration, as local non-state actors shaped by a history of a once stronger colonial state refer to the abstract notion of the state and state order in settling their local disputes. For these non-state actors behaving like state actors, state order is thus the only possible frame of reference, and the absence of state order is unthinkable, even if state institutions themselves are absent. As this historical-cultural context forms the bedrock for today's unofficial village courts, this also means that colonial concepts of order, far from being relegated to the past, are still relevant and active in Papua New Guinea today.

References


