GRASSROOTS LAW IN PAPUA NEW GUINEA

GRASSROOTS LAW IN PAPUA NEW GUINEA

EDITED BY MELISSA DEMIAN

Australian National University

ANU PRESS

MONOGRAPHS IN ANTHROPOLOGY SERIES

Australian
National
University

ANU PRESS

Published by ANU Press
The Australian National University
Canberra ACT 2600, Australia
Email: anupress@anu.edu.au

Available to download for free at press.anu.edu.au

ISBN (print): 9781760466114
ISBN (online): 9781760466121

WorldCat (print): 1397089446
WorldCat (online): 1397089079

DOI: 10.22459/GLPNG.2023

Cover design and layout by ANU Press. Cover photograph by Melissa Demian.

This book is published under the aegis of the Anthropology in Pacific and Asian Studies editorial board of ANU Press.

Contents

Acknowledgements

Deepest thanks go to the original team whose work on various parts of the *Legal Innovations in Papua New Guinea* project formed the inspiration for this book: Michael D. Fischer, Eve Houghton, Fiona Hukula, Michael Goddard and the late Kritoe Keleba, whose dedication as a researcher and insights shared at the project workshops are to be found throughout the questions and challenges posed in this collection. He is much missed by friends and colleagues alike.

That project was funded by the UK Economic and Social Research Council, grant no. ES/J012300/1. The present volume stands as evidence of how the effects of research funding can often outlast the specific projects for which it is awarded, and it is critical to acknowledge the points at which these effects are materialised, even—or especially—years after a funded project has concluded.

Thank you to Camila F. Marinelli for the stellar transcription work that brought one of our chapters to fruition.

Especial thanks to Matt Tomlinson, Chair of the Editorial Board for Pacific and Asian Studies at ANU Press, for his support, patience and sound advice in shepherding the book through the ups and downs of the road to publication.

Thanks also to the two reviewers for this volume, whose close attention to the chapters offered here transformed the book in many ways. One reviewer helped to make it stronger; the other helped to make it longer.

Melissa Demian
September 2022

Introduction: The magic of the court

Melissa Demian

> It is law that defines everything we see and hear going on around us.
>
> – Former Chief Justice of PNG Sir Salamo Injia, speaking in Canberra, 2015

What does it mean to speak of a law of the grassroots in Papua New Guinea (PNG)? Does it refer to what a legal observer of the newly independent nation called 'a true people's law' (Fitzpatrick, 1975: 284), which he hoped would emerge to serve the whole population and not just metropolitan elites? Or is it something even more diffuse, an atmosphere of law generated by the sometimes fraught relationship between a citizenry and a state that can appear to have little interest in interacting with them other than generating laws to constrain the flow of everyday life? These questions and a host of related ones form the backbone of this book, as they address how Papua New Guineans who are not metropolitans engage with the part of the legal system that was 'designed' for them—that is, the village courts—as well as with any number of court-like forums and other legal sensibilities that exist in dialogue with the formal legal system without necessarily being part of it.

To talk about non-metropolitan law in contemporary PNG poses some risks, given that the very idea of a metropole in relation to a periphery has such a long and contested history in the social sciences and humanities. It dates at least to the spatial metaphor of centre and periphery offered by postwar sociology to describe the concentration of political, economic and cultural influence in particular physical spaces and institutions, usually although not always located in cities (Shils, 1975). This urban inflection of the concept was later adopted by other disciplines such as history, geography and anthropology to theorise the ways that colonising states and

their capitals, the metropoles, existed in an interdependent relationship with the colonised periphery (Slater, 2004; Stoler & Cooper, 1997). For my purposes, a salient observation about this relationship from Connell (2010) underscores the way law in formerly colonised countries like PNG has been studied in the past. As she notes:

> The distinction of metropole from colony is also a distinction of function in the making of scientific knowledge. Theory-making was located in the metropole; data-gathering, and some applications of science at the end of the process, occurred in the colonies. (2010, p. 74)

This one-way directionality is no longer quite so straightforward in the era of the postcolony, but Connell usefully highlights the way that the metropole–periphery relationship in colonialism was a set of knowledge practices as much as it was a system of political and economic domination.

If law was a component of that domination, the way law was studied in colonised societies also became a way for metropoles using data gathered in the periphery to speak to themselves about their own theories. In Merry's (1991) consideration of the relationship between colonial-era law and socio-legal studies, she notes that this created a doubling effect in colonial legal regimes, often with one set of courts (and regulations governing them) for the colonial metropole and another for the colonised periphery. Combining her observation with Connell's, one could say that these dual legal regimes also gave rise to a kind of double vision in late colonial-era work in the anthropology of law. Case studies of the ways that colonised people resolved their disputes, from indigenous North America (Llewellyn & Hoebel, 1941) to sub-Saharan Africa (Bohannan, 1957; Gluckman, 1955; Schapera, 1955) to Melanesia (Epstein, 1974), all contributed to the development of a legal anthropology informed by precisely this aspect of the metropole–periphery relationship. Practices and concepts gathered among peripheral peoples were meant to inform theory in the metropole, but more than that, they subtly enforced the distinction between the two sides of colonial legal systems even as politically engaged scholars such as Gluckman sought to undermine the divide between them. But as important as this emergent legal anthropology was in arguing that there was something law-like in the disputing practices of colonised peoples, its very premise—the ethnographic study of something analogous to European jurisprudence—maintained the duality of a metropolitan versus a peripheral set of legal sensibilities and courts intended to serve those dual sensibilities.

A double system of this kind always holds the relationship between metropole and periphery in productive tension. Among the aims of this book is to ask how this uneasy relationship between metropolitan law and a law of the grassroots has informed the other's concepts of what law is, what it is for and *whom* it is for. To acknowledge this phenomenon and investigate it ethnographically, it has become necessary to treat 'actually legal' and 'nonlegal but law-adjacent' practices in PNG as part of the same social repertoire, as they have indeed been treated since the beginnings of a robust legal anthropology in the country just prior to its independence in 1975 (e.g. Epstein, 1971; Lawrence, 1969; Strathern, 1972). In other words, this is a collection of observations conceived of deliberately as offering the perspectives not of specialists in the field of legal scholarship, but of social scientists and the populations of ordinary Papua New Guineans with whom we have worked. While formal law for the purposes of state-building and the institutions created to support it are generated in the metropole, people can and must find ways to make these institutions work for them, which often starts with disregarding any distinction between institutional and non-institutional forms. This then becomes part of a people's 'legal consciousness', to employ the useful term once coined by Merry (1990) to describe the processes whereby people arrive at such a consciousness in their dealings with a particular legal system. They deal with the law that defines everything they see and hear going on around them not only through metropolitan institutional forms, but also through the entire set of values, experiences and expectations they bring to the category of law and legal action. This collection aims to expand that category accordingly, in an effort at ethnographic commitment to the future of the 'underlying law' of PNG—a concept enshrined in the country's constitution and elaborated further through the *Underlying Law Act 2000*. If the underlying law, with its metaphoric suggestion of a bedrock-like stratum lying just beneath the conduct of everyday life, is to be found in what people are already doing, then it cannot be 'developed' from the metropole: it must come from the grassroots.

Who do we mean by the grassroots, and can the slightly problematic class implications of that term be turned to an advantage? Most of the people consulted for the studies in this book—although by no means all—are either rural people or those on the economic and physical peripheries of PNG's towns and cities. They are, for the most part, not metropolitans. They have substantially varying levels of educational attainment, experience of different parts of the country besides their own and, critically for our

purposes, access to formal legal mechanisms and the social class necessary to being able to use those mechanisms skilfully. Village courts were created precisely for this majority population in PNG to use, and to formalise in some way their modes of seeking redress from each other under conditions of conflict.

Having said this, it is important to note that the concept of customary law was not an organising principle for this project, nor is it central to most of the chapters collected here. This concept does formally ride in tandem with that of 'underlying law' due to the way the latter is articulated in the Underlying Law Act (Demian, 2011; Zorn & Care, 2002), and it is also meant to form the basis for most village court decisions according to the *Village Courts Act 1989*. But as the chapters to follow will demonstrate, what happens in reality is far more complex. Some village courts explicitly position themselves as dispensing state law and, in so doing, they claim a direct relationship to the metropole, in blithe disregard for the metropolitan perspective of the Village Courts Act, which establishes exactly the kind of dual system (one legal body for the centre, another for the periphery) described by Merry (1991). Other courts appear to combine what they regard as the law of the state with practices or relationships that could, conceivably, come under the rubric of customary law. But even this concept, as a wealth of scholarship has shown, is itself an artefact of the metropole–colony relationship, wherein the intersecting interests of colonial and indigenous elites produce the 'discovery' of a body of law-like principles that are in fact synthesised out of the far more contingent and relational decisions that emerge from local disputing practices (see e.g. Chanock, 1985; Fitzpatrick, 1989; Lev, 1985; Moore, 1986; Vincent, 1989). As I have argued elsewhere (Demian, 2014a), this process of 'recognising' customary law is simultaneously a project of holding it at bay, in order to control and circumscribe those practices placed under the category of custom that metropolitans do not wish to see becoming part of the law in the modern liberal state they are building.

If the present collection is not yet another evaluation of the place of customary law in Papua New Guinean legal practices, what is its remit? The germ of this book formed with a research project entitled *Legal Innovation in Papua New Guinea*, which ran from 2012 to 2015 and involved a team of researchers from the United Kingdom, Australia and PNG, who conducted work with village courts in different parts of the country. Among our objectives for that project was to investigate the widespread sentiment, expressed by legal practitioners in Port Moresby and other urban centres, that the activities of village courts had become uncontrolled or even chaotic,

and that they were certainly exceeding their jurisdiction on a number of fronts. The 'unlawfulness' of village courts seemed a timely subject at a time when the Village Courts Secretariat was exerting additional efforts to appoint and train women as magistrates, and to come to grips with the often stark differences between who was officially gazetted in their records and who else was out there in the provinces, acting in a magisterial capacity without any knowledge on the part of the secretariat in its offices in Port Moresby.

What we found in the course of the project was far more interesting, as our research was required to encompass the workings not only of the courts themselves but also of the wider social fields of which they were a part. As Moore (1973) once observed, the social field inhabited by local courts in the postcolony is 'semi-autonomous' in that it is defined not by an institutional structure so much as by 'a processual characteristic, the fact that it can generate rules and coerce or induce compliance to them' (1973, p. 722). Other anthropological observers of law as a social field such as Greenhouse (1982) and Strathern (1985) emphasised even more strongly this processual and relational characteristic of local disputing practices, and asked whether there was even anything as stable or identifiable as rules, control or coercion in the picture. For our own project this meant, among other things, attending to the ways in which the formal constraints upon village courts in the context of the everyday lives of people they were trying to help all but *required* them to go 'off script' to do their job of keeping the peace. Several of the chapters in this book will show precisely this improvisational mode of dispute management in action.

In principle, village courts in PNG are meant to execute their functions within the parameters of the Village Courts Act, which are operationalised in the handbook provided to some magistrates, and whose provisions are also the foundation for any training they may have received. Training and remuneration of village court magistrates can be patchy at best and, in some parts of the country, have not occurred for years (Demian, 2014b; Howley, 2005). Additionally, magistrates themselves may have little or no formal education, as it was always the intention that village court magistrates should be local men—and these days, women—acknowledged by their communities to be persons of note and repositories of local or 'customary' knowledge. Formal advocacy is specifically excluded from village courts under the terms of the Village Courts Act; these courts were always intended as forums in which people should be able to represent themselves, in line with the courts' purpose of providing access to justice for all Papua New Guineans. So, while village court magistrates make every effort to operate within the bounds of

the law as they understand it, it is precisely this 'as they understand it' that is at issue. Their lines of communication with Port Moresby and even their own provincial capital may be tenuous to nonexistent, especially if they are not literate in English, and their grasp of the latest legislative decisions of parliament similarly partial in nature. The communication infrastructure—and this is not a technological or transportation infrastructure so much as a political and economic one—between Port Moresby and the provinces, or even between the urban centres of Moresby, Lae, Goroka and so on, and their settlement peripheries, has not been able to support the range of needs that village courts must serve. The courts are, in many cases, effectively on their own, attempting to fulfil their obligations to a state to which they are functionally invisible much of the time.

As a consequence, that original project became one that was about much more than village courts and how well they 'functioned', as this book has also become. The social conventions and performative modes of the court have exerted their own influence over other ways of doing things and become part of the wider social imaginary in PNG—part of the 'magic' in the title of this introduction. I will return to that presently. The point is that it is no longer sufficient to ask 'Is X type of court executing Y element of its jurisdiction correctly?'. Arguably that was never the right question. One of the intentions of the present volume is to shift the conversation about how Papua New Guineans who are not legal specialists conceive of their relationship to the law. By now there has been exhaustive documentation not only of what village courts do and how they work, but also of non-court events and social forms that draw upon the blueprint of the court to serve a host of purposes, ranging from playful experimentation to the purposive appropriation of state authority. They may appropriate and emulate the style of court proceedings in order to have entirely different kinds of social effects (Lipset, 2004), they may claim the title of courts and government sanction in the demonstrable absence of either (Schwoerer, 2018) or the anticipation of one's actual day in court may serve as a means of hopeful future-formation for incarcerated Papua New Guineans (Reed, 2011). Courts in PNG have generated their own spaces of anticipation and anxiety, as have other modes of disputing and dispute management that may borrow some, but not all, of the ways of doing this that the village courts offer.

The chapters in this book grapple with both how the village courts create such spaces, in the technical sense of their actual practices and the ways in which they interpret the legal remit handed to them, and how these in turn

indicate some of the ways that people in PNG imagine what law and the state from which it emanates are. As such, this collection may be thought of as a contribution to the new legal realism (NLR), which advocates for:

> A bottom-up approach [that] takes an expansive and open-minded view of the impact of law, and also includes within its purview a wide range of socio-economic classes and interests. Indeed, at times, this approach will reach outside of the boundaries of formal legal processes and institutions altogether to examine other forms of regulation and ordering. (Erlanger et al., 2005, p. 339)

The 'other forms of regulation and ordering' component of this approach is critical both to the project of NLR and to this book, particularly as the authors collected here investigate social forms that may appear to legal practitioners to be disorderly, unregulated or wrongheaded. Among the efforts of scholars interested in NLR is that of 'translating' between the work of legal scholarship and scholarship in social sciences such as anthropology. While this translation work is largely happening in law schools disposed to critical reflection on the actual effects of law (Klug & Merry, 2016), there remains an entire repertoire of action in relation to the changing landscape of law that is difficult to encompass without recourse to ethnographic work of the kind represented in this book.

Some examples may serve to illustrate the challenge. In many countries there are particular social phenomena or issues with which the law is felt perpetually to struggle; in PNG, those issues include gender-based violence and violence arising from sorcery accusations. In terms of the former, despite a decade of rigorous scholarship on gender violence in PNG and elsewhere in Melanesia (Biersack et al., 2016; Jolly et al., 2012; Rooney et al., 2022), the nongovernmental organisation (NGO) discourse has not moved far beyond the 'worst place in the world to be a woman' idea (Human Rights Watch, 2015; Médecins Sans Frontières, 2016). Many Papua New Guinean women would find this picture of their country difficult to recognise. At the same time, the very high prevalence of gender-based violence in the country is undeniable, and is undeniably an issue with which the formal legal system has struggled to keep up. Despite the passing of the *Family Protection Act 2013*, no resources have been devoted to enforcing its provisions and few cases are prosecuted in the district or national courts. The result is that gender-based violence persists almost entirely outside the domain of the law and has instead become a matter for NGOs, churches and community initiatives to manage as best they can.

Sorcery-related violence is another issue that has resisted becoming 'domained' as a legal matter. Until 2013, the *Sorcery Act 1971* provided the main toolkit for courts to deal with cases involving an accusation of sorcery and those involving violence arising from a sorcery accusation. This dual remit for a single piece of legislation was complicated further by an extraordinary attempt to reconcile sorcery's existence and non-existence in the same breath:

> Even though this Act may speak as if powers of sorcery really exist (which is necessary if the law is to deal adequately with all the legal problems of sorcery and the traditional belief in the powers of sorcerers), nevertheless nothing in this Act recognises the existence or effectiveness of powers of sorcery in any factual sense. (*Sorcery Act 1971*, s. 3)

This language attempted to satisfy an official nonrecognition of sorcery consistent throughout Commonwealth jurisdictions with the issue of 'belief' that courts would need periodically to confront. The legal fiction it generated in this way—sorcery does not exist, but courts are permitted to reach decisions as though it does—never quite did the work it was perhaps intended to do. As Riles observes, courts and lawmakers rely explicitly upon

> the particular character of the legal fiction as an assertion of what is understood always already to be false … [I]t is an *explicit instrument*, a device with a clearly defined purpose, *a means to an end*. (2016, p. 132, emphasis in original)

Riles notes, in her survey of a body of theory about legal fictions, that they can have the effect of allowing or obliging judges to reach decisions that reveal disharmonies in the law that the fiction concealed—say, that sorcery is not real but courts may act as though it is—and these decisions inherently reflect the political positions of the judges. The legal realist implications of this effect is a topic to which I will return shortly. My point for now is that the legal fiction at the heart of the Sorcery Act had precisely this effect. It generated a body of case law in which courts in PNG vacillated for decades between decisions reached as though an accusation of sorcery provided a mitigating defence for killings or other violence, and those refusing to recognise any such defence. Both these types of decisions were potentially reachable through the provisions of the Act, leading to the unavoidable conclusion that judges who came down on one side or the other were making decisions in accordance with the aspects of the Act they found more compelling. In 2013 the National Parliament of PNG finally

repealed the Act, with the proposing Member of Parliament (MP), Kerenga Kua, declaring that 'the Sorcery Act belongs to another era' and also noting the way in which it had pulled the courts in two directions, although he was focused more on a distinction in the Act between 'innocent' and 'forbidden' sorcery than on its reliance on a legal fiction to enable different kinds of outcomes (Papua New Guinea, 2013). The concern of this MP was to foreclose on any possibility of the Act being used to mount a defence in cases of violence arising from sorcery accusations. The ontological status of sorcery was not an element of his proposed bill, nor did it have to be. Repealing the Act removed the necessity to talk about what kind of sorcery courts were dealing with, and about whether or not sorcery is real, in the same legislative move. This move transferred any violence committed in the name of a sorcery accusation unambiguously into the remit of the Criminal Code, disallowing any possibility of a defence on the grounds of a 'belief' that sorcery had occurred or might occur.

So much for parliamentary concerns in 2013. Whether or not a given village court has the decade-old repeal of the Sorcery Act on its radar, village courts continue to be confronted with sorcery accusations on a regular basis and must deal with them in their capacity as the institution charged with keeping the peace in their communities. Village courts are supremely pragmatic institutions and their officers—magistrates, peace officers and clerks—are committed to maintaining that bundled concept so beloved of the PNG Government and foreign donor agencies alike: 'law and order'. This very commitment to law and order means that their interpretation of jurisdiction can be quite flexible at times, which is often precisely what allows village courts to keep the peace. The courts' pragmatism can, at the same time, exacerbate problems with any assumptions about the efficacy of changes to the law beyond the metropole. There can be no presumption that laws enacted, repealed or amended in Port Moresby will be either communicated effectively or accepted by village courts as having any bearing on how they deal with sorcery accusations, because of the flexibility required of them.

This is because some people in PNG might interpret decisions like the repeal of the Sorcery Act as evidence that the law and the state are not on the side of the angels, as it were. Ethnographic reports of sorcery narratives that encompass the state itself indicate how ordinary people may deny the legitimacy of law as soon as it is perceived to serve the interests of a world inhabited not by themselves, but by other kinds of beings hostile

to human lives and human flourishing.[1] The legal establishment is in a genuine bind vis-à-vis fears about sorcery in communities throughout the country. If sorcery were treated as a real phenomenon meriting a defence in cases of violence arising from a sorcery accusation, lawmakers in PNG risk denunciation for opening the door to human rights abuses by the agents of liberal humanism ranging from donor governments to NGOs and international development agencies. If, on the other hand, people's concerns about sorcery are not taken seriously, and are granted no status in law, the government risks further alienation from some groups of its citizens—the uncomfortable 'real' in any version of legal realism that might be applied to this situation. As one legal colleague in Port Moresby observed to me, law governs human affairs, but not the spiritual dimension inherent in sorcery accusations. Further legislation would not solve the problem, in his view. 'Law has reached its limit', he said, and suggested that the law had reached an impermeable border where law and spirituality meet (D. Gonol, pers. comm. 2015). Another colleague at the same meeting suggested that law is a technique of both measurement and standardisation for human action, but the spiritual domain by its very nature cannot be measured. He was effecting an analytical removal of the category of the spiritual from any question of human agency or human institutions being able to act upon it. In the absence of such agency (or indeed of structure), the potential of the spiritual to cause trouble is potentially limitless, which contributes in no small part to the anxieties produced through and around sorcery discourses in some parts of PNG. How can one exercise any kind of realism, legal or otherwise, under these conditions?

Some readers will have noted already that the title of this introduction is a reference to Taussig's *The Magic of the State* (1997), a trippy work of ethnographic fiction that I used to inflict on students when I taught classes on anthropological assessments of magical systems of thought. Taussig's book is not an assessment, though, so much as an attempt to reproduce in the reader the sense of disorientation experienced frequently by ethnographers whenever magical systems and political systems are found to be inextricable from each other—when one is always the 'behind' of the other, as he describes it throughout the book. Another way to describe this way of apprehending both magic and politics is as merographic forms, in that,

1 I am grateful to the unpublished work of Kritoe Keleba on Western Province, and Thomas Strong on Eastern Highlands Province, for drawing my attention to this particularly challenging aspect of sorcery discourses in some parts of PNG.

> although they precipitate a plural world of analogous contexts and domains, these domains are never sustained as exhaustive or total analogies. That is precisely because the domains are regarded as overlapping in certain 'places', in certain areas or institutions or persons, where they must appear only as parts (of other domains). (Strathern, 1992, p. 84)

My use of Strathern to parse Taussig is itself a merographic move: their ways of describing systems appear to be analogues of each other, but only in 'certain places' do they have this effect. They are not aiming at quite the same descriptive outcomes for the way institutions, persons and so on can appear as parts or sides of each other, but it is possible to discern a fleeting analogy in the way they both try to hold this phenomenon still long enough to make it visible.

'Certain places' can apply not only to conceptual meeting points, but also actual places, actual localities and the way people in these localities use one system to describe or measure the other; sorcery can be used to assess law, and law used to assess sorcery—but only in certain places. What would a realism applied to this particular legal system suggest for, say, attempting to reconcile a domain such as law with a domain such as the spiritual? Elsewhere law may be used to assess familial relationships between spouses, or between parents and children, but the same effect of temporary or partial analogy obtains, wherein Acts of parliament may be made to appear as the mode of measurement for a community meeting or a mediation. But these modes of measurement are themselves subject to assessment insofar as they appear to look towards an international audience rather than one residing within PNG, and as such they index a field of relationships in which many Papua New Guineans do not feel they participate.

Another way to put this is that Taussig's intervention, however dizzying in its literary effects, suggests some reasons for the way village courts and other non-court institutions exert so much effort in invoking both the symbols and the laws of the state in the face of the state's almost complete lack of interest in what they are actually doing. One might go so far as to suggest that the state itself can be invoked in a spiritual capacity, such as when a peace officer says that the law has two parts, the church side and the government side (Demian, 2021, p. 151), or when the rituals of district and national courts are followed, such as erecting the PNG flag next to the magistrates and bowing at the start and close of a village court sitting. But I also have Taussig in mind because there has been a concern in the PNG metropoles for many years that although what village courts are doing has the *form* of

law, it lacks the content. In some respects they were engineered this way: early plans for the village courts explicitly envisioned them as adapting to local conditions, within the limits of their jurisdiction. It would not be too much of an exaggeration at this point to say that they have adapted so well to local conditions that they have entirely outgrown their jurisdiction and are operating as a system almost entirely independent of the rest of the legal apparatus of PNG. The only time village courts have any institutional relationship with the formal court system is when cases are appealed to the district courts, which is considered a highly undesirable option for many people. So the aim is to invoke the state as a source of symbolic—dare one say magical—authority, but actually involving that authority in local disputes is to be avoided if at all possible. One could pose a more theoretical question in regard to village courts and their adjacent conflict mediation forums: what exactly is the form that they appear to be reproducing? Law changes its form too, all the time. If village courts are trying to appear in the form of some other system, what and where is that system? Is it the law of the Papua New Guinean state and its legal infrastructures, or a law of the grassroots, or a manifestation of the relationship between them?

The chapters in this book have been organised in such a way as to attempt to answer these questions. In the first half, the 'bottom-up' approach championed by NLR and socio-legal studies more broadly is taken with the practices of village courts and non-court disputing forums in four regions of PNG. These chapters demonstrate that an ethnographic examination of the ways in which disputes are conducted and, more critically, the meanings that people make of their disputing by means of these forums offers particular insights into how 'the law' becomes translated through institutions that are only incompletely connected to a formal legal system.

This sets the stage for the second half of the book, which takes up both ethnographic and theoretical issues suggested by the relationship between citizens and the Papua New Guinean state that the law is meant to instantiate. Again, the 'real' of realism is challenged by the activities of people who may understand their participation in a state legal regime as being any mixture of education, capitulation, support or outright enmity. The effects of law are felt unevenly, as these chapters demonstrate, and can also have unintended consequences the more distanced people feel from decisions made in the metropole. This too speaks to the realism of the approach taken here: some of the interpretations and actions to which people turn in their relationship

to the state may constitute a direct challenge to the moral authority of the state and its abilities to make laws that can or should affect people's relationships with one another.

Hiroki Fukagawa opens Part 1 by inviting a consideration of the way that village courts in Enga Province took their cues from the total authority of *kiap* courts during the colonial era as the model for how village courts should be run, and how village court magistrates in the present day should engage with the people who bring disputes to them. In his chapter, the 'external' authority of the Papua New Guinean state has been 'internalised' by the activities of village courts in Enga. This has the effect of consolidating the political influence of clan leaders, who frequently use their appointment as magistrates to steer court decisions in favour of their kin. People who bring their disputes to the village court rather than to the alternative forum of village-level mediations know and to a certain extent accept that this kind of self-dealing will occur, and that it is a normal part both of local politics in Enga and of the state authority that magistrates arrogate to themselves. This does not prevent people from imagining, as Fukagawa argues, how a court more properly connected to the state might operate, and whether its operations might deliver something less thoroughly entangled with the politics of local kinship formations.

Juliane Neuhaus employs a close analysis of an adultery complaint in Morobe Province to show how a single 'case' can move through multiple forums for redress, activated by the actors involved, their degree of involvement in these forums and their hopes for a particular outcome to the grievance. The accusation of adultery brings into view an entire range of moral, spiritual and legal concerns stemming from interpretations of international human rights discourses, from Christian ideas of fidelity and from the kinship implications of multiple partnerships. As a single complainant takes her accusation through a series of different forums, both legal and nonlegal in nature, Neuhaus shows how the pursuit of a grievance at the local level is not necessarily sequential in nature, is often taken to several forums at the same time and never kept solely within the purview of the law. Instead, even very localised and intimate issues around the nature of marriage in PNG allow people to engage with a set of cosmopolitan ideas of what it means to be an actor asserting a set of 'rights'.

Tomi Bartole then takes us to East Sepik Province to discuss the spectral nature of the presence of the village court: it is known as an institutional form but is avoided in practice, in favour of local dispute resolution forms

such as the 'handshake'. The village court is not instantiated, Bartole argues, because it remains an unfinished or negatively evaluated 'gift' from the PNG state. The power of the court system is compared to the shells once exchanged in this part of the Sepik region for peacemaking purposes, wherein the threat of the shell to punish those who break a truce is analogous to the threat of violence from the police in the present day. But police and district courts cannot be integrated into productive local exchange the way that shells were, so the analogy remains incomplete, and the village court is avoided for its hazardous connections to those other institutions of the law. Law itself, as Tok Pisin *lo*, is then located as an uneasy—because still incomplete—supplement to *kastam*, which is itself rendered incomplete by the presence of *lo*.

Concluding this half of the book, Eve Houghton's chapter asks us to consider how village courts and their alternatives can coexist in the same space and even during the same dispute. Using the example of how courts are 'unmade' in West New Britain Province when magistrates determine that the issue at hand cannot be handled appropriately in the context of a formal court sitting, she shows how the inherent multiplicity of disputing forms supports the ability of magistrates and community leaders to switch between forums for the benefit of the disputing parties. In Houghton's analysis, the spatial and material nature of the shift between court and non-court is key to this skilful way in which magistrates—recast as mediators—navigate between the constraints placed on the village courts and the relational demands of justice in PNG. Unmaking a court may be signalled by the removal of the physical paraphernalia of the village court in the midst of a sitting, but it is also the changed bodily and spatial dispositions of the magistrates-as-mediators and their disputants that allow a different kind of outcome to be reached than what the court would have made possible.

The book shifts from there into Part 2, which is opened by Michael Goddard's chapter investigating the history, development and contemporary challenges faced by village courts. The courts, he notes, have functioned better as improvised local conflict management forums than as institutions standardised to a set of national-level expectations without much in the way of concrete national-level support. These expectations have expanded further in recent years to encompass a suite of international human rights regimes and discourses that PNG has become obliged by donor agencies to integrate into its 'development' initiatives. Such regimes are often at odds with precisely the sensitivity to local concepts of justice and peacekeeping at which the village courts excel. These concepts include a widespread

distinction between responsibility and liability, and a sociocentric approach to dispute management that depends on such a distinction. An over-emphasis on attempting to standardise the courts' practices and harmonise them with international rule-of-law regimes, he argues, may undermine the very particularism with which village courts have successfully done their job for decades, with very little attention or material support from the PNG state.

My own chapter takes up another aspect of these problems, which is the scaling or measuring effect of law when it is used by people to assess their own practices against the intentions of the PNG state as they are read off recent pieces of legislation or their repeal. Courts, village or otherwise, are in many of these instances not in the picture at all, as ordinary people make their own determinations as to how they ought to modify their own behaviour or demand different behaviour from others. They may do this in the context of community meetings and informal mediations, or of experiments in creating local organisations that imagine a direct relationship to national organisations, whether or not there is any 'actual' connection between them. The 'local' in all of these examples becomes a way of imagining the law as a means of connecting one's own locality to other localities, including the source of lawmaking in Port Moresby. But that source can be problematic, as the concerns of legislators do not always seem to match up with those of people elsewhere in the country, particularly with regard to the repeal of the Sorcery Act, wherein some citizens now feel compelled to act outside the law to seek redress against those they suspect of sorcerous attacks.

The book concludes with a set of reflections from Fiona Hukula on the current relationship between formal and informal modes of disputing in PNG, and how this relationship might better be recognised as one of the most important ways that grassroots people—including those living in cities—can access some form of justice that is acceptable to them. The nature of Port Moresby, in particular, as a 'big village' sees it emerge as a space in which creative uses of both courts and *komiti* meetings enable people living in the city's settlements to find a way to live together well. The broader needs of settlement communities, from the provision of utilities to public health concerns, feed into both the conflicts that emerge and the ways that *komiti* seek to resolve conflicts. Hukula points out some of the areas where future research on PNG's legal systems, from the prisons to the way village courts should or should not be regulated, might be of use, especially as systems for dispute management such as restorative justice continue to be introduced to the country. Although there is probably a need for more oversight of the village courts, she suggests, they must also be allowed to do

what they have always done best, in tandem with all the informal systems of managing conflict: allow people the chance to maintain good relations among themselves.

References

Biersack, A., Jolly, M., & Macintyre, M., (eds). (2016). *Gender violence & human rights: Seeking justice in Fiji, Papua New Guinea and Vanuatu*. ANU Press. doi.org/10.22459/GVHR.12.2016.

Bohannan, P. (1957). *Justice and judgment among the Tiv*. Oxford University Press.

Chanock, M. (1985). *Law, custom, and social order: The colonial experience in Malawi and Zambia*. Cambridge University Press.

Connell, R. (2010). Periphery and metropole in the history of sociology. *Sociologisk Forskning, 47*(1), 72–86. doi.org/10.37062/sf.47.18449.

Demian, M. (2011). 'Hybrid custom' and legal description in Papua New Guinea. In J. Edwards and M. Petrović-Šteger (eds), *Recasting anthropological knowledge: Inspiration and social science* (pp. 49–69). Cambridge University Press. doi.org/10.1017/CBO9780511842092.004.

Demian, M. (2014a). On the repugnance of customary law. *Comparative Studies in Society and History, 56*(2), 508–536. doi.org/10.1017/S0010417514000127.

Demian, M. (2014b). *Overcoming operational constraints in Papua New Guinea's remote rural village courts: A case study* (In Brief 2014/52). State, Society and Governance in Melanesia, The Australian National University.

Demian, M. (2021). *In memory of times to come: Ironies of history in southeastern Papua New Guinea*. Berghahn. doi.org/10.2307/j.ctv2tsxj8h.

Epstein, A.L. (1971). Dispute settlement among the Tolai. *Oceania, 41*(3), 157–170. doi.org/10.1002/j.1834-4461.1971.tb01149.x.

Epstein, A.L., (ed.). (1974). *Contention and dispute: Aspects of law and social control in Melanesia*. The Australian National University Press.

Erlanger, H., Garth, B., Larson, J., Mertz, E., Nourse, V., & Wilkins, D. (2005). Is it time for a new legal realism? *Wisconsin Law Review 2*, 335–363.

Fitzpatrick, P. (1975). A new law for co-operatives. *Annals of Public and Cooperative Economics, 46*(3), 277–287. doi.org/10.1111/j.1467-8292.1975.tb00431.x.

Fitzpatrick, P. (1989). Custom as imperialism. In J.M. Abun-Nasr, U. Spellenberg, & U. Wanitzek (eds), *Law, society and national identity in Africa* (pp. 15–30). Helmut Buske Verlag.

Gluckman, M. (1955). *The judicial process among the Barotse of Northern Rhodesia*. Manchester University Press and Rhodes-Livingstone Institute.

Greenhouse, C.J. (1982). Looking at culture, looking for rules. *Man*, n.s., *17*(1), 58–73. doi.org/10.2307/2802101.

Howley, P. (2005). Rescue mission for village courts: Mediation on non payment of allowances to village courts. *Contemporary PNG Studies: DWU Research Journal, 3*, 47–66.

Human Rights Watch. (2015). *Bashed up: Family violence in Papua New Guinea*. www.hrw.org/report/2015/11/04/bashed/family-violence-papua-new-guinea.

Jolly, M., Stewart, C., & Brewer, C., (eds). (2012). *Engendering violence in Papua New Guinea*. ANU Press. doi.org/10.22459/EVPNG.07.2012.

Klug, H., & Merry, S.E. (2016). Introduction. In H. Klug & S.E. Merry (eds), *The new legal realism: Studying law globally* (pp. 1–9). Cambridge University Press. doi.org/10.1017/CBO9781139683432.002.

Lawrence, P. (1969). The state versus stateless societies in Papua and New Guinea. In B.J. Brown (ed.), *Fashion of law in New Guinea* (pp. 15–37). Butterworths.

Lev, D.S. (1985). Colonial law and the genesis of the Indonesian state. *Indonesia, 40*, 57–74. doi.org/10.2307/3350875.

Lipset, D. (2004). 'The trial': A parody of the law amid the mockery of men in post-colonial Papua New Guinea. *Journal of the Royal Anthropological Institute, 10*(1), 63–89. doi.org/10.1111/j.1467-9655.2004.00180.x.

Llewellyn, K.N., & Hoebel, E.A. (1941). *The Cheyenne way: Conflict and case law in primitive jurisprudence*. University of Oklahoma Press.

Médecins Sans Frontières. (2016). *Return to abuser: Gaps in services and a failure to protect survivors of family and sexual violence in Papua New Guinea*. www.msf.org/papua-new-guinea-new-msf-report-return-abuser-reveals-cycle-abuse-survivors-family-and-sexual.

Merry, S.E. (1990). *Getting justice and getting even: Legal consciousness among working-class Americans*. University of Chicago Press.

Merry, S.E. (1991). Law and colonialism. *Law & Society Review, 25*(4), 889–922. doi.org/10.2307/3053874.

Moore, S.F. (1973). Law and social change: The semi-autonomous social field as an appropriate subject of study. *Law & Society Review, 7*(4), 719–746. doi.org/10.2307/3052967.

Moore, S.F. (1986). *Social facts and fabrications: 'Customary' law on Kilimanjaro, 1880–1980*. Cambridge University Press.

Papua New Guinea. (2013). *Parliamentary debates*, National Parliament, 28 May 2013. (Kerenga Kua, MP). www.parliament.gov.pg/hansard/2013.

Reed, A. (2011). Hope on remand. *Journal of the Royal Anthropological Institute, 17*(3), 527–544. doi.org/10.1111/j.1467-9655.2011.01705.x.

Riles, A. (2016). Is the law hopeful? In H. Miyazaki and R. Swedberg (eds), *The economy of hope* (pp. 126–146). University of Pennsylvania Press. doi.org/10.9783/9780812293500-006.

Rooney, N.M., Forsyth, M., Goa, J., Lawihin, D., & Kuir-Ayius, D. (2022). Thinking incrementally about policy interventions on intimate partner violence in Papua New Guinea: Understanding 'popcorn' and 'blanket'. *Culture, Health & Sexuality,* 1–16. doi.org/10.1080/13691058.2022.2103736.

Schapera, I. (1955). *A handbook of Tswana law and custom*. Frank Cass & Co.

Schwoerer, T. (2018). *Mipela makim gavman*: Unofficial village courts and local perceptions of order in the Eastern Highlands of Papua New Guinea. *Anthropological Forum, 28*(4), 342–358. doi.org/10.1080/00664677.2018.1541786.

Shils, E. (1975). *Center and periphery: Essays in macrosociology*. University of Chicago Press.

Slater, D. (2004). *Geopolitics and the post-colonial: Rethinking North–South relations*. Blackwell. doi.org/10.1002/9780470756218.

Sorcery Act 1971, Papua New Guinea. (1971). www.paclii.org/pg/legis/consol_act/sa1971117/.

Stoler, A.L., & Cooper, F. (1997). Between metropole and colony: Rethinking a research agenda. In F. Cooper & A.L. Stoler (eds), *Tensions of empire: Colonial cultures in a bourgeois world* (pp. 1–56). University of California Press. doi.org/10.1525/california/9780520205406.003.0001.

Strathern, M. (1972). *Official and unofficial courts: Legal assumptions and expectations in a Highlands community* (New Guinea Research Bulletin No. 47). New Guinea Research Unit and The Australian National University.

Strathern, M. (1985). Discovering social control. *Journal of Law and Society, 12*(2), 111–134. doi.org/10.2307/1409963.

Strathern, M. (1992). *After nature: English kinship in the late twentieth century*. Cambridge University Press.

Taussig, M. (1997). *The magic of the state*. Routledge.

Vincent, J. (1989). Contours of change: Agrarian law in colonial Uganda, 1895–1962. In J. Starr & J.F. Collier (eds), *History and power in the study of law: New directions in legal anthropology* (pp. 153–167). Cornell University Press. doi.org/10.7591/9781501723322-009.

Zorn, J.G., & Care, J.C. (2002). Everything old is new again: The Underlying Law Act of Papua New Guinea. *Lawasia Journal, 2002*, 61–97.

Contributors

Dr Tomi Bartole is a researcher at the Slovenian Academy of Sciences and Arts. He is the co-curator of the exhibition 'Green Sky, Blue Grass: Colour Coding Worlds' at the Museum of World Cultures in Frankfurt, Germany.

Dr Melissa Demian is a Senior Lecturer in Social Anthropology at the University of St Andrews, Scotland. She is the author of *In memory of times to come: Ironies of history in Southeastern Papua New Guinea* (2021).

Dr Hiroki Fukagawa is an Associate Professor in the Graduate School of Intercultural Studies at Kobe University, Japan. He is the author of *Ethnography of the social body: Theories of personhood and sociality in New Guinea Highlands* (in Japanese; 2021).

Dr Michael Goddard is an Honorary Senior Research Fellow in the School of Social Sciences at Macquarie University, Australia. He is the author of *Substantial justice: An anthropology of village courts in Papua New Guinea* (2009).

Dr Eve Houghton is a Postdoctoral Researcher at the Royal Veterinary College, London. Her current work explores emergent zoonotic diseases in South Asia as a member of the One Health Poultry Hub.

Dr Fiona Hukula is a Gender Specialist for the Pacific Islands Forum Secretariat in Suva. Prior to this, she was a senior research fellow and program leader for the Papua New Guinea National Research Institute.

Dr Juliane Neuhaus is a Senior Lecturer in Social Anthropology at the University of Zürich, Switzerland. She is the author of *It takes more than a village court: Plural dispute management and Christian morality in rural Papua New Guinea* (2020).