GRASSROOTS LAW IN PAPUA NEW GUINEA

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Melissa Demian
September 2022

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Collapsing the scales of law

Melissa Demian

What can be learned from the extremely common phenomenon of disputes brought to the village courts and even more informal disputing forums of Papua New Guinea that have no discernible or possible resolution? I have long been interested in these types of 'cases' (I deploy for the sake of convenience the legal term for a conflict being adjudicated or mediated although many such conflicts never reach a recognised legal forum) because of what they suggest about the legal consciousness of people in PNG.

Say the village courts of PNG and the myriad quasi-court disputing systems that can also be found across the country are a means of creating a public space for social and even political debate. Many of the kinds of cases that have no resolution, and even no status in law, may instead be regarded as techniques for discussing the most pressing issues of the day for a given community, whether that community is urban or rural. These discussions might range from reminding those present of the appropriate treatment of public and government resources, to considering the eruption of sorcery and witchcraft talk and its social consequences, to debating the nature of marriage in contemporary PNG. These issues, which can range from the intimate to the cosmological, are not ordinarily debated in everyday life—but they are in the village courts and in their related forums. What if, in other words, these forums are not so much about resolving disputes as they are a mode of local-level democracy at work, the creation of a truly public space for debate, however limited in time that space may exist?

I ask this question in order to consider, in this chapter, what the space of 'the local' means in PNG's multifarious forums for disputing and dispute management, especially when these forums make reference to national-level decisions and legislation. To speak of the localism of these forums always refers to other places both close by and far away, and other ways of reaching decisions, for as Strathern once reminded us of calling anything 'local':

> This is a relational epithet, for it points to specificities and thus to types of itself—you cannot imagine something local alone: it summons a field of other 'locals' of which any one must be only a part. (Strathern, 1995, p. 167)

And if we are to be serious about 'local-level' dispute management systems delivering justice, and are not simply paying lip-service to people finding their own reasons to take ownership of justice delivery systems that have been imposed or invented by central governments and their colonial precursors, then we must also ask how people find ways of collapsing the scale of such systems in order to encompass the authority of the centre within the various peripheries in which they are dwelling. In the case of PNG, this can mean rural contexts but also those of urban and peri-urban settlements, heterogeneous communities that have grown up around extractive industries such as mining and oil palm, and any other spaces where the relationship to the perceived sources of political and legal power is regarded as tenuous or remote.

If social relationships—which may include relationships with ancestral or spiritual interests—have had an injury done to them in many of these 'local' cases, and are the relationships whose moral state must be rectified (Demian, 2016; Robbins, 2009), the space of the local and the public in which the state of relationships is debated can indeed occur anywhere. Localism may refer to people conducting their affairs right here and right now, but there are always other people and other places in mind when they do so. Consider that in many parts of PNG the state's felt presence is very thin on the ground. And, as the informality of local systems such as the village court illustrates, it is sometimes hard to tell where a court ends and a mediation begins. There is not a great deal of 'law' on display at all times, but there is not necessarily a great deal of 'custom' either, and the latter is another category officially enshrined at the level of the state (for example, in the Constitution) in a way that does not always make sense at the local level, because the moral status of custom can be quite contentious.

Instead, people often attempt to serve the cause of relational justice by keeping cases *away* from processes of formal law. For example, following a 2015 village court case in Milne Bay Province about the destruction of a water pipeline, the primary magistrate who heard the case told me his aim had been to keep the young man on trial from going to the district court in Alotau. The lad was uneducated and wouldn't have stood a chance in a formal legal setting in the provincial capital, the magistrate told me. If the district court sent him to jail, his life would be derailed permanently. Better to keep him in the village, with moral correction for his misdeeds provided by the village court magistrates, by the pastor and by his own family. The court's decision in this case, to levy a fine and community service, self-consciously contained its own scale of action. Although the pipeline in question was strictly speaking government property, and therefore an interest of the state, the youthful offender's community decided in a public setting that he should be kept out of the system of state law.

The ways decisions of this kind are reached have their own, particular aesthetic. It has been my experience in observing village court cases in rural Milne Bay that, for instance, everyone present is entitled to have their say in the case at hand, multiple times if necessary. In particularly thorny cases involving several disputing families, such as those about adultery or land (although village courts are not permitted to hear land disputes, many putatively non-land cases have land as an underlying issue), magistrates often appear not to be mediating so much as exhausting their disputants into reaching an agreement with each other. These cases are also an opportunity for public oration on the topic under dispute, whereupon people sometimes joke that 'it's a village meeting now'—but this may in fact be an important function of the village court, rather than a distraction from its 'true' purpose. After 20 years of research on village courts in PNG, I have often suspected that the outcome of the case matters less than the performance of grievance in the public theatre provided by the court.

This, too, matters for any future considerations of what village courts are for. If their 'localness' can be defined by the way that they give ordinary people a platform from which to address each other, and an appropriate forum for the exercise of dramatic emotion in order to make the effects of others' actions known to the public of the court, there are implications here for how the courts are supposed to work. Sometimes they do their job best when they are not acting in the capacity of a court at all, or when other public forums start to take on the theatre of grievance aesthetic found in the village court, as actual village meetings to deal with public problems sometimes

do. I have documented such theatrical meetings elsewhere (Demian, 2021, pp. 181–184), but wish to emphasise here that I characterise them as theatre not because people are performing sentiments they don't actually feel—they absolutely do feel them—but rather, because the forum of the court or the public meeting both legitimises and contains such sentiments and their dramatic expression, in order to reach a resolution for them.

The central theme of this chapter is to demonstrate the capacity of people in PNG to encompass the scale of the state within these intimate spaces at strategic moments and to consider some of the ways in which this can happen. Of importance for my purposes is to give attention to the means by which the presumed perspective of the state and its laws is only integrated or encompassed into intimate, 'local' spaces at key moments when particular actors are regarded as having brought it into these spaces.

The scales of law

In 2017 at a workshop in Port Moresby, the Director of the Office of Urbanisation had just finished speaking on what he saw as the primary challenges facing the growth of towns and cities in a country that, prior to the colonial era, had never had towns or cities. He touched on a number of familiar themes for urban PNG, such as the lack of sufficient and affordable formal housing and the lack of alienated land on which such housing could be built, given that most land in the country is still held under customary tenure. He concluded by saying he would like the government to enact new legislation, say, a National Urbanisation Management Act, to solve some of the problems he identified.

During the discussion following his presentation, a member of the audience at the workshop responded, 'There is an Act already.' She went on to mention the *Physical Planning Act 1989* and the *Land Act 1996*, both of which had the potential to be used by a creative local-level government council to institute urban planning offices of a kind PNG has never really had. 'The Act is there,' the workshop attendee said, 'it just has to be implemented.'

This interaction between a public servant and one of his constituents might have seemed a fairly pedestrian one. Indeed, one can imagine this sort of hair-splitting over legislation and its uses is fairly common among actors in the sphere of public policy in almost any national capital in the world. But it caught my attention because it was not the first time I had heard

this type of conversation, nor would it be the last on the particular research project that brought me to that workshop. The project was not about land use per se, but about domestic violence in PNG's urban environments. At the time I was two months into the project and already intrigued by a phenomenon that had cropped up repeatedly when my co-researcher Zuabe Tinning and I met with women's groups or NGOs working to alleviate the effects of domestic violence. The recurring phenomenon was this: either one of our interlocutors or Zuabe would bring up two pieces of recent legislation, the *Lukautim Pikinini Act 2009* and the *Family Protection Act 2013*. These two Acts, invariably cited together, are aimed at child abuse or neglect and at domestic violence, respectively. I have long been interested in how the Parliament of PNG enacts 'social' legislation of this kind as an outward-looking exercise. That is, social legislation sometimes appears to emerge from a sense of national relationship to an international ecumene that periodically assesses PNG's ability to meet social indicators such as the Millennium Development Goals, which as Merry (2016, p. 16) has noted, form part of an 'ecology of indicators' that purport to measure 'progress' towards both overlapping and competing social and economic aims. There are both political and economic consequences to this exercise in social audit and scale-making. So parliament, with the assistance and advice of the Constitutional and Law Reform Commission, has spent over a decade enacting legislation that is aimed at addressing some of the social issues for which the country is routinely criticised by international development organisations and international media.

My aim in this chapter is not to assess the various reports that have come out in recent years, detailing the difficulty of being female or a child in PNG. Of course there are grave problems with the rapidly changing nature of family life that leave people in a state of uncertainty about their obligations to each other, but I do not see a need to add to the already significant noise being made about this issue by the international development sector. I am also concerned about presenting too cynical a view of PNG's parliament or suggesting that it only enacts social legislation in response to international pressure. That also is not my aim. Rather, one of the things that intrigued me on the recent project was the way that the presumed intentions of the PNG government are read by ordinary Papua New Guineans off the legislation it enacts. And it is not only educated, middle-class Papua New Guineans who do this; anyone with even a passing familiarity with changes in the country's legal landscape is interested in discussing how these changes might affect their daily lives.

There is more widespread familiarity with that landscape than one might expect. For example, in 2013 the *Sorcery Act 1971*, a piece of colonial legislation, was repealed. This was a somewhat fraught move, as it came in the wake of a series of gruesome and highly publicised vigilante executions stemming from accusations of sorcery or witchcraft. The ostensible reason for the repeal of the Sorcery Act was to disallow fear of sorcery as a defence in criminal law. The repeal of the Sorcery Act also went hand-in-hand with public assertions by then prime minister Peter O'Neill that capital punishment for murder would be back on the table as a sentencing option. This was largely a rhetorical move; PNG has not executed anyone and is unlikely to do so for a host of reasons both micro- and macropolitical in nature. But this pair of announcements at the level of government also generated a certain amount of anxiety among Papua New Guineans more widely: was the government now on the side of the witches and sorcerers? If not, why else would it remove the only legal recourse available to those who, in the view of some people, were defending their families and communities against malevolent beings and their powers?

I will return to the repeal of the Sorcery Act and its implications later in this chapter; for the moment my focus is on how Papua New Guineans bring Acts of parliament into their discussions of highly localised, even intimate issues of conflict. During the research I was pursuing in 2017, the Family Protection Act was the one discussed the most in the forums through which I was circulating. These included workshops of the kind described above, meetings with NGOs and with more informal modes of organisation at the community level such as church women's fellowships, neighbourhood associations and even looser groupings of women around efficacious personalities such as the village court magistrate or the *komiti*, a colonial-era role that, in its myriad postcolonial usages, often means a person acting as bailiff-cum-community-mediator for the landowners of an urban settlement (Forsyth et al., 2020). Persons who are efficacious enough to hold one such role often hold multiple ones, including more nebulous titles such as 'human rights defender' or 'chair of the women's association', where the women's association is often just themselves and a personal cohort of women from their settlement who may be co-ethnics, co-religionists or a mix of these and other forms of relationship-making in PNG's cities and towns (Hukula, 2017).

These various women's groups were keen to hear more about the Family Protection Act when Zuabe or a meeting participant from the NGO sector mentioned it. In particular, they were intrigued about the Act's provision

that categorises intimate partner violence as a criminal offence, and that 'violence in marriage is not a private matter, but a social problem of public concern' (*Family Protection Act 2013*, section 4(c)). In some of our meetings, women told us it was the first time they had heard domestic violence was illegal, or had heard it definitively, that is, from someone presumed to be speaking from a position of access to an authoritative source of knowledge. This was despite the fact that the Constitutional and Law Reform Commission, the Family and Sexual Violence Action Committee and other national bodies had produced pamphlets on this very topic for years—preceding even the passage of the Act. But the pamphlets depended on a high degree of literacy in English, which many settlement women do not possess. Hearing information about laws and other policies directly from another person is often a far more effective method of dissemination in PNG than through a printed medium. But it is also a method that is highly contingent on particular actors coming together at particular moments and in the urban space: for example, an NGO worker accompanying an anthropologist on her research in order to 'take the temperature' of the local community's knowledge of available legal and medical resources. So while an authoritative person speaking about recent legislation has more impact, this is also a mode of dissemination that is ad hoc at best, and very unreliable at worst. Some women said that if I hadn't brought Zuabe or other support service representatives with me, they would never have encountered any of this information.

The refrain of knowledge revealed and brought into particular spaces by an authoritative source is one that came up repeatedly over the course of that project. A nurse at Port Moresby General Hospital, who runs its Family Support Centre for survivors of domestic violence, described the initiation of the centres in various urban hospitals around PNG in the following terms: 'MSF brought us to light and we learned it was wrong' (where 'it' refers to domestic violence). MSF of course is Médecins Sans Frontières, which took over the Family Support Centre program from Soroptimist International in 2007 and supported it until funding was withdrawn in 2013 and the program was passed on again, to the United Nations Children's Fund (UNICEF) and the PNG National Department of Health. The nurse's use of 'light' as a metaphor for revealed knowledge, especially moral knowledge, replicates almost exactly the use of this metaphor by the community in rural PNG with whom I had worked for 20 years, when they speak of the knowledge they gained from showing hospitality to missionaries towards the end of the nineteenth century. This nurse is now able to pass on what

she learned in the course of her training by MSF and re-embody the moral alignment she acquired from MSF along with training in providing medical and psychiatric triage to the women who come to her clinic.

The nurse at the Family Support Centre can simultaneously 'stand for' the legislation whose provisions she is keen to make known to other women and the new moral order it appears to offer the whole of the population for whom she cares as well as the relational parameters of care itself (see also Street, 2014). It is worth noting that although most of our work was not with the men in these communities, men of course also spoke at the various meetings and mediations we attended, and their discussions of the new legislation ranged from the defensive to the analytical—often in terms of abstract categories of citizenship. As one village court magistrate told us gravely, 'I try to tell men that these days, the law of women is in the ascendant' (*lo blong ol meri i kam antap*). He went on to explain that he meant men had to be more vigilant about monitoring their own behaviour, because the law was on the women's side. There was also an implication in his words and tone that the law was no longer on the side of men, which Taylor (2008) has also documented for 'rights talk' in Vanuatu, and how the apparent gendering of rights as feminine raises questions for some ni-Vanuatu men about whether they have lost certain rights and entitlements in the process. But whether or not men and women interpret news of recent legislation as a redistribution of rights, the common refrain was that the legislation represented a shift, of at least a provisional kind, in the moral order. Even in our individual interviews with domestic violence survivors, some women appealed to Zuabe and myself as potential bearers of news about this shift. 'Is it all right for him to do that?' was a question we received on multiple occasions, and in various forms. In other words, our very presence as researchers was taken as evidence by some – particularly by the efficacious personalities – of the moral landscape of marriage and cohabitation having changed sufficiently that we showed up in their homes, churches and neighbourhoods, specifically in order to tell them about it.

Encompassing the metropole

Why should any of this matter? Why should Papua New Guinean women, or citizens categorised in any other way, see a particular value in being told by particular actors which legislation has been passed in recent years, and want furthermore to talk about it with those actors and with each other?

What kind of legal consciousness is being enacted when conversation at a village court in Milne Bay or a meeting with researchers in Port Moresby turns on questions of how recent legislation affects intimate relationships and how people are to resolve problems in those relationships?

The connections between levels of government, and between organisations that may have some connection to government bodies, do seem to be an object of interest for many people in contemporary PNG. One of the things that can be done with the interpretation of these relationships is to strategically remove relationships from the picture—sometimes literally. There is a diagram on the wall of an office in the Ahi Local-Level Government Council building in Lae (Plate 6.1). Ahi is the administrative district for Lae's closest suburban settlements. The diagram shows the putatively hierarchical relationship between the Ahi Council of Women and the National Council of Women, with some steps at the provincial and regional levels in between. But note that all other provinces, regions and local government councils have been removed to show a direct line of communication between Ahi and the national council.

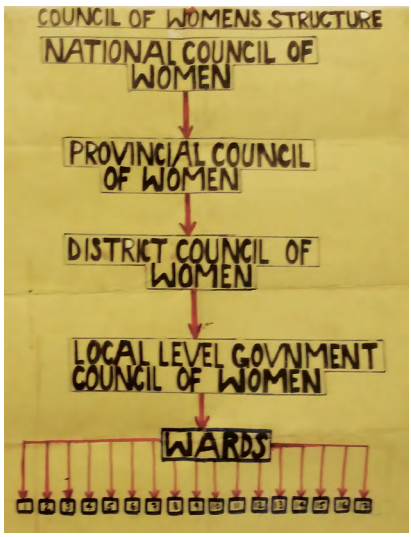

Plate 6.1. Ahi Council of Women diagram, Lae.

Source: Photograph by the author.

During my field trips to Lae in 2016, 2017 and 2019 I only ever met three people who identified themselves as members of the Ahi Council of Women, and they were its president, treasurer and secretary. All other members of this 'council' seemed provisional at best, imaginary at worst. I say 'at worst', but the aspirational nature of this entity can also be regarded as a creative act of collapsing the scale of the national into the local. The Ahi Council of Women has had no contact of which I am aware with any national or provincial body; the president of the Ahi council said that she saw a poster mentioning the national council in Lae and thought she ought to create a local branch of it. She and her co-councillors

mustered the contacts they had through their multiple roles (as 'human rights defenders' and so on) to get an office in the Local-Level Government Council building, where they hold occasional meetings with women they are trying to help and attempt to extract funding for further activities from the local or district governments, since none is forthcoming from the National Council of Women.

I use this example of an attempt at bureaucratic scale collapse and the strategic removal of complicating relationships to ask whether a similar move is being made when my interlocutors in PNG spoke of knowledge about recent legislation as the primary mechanism for effecting changes in people's behaviour towards each other, or even as a form of social engineering. To be clear: the village courts are doing their usual job of interpreting the laws that are handed down to them. But it is the notion that *everyone* ought to be engaged in this activity that is of interest here. A term familiar to anyone who has worked in the public policy sphere in PNG—and possibly other places—is 'awareness', particularly the construction 'making an awareness' in the English usage of PNG. 'Making an awareness' was the mechanism by which many of my friends and research participants envisioned the transmission of recent Acts of parliament to the general populace. It couldn't be done with pamphlets, of course; it had to be done by means of face-to-face presentations and workshops through which people's 'mindset' (another inescapable item of NGO and church self-help language) would be transformed and they would then change their behaviour accordingly. 'Making an awareness' is itself a social form through which social relationships are imagined to adapt themselves to a moral order that has been reconfigured at the level of the country's parliament.

But does a shift in 'levels' actually concretise the abstracted kinds of persons found in, say, the Family Protection Act? I am mindful of Wastell's (2001) exhortation, when considering the law as a social system, not to presume that the migration of a legal object—such as an Act of Parliament—'between scales' will alter the nature or effects of that legal object. In Wastell's own words, echoing those from Strathern at the beginning of this chapter:

> Nothing is particularly 'local' unless it is measured against something 'bigger', less 'local' than itself—and here so many prejudices flee from analytical view, 'local' so often eliding notions of that which is smaller, more particular, concrete rather than abstract, substantial rather than ideational. The scale global:local depends upon a certain presumed but impossible metaposition which tells us that local really is more specific and atomistic than the impersonal

> and all-encompassing global. The scale insists that we accept each manifestation of a local context as a constituent element of a global whole, each local perspective as a subjective position in an objective reality. (2001, p. 186)

Here, Wastell reminds us that framing local relationships in terms of those 'above' them on a scale generates a whole other cascade of assumptions about the social effects of migration between levels of the scale one has in mind. For her, the scale is global to local; for me, it is national to local, but with domestic violence legislation such as the Family Protection Act, there is little question that Papua New Guinean parliamentarians had the global in mind when they enacted this law. It was a moment of participation in what Lazarus-Black (2001) has called the 'pragmatics of inclusion', or a deliberate scaling of national law both 'out' into an international NGO-scape that has in the past decade done a great deal of work to recast human rights as the rights of women and girls and 'in' to inoculate or infuse the PNG legal landscape with this new language of rights. But where Lazarus-Black found that the introduction of comparable domestic violence legislation in Trinidad over 30 years ago appeared to offer women their first opportunity to act on domestic violence in particular ways now sanctioned by the law, at present, this legislation appears to offer Papua New Guineans the opportunity to talk about domestic violence in particular ways. Some village court magistrates in Lae, for example, have spoken of being harassed by police for attempting to remove a woman from the household she shared with a violent husband, rather than the police doing anything about the violence itself. So there is not yet a consensus even among actors in the legal landscape about what the new legislation may or may not oblige them to do. This is itself a kind of pragmatics of inclusion, where citizens can make strategic decisions about when a set of actions is even included in the rubric of the new laws.

But the adoption of 'the Act' as a potential tool for social engineering by some of my interlocutors does complicate some of the assumptions about what happens when any kind of scale is presumed to begin, such that legal objects might 'move' along that scale. Courts interpret laws made by parliaments and, in common law systems like that of PNG, they can even shift the nature and effects of a statute through the building of a body of case law and the creative application of precedent. How much more 'local' or 'concrete' does the law become by means of this process, though? And how much more local or concrete, again, does it become when nonlegal actors pick up a legal object and run with it, as it were?

Acts of parliament affect people personally but are made remotely in a fragmented metropole such as Port Moresby where one does not need to travel very far from the government district of Waigani to meet people whose lives might as well be happening on the other side of the country from the offices and chambers where laws are made. The sense of remoteness here is not necessarily spatial, in other words. In the words of Harms et al. (2014, p. 364), remoteness is 'not only determined by topography, but also topology, that is the level of connectedness experienced in cultural vocabulary'. The remoteness of a lawmaking body is precisely what makes it compelling in everyday discourse, and that discourse in turn makes use of the 'distance' of parliament from ordinary life precisely in order to lend discussions of Acts and their effects velocity and force.

I am arguing, in other words, that people would not wish to use Acts of parliament as tools for social experimentation and engineering if they were not considered to be remote in origin, with the creative work of connecting an Act to new social forms being taken up by ordinary citizens. The vernacularisation of laws such as the Family Protection Act *doesn't mean they become local*; precisely the opposite. Transforming a law understood to originate from 'far away' into something that is both intelligible and able to affect one's own life means that that law retains indices of remoteness, but its effectiveness is connected to the everyday practices in which people to play with the idea of distance as something that can either legitimise a legal instrument or actor or question the very grounds for legitimacy on which some people may act.

Take, for example, the elusive individual known as the 'bush lawyer'—an illegitimate actor in the eyes of legal professionals who is imagined to rely for his business on people whose remoteness from the legal metropole makes them unable to distinguish a real lawyer from a false one. During a 2012–15 team research project on village courts that I co-convened, only one project member documented the activities of persons who might fit the descriptions commonly offered for this category of person. I will not claim that bush lawyers do not exist, only that they remain known largely through the talk about them that circulates among legal professionals and police. They share this quality with sorcerers in PNG—also known largely through talk—and I am interested in extending the analogy to see what it might suggest about the anxieties manifested in the figure of the bush lawyer. The characteristics of the bush lawyer, insofar as I have been told about them, are as follows. He is not actually a lawyer (but is always a man). He may have little in the way of formal education, but possesses sufficient literacy, innate intelligence and charisma or confidence to convince other people he

knows what he is talking about when it comes to legal matters, especially regarding the preparation of documents for presentation as evidence in the village court and even the district court. I was told by legal colleagues back in 2008 that I could find such persons propping up the bar at the Airways Hotel in Port Moresby, offering their services to the gullible and desperate. But the researcher on our project who had been working on village courts in Moresby found no sign of this character; instead, the bush lawyer seems to be appearing in rural areas or smaller provincial towns. Like the sorcerer, he is never quite where you think he is.

The sorcerer, too, is known to hire himself out to clients bent on revenge or the exercising of petty jealousies; both the sorcerer and the bush lawyer are imagined to act out of uncontrollable greed. Just as the law practised by the bush lawyer 'looks like' real law but isn't because the bush lawyer is not a real lawyer, the solution offered by the sorcerer isn't a real solution because the sorcerer is not a proper human being. In both cases, the generation of future trouble rather than any resolution of trouble in the present is anticipated to be the inevitable outcome. This is what I mean when I say the figure of the bush lawyer inspires anxiety. The counterfeit law of the bush lawyer, like the counterfeit humanity of the sorcerer, is a case study in negative mimesis. It is imitation with the destructive aim of inverting the appropriate order of things, rather than the productive and legitimate work of encompassing actual laws that emanate from actual legal sources within the ambit of everyday life.

Irregularities of this kind create category problems and further problems of scale. Spatially, sorcery is felt to happen at the peripheries—not just of the metropole, but also of certain modes of legal vision. The ideal of law is a regularised, not to say flat, topography and a means of maintaining standards from the centre outwards. Peripheral activities such as bush lawyering, sorcery and the vigilante actions against sorcery to which people sometimes resort all seem to indicate that the topography of law in PNG is far more uneven than any metropolitan perspective is currently willing to grant it. It is instead 'a scrunched-up "shadow map" of the world' (Saxer & Andersson, 2019, p. 141) upon which the flows and stoppages of social forms shaped by law are seen rarely to follow anything as orderly a path as they are imagined to do from the standpoint of the metropole. Arguably, too, the very ability of Papua New Guineans who are not legal professionals to imagine themselves or others as bearers of legal knowledge is itself the 'local effect' of the law. It is in these comparative moments that one is obliged to ask, with Wastell, how scale enters into an ethnographic understanding of lawmaking and law-using in the first place.

Plate 6.2. Saying sorry at the end of a *komiti* mediation between families, Lae.

Source: Photograph by the author.

Plate 6.2 shows two families in an effort of resolving a series of ongoing difficulties (*hevi*) between a young husband and his even younger wife, in a settlement in the suburban fringe of Lae. The problems encountered by this couple were multiple in nature and only at various points in their relationship—at least as recounted in the mediation conducted by their block *komiti*, which concluded in this public reconciliation—could they be described as 'domestic violence' as it is commonly understood in the law or the NGO-sphere. Nonetheless, the recent legislation was duly trotted out during the proceedings, in this case by the village court magistrate, who was not overseeing the mediation because it was not being held under the auspices of the court, but who was invited to participate as an informed observer. Both pieces of legislation—the Lukautim Pikinini Act and the Family Protection Act—were offered up as ingredients in the recipe of moral instruction that this youthful couple received over the course of the mediation to induce them to reflect more seriously on whatever they thought they were doing when they began cohabiting, having children and referring to each other as husband or wife.

On the one hand, the two Acts were indeed 'localised' in the mediation as they became components in the mix of moral, spiritual and legal sources of authority that could be marshalled to instruct the couple in how to behave like properly married adults. But apart from that enrolment of the Acts into the mix, not much about the Acts themselves was changed in terms of the abstractions they encode. The types of family members named in the Family Protection Act as being responsible for domestic violence, for example, does not include common perpetrators identified in our research such as co-wives or brothers-in-law and other *tambus*. Even the level of detail available in the Act is lost when it becomes a rubric for talking simply about husbands and wives or, worse, 'men and women'—abstract categories of persons that seldom have any real purchase on how Papua New Guineans might actually imagine a relationship in a state of conflict to be configured.

Gershon (2011) has reminded us that lawmaking is an attempt by legislatures to make differences within a citizenry intelligible, orderly and governable. She writes:

> In legislatures, differences are explicitly at stake in the construction of laws. From a legislative perspective, pluralism is imagined in terms of interest groups or competing agendas between lawmakers. Thus, laws are proleptic projects for legislators, produced out of agonistic discussions and through practices ideally transparent to a nation's citizenry … [but] the application of law to context is

> itself a process in which the 'law' has to stand still for a moment, to be thought of as more monolithic. For court officials, laws are both acontextual and applicable to context, linked to particular circumstances through competing interpretations, and ideally an instantiation of an objective justice. (Gershon 2011, p. 167)

In this passage, Gershon is applying the issue of how legislatures make laws to how courts apply them. The differences being aggregated under the rubric of the law for a legislature are then applied by courts to the manifestations of those differences as they appear to them in a given case—the form of 'the case' is how they make the more abstract differences represented in a statute concrete in the manifestation of the disputing parties before them. I am interested here in how these abstract differences as represented in, say, parliamentary Acts, seem to escape the legal arena of the courts entirely and are taken up by ordinary citizens as objects of interpretation and 'agonistic discussions' of the kind Gershon finds among legislators. When I say 'abstract differences', I mean the cataloguing of persons in particular ways, such as between parents and children in the Lukautim Pikinini Act, or between husbands and wives in the Family Protection Act. Some of these categories can become even more abstracted once they become objects of discussion by people trying to work out what these Acts could mean for their everyday lives: husbands and wives, for example, become transmuted into the even vaguer men and women in urban Papua New Guinea, where the contracting of a marriage has become so informal and contingent in nature that cohabitation alone is now enough to claim conjugal rights and obligations in relation to another person (Goddard, 2010). Remaining to be seen as discussion of these Acts moves further into the Papua New Guinean public sphere is whether their non-mediation through the courts translates to the dramatic jumping of scales that it currently appears to be, or else to an obviation of any attempt to describe something identifiable as scales of law at all.

The 'local' again: Sorcery on trial in Milne Bay

In the final part of this chapter I return to the phenomenon that most commonly eludes any kind of scale-making project in PNG legal consciousness, because it has proven almost impossible to legislate, to contain or to control in any way within the lawmaking project. I refer of

course to sorcery, and the way that this discourse continues to haunt the attempts of Papua New Guineans to manage it in their conflicts with one another and negotiate those conflicts at the local level.

For this purpose I leave behind my recent work in Lae and Port Moresby and turn to a compiled or normative account of how village courts on the Suau Coast of Milne Bay Province deal with the most difficult type of cases brought to them. The Suau-speaking region of Milne Bay was where I conducted fieldwork on and off for nearly 20 years, and that work continues to inform how I think not only about the way law has become vernacularised in PNG, but also about the way sorcery and village courts may be seen as versions of each other. When one is brought into the presence of the other, village court magistrates must take on an analogous perspective to that of the accused sorcerer and act as though they can perceive the state of relationships that are hidden from view. This is both what Suau sorcerers are understood to do when they use invisible forces to cause harm and what magistrates do when they elicit testimony from those attending their court that reveals not only the current state of relationships, but also their deep history.

Both the magistrates I have interviewed and some of the people involved in sorcery cases attest to their difficulty—indeed they seem to belong to an entirely different category from the normal round of adultery, damage to gardens or houses, and land boundary cases that are the village court's normal stock in trade. Category problems have been a recurring theme in this chapter and the type of case I discuss now also stands for category problems in the everyday lives of many Papua New Guineans, as well as for the law itself. These types of cases present a challenge to the very notion of a legal *system*—or rather, they offer possibilities for thinking about such a system 'in terms of communication and its binds [rather] than with interpreting systems in terms of functions and their failures' (Gershon, 2005, p. 100).

Sorcery cases on the Suau Coast normally follow on from at least one death and often more than one if they have occurred within the same matrilineage. They will proceed for many hours; magistrates reported to me cases that had gone on for a day or more without interruption. Emotions run high, so magistrates and peace officers must work hard to keep matters from getting out of hand. The accused person will invariably deny having caused these deaths. He—it is always he, since Suau witches can cause mischief of various kinds but do not kill people directly, and Suau sorcerers are by definition men—must be worn down with argumentation and any evidence that

the accusers may be able to provide: marks on the body of their deceased relative, for example, or the sight or sound of an animal out of place, such as a diurnal bird calling in the middle of the night or a snake or crocodile appearing outside its normal habitat. Other known specialists in the magical technique in question may be brought in as 'expert witnesses' to assess the evidence of the accusers and to interrogate the accused. A forensic history (cf. Munn, 1990) must be built up in which the presumed grievance of the accused sorcerer or his lineage against the lineage of the dead person or persons is brought to light. The magistrates to whom I have spoken note their own worries that the decisions they make at the conclusion of such cases, in a physically and mentally exhausted state, may not bring about the reconciliation that is their aim and indeed may rebound on themselves in the future, with terrible consequences. At the *haus krai* for a woman my own age that I attended on a visit to the Suau Coast in 2015, other mourners noted pointedly to me that this was the third death in the family of the local village court chairman. Of course there could be no doubt as to what had caused these deaths; only the identity of the perpetrator was in question.

I would now like to step back from this sad scene and make a few fairly mundane remarks about the political and legal environment in which village courts such as the ones I have just described find themselves. As noted earlier in this chapter, in 2013 PNG repealed its Sorcery Act to both domestic and international acclaim (Siegel, 2013). Members of the legal profession in Port Moresby had already reported to me several years before the repeal of the Act that they felt it was no longer fit for purpose, as it appeared to make available a defence in criminal cases involving sorcery-related violence. Notwithstanding such a defence has almost never succeeded in court (Demian, 2011), the perception that it could potentially be used to exonerate murders was heightened throughout the country in the wake of several high-profile and gruesome killings related to sorcery accusations. Then Prime Minister O'Neill moved swiftly to have the Act repealed in parliament, along with introducing draconian penal measures such as the reinstatement of the death penalty. Human rights bodies such as Amnesty International were pulled in two directions and unable to mount a consistent response; they applauded the repeal of the Act and in the same breath denounced the return of capital punishment as a sentencing option (Amnesty International, 2013). It was a perfect illustration of how many international NGOs and donor agencies struggle to engage in a coherent fashion with PNG politics, which seem half of the time to be in accordance with the particular set of liberal humanistic values that these agencies promote

and the other half of the time to be pointed in a direction that they cannot countenance. The religiously motivated destruction of traditional carvings in PNG's Parliament House was another example of this phenomenon, coming as it did directly on the heels of the repeal of the Sorcery Act and a national conversation about how to eradicate sorcery-related violence by means of eradicating sorcery itself (Santos da Costa, 2021; Schram, 2014). The debates about the destruction of the carvings, too, were dealing with categorical peripheries—a problem encountered by village courts when they confront sorcery cases.

However timely the repeal of the Act may have felt to some metropolitans in the legal professions, in practical terms this event was largely symbolic. Cases involving sorcery accusations rarely make it as far 'up' the scale of PNG's legal hierarchy as the national courts, where the repeal of this piece of legislation might actually be felt in terms of constraining the options available to defendants who have acted out of fear of sorcery. The majority of sorcery cases, instead, occur at the 'local' level of the village courts, particularly those in rural areas where concerns about sorcery are strongest, and indeed can be a matter of nearly daily conversation. For these courts, the repeal of the Sorcery Act has been functionally irrelevant. This is not, as I have already discussed, due to a lack of knowledge about Acts of parliament, but is instead due to a deep pragmatism on the part of magistrates combined with their obligations to the moral state of local relationships and their resolution, where 'local' can mean anywhere from a rural village to an urban settlement (Hukula, 2019).

There is also some evidence that even when rural people are aware of the repeal of the Act, this can be interpreted as evidence of indifference or even hostility on the part of Port Moresby elites to their concerns. The danger here is that people may move their sorcery-related conflicts out of the village courts entirely or strike them from the court records, for which there is ample evidence in the literature already (Goddard, 1998). In such instances, the risk of sorcery accusations escalating into violent conflict is compounded.

Violence stemming from sorcery accusations is rare in Milne Bay, although not unheard of. I make no claims to expertise on its various and appalling manifestations elsewhere, due to my primary research history in a province of PNG where sorcery is treated more as a social problem to be resolved than as a spiritual or existential threat to be confronted through the destruction of individual lives. But because I am interested in the legal scale of sorcery for the purposes of this chapter, I have paid attention to

work on parts of the country where violence can be an outcome of sorcery narratives. It is worth mentioning briefly a frequent 'elephant in the room' or backgrounded feature in discussions about sorcery-related violence, which is that it appears consistently in communities where evangelical and neo-Pentecostal churches predominate rather than the older Christian denominations found throughout PNG. Some of the newer Pentecostal churches with connections to megachurches and their associated broadcast media empires based in Australia and the United States preach a doctrine of cosmological warfare against Satanic powers thought to be literally at work in the world and vigilance against these powers as a component of the embodied practice demanded of believers (Andersen, 2017; Coleman, 2020; Jorgensen, 2005). In PNG this set of ideas is sometimes taken up by groups of young men who translate the call for spiritual vigilance in their churches into actual vigilantism, as a means of seeking local renown and of speaking back to a state regarded as detached from or even hostile to the issues of pressing concern to themselves (Abrahams, 2000). Abrahams characterises vigilantism as a 'frontier phenomenon' (2000, p. 113), to indicate the way it tends to occur at social margins that can be geographical, economic or political in nature—again, no frontier is merely topographic in nature. Under conditions of perceived state withdrawal, and especially the seeming withdrawal of interest in sorcery signalled by the repeal of the Sorcery Act, an affective frontier emerges in which vigilante action against people accused of sorcery or witchcraft can be seen to flourish.

It does not flourish in Milne Bay, however, where sorcery cases instead continue to be brought to the village court, in the absence of any jurisdictional sanction for this to occur. The magistrates there have a job to do and, as one Suau magistrate insisted to me, 'We are the first court'—that is, the court where problems are taken first in order to prevent them from becoming even bigger problems. Sorcery is the biggest problem of all, to be handled by people who know properly about it rather than distant magistrates and judges in the provincial or national capital who may have no appreciation of how the sorcery of the Suau region works, or of how familial histories and futures are at stake in sorcery cases. To call the village court the 'first court' also inverts the normative hierarchy of PNG's courts, with the national court at the top, the district courts in the middle and the village courts at the bottom. As with other obviations of hierarchy, such as a local-level Council of Women that claims a direct relationship to the National Council of Women, placing the village court 'first' asserts the primacy of the local, especially when dealing with issues as intractable as sorcery.

In the examples I have offered here, the local is used to assess laws being made and unmade in the metropole of Port Moresby, and also to assess the relationship of 'local' people to that metropole and the ways in which it disseminates knowledge of what the laws are, what they are meant to do and to whose benefit they may appear and disappear from the legal landscape. These assessments can also be regarded as playing with scale in such a way that people distanced from the metropole, dwelling on physical or informational peripheries, can bring themselves back to the centre.

In order for a law to effect social change in this way, it has to remain remote in nature. If it becomes truly 'local'—that is, if it is seen to originate with a particular place and with the people using it—this would cause it to lose any power to have an effect on their lives. As a national court judge noted to me in 2008, the 'independence' of the common law and post-independence statutes enacted by parliament was what potentially made it appealing to many people in PNG, because it was not linked to any particular ethnic or regional group in the country (Demian, 2011, p. 66). 'It has a source', he said, and went on to explain that precisely because its source lay either with the formalities of parliamentary lawmaking or with the common law principles inherited from the United Kingdom, it was immune to manipulation by any particular group of interests within PNG. While this may seem like a piece of standard rhetoric about the impartiality of a functioning legal system, everything I have noted in this chapter suggests that this judge really did have his finger on what his fellow Papua New Guineans find valuable or interesting in laws such as Acts of parliament. Laws that are seen to come from elsewhere, from another scale of activity and experience, offer the beguiling prospect that one could, with enough imagination, make a conceptual jump to that other scale of experience in order to evaluate one's own actions as well as those of kin and other relations. It is critical that these laws come from somewhere identifiable, unlike the actions of sorcerers, bush lawyers and similar figures of illegitimacy who occupy an upside-down world of activities that stem from no place other than their own avarice. But if the somewhere from which national laws originate is deemed *both* part of the world that ordinary people inhabit *and* also sufficiently remote from the immediate cares and obligations of everyday life, the very foreignness of their origin is precisely what allows people to translate these laws into terms that infuse the everyday with new possibilities.

References

Abrahams, R. (2000). Vigilantism, state jurisdiction and community morality: Control of crime and 'undesirable' behaviour when the state 'fails'. In I. Pardo (ed.), *Morals of legitimacy: Between agency and the system* (pp. 107–126). Berghahn Books. doi.org/10.2307/j.ctv27tctfr.8.

Amnesty International. (2013, 28 May). Papua New Guinea repeals Sorcery Act while moving closer to executions. www.amnesty.org/en/latest/news/2013/05/papua-new-guinea-repeals-sorcery-act-while-moving-closer-executions/.

Andersen, B. (2017). Learning to believe in Papua New Guinea. In K. Rio, M. MacCarthy, & R. Blanes (eds), *Pentecostalism and witchcraft: Spiritual warfare in Africa and Melanesia* (pp. 235–255). Palgrave Macmillan. doi.org/10.1007/978-3-319-56068-7_10.

Coleman, S. (2020). Spiritual warfare in Pentecostalism: Metaphors and materialities. In V. Narayanan (ed.), *The Wiley Blackwell companion to religion and materiality* (pp. 171–186). John Wiley & Sons. doi.org/10.1002/9781118660072.ch8.

Demian, M. (2011). 'Hybrid custom' and legal description in Papua New Guinea. In J. Edwards & 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. (2016). Court in between: The spaces of relational justice in Papua New Guinea. *Australian Feminist Law Journal, 42*(1), 13–30. doi.org/10.1080/13200968.2016.1191118.

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

Family Protection Act 2013, No. 29 of 2013, Papua New Guinea. (2013). www.paclii.org/cgi-bin/sinodisp/pg/legis/num_act/fpa2013206/fpa2013206.html.

Forsyth, M., Dinnen, S., & Hukula, F. (2020). A case for a public Pacific criminology? In K. Henne & R. Shah (eds), *Routledge handbook of public criminologies* (pp. 163–178). Routledge. doi.org/10.4324/9781351066105-18.

Gershon, I. (2005). Seeing like a system: Luhmann for anthropologists. *Anthropological Theory*, *5*(2), 99–116. doi.org/10.1177/1463499605053993.

Gershon, I. (2011). Studying cultural pluralism in courts versus legislatures. *PoLAR: Political and Legal Anthropology Review, 34*(1), 155–174. doi.org/10.1111/j.1555-2934.2011.01144.x.

Goddard, M. (1998). Off the record: Village court praxis and the politics of settlement life in Port Moresby, Papua New Guinea. *Canberra Anthropology, 21*(1), 41–62. doi.org/10.1080/03149099809508373.

Goddard, M. (2010). Making and unmaking marriage in Moresby. In M. Goddard (ed.), *Villagers and the city: Melanesian experiences of Port Moresby, Papua New Guinea* (pp. 110–136). Sean Kingston Publishing.

Harms, E., Hussain, S., & Shneiderman, S. (2014). Remote and edgy: New takes on old anthropological themes. *HAU: Journal of Ethnographic Theory, 4*(1), 361–381. doi.org/10.14318/hau4.1.020.

Hukula, F. (2017). Kinship and relatedness in urban Papua New Guinea. *Journal de la Société des Océanistes*, *144/145*, 159–170. doi.org/10.4000/jso.7756.

Hukula, F. (2019). Morality and a Mosbi market. *Oceania*, *89*(2), 168–181. doi.org/10.1002/ocea.5216.

Jorgensen, D. (2005). Third wave evangelism and the politics of the global in Papua New Guinea: Spiritual warfare and the recreation of place in Telefolmin. *Oceania*, *75*(4), 444–461. doi.org/10.1002/j.1834-4461.2005.tb02902.x.

Lazarus-Black, M. (2001). Law and the pragmatics of inclusion: Governing domestic violence in Trinidad and Tobago. *American Ethnologist, 28*(2), 388–416. doi.org/10.1525/ae.2001.28.2.388.

Merry, S.E. (2016). *The seductions of quantification: Measuring human rights, gender violence, and sex trafficking*. University of Chicago Press. doi.org/10.7208/chicago/9780226261317.001.0001.

Munn, N. (1990). Constructing regional worlds in experience: Kula exchange, witchcraft and Gawan local events. *Man*, n.s., *25*(1), 1–17. doi.org/10.2307/2804106.

Robbins, J. (2009). Recognition, reciprocity, and justice: Melanesian reflections on the rights of relationships. In K.M. Clarke and M. Goodale (eds), *Mirrors of justice: Law and power in the post–Cold War era* (pp. 171–190). Cambridge University Press. doi.org/10.1017/CBO9780511657511.010.

Santos da Costa, P. (2021). Postcolonial nationalism and neo-Pentecostalism: A case from Papua New Guinea. *Nations and Nationalism, 27*(3), 1–15. doi.org/10.1111/nana.12731.

Saxer, M., & Andersson, R. (2019). The return of remoteness: Insecurity, isolation and connectivity in the new world disorder. *Social Anthropology/Anthropologie Sociale, 27*(2), 140–155. doi.org/10.1111/1469-8676.12652.

Schram, R. (2014, 9 February). A new government breaks with the past in the Papua New Guinea Parliament's 'haus tambaran'. *Material World* blog. material worldblog.com/2014/02/a-new-government-breaks-with-the-past-in-the-papua-new-guinea-parliaments-haus-tambaran/.

Siegel, M. (2013, 29 May). Papua New Guinea acts to repeal sorcery law after strife. *New York Times*. www.nytimes.com/2013/05/30/world/asia/papua-new-guinea-moves-to-repeal-sorcery-act.html.

Strathern, M. (1995). The nice thing about culture is that everyone has it. In M. Strathern (ed.), *Shifting contexts: Transformations in anthropological knowledge* (pp. 153–176). Routledge. doi.org/10.4324/9780203450901_chapter_8.

Street, A. (2014). *Biomedicine in an unstable place: Infrastructure and personhood in a Papua New Guinean hospital*. Duke University Press. doi.org/10.1215/9780822376668.

Taylor, J.P. (2008). The social life of rights: 'Gender antagonism', modernity and *raet* in Vanuatu. *The Australian Journal of Anthropology, 19*(2), 165–178. doi.org/10.1111/j.1835-9310.2008.tb00120.x.

Wastell, S. (2001). Presuming scale, making diversity: On the mischiefs of measurement and the global: Local metonym in theories of law and culture. *Critique of Anthropology, 21*(2), 185–210. doi.org/10.1177/0308275X0102100204.

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