

MODERN AND TRADITIONAL ADMINISTRATION OF
JUSTICE IN NEW GUINEA*

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I. INTRODUCTION

The contrast between "primitive" (e.g., tribal) and civilized law, and the evolution of legal systems, has always captured the interest of social scientists and legal scholars. Theories of change of law, based on pure logic, historical material limited to Western civilization, or on sheer speculation, have been advanced since the time of Ancient Greece and Rome. Only in the middle and late twentieth century have exact data on tribal law and legal dynamics been supplied by anthropologists, sociologists, and historians--data that allow for adequate analysis of the process of change in the field of social control and for testing theories and hypotheses concerning comparison and transformation of legal systems.

The following analysis of change of law and its effects upon a tribal society as a whole is based on material gathered among the inhabitants of the Kamu Valley of the mountainous interior of the western part of New Guinea, now known as Irian Jaya. The Mimika people of the southern coast of this island call these mountain Papuans "Kapauku", their Moni Papuan neighbors refer to them as "Ekagi". The people call themselves "Me"--The People. Originally I studied the Kamu Kapauku in the years 1954-1955, before they had been pacified; many of them saw in me their first white man. Since that time I have followed my research with periodic restudies of the people, as political and financial circumstances allowed (1959, 1962, 1975, 1979). This long-term study has yielded a dynamic picture of a Stone Age society, its rather abrupt transition to civilization, and the concomitant changes in its legal structure.

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The Kapauku Papuans, who speak several dialects of the same language, number approximately 80,000. They live by horticulture in a large area that includes three huge lakes (Paniai, Tigi, and Tage), the dried-out lake bed of the Kamu Valley, and the surrounding mountainous terrain. They subsist on the cultivation of sweet potatoes and the breeding of pigs. Patrilineal descent, patrilocal polygamous family, and a system of exogamous sibs are the main characteristics of their societal structure. About fifteen households, the members of which live in a main house and in one or several women's huts, form a village. The male villagers and their children belong to the same patrilineage; their wives usually come from outside lineages of other sibs.

II. CHANGE OF LEGAL AUTHORITY

Aboriginal Authority System

Tonowi--the headman. In the old days each of the politically organized descent groups--the lineages and sublineages, and the confederacies of allied lineages--had its own leader or tonowi, an informal authority whose decisions were followed by most of the members of his group. They accepted his decisions not because he held formal office but because he was recognized as a knowledgeable and effective leader, and his followers owed him allegiance for a variety of personal reasons. An informal authority of this kind we call headman. The Kapauku headman was defined by two sets of criteria: personal characteristics that established the individual as a leader, and those that determined his societal status (his position in the hierarchy of Kapauku leadership).

The most important personal criterion of a tonowi was his wealth. He had to have a large amount of cowrie-shell money in the form of cash or credit extended to a number of individuals, several wives, usually more than twenty pigs, a large house to accommodate his polygynous family as well as some more distant relatives and "apprentices", and an adequate area of cultivated gardens. The wealth criterion was so important that the term tonowi was used for any wealthy man, whether a leader or not. To differentiate a wealthy man from a wealthy headman the latter was called maagodo tonowi, "a really wealthy man". Most of the tonowi attained their position through personal achievement. A few were helped by a generous inheritance from their fathers, but only if they themselves were capable men. An incompetent son of a rich father usually lost his fortune in a relatively short time. Thus it may be justifiably said that the Kapauku headmanship was an achieved position.

Accumulation of wealth alone did not carry much prestige. For a headman it had to be combined with a second consideration--generosity. It was the distribution of wealth and extension of credit that counted, not simply hoarding one's economic assets. Some people followed the decisions of a tonowi because they were his debtors and were afraid of being asked to repay the loan, or because of gratitude for past financial assistance. Others accepted his leadership because of expectation of future favors. Indeed, ba epi ("to be generous"), which means to distribute one's wealth through loans, constituted one of the basic Kapauku moral values. Since accumulation of wealth depended on successful pig breeding, on a man's health, on his economic skills, and often also on plain luck, the political leadership of a lineage, sublineage, or confederacy was in constant flux. New men succeeded to leadership only to lose it several years later to often younger but always more successful and generous pig breeders.

The last essential criterion of the Kapauku leadership can be called eloquence and verbal courage. A headman had to have the courage to speak publicly and to hand down unpopular decisions that might bring displeasure from some of his followers. To be effective, the decisions had to be convincing and supported by generally well-recognized factual and theoretical (e.g., moral, logical) arguments. A timid and verbally unskilled wealthy and generous man could not qualify as an authority because he would have to defend his judgments with force. In contrast, shamanistic skills and bravery in war, although they enhanced a man's prestige, were qualities not essential to the "office" of maagodo tonowi.

As mentioned above, the followers of a headman stood in various relationships to their leader. Consanguineal and affinal relatives followed the headman because of their kinship and emotional bonds, and because of their expectation of economic and political help. However, it was the debtors who formed the most important and dependable category of the tonowi's adherents. Because of fear of being asked for back payment of their loans, and because of gratitude for received financial favors, the debtors could always be depended upon in war or in a legal suit. Ani jokaani ("my boys"), adopted young men who were apprentices of the tonowi, constituted a special group of his faithful followers. For his protection, food, business instruction, and financial aid in buying a wife, they offered their labor in his gardens and support in war and legal disputes. They formed almost a sort of bodyguard, and their physical presence alone assured respect for their leader.

The criteria above identified a Kapauku as a tonowi but did not define his rank in the hierarchy of Kapauku headmen. To determine who was a leader of a more inclusive group and

therefore superior in rank, we have to understand the principles of Kapauku societal structure. First, every functioning Kapauku social group had its leader. The scope of his jurisdiction, and the type of law which he administered was determined by the type of group of which he was the headman. Second, his status depended on the inclusiveness of the group of his followers. The head of a confederacy was thus superior to that of one of its constituting lineages or sublineages. Third, attainment of a higher status as headman of a more inclusive group depended upon his also being headman of one of its constituent lineages, and within it the leader of one of its sublineages (of course he was also the head of his household and family). In acting on behalf of the various subgroups of his constituency, the amount of power he had and the law he administered differed according to the type of the relevant group. Fourth, the leader of the group on the higher level of inclusiveness was drawn from the most populous subgroup. Accordingly, the headman of the Ijaaj-Pigome Confederacy, for example, was the leader of its strongest lineage, Ijaaj-Gepouja, and tonowi of that lineage's largest sublineage, Ijaaj-Jamaina. Fifth, if there were several headmen in a group, they shared equally in the jurisdiction. However, the wealthiest represented the unit in disputes with outsiders.

Social control among the Kapauku. Kapauku political and legal systems were based on an egalitarian philosophy and notion of equity. All people were ideally regarded as equal in law and their relations were expected to be balanced: any favor or payment extended to another person ultimately had to be countered by an equivalent prestation--a notion of balance called uta-uta, "half-half" (or even better, "fifty-fifty"). Conformity with social and legal norms was achieved by inducement rather than compulsion. The Kapauku did not force anyone into conformity. They did, of course, punish offenders for crimes and torts, but the punishment was regarded as reestablishing the uta-uta balance and was recognized also as a corrective measure for the culprit and a deterrent for potential offenders. The people regarded individual freedom as, possibly, their most valuable possession. It was not taken from anyone, not even from a convicted criminal. Such institutions as jails, home imprisonment, captivity in war, servitude, or slavery were unheard of. Indeed, freedom of movement and of premeditated action was regarded as the basic condition for life. If a body were physically forced to remain in one place such as a prison, or forced to work, the soul, displeased and unable to direct the individual's activity, would leave the body permanently, thus causing death. "As in disease, you cannot move on your free will, and the soul leaves," I was told several times by the old headman of the Ijaaj-Enona sublineage. Even the Kapauku language expressed the paramount importance of individual freedom and personal integrity in the expression "to live"--umii-tou. "Umii" means to sleep, and thus

indicates the separate existence of soul in dreams, "tou" refers to the body and its physical existence in space. Umii-tou then, means a free cooperation of body and soul, the thinking process by which the body's actions are determined-- the essence of life itself. Sanctions, no matter how severe, worked as an inducement for better behavior in the future but did not enforce immediate action. Thus, ideally speaking, all actions of a Kapauku were determined by his own decisions.

Because wealth was one of the highest goals of the individual, persuasion in daily life was often economic in form: fines and withdrawal of credit or its extension were frequently used as inducements. Even in legal decisions, economic sanctions such as payment of compensation, damages, and fines exceeded other types of punishment (physical, social, or psychological). One can thus understand Kapauku shock over the idea of jail. In the early days of the colonial government, imprisonment actually did result in the death of Kapauku prisoners (as a psychosomatic effect). The Kapauku condemned imprisonment by saying, "Even pigs and dogs do not behave like that." Individual freedom, reflected in political, social, and economic life (e.g., by individual ownership of the means of production and other wealth) was the essence of Kapauku philosophy, law, social institutions, actual behavior, and indeed of life itself.

Change of Political and Legal Authority

Decline of the tonowi. Every colonization and "pacification" of tribal territories has led to a swift decline and often destruction of the native political and legal systems. The Kapauku are no exception. The aboriginal conception of legal authority and political leadership clashed with the new policies and legal provisions of the Dutch and (later) Indonesian governments. With the elimination of internal warfare, the Kapauku tonowi were deprived of their former powers to declare war and to negotiate peace terms and alliances. They ceased to function as independent heads of politically autonomous units and their confederacies of allied lineages slowly atrophied and fell apart. They and their followers became subjects of foreign governments and were subordinated to an immense state machinery seated first in the Hague and then in Jakarta. All capital and serious criminal cases were taken from the tonowi's jurisdiction and delegated to formally state-appointed (not elected or informally recognized by the people) district officers or to judges residing in the remote and unknown coastal town of Nabire (seat of the contemporary Paniai Region Government represented by the bupati-- the resident officer) or even in Jakarta, the distant capital of Indonesia. The tonowi no longer had the right to have criminals executed, wounded, or sentenced to onerous damages, fines, or compensations. In their settlement of misdemeanor and

civil disputes the tonowi were neither supported nor hindered by the state government officials--they were simply ignored. Thus almost all criminal law became the law of the state, and therefore alienated from the native culture, and only minor offenses and civil law were left to the tonowi in the first phase of colonization.

The last blow, a sort of coup de grace to the tonowi, was dealt unwittingly by the Dutch administration in a non-political context around 1959. In that second year of my research in the area I was confronted with a spectacular loss of power and influence of most of the native headmen, a loss that neither pacification nor the political decrees and legal limitations by the colonial government could explain. All this loss had occurred in the first four years after the Kapauku exposure to Western civilization. Not until I analyzed the amounts of outstanding debts and credits of 1959 and 1962 (my second and third research periods; see esp. 1963: pp. 349-356) could I understand the reasons for this loss. Quantitative analysis of the native economy of these years revealed that in 1962 the outstanding debts of the members of the Ijaaj-Pigome confederacy to their headmen were only about 31.5 percent of what they were in 1955. If we recall that the Kapauku followers had supported their local headman because they were in debt to him or because of their gratitude for extended credit, it is therefore obvious that the lessening of the headmen's power resulted from the decrease of indebtedness. With the advent of the Dutch administration, the young Kapauku no longer had to borrow from their headmen in order to pay bride-price or to start a lucrative pig-breeding venture: they could get employment at Moanemani where the administration was building an airstrip. Thus the construction of the airport had the unexpected effect of undermining the economic basis of the native social control and rendering the aboriginal political and legal structure obsolete.

Early changes in political and legal authority after pacification. The administrative activity and the new law of the Dutch and the Indonesian states not only took most of the criminal law out of the tonowi's jurisdiction, but it also affected the remaining decision-making activity left to him. All old interconfederational disputes, formerly settled by diplomatic negotiation or by armed conflict, were brought by the natives themselves to the attention of the Dutch and later to the Indonesian district officers at Moanemani, whose decision-making agenda became crowded with interconfederational marriage disputes concerning bride-price payments and with conflicts over ownership of or payment for pigs, the two most important types of transactions in the aboriginal economy.

An additional new factor in changing power relations was represented by Catholic and Protestant missionaries. Their arbitration of marital troubles and disputes between parents and children took a sizable legal agenda away from the headmen, especially those of the localized sublineages. In some instances the missions' concern for a woman's free choice of mate and their interference in domestic affairs and conflicts resulted in unprecedented types of violence. In one instance a missionary was almost killed by the enraged father who tried to decapitate the priest with his machete because the latter had attempted to prevent the daughter's arranged marriage. Finally, the only interconfederational disputes that were not brought to the state authorities or to the missions were those concerning payment of debts incurred in past wars. Most of these, for example "rewards for killing an enemy," were regarded as illegal by the new rulers and therefore had to be settled secretly by the parties involved and their local tonowi.

Recent Indonesian influence and authority structure. The Indonesian state, as already mentioned, assumed the decision-making power in all serious criminal cases and monopolized the use of legally recognized violence (execution, jailing, questioning under duress, etc.). The finding of evidence was delegated to the local (e.g., of the Kamu Valley), regional (e.g., of the regional capital of Nabire), or provincial police forces (of Irian Jaya and Jayapura). The adjudication of serious criminal cases was turned over to the courts of law at Nabire, Jayapura, or Jakarta, depending on their gravity. Minor crimes and civil disputes were turned over to a newly created local authority, the kapala kampoeng. This type of authority, modeled after that in Indonesia, was originally introduced by the Dutch and later retained by the Indonesian state. A kapala, unlike a tonowi, was a formally appointed leader of a village, a societal unit that did not constitute a politically organized group in the aboriginal Kapauku societal structure. The institution of the village chief was made for convenience and efficiency because the new rulers found it easier to deal with a few formally appointed kapalas than with either a multitude of people or informal headmen (tonowi) of poorly understood descent groups (e.g., lineages and sublineages). The kapalas were charged with settling unimportant civil disputes, attending to local economic development, and functioning as local representatives of the newly imposed state machinery. Thus, kapalas, unlike tonowi, were state appointees representing the national interests rather than those of the local people. In practice, besides some respected old tonowi, many unimportant individuals, sometimes even local misfits, were appointed to the new office. As the administration gained importance through economic influence and law enforcement by the police, the kapalas gained strength and prestige, thus securing the political position of the village in the new state hierarchy of legal levels.

The Kapauku slowly adjusted to the kapala system, but that institution was abruptly abolished in the summer of 1979. The Indonesian government came to regard the village structure with its local authority as clumsy and expensive; each kapala had been paid 10,000 rupias a month. The new system which is to replace the village chiefs, groups several villages into an administrative cluster presided over by a desa, a paid employee of the state, assisted by several unpaid officials: a substitute desa, secretary-scribe, substitute secretary, cashier, and substitute cashier. In addition to general administration, the desa will also be charged with settlement of local disputes. This recent abrupt change caused consternation among the Kamu Kapauku, who have heard about the abolition of kapalas from the camat--their district officer--but have not yet learned anything about the future of the local government. They charge that anarchy exists at present, and there is no authority to adjudicate local grievances. Their sense of helplessness and frustration and their desire for individual freedom and traditional justice may yet create problems for the state.

Summary of change in the nature of legal authority. In retrospect, the introduction of the kapala and then the desa system into the Kapauku power structure created a basically new type of authority. Unlike the old tonowi, the kapala and desa do not derive the tenure of their leadership position from the voluntary support and informal recognition of their constituents. They assume their position on the basis of a formal appointment by a superior and, to the Kapauku, foreign authority. Instead of informally recognized lineage, sublineage, or confederacy headmen, there was created a formal office of a kapala in a village and later that of a desa of a cluster of villages--an office that had to be filled. The scope of power, rights, and duties of the former tonowi varied profoundly from lineage to lineage, sublineage to sublineage, and confederacy to confederacy, depending on the skill, achievement, and ambition of the individual headmen. Thus it was possible that a basically democratic, benevolent, and charismatic leader could exist in one group, while in the neighboring one a feared, ruthless, and dictator-like tonowi virtually terrorized his followers into obedience. Unlike these two headmen, the kapala's and desa's amount of power, scope of jurisdiction, rights and duties, and means of implementing their verdicts were determined by the law of the modern state with great precision. Thus, the former variety of local leadership types (popular, authoritarian, democratic, autocratic, strong, weak, etc.) has been replaced by a standardized, uniform, and rigidly defined set of officials. Furthermore, the tenure of these new officials is no longer informally ended by decline of their popularity and influence (marked by simple disregard for their decisions by their followers), but is terminated by a superior official. Similarly, their assumption of office is by bureaucratic appointment instead

of through a slow and skillful process. In other words, popularly recognized leadership was replaced by one imposed from above, often against the will of the people.

The formal organization of the new leadership replaced the informal political structure that had been marked by a constantly shifting focus of power and a consequent change of incumbents. The tribal power structure became petrified and formalized into the kapala and desa chieftainship and officialdom.

The people's former voluntary recognition of justice and the need for the existing legal provisions, a conviction that provided support for the aboriginal system of leadership and settlement of conflicts, was replaced by fear of the new law, of its sanctions, and of the authorities who enforced it. The former customary law, internalized by the majority of the people and followed because of their inner belief in its correctness, gave way to an imposed authoritarian law that elicits only superficial conformity based upon a fear of detection. Indeed, it is not surprising that the people have already revolted in bloody uprisings against the Dutch in 1956 and against the Indonesians in 1968.

To summarize, then, we may say that the imposition of the state law caused a change from an informal to a formal authority, from an achieved type of leadership to an appointment to an office, and from a variety of leadership forms to a standardized single type. The leadership pattern changed from a dynamic one to a rigid one, and from popular to imposed. The law itself was altered in character from an internalized customary kind to an authoritarian type.

III. PRINCIPLES OF JURISDICTION IN TRANSITION

The Traditional Jurisdiction

Aboriginal societal structure. The basic building block of the old Kapauku socio-political structure was the localized patrilineage whose members occupied a contiguous territory they regarded as their home. In it they could build their homes any place they wished, provided the ground was theirs or that they received a "building permit" from the owner of the particular lot (for compensation or on the basis of reciprocity). This group was organized politically in that it had a leader in a tonowi, its members had broad domicile rights to this territory, and it formed a unit in war and in negotiating alliances. Law and order within the unit was usually administered skillfully by its headman. Members of two or more patrilineages, which might have belonged to the same or different sibs, united into

political confederacies. These unions were reasonably stable and varied as to numbers of lineages and members (consisting most frequently of about 600 individuals who belonged to two to four lineages). They constituted the most inclusive politically organized groups within the Kapauku tribe. Within the political confederacy, a hierarchy of the tonowi administered law and settled disputes peacefully. Beyond its territorial boundaries, only political negotiation or war could conclude a conflict. The confederacy was represented by its headman who, as we have seen, was also tonowi of the strongest constituent lineage and, in turn, of that lineage's most numerous sublineage. Moreover, every subgroup of the confederacy (lineage, sublineage, and household) had its own leader (lineage or sublineage tonowi, and owa ipuwe--the household head).

Because the headmen of the various subgroups differed in their ideas of proper behavior and justice, each subgroup had its own legal system that was different (sometimes strikingly so) from the systems of the other related subgroups. This point can be well-demonstrated in the case of the law governing incest taboos pertaining to sib exogamy. Although a widely accepted rule prohibited, under penalty of death, marriage between individuals of the same sib (an Ijaaj man could not marry an Ijaaj girl), in the Ijaaj-Pigome Confederacy this rule underwent modification through a well-documented process of legal change (see esp. Pospisil 1971: 110-111, 214-232). Because of the local autonomy of the constituent subgroups, the modification had a differing impact upon the legal systems of the particular constituent lineages and sublineages. So, whereas in the Ijaaj-Enona sublineage it became legal to marry one's own sibmate as long as he or she was no closer than a second cousin of Ego, in the sister sublineages of Ijaaj-Jamaina and Ijaaj-Nibakago (the three sublineages form the Ijaaj-Gepouja lineage) only fourth cousins and more distantly related individuals were permitted to intermarry. Indeed, in the other two confederated lineages of Pigome and Dou, sib and intrasib marriage were prohibited under penalty of beating among the Pigome and of death among the Dou. So, although marrying a second-cousin sibmate was condoned in one sublineage, it was severely punished in the other two.

The Imposed Change in the Kapauku Jurisdiction

Disappearance of the Confederacy. As was noted above, whenever a colonial or foreign power moves into a new tribal territory it alters and often destroys the native political structure. It eliminates warfare between various tribes or lineages and enforces peace, but it also deprives the people of their independence and imposes limitations upon the power and agenda of the native leadership, sometimes even abolishing

it altogether. By establishing itself as a government over a politically fragmented area, it converts former external conflicts, negotiations, and wars into internal disputes that are adjudicated by colonial or state law, as the case may be. In this way the Kamu Kapauku were "pacified" in 1956 (one year after my initial research). The former interconfederational disputes began to be referred to the court of the Dutch Civil Administration at Moanemani, and serious criminal offenses were brought to the attention of the district officer at Enarotali and later Waghete in the Tigi Lake area. Only misdemeanors and non-interconfederational disputes were left to the jurisdiction of the local native authorities. The pacification policy was continued after the Indonesians succeeded the Dutch in 1963. An Indonesian district officer was assigned to the Kamu Valley that in turn became part of the large "Paniai Region," presided over by an Indonesian resident officer (bupati) with his headquarters at the newly built and rapidly expanding coastal city of Nabire. Nowadays, all serious legal cases are transferred to a judge at Nabire, and capital offenses referred to the court in Jakarta.

The elimination of native warfare and the delegation of serious criminal cases to state authorities deprived the old Kapauku confederacies of their raison d'être. Political ties that formerly linked the confederated lineages began to loosen, and the lineages, with their village settlements, became more independent. As a consequence, many of the former native leaders faded away; the tiny state-like entities--the old Kapauku confederacies--slowly vanished.

Reaction of the Kapauku political structure to pacification.
Not all local leaders, however, disappeared from the political scene. Actually, in response to the Dutch administration and as a challenge to it, the influence of a few leaders of the former political confederacies began to extend beyond the old political boundaries. Thus, new and unprecedented region-wide alliances originated. In the Kamu Valley the former confederacies consolidated into two moieties that divided the area into two halves, one led by Goo Jupikaaibo, the tonowi of the Mauwa village, the other led informally by Ijaa Jokagaibo of Aigii, leader of the disappearing Ijaa-Pigome confederacy. Whereas Jupikaaibo, who commanded roughly the northwestern half of the valley (in which Moanemani, seat of the government official, is located) derived his new prestige from his friendship with the Dutch officer, Jokagaibo's influence in the southeast was enhanced by his friendship with me. At the court of Moanemani he or his trustees (close patrilineal relatives and friends), tried, often effectively, to counter the bias that the official might have had in favor of Jupikaaibo's "westerners." Thus all over the Kamu Valley former traditional enemies united into two

politically hostile camps. Within these the two leaders settled most of the civil disputes of their constituents.

With the advent of the Indonesians the political moieties' antagonism began to disappear. Although Jupikaaibo still kept his prestige, his close relationship to the new government vanished. After a major uprising against the new rulers in 1968 (prompted by frustrated prospects for political independence), in which the whole Kamu Valley united against their "oppressors," the moiety system finally disintegrated. Thus for the first time in Kapauku history the whole Kamu Valley was politically united on a territorial basis. In this situation, a few formerly important headmen have emerged as an informal body of political leaders of the valley. They try to represent the "Kapauku point of view" while dealing with the government, and among themselves they settle civil legal cases and those of a criminal nature that are not the concern of the state. It should be emphasized that these leaders do not derive their following from their money-lending practices, as was formerly the case. They are purely political figures who have assumed an informal and often secret leadership because of their opposition to the state administration.

The new territorial unit--the village. Formally, the home of a lineage was its entire territory and not a specific settlement. The lineage members owned garden land in any part of their home territory and were free to build their houses on any of their lots or on land offered to them by their lineage mates. Irregular clusters of homes formed villages of a semi-permanent nature. Whenever the land around the settlement had been exhausted, the people, often one family at a time, moved to new localities. Thus on a lineage territory there were often several villages whose number and locale shifted with time. Consequently it was the lineage (and, if subdivided, the sub-lineage) that was socially significant, enduring over time, and politically and legally organized. A lineage had one or several headmen--the tonowi--who resided in any village they preferred. Their jurisdiction pertained to the whole lineage territory, irrespective of their residence. They heard and decided disputes in any of the villages of the sublineage or non-subdivided lineage. To avoid conflict with fellow headmen (if there were more than one in the same sublineage), a rule determined that a proper "judge" for a given dispute was that tonowi who was the first to participate in hearing testimony and argumentation.

Having had experience with politically organized villages in Indonesia, the colonial Dutch administrators mistook the Kapauku settlements for permanent villages and the tonowi for their local leaders--kapala kampoeng. They therefore appointed their own trustees as kapalas (village chiefs) not realizing that they had introduced a structurally new concept into the

Kapauku culture. By elevating the village to the most important administrative unit, in which the kapala watched over peace and dispensed law to all the inhabitants, they introduced an unprecedented principle--that of territoriality. Formerly, the principle of personality of jurisdiction had prevailed among the Kapauku: a man was judged by his own tonowi and tried on the basis of the legal system of his own lineage, no matter where the delict was committed or the transaction took place. According to the new principle of territoriality, a man's case was adjudicated on the basis of the law of that locality in which he committed a tort or a crime, irrespective of his lineage or confederacy affiliation.

Summary of changes in jurisdiction. The imposition of the state legal system caused several significant alterations in the political structure of the Kapauku society and in its pertinent principles of jurisdiction. The traditional multiplicity of legal systems of the former thirteen confederacies and their numerous lineages and sublineages disappeared. It was replaced first by two incipient systems of law of the two political moieties, and later, with the arrival of the Indonesians, by an attempt to unify the law of the entire Kamu Valley region, a trend that is still going on. The imposed state law, on the other hand, created a village territory headed by its appointed kapala. Thus it replaced the traditional personality principle of jurisdiction with one of territoriality, certainly a radical legal change even to the undogmatic and practical Kapauku.

IV. CHANGE OF THE LAWS OF PROCEDURE

The traditional Kapauku process of law. Typical Kapauku legal proceedings usually started as a quarrel between two parties. The "plaintiff" accused the "defendant" of violating some common notion of decency and fair play, thus causing harm to the plaintiff's interests. The defendant rejected the charges and either denied the delict or brought forward justification for his action. The arguments were usually accompanied by loud shouting which attracted other people, who gathered around the contestants. The close relatives and friends of the parties to the dispute took sides and presented their opinions and testimony in emotional speeches, accusations, and insults. Should this sort of arguing, called mana koto, be left unchecked it would result in a fight or, if the parties belonged to two different confederacies, in war. Therefore, in most instances, the tonowi of the lineage, sublineage, or confederacy to which both the parties belonged appeared on the scene. First he sat unobtrusively among the onlookers and listened to the arguments. This seeming nonparticipation in the argument had its

justification and importance. Thus not only did the headman learn about the charges, countercharges and excuses of the litigants, but also, in the heat of the argument, many facts were revealed that the parties in the later and more formal hearing would not have disclosed. As soon as the exchange of opinions approached an outbreak of violence, the headman stepped in and admonished both parties to have patience and began a systematic questioning of the defendant, plaintiff, and witnesses. He might interrupt the proceedings in order to search for further factual evidence at the scene of the crime, at the locus of controversy (e.g., disputed land boundaries), or in the defendant's house (to locate possibly stolen property). He might summon experts to give him their "professional" opinion pertaining to the case (e.g., land boundaries, tracks left in the soft or muddy soil, the identity of the weapon used in the crime, or opinions about the personality and trustworthiness of the contestants). This activity was called boko petai--"to seek the vital substance," to establish the evidence.

Having secured the available evidence and made up his mind about the facts of the dispute, the authority would then begin the activity called boko duwai-- "to cut the vital substance," which means to evaluate the evidence, reach a decision, and persuade the parties to accept the decision. For that purpose the authority made a long speech in which he summed up the evidence, appealed to a rule, recalled a precedent or two, and told the parties what should be done to terminate the dispute. If the parties were not willing to comply, the tonowi became emotional and shouted reproaches. He made long appeals in which evidence, rules, precedents, justification of his decision, social consequences of disobedience, and threats were mixed to form a potent inducement. Indeed, the authority often went so far as wainai, to perform a "mad dance." He might change his tactics and weep profusely over the misconduct and disobedience of the litigants. An inexperienced Western observer or an ethnocentric anthropologist confronting such a situation might very likely regard the weeping tonowi as the man on trial. Thus from the formalistic point of view there was little resemblance between a Western court's sentence and the boko duwai activity of the tonowi. Nonetheless, the headman's persuasion could be equated with the verdict of a Western court. For example, there were only five cases in my initial collection of 176 in which the parties resisted the tonowi's decision. In these cases there were grave consequences for disobedience by the litigants. In addition to the sanction, that sometimes was executed by force (confiscation of property, beating, wounding, execution), the headman could add to the original verdict more payment, physical punishment, withdrawal of his loans, and sometimes even excommunication.

In his decision-making process, the tonowi was not

necessarily bound by daa mana, the existing abstract rules (leges). These served only as advice to the legal authority, as a guide that for appropriate reasons might be disregarded in the formulation of the decision (of 176 decisions recorded in 1955, only 87 correspond to pertinent rules! see esp. Pospisil 1958: 249-251). Thus the traditional Kapauku legal process closely resembled that of republican Rome or Confucian China rather than contemporary Western tradition. It was non-legalistic. The Kapauku correctly recognized the difference between boko duwata mana--the ius (law that is actually incorporated into legal decisions and thus formulated by the iudex, the judge)--and daa mana, the leges (rules, abstract statements that are either remembered by the elders or form the content of codices and are created by legislators). Furthermore, litigants and witnesses could bring any evidence they deemed important to the court; none was arbitrarily ruled "inadmissible". To us, such hopelessly irrelevant testimony as the frugality and industry of a defendant in a murder case were regarded by the Kapauku as highly relevant and important for a just decision. In their adjudication, tonowi always tried to establish what we might call the moral and psychological profiles of the parties to the dispute. Their total personalities, and not only some arbitrarily selected or "logically related" facts, were relevant.

The Dutch and Indonesian procedures. As my research on court procedures reveals (23 legal cases and interviews with judges and parties to the dispute), the westernized Dutch and (to a lesser degree) Indonesian courts of law have been dominated by what is called legalism. This legal philosophy holds that law is created exclusively by legislators, and that the judge's role is basically a passive one--to determine the pertinent rule (lex) that should be applied to the case. The theory explicitly denies the judge the capacity to create law; his task is merely to apply it. Thus legalism equates ius with lex. This philosophy regards leges (rules) as orders issued to the judges whose role is basically a mechanical one: to find a situation dealt with by one of the leges that resembles that of the case on hand, to consider these two situations (despite the fact that they are at least to some degree different) as identical (legal fiction), to subsume the case under the pertinent rule (lex), and to apply mechanically the rule's provision (sanction) to the case. According to this doctrine, law is supposed to change only through new legislation, but never through the action of judges. The history of the rise of Western legalism and its shortcomings and misconceptions, I have described elsewhere (Pospisil 1971: 20-28). Suffice it here to say that rules (leges) do not yet make a society's law legalistic. Neither republican and imperial Rome, nor Confucian China, for example, was legalistic. Although both had rules (leges; fa) summed up in codices, these were not identified with the law. Indeed, rules were only an advice to judges, never commands to

be "enforced." It was the iudex (the judge) who created ius (the law) through his power of iurisdictio (declaration of the law for the case on hand). In this activity he was often advised by iuris prudentes, experts who, on the basis not only of rules but especially of precedents, suggested the proper ius for a given case. Thus Roman and Chinese law was mainly a case law, as was also true among the Kapauku. Their boko duwata mana (the law), would be found not only in their daa mana (the rules) but also, and especially so, in etimakita mana (the precedents). One can fathom only with difficulty the extent to which the casuistic Kapauku and their sense of justice suffered from the confrontation with, and the abrupt imposition of, Western legalism. In the government courts, gone was the free discussion of the case and the presentation of any facts one regarded as important. Only that evidence became admissible which bore directly upon the situation presented in the rule. Character profiles of the litigants and their past behavior are of no interest whatever to the state judiciary, who request that the witnesses "come to the point," the point being, of course, the evidence pertinent to the relationship dealt with by the rule. Thus to the Kapauku the state's legalistic procedure appears ridiculously overformalized, relying only on partial evidence, making the judge into a mechanical mouthpiece of the written rules, destroying his creativity, and turning the formerly dynamic, ever (although slowly) changing law into a rigid set of rules. In their view, all this amounts to, in most cases, is hopeless injustice. In contrast, in the diminished (and from the state's point of view, illegal) administration of justice by the informal tonowi, the old, traditional, and nonlegalistic procedure still survives. It is limited to "civil" law and to a few cases of minor crime that escape the attention of the state.

V. CHANGE IN LEGAL SANCTIONS

Traditional Kapauku sanctions. The Kapauku's basic value of individual freedom and their conception of the essence of life (the free cooperation of body and soul), was clearly reflected in the way they punished offenders and redressed wrongs. People could not be forced into desired behavior: an offender could not be beaten into performing a task, a child could not be compelled to conform to its parents' desires or requests; only inducement was possible. All sanctions were punishments for, or rectification of, past delicts and mistakes. In this way justice (uta-uta) was achieved by balancing, so to speak, the past suffering of the plaintiff with the present suffering of the defendant. Since a man's freedom of action had to be kept unimpaired, a culprit could not be arrested and brought to face the authorities; he had to be induced to appear

by threat of economic, social, or bodily harm. Similarly, there was no place in the Kapauku culture for slaves, serfs, prisoners of war, jail inmates, or hostages. The penal institution so prevalent in the West and in the rest of the civilized world of today, the jail, was not known. A preponderance of sanctions (about 90 percent of the cases) took economic and/or psychological form. Damages, restitutions, indemnities, and other material transfers and payments were exacted even for major crimes such as murder, rape, fornication, and assault. Not until a culprit refused to fulfill the obligation imposed by a sentence was he physically punished by beating, wounding with an arrow in his thigh, or executed. Only a murderer who became notorious for killing people did not have the option of compensation: he would be shot to death. But even capital punishment did not involve tying the sentenced man and forcing him to stand to be executed. No ritual ceremony was made of execution, as is the case in our civilization. Rather, it was done from ambush, when a firing squad, usually of four to eight members, shot their arrows from behind into the unsuspecting culprit (the death sentence was pronounced in secret, after the man had had a chance to defend himself and was found guilty). To eliminate any internal rift, the closest patrilineal relative of the sentenced man (son, father, brother, patriparallel cousin) was required to be a member of the firing squad. However, he was allowed, out of humane consideration, to miss the victim.

Unaware of the Kapauku philosophy and practice of punishment, the Dutch and later the Indonesian administrations imposed not only their criminal and political law, but also imprisonment as a sanction. One of my informants from the Tigi Lake area commented on the new practice: "Jail is the worst thing. A man's vital substance deteriorates and the man dies. We used to kill only very bad people, but now one may get into prison simply for stealing or even for fighting in a war. One dies if shot by an arrow, but in jail one has to suffer before death. One has to stay in one place and has to work when one does not like it. Jail is really the worst thing. Human beings should not act like that. It is most immoral." This and similar statements of my Kapauku informants express their profound rejection of the civilized punitive system. Their verbal reactions predicted what inevitably happened. Because prisoners believed that they would lose their health, they indeed pined away. As a result, the perplexed Dutch administrators were reducing jail sentences to bare minimums in order not to jeopardize the prisoners' lives. It was easy for me, therefore, to predict an early uprising of the populace, and to recommend that payment of fines and damages be substituted for imprisonment, and that jailing be abolished. These recommendations were rejected "on logical grounds," and the Kapauku revolted within a year (1956). After bloody fighting they were defeated and "pacified," at least temporarily. Their second uprising

and battle for freedom and abolition of jail, directed against the Indonesians, occurred more than ten years later. This time the Kapauku won a political compromise. Indonesia has kept the Kamu Valley under the political control of its district officer, while the police force that keeps peace and order in the valley is composed entirely of Kapauku. Jail, however, as a penal institution, has not been abolished and it still provides the fuel for discontent and a potential new uprising.

In summary, for its most frequent sanction traditional Kapauku law depended primarily upon payment of damages and indemnities. Psychological and social sanctions were second in importance, physical punishment ranking as the least frequently used. The advent of civilization changed all of this, and physical punishment, especially in the form of imprisonment, became the dominant mode. The change from tribal reliance on economic restitution and compensation (even for death) and Western insistence upon physical punishment contradicts the basic theoretical tenet of Emile Durkheim. According to him, the change should have been in reverse. The central theoretical argument of his work, *De la Division du Travail Social* (1893), maintains that primitive tribal societies have a mechanical type of solidarity caused by the lack of division of labor. In such a society all people do basically the same tasks and have the same interests, and society tries to keep the behavior of the people within the bounds of determined standards. Thus legal sanctions are supposed to be repressive, punishing usually in a physical way behavior deviant from the established norm. In contrast, in a civilized society, Durkheim reasons, the solidarity is organic because of a division of labor that makes people dependent upon each other for their products. Therefore the law is not so much interested in punishing offending behavior as in reestablishing social harmony and productive efficiency. Hence, restitutive sanctions (in the form of compensation, damages, restitution, etc.) dominate the field of law. The value of this theory, which became a dogma to some of Durkheim's followers, is seriously challenged by the foregoing material on cultural change. Although logical and ingenious, Durkheim's theory is subject to the criticism of a scientist who once said: "Pure logic is the safest way to go wrong with confidence."

VI. FROM CONTRACT TO STATUS

The Kapauku contract-oriented society. When one recalls the value the Kapauku placed upon individual freedom it is not surprising to find that their economic and sociopolitical life was dominated by free contractual agreement. Especially in their economy, the proliferation of various, often well-defined types of contracts aided and characterized their production,

of social relations. The district officer or camat, the resident officer or bupati, policemen and their commanders, soldiers and their officers, priests and Protestant missionaries, catechists and secular teachers, physicians and nurses, servants and masters, kapalas, desas, cashiers, pilots, and others all represent new formal statuses defined by rights, duties, and privileges. Interaction with them requires from a common man a special address (deferent or subordinate behavior, standing at attention, using polite or sometimes subservient language). The emphasis upon contract has been even further reduced by the abolition of many sorts of contractual agreements such as, for example, the political contracts of alliances, peace, avenging of a relative, and confederation of lineages. Even some economic contracts have been rendered less free by new legal restrictions and more rigid formalization.

Conclusion. The changes in Kapauku society outlined above may come as a surprise to those who have embraced as revealed truth Sir Henry Maine's contention (1963: 164-165) that the evolution of human society and its law follows a path marked by the change from a relatively non-free, status-oriented tribal people to a contractual modern society characterized by freedom of agreement. The Kapauku experience actually shows the reverse --from contract to status, from a high degree of personal freedom to restriction of individual choice of action. And in this case we deal with two civilized nations, Dutch and Indonesian, whose political structure and philosophy are non-totalitarian. What would have happened if the "pacifiers" of the territory were modern dictatorships of the National Socialist (Nazi), Communist, or Fascist types? In the light of these facts, we must reject Maine's tenet of the inevitability of a social change from status to contract.

VII. FROM DOUBLE TO SINGLE STANDARDS OF MORALITY AND LEGALITY

The Kapauku double standard of morality and legality. One of the modern dogmas of Marxian anthropology is the belief that "primitive" (i.e., tribal) peoples do not distinguish between morality and legality. Their behavior is supposedly controlled by a single set of norms ("mono-norms") that combine a high moral standard with legality, a standard prescribed by law in terms of a bare minimum of permitted and correct behavior (Pershitz 1977). The distinction between law and morality is supposed not to have appeared in the course of social evolution until a stratified society has been reached. A cursory glance at the ethnological literature whose authors were interested in the relationship between these two phenomena reveals, however, that many "primitive" people did make the distinction between the ideal and the permitted. For example, Max Gluckman describes how the Lozi of

distribution, and consumption. Reflecting this emphasis, their law defined the form of, and the rights and duties pertinent to, the specific types of these agreements. Violation of this "ius ex contractu" constituted a large part of the agenda of the decision-making authorities, whether in civil (breach of contract) or criminal (embezzlement, fraud) legal spheres. There were different types of labor contracts (based upon accomplished tasks rather than on the amount of time spent on the job): lease and loans of land and tools; sales of crops, artifacts, food, personal valuables, land, meat, dogs, and especially pigs. Different provisions pertained to sales of young for slaughter, female piglets, sows, and boars; and laws concerning the various required payments differed from one type to another (for example, three different payments were required for the sale of a female pig: bo badii, epaawa, and ijobai). They were so involved and elaborate that they could be compared with the contractual law of ancient Rome. Since the Kapauku economy was based upon the circulation of true money (in the form of cowrie shells), there were money-lending contracts, sales of goods and services, savings contracts, and stipulations about interest on loans. Even consumption within a household was well planned and based on bilateral agreements concerning who should supply what and at what time. Moreover, even an acceptance of food and services offered as jegeka (gift), which was made without expectation of immediate reciprocation, constituted a tacit agreement to repay in kind in the future. Services of tooth extractionists, gum-cutters, surgeons, canoe-builders, shamans, sorcerers, expert mourners, undertakers, etc., were all secured on the basis of contracts, and for all these services payment was required. Similarly, social life was permeated with contractual agreements for marriage and bride-price payment, friendship, adoption, and apprenticeship, guardianship of minors, sponsorship of pig feasts and of other ceremonies, and so on. Support in war and peacemaking were matters of formal agreement which defined the obligations of the parties and especially their rights and duties pertaining to payment of blood money and damages. Similarly, political support, avenging the death of a relative, and fighting on behalf of someone were based on contracts. Indeed, even the thirteen Kamu political confederacies that once existed were formed by contractual agreements among the representatives of the lineages concerned.

Status, however, was limited to Ego-centered kin relations and ties of friendship, and to the very few societal positions: tonowi, shaman, sorcerer, and surgeon. But even these few statuses, with the exception of those that were kin-oriented, were dynamic (ever-changing) and relative: a shaman might be respected as such by some, but not all, members of a group.

The status-oriented civilization. The advent of the Dutch and later the Indonesians has abolished the contractual character

Zambia contrasted behavior of the so-called "upright man" (mutu yalukile, ideal man) with that of the "reasonable man" (mutu yangana, law-abiding man; 1967: 125-126). Similarly, the Kapauku refer to moral standards as kou dani maagodo enaa, "this way it is really good" (their high praise for a moral man, me enaa), whereas legal behavior was spoken of as kou dani tija, "this way it ought to be done" (and is usually done). While everybody was expected to behave according to the standard of law, only some people were credited with high morality. Any deviation from law was punishable, but falling short of the ideal was legally permitted but informally disapproved. Whereas law was the concern of the tonowi, who had to watch that the minimum standard of permitted behavior was maintained, morality was everybody's business, was talked about, and was used to evaluate people's characters. The difference between the two standards was usually quite clear. While it was legal to ask for repayment the next day of a jegeka type of "gift," such behavior was regarded as morally reprehensible, and the man who asked was publicly and privately criticized. Similarly, to request repayment of a loan when the debtor had no money was regarded as immoral, although legal. Insisting on repayment only when a debtor came into some money (through sale of pigs or receipt of a bride-price) was legal as well as moral. I have found a similar distinction between morality and legality among the Nunamiut Eskimo of Alaska.

Tendency toward a single standard of morality and law in the contemporary situation. The Dutch as well as Indonesians, in order to be convincing, idealized their law and either proclaimed it publicly as an ideal or implied it in their language and behavior. Where law has been imposed upon a resisting population, the general tendency seems to have been to idealize it, to equate it with morality; in other words, to create the mono-norms that some Marxists speak about. Often such a tendency remains only an official ideology, but in some cases it may become a behavioral reality if the dominant colonial government can effectively isolate the population, and for a prolonged time indoctrinate it. Such is the case not only in the colonies, but also in modern dictatorships where obedience to the imposed new "revolutionary" law is regarded as moral. Indeed, some Marxists have talked about the demise of the state and law, when morality and law shall fuse, and the population as a whole, without the need for police and judges, will conform by itself by application of the mono-normatic ideal (Lenin 1943: esp. pp. 77-78). In this doctrine, Communism parallels Nazism. In one of his speeches to the Reichstag, Hitler proclaimed that national-socialist morality and law became the same thing - in Marxist language, the hallowed mono-norms. There seems to be an explanation for the appearance of mono-norms that is at variance with Pershitz's and Lenin's theory. As soon as an imposed legal system is accepted as proper by a population, the standards of law and morality begin to separate, and a "law-abiding citizen" is no longer an exception,

because he has become "almost everybody." What has been said about the dictatorships and other cases of imposed laws is also true about the legal systems of otherwise democratic nations in which the population has lost its trust in its law and judiciary because of their obvious failure to curb crime and graft. Thus, popular distrust, and not primitiveness or revolutionary excellence, brings about the official idealization of the law that is imposed upon people; it indeed brings Pershitz's mono-norms into being.

VIII. CONCLUSION

The imposition of colonial and state legal systems of the Dutch and Indonesians upon the tribal Kapauku resulted in several theoretically interesting changes challenging many social doctrines. (1) With respect to authority, new rulers replaced the aboriginal informal leadership of the tonowi with the formal office of kapala and desa. (2) They created a whole new formal authoritarian superstructure and imposed it upon the traditional political structure, causing the political confederacies to disintegrate and the hierarchy of tonowi to vanish. (3) The formerly varied informal leaders were replaced by officials with standardized rights and duties. Formal appointment to and termination of their office transformed the formerly dynamic system of authority and leadership into a static one. (4) The traditional, popularly supported leadership, with whose decisions the Kapauku agreed because of internalized convictions, gave way to an imposed system of authority whose decrees and edicts elicit only external conformity. Laws are obeyed because of fear of punishment rather than conviction of their justice and necessity. Thus a formerly internalized law has been replaced (especially in criminal and public law) by an authoritarian one. (5) The personality principle of jurisdiction, based upon lineage affiliation, yielded to the territoriality principle, emanating from the new village and district authorities. New territorial entities, such as villages, groups of villages, districts, and regions have been created. (6) The theory of legal procedure changed from casuistic; it became formalized and rigidified. The justice of a case had to surrender to the formal justice of the rule. Legal authorities ceased to be formulators of law; they became a mouthpiece of the legislature. (7) The former preponderance of restitutive sanctions yielded to retribution, thus challenging the old Durkheimian credo of an evolution proceeding from mechanic solidarity with punitive law to organic solidarity based upon restitution. (8) The findings equally challenge Sir Henry Maine's contention of an evolutionary change from status to contract. Kapauku evidence shows the reversal of the process to be true in their case: from a prevalence of contract to a more status-oriented society. (9) The idealization

of the imposed legal system by the colonial government and state apparatus, with high moral values attached to the introduced law, creates mono-norms, in Pershitz's sense. The old Kapauku contrast between a law-abiding man and a moral man is being replaced by an image of a man who is moral because he obeys the imposed law. Thus, contrary to some old and recent Marxian tenets, "mono-normism" (fusion of law with morality into one standard for behavior) is not due to either "the nature of man," as exhibited among "primitive peoples," or the revolutionary excellence of modern dictatorships, but is the result of a reaction of the ruling class to the popular distrust of the ruled.

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