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Who Manages Disputes?: Introduced Courts among the Fasu, Papua New Guinea

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Since European contact, the European court system has been introduced to the Fasu, Southern Highlands Province, Papua New Guinea. Among them law and order' is now (1983) still well maintained. Moreover, they are willing to have their disputes mediated by the patrol officials. Although the courts held by the patrol officials are unofficial (*i.e.* mediation), the Fasu regard the officials' suggestions as formal court decisions, which is shown in the analysis of the cases handled by a patrol official and a policeman on 9 March, 1983. The long history of their contact with the administration made them realize that the patrol officials hold the ultimate power and their orders can not be opposed. As they were prohibited to use their own system of sanction by the administration, they are forced to depend on the European system of sanction to resolve their conflicts. The introduction of the Village Court in place of the official's informal courts should be welcomed, therefore, in the sense that it makes clear the fact that the Fasu are totally dependent on the outside power to resolve their conflicts, even if this is quite contrary to the original plan that customary law will be respected once the Village Court is introduced.

The problem of 'dispute settlement' has recently drawn the attention of many anthropologists specializing in the study of Papua New Guinea societies, especially Highland societies. These societies are marked by the lack of elaborate political or judicial organizations. Even in the largest political unit, usually a clan or village, there are few established mechanisms through which conflicts are resolved. Although big men exert some influence on conflict management, it is rare that their political powers go beyond their own community. Inter-community disputes often resulted in warfare, which was a dominant part of life among the peoples of Papua New Guinea. It is natural, therefore, for the earlier anthropologists interested in the problem of customary law to concentrate their attention upon how these societies manage disputes without any formal procedures.

After Australian administrative control was established, an alien court system was introduced by the administration to these societies. Anthropologists gradually shifted their interest from traditional conflict management procedures to the newly introduced system; the problem is how the court system functions in the societies they study. Such an academic concern was first expressed by the writers who contributed to *Fashion of Law in New Guinea* [BROWN 1969]. The detailed study

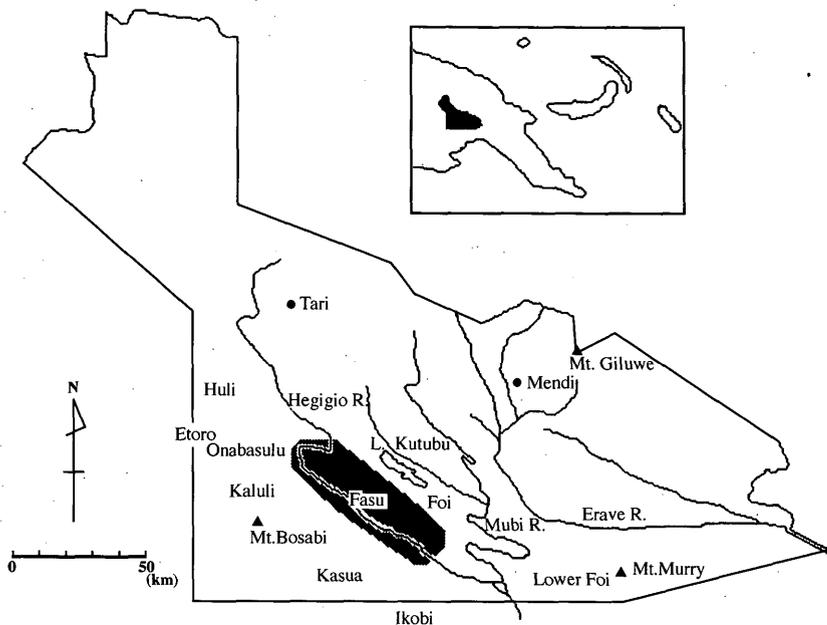
of local judicial systems was pioneered by Marilyn Strathern [1972]. She found that in Hagen society, apart from the Local Court, or formerly the Court of Native Affairs, unofficial court procedures played an important role for Hageners in settling disputes. The problem of dispute settlement from different parts of Papua New Guinea is analysed in *Contention and Dispute* [EPSTEIN 1974]. These various aspects of the law, especially the issues of customary law and native courts, were examined by a number of anthropologists.

After the Independence of Papua New Guinea in 1975, Village Courts have gradually been introduced in place of unofficial native courts. It was expected by the government that the Village Court would handle cases in terms of customary law. The actual workings of Village Courts were studied by Fitz-patrick [1980], and more recently and more in detail by Andrew Strathern [1984] and by Gordon and Meggitt [1985]. These anthropologists pointed out various problems which prevented the Village Court from gaining public support. Despite the government's efforts to elaborate the judicial system, it is widely acknowledged that 'law and order' is increasingly breaking down in many parts of Papua New Guinea. Epstein once complained that law 'stands out as one of the most neglected' by anthropologists studying Melanesian culture [1974: 2]. Today all the anthropologists who study the present situation of Papua New Guinea society are obliged to face the problem of 'law and order'.

The Fasu-speaking people of the Southern Highlands Province are at present (1983) free from such tribal fightings and urban crimes as flourish among Highlanders. Law and order is fairly well maintained among them. Andrew Strathern wrote that in 1973 the Pangia people, also of the Southern Highlands Province, 'were sure that if anyone tried to fight in Pangia as people did in Hagen, they would undoubtedly all be thrown in gaol' [1984: 28]. The same may be applied to the Fasu of this day. They are geographically isolated and not offered any prospects of economic development. They are, despite the long history of European contact, classified as an under-developed people. Considering the present legal situation of other parts of Papua New Guinea, I was fairly shocked at Fasu statements to patrolling officials that they need government intervention in their affairs. The purpose of this paper is to examine how disputes are settled through such official's informal court procedures in Fasu society and to consider why the Fasu are eager to have outside authority intervene in their affairs. And to answer these questions, the historical background will be described in some detail. The need for this historical account in discussing the problem of 'dispute settlement' in post-contact times is always stressed [e.g. EPSTEIN 1974: 29], though such an account is neglected in most anthropologists' work.

1. Ethnographic Setting

The Fasu-speaking people occupies the area of land between the Hegigio (Kikori) River and Lake Kutubu in the Southern Highlands Province of Papua New



Map 1 The Fasu and Surrounding People

Guinea (see Map 1). The area, situated at an altitude between 300 and 800 meters, is mountainous and covered with thick tropical forest. Sago swamps are scattered through the whole area and provide the Fasu population with the staple starch. The Fasu territory, which comprises the Fasu Census Division, covers roughly 1000 square km and is sparsely populated by about 1000 people (1980 national census), who speak 3 different dialects of the Fasu language.

The Fasu population in the census division is geographically and sociologically divided into three groups which correspond to the three linguistic divisions. The northern or Kaipu-Sisibia group is composed of 4 longhouse communities: the middle or Waro group of 3 communities: the southern or Seiku group of 4 communities. The data used in this paper were collected mainly in Ubogo, one of the longhouse communities of the Waro group, between July 1982 and September 1983. Ubogo is located near the Waro air-strip and the Waro mission station (Evangelical Church of Papua). The Waro aid-post, which offers medical services to the Waro and Seiku groups, is attached to Ubogo. The Waro community school, the first government school in the Fasu territory, opened in 1982, is located in the vicinity of Ubogo.

Another Fasu population inhabits the area of the upper Turama River, a week's journey from Waro. Some informants claimed that the Fasu people migrated from this area. Although this statement cannot be historically attested, it is evident that the Fasu are 'part of the broadly lowland Papuan series of cultures' [SCHIEFFELIN 1978: 9]; or more particularly, Fasu culture is a mixture of that of the

Bosavi (Kaluli, Etoro, Onabasulu, and Kasua) and that of the Foi.

Sago starch, the staple food of the Fasu, is processed exclusively by women. Ownership of sago palms is a matter of great concern. Other traditional crops include banana, pandanus, breadfruit, sugarcane, edible pitpit, and a variety of bush leaves and nuts. Many other crops, such as new varieties of sweet potato, taro, cassava, corn, pumpkin, cucumber, choko, coconut, pineapple, papaya, mango, orange, and so on, have been introduced since European contact. Women usually plant these crops in gardens cleared and burned by men. Pigs are raised in small numbers, though they are scarcely consumed and only on ceremonial occasions. Other sources of animal protein include wild pig, cassowary, and a variety of marsupials, frogs, pythons, snakes, lizards, and birds. Small fishes, eels, and crayfish are caught in small creeks. Sago and tree grubs also contribute much to the Fasu diet.

The traditional settlement pattern of the Fasu is similar to that of the Daribi [WAGNER 1967]. A clan moves to a new location and builds a communal longhouse when it has raised enough pigs to be killed at the celebration ceremony held at the completion of the longhouse. The longhouse is used for several years. As sago palms near the longhouse become exhausted, individual men or groups of brothers build separate small bush-houses in order to collect sago starch in remote swamps. When the longhouse goes out of repair, the members of the clans live separately in their own bush-houses, waiting for their pigs to grow in number. Then the cycle begins again elsewhere. The traditional Fasu longhouse settlement was of the Bosavi type, *i.e.*, both men and women live together in the longhouse. The longhouse settlement of Foi type gradually took its place: the longhouse is inhabited only by men, while women use the smaller women's houses which line both sides of the men's house. The residential separation of the sexes is always maintained for longhouses of both types and also for the smaller bush-houses.

Aporo ira (lit. 'man tree') is the basic social unit of the Fasu. It may be viewed as a patri-clan. When a clan is split into sub-clans, however, these units are also referred to as separate *aporo ira*. A longhouse community is ideally composed of male members of a single clan or subclan and their wives. In most cases, however, non-agnates, such as children of female clan members, affines, and refugees from warfare or sorcery, are allowed to live in the community. These non-agnates and their offspring are sometimes fully incorporated into the host clan; they participate in the exchange system, obliged to contribute to the payments hosts make, given a right to receive a portion of the payments hosts receive, and having a duty to distribute payment they receive to the hosts; they are allowed to share a variety of resources of the host clan, the most important of which is the sago palm. However, their original clan affiliation is remembered for several generations. It often happens that the host clan dies out and non-agnatic members of the community took its place.

Basically the clan and community structure remained the same after European contact. The longhouse community is the largest social and political unit of Fasu

society. The Australian administration, however, regarded the scattered settlements as the main obstruction to the patrollings and gave instructions to the Fasu that several clans should gather and form a single longhouse community. Consequently most of the present communities are of multi-clan type. Marriage is exogamous, the preferred arrangement being FFZSS or FHBSZ marriage. Residence is patri-virilocal. What Kelly [1977] called 'classificatory matrilineal sibblingship' is found among the Fasu; the offsprings of the mothers of the same clan call each other 'brother'. Affinity and matrilineal sibblingship are the two main principles that establish inter-clan or inter-community alliances.

No political institution integrates the whole Fasu population. The longhouse community, the largest political unit, usually has one or two headmen as its leader or leaders. Their social position is individually achieved mainly through their abilities in warfare and sorcery, independent of their clan membership. Few of these headmen are so prominent as to exert their political influence over other communities. The political powers of these headmen are usually restricted to within their own clan or community. Warfare marked Fasu social life until Australian administrative control was established.

2. Historical Background

Australian officers started regular patrols into Fasu territory after World War II, when a government station was established at Lake Kutubu (Tage station), two days journey from Waro, in 1949. Before the war a small proportion of the Fasu population was contacted by government patrols from Tugiri camp on the lake, which functioned in 1937-40 as a base camp for the Papuan Government's penetration into the region of the Southern Highlands. A few Fasu men also visited the camp. Pre-war patrols took neither censuses nor appointed village officials in the Fasu area. It was in the 1950s, therefore, that government influence and control was extended to the Fasu.

Before describing the process of the spread of administrative control after the war, however, how the Fasu experienced earlier encounters with European visitors and how they made their own image of white men should be examined. I have suggested elsewhere [KURITA 1985; SCHIEFFELIN and KURITA 1988] that Staniforth Smith, on his Kikori expedition in 1910-11, made the first white contact with the Fasu. After Smith's expedition, three patrol parties went into the lower Mubi valley and contacted the lower Foi, south-eastern neighbours of the Fasu. Although these parties did not penetrate into Fasu territory, it is highly probable that these encounters with strange trespassers were quickly reported to the Fasu. In fact, some Fasu men were involved in the fights between the lower Foi and these parties. An account of these fights was given by a retired Fasu policeman who now lives in Port Moresby:

My father, along with Kaipuhao people (the southernmost population of

the Fasu) and the lower Foi, fought with white men at Kandobo (a lower Foi longhouse community near the Mubi). Foi and Fasu people gathered together around the white men's camp on the pretence that they wanted to trade with the party. At night they raided the party. While a number of Foi and Fasu were shot, a white man was shot by a native spear. One Constable and six native carriers were killed. In retaliation other white men came later and shot out all the Kandobo people. They burnt down the longhouses of Kandobo, Homane, and Kobe (all lower Foi communities).

Thought details of the former fight are not known, the latter was recorded by Sydney Chance and Clarence Healy in their patrol report [Kikori Patrol Report, 13/1926-27]. Although this account does not accord with Chance and Healy's report in many respects, it might convey the early Fasu conception of Europeans. It is important that the latter patrol was interpreted by the Fasu as a revenge for the former. As in the Highlands, Europeans were initially assigned to a 'wild spirit' (*yagasa ho*) category among the Fasu. They were classified as non-humans that brought a variety of new goods. This does not mean, however, that they were comprehensible to the Fasu. The fact that they were totally new spirit-beings which they had not seen or heard of is not to be dismissed. The Fasu and Foi could not infer with what intentions these spirit-beings came. They did not expect, therefore, that Europeans would come back to make a retaliatory attack on them, as they themselves were accustomed to make. These fights were the first occasion in which they learned that the newcomers behaved like human beings, that is, like themselves, with enormous fighting power unknown among them. This also explains why Ivan Champion and Adamson, who passed through Fasu territory on their Bamu-Purari patrol in 1938, encountered few natives on their way from the Kikori River to Lake Kutubu [CHAMPION 1940]: Most of the Fasu had fled into the bush, thinking that white men came again to have revenge upon them.

After the commencement of regular government patrols into the Fasu area, Australian officers reported favorably on Fasu attitudes towards them. According to patrol reports, the Fasu were, for the most part, timid and shy, but friendly [Lake Kutubu PATROL REPORTS, 1949-60]. Sometimes they deserted their own houses on hearing of the approach of the patrol parties, although they did not attack these newcomers. The main instructions given to the Fasu in the 1950s were: stop fighting; stop killing and eating human flesh; settle down in a fixed village, and so on. No severe fighting has been reported since 1949, though several incidents of homicide still occurred in the 1950s. A report made on a case of killing a female witch is worth quoting.

Their attitude to this business was we have done what you asked us — instead of having a battle between the two villages concerned we got together and arranged that the woman who was guilty of these four deaths (she was said to have killed her husband and three of her dead spouse's relatives)

should be punished.

Normally this would have involved war between our villages and we would have eaten the bodies of the slain as is our custom. We killed the woman but we did not have a battle nor did we eat the woman. [Lake Kutubu Patrol Report, 3/1950-51]

It is clear from this case that the Fasu tried to follow the European officer's orders as far as they could in their own way. As for the settlement, however, they were very slow to adopt fixed village settlement forms as instructed, for this settlement form was not congruous with their traditional community structure nor with their ecological conditions. It was only late in the 1950s that some Fasu clans began to gather together to build and settle down in a communal longhouse community.

There may be a number of reasons why the Fasu were willing to cooperate with patrol officers. One is clearly that many traditional valuables, such as various shells, and new goods, such as steel axes and knives, mirrors, beads, etc., could be obtained through trade with Europeans. Another reason is that the Fasu policeman on duty then accompanied the patrol [cf. Lake Kutubu Patrol Report, 4/1949-50]. Of the Sanemahia clan, he lived as a refugee near Wasemi Island of Lake Kutubu, when the Tugiri camp was opened. In 1940, when the camp was forcibly closed on the outbreak of World War II, he was taken to Port Moresby to be trained as a Constable. He returned to the lake upon the re-establishment of the government station, and from then worked as a Constable. His important role as a mediator between Europeans and the Fasu cannot be exaggerated. In general, the spread of government influence is conditional to a great extent on the mediator's or interpreter's ability. He was a favoured son of a major big man and so had a detailed and specialized knowledge of Fasu life. He was a clear-minded man, and was relied upon both by European officers as an able native Constable with local knowledge, and by the Fasu themselves as a fellow man who knew and understood well the white men's ways.

Village constables and councillors were also expected by European officers to act as intermediaries between villagers and the administration. Officers attached great importance to these village officials who could facilitate the spread of government influence. They directed their attention, therefore, to choosing influential local leaders to hold these offices. Village officials were instructed to organize villagers to carry out public works, such as the construction and maintenance of main paths, latrines, rest houses, and so on. They were also told to settle minor disputes and quarrels in the village and to bring offenders before the court of Native Affairs.

In 1954 a government air-strip was opened near Lake Kutubu (Moro air-strip), in the territory of the Sanemahia clan. A number of the Fasu worked on its construction and maintenance. Some of them were employed to build other air-strips in the Highlands area, such as Mendi and Tari. They also worked as carriers

for the patrols into the Highlands and Mt. Bosavi areas. These jobs provided the Fasu with occasions in which they became familiar with the ways of the Europeans, as they did when working with the patrols. Most patrol officers considered that this contact accelerated the acceptance of the administration by the Fasu.

After the opening of the Mendi air-strip in 1950, Mendi became the headquarters of the newly formed Southern Highlands District in 1951. Since then the importance of the Tage station gradually diminished, though it still functioned as the main base for the patrols around Lake Kutubu and Mt. Bosavi. Tage station was officially closed in 1960. From 1960 to 1974 the Foi and Fasu areas were administered from Mendi, and after 1974, from Nipa. The regular government patrols continued, and Lake Kutubu Local Government Council was formed. In 1974 a new patrol post was established at Pimaga, a two day journey from Waro, in the Foi area and started to function as the base for government patrols. A mission air-strip was constructed for the mission station at Waro in 1971, though most government patrols visiting Fasu villages were carried out on foot from Pimaga throughout the Fasu area, not using the flight service. At present (1983) no administrative officers are stationed at any Fasu villages.

3. Changes of Dispute Management Procedures

Among the Fasu all disputes are referred to simply as 'trouble', *kerere*, a loanword from Motu. There are no original Fasu terms for disputes or quarrels. This corresponds with the Fasu traditionally having no formal procedures to handle cases of trouble, and also with the process of dispute settlement varying according to the specific conditions of each case. A Fasu term *we-raka* (lit. 'to fight') is usually used to describe disputes which developed into brawls. Most informants tend to emphasize that before European contact a dispute always resulted in fighting and that strong enmity lasted for a long time between the disputants. This characterization, with the implication that their traditional way of dispute management is 'wrong', may be related both to the Christian ideology to which all the Fasu have now converted and to the legal education of the administration.

It is almost impossible to draw out a full list of the causes of trouble among the Fasu, for any sort of problems may give rise to dispute and fighting. Many elder informants are willing to give accounts of old troubles, which are mainly cases leading to severe fighting and killing. It is evident that disputes which were quickly and peacefully settled tend to be forgotten. Detailed descriptions given mainly concern the process of the development of enmity between the disputants and with the actual fight, rather than the trigger of the initial dispute. The focus of the informants' interest is the particular hostile relations between the parties, though when pressed they can usually explain what caused such brawls. The issues most frequently mentioned as the initial causes of disputes and brawls are: Problems concerned with witchcraft and sorcery; problems involving women, such as adultery, rape, theft of women, *etc.*; problems of bridewealth or compensation

payments; various other kinds of thefts; and problems of land ownership, especially ownership of sago palms.

Another category of causes of trouble, which is stereotypical, should be noted. A split in a longhouse community sometimes occurred after a brawl among its members and each segment formed a new community. Although various types of trouble may have given rise to such a split, informants always ascribe its cause to *kasa kati we-raka* (lit. 'dog faeces fighting'), *i.e.*, members disputing and fighting over whose dog defecated on the floor of the longhouse and who should dispose of it. This expression is never used when informants talk about disputes and fights involving inter-community relations.

A member of a longhouse community is prohibited from killing another. When a brawl breaks out among them, they only use sticks (or special fighting sticks) and never shoot arrows or spears in the traditional way. Solidarity of the community is stressed, so that the whole community can cooperate in communal tasks when facing enemies. Leaders of the community usually act as mediators and manage the trouble. They may arrange a payment or an exchange of valuables between disputants, or merely tell the aggrieved to drop the matter. Minor intra-community disputes are thus settled. Or if this procedure failed in pre-contact situation, a split of the community followed.

Influential headmen sometimes managed inter-community disputes by arranging compensation payments or exchange of valuables or women between the disputing parties. They also could restore through mediation an amicable relation between longhouse communities which were at war with each other. When they had some interest in the matter, however, they would not act as mediators. Vengeance was the most common way of rectifying any injury, whether it was brought about by accident or through malice, in conditions filled of suspicion and hostility. In most cases inter-community disputes led to severe fighting and in consequence to homicide; the death was revenged by the aggrieved. Vengeance killings were thus repeated between the communities. The fear of being attacked by hostile neighbours was a major source of pre-contact migrations. Strong enmity between communities continued for long and was difficult to dissolve through the arrangement of death payments.

Since self-redress was prohibited by the administration, the Fasu have put much reliance upon patrol officers as arbitrators. It may be said that European administrators, who banned on the use of physical violence, were obliged to take its place. Officers' orders were physically sanctioned with great power which could not be opposed, and therefore could not be neglected. Although traditional headmen could also force people to obey their orders with the threat of withdrawing their support or using violence or sorcery, they could be challenged, unlike Europeans. Arbitration by patrol officers had, for the Fasu, a nature absolutely different from that of major headmen.

In the initial stage of introduction of judicial system, however, the Fasu did not appreciate the arbitration by patrol officers in their trouble. Europeans were first

believed to be merely the holders of enormous power who would rarely kill but who would often put those who was not obedient to them in gaol. Most of the Fasu were at first not willing to bring their trouble cases up to the officers for fear that all the disputants would be taken to Lake Kutubu and sentenced to jail. A patrol officer wrote about the Fasu in 1957:

...I feel that there is still a great deal of distrust for Native Affairs courts and our interest in all the little disputes. The people seem (seem) to fear that our only concern in these internal squabbles is to catch some one out and take him away to jail. They believe that a man who has offended against village code, e.g. incomplete payment of bride price, is just as liable to go to gaol as an offender amongst the law as is a man who has, perhaps, committed homicide.

Their village and communal feeling is very strong and rather than bring an offender up before a court, they prefer to keep their troubles to themselves rather than lose one of their number to a corrective institution [Lake Kutubu Patrol Report, 1/1957-58].

As administrative education was repeated for each patrol, the number of problems brought up to the officer's court gradually increased. The trace of this fear, however, can still be found among the Fasu.

The second stage of introduction of a judicial system was marked by the appointment of village officials. They were instructed to manage minor disputes in their own right. The villagers were also ordered to report on every trouble they had initially to these office-holders first. The Fasu regarded the meetings held by village constables or councillors to discuss the problems as *koto* or 'courts', a loanword from English or Pidgin. The court of Native Affairs held by patrol officers was also called *koto*, or more particularly *saubuta koto* (lit. 'whitemen's court': *saubuta* is a loanword from Motu), which became the model of village officials' meetings. The administration, however, did not provide village officials with judicial power to convene a court. They could settle disputes only with 'out of court' procedures, that is, they could act only as arbitrators, not as magistrates. All that they were expected to do by the administration was to report offences to patrol officers and bring to the court of Native Affairs those who did not obey their orders. They, backed by the administration, were not actively empowered, with no shot-guns and no ability to put culprits into gaol. Although minor domestic problems could be solved through the village official's court, major inter-community disputes were not mediated well and referred to the patrol officer's court.

The court of Native Affairs was later replaced by the Local Court, and patrol officers lost their judicial power. As the police system was separated from the *kiap* system, they also lost their police power. They no longer acted as magistrates or as commanders of police. Village constables and councillors were also replaced by elected Local Government Councillors, whose positions are regarded by the Fasu as

analogous to those of their predecessors. After Independence expatriate patrol officers were replaced by nationals. In spite of these changes, however, the Fasu conception of the judicial system still remained the same. National officers and policemen who visit the Fasu villages irregularly are, for the Fasu, the only 'government people' who can handle disputes appropriately. They are vested with the same image as their predecessors, expatriate kiaps.

4. Present Judicial Situation and Cases

During my field research, two administrative patrol parties visited the Fasu villages: one for the election of the Local Government Councillors, the other for a national census. A number of problems were brought before the administrative officers and accompanying policemen. Their dispute management was regarded as a formal or official court procedure by the Fasu; their informal instructions were taken as court orders with authority.

Disputes which were not settled on the spot are first reported to the Local Government Councillor. Then the councillor summons a meeting and tells all the disputants and witnesses to attend. Major elder headmen are also requested to participate. The meeting is always held in the longhouse, which women are prohibited to enter. The main disputants are exclusively male, even if women are involved in the trouble, and female disputants and witnesses stay outside the longhouse, usually near its entrance. While the headmen plays active roles as mediators, the councillor often draws back, commenting only on formal legal problems unless he is involved in the case. Some of the problems are solved by reconciliation through these unofficial court procedures.

If an agreement is not reached by both sides the case is brought before the administrative officials. There are two possible ways of 'appealing': One is to wait for the next government patrol to visit the village and report the matter to the officials. The other is for the disputants themselves to go to the Pimaga patrol post and ask the officials to arbitrate the case. The latter procedure is rarely taken because of the distance between Waro and Pimaga. If it is taken, it is because the case is very serious or the disputants are much grieved. All the troubles brought to Pimaga during my research were not handled by the administration, and the disputants were always told to wait for the next patrol, because only one side to the dispute visited Pimaga and the other disputants and witnesses remained in their own village. Most of the trouble cases are, therefore, handled by the administrative officials when they visit the villages on their patrol. Anxious villagers gather around the officials' table, waiting for them to finish their administrative work and start hearing cases.

At Ubogo seven disputes were heard by an administrative officer and a policeman after they finished taking census on 9 March, 1983. Most of the members of the Ubogo, Yorogobayu, and Hebaiya longhouse communities of the Waro group gathered at the meeting. For each case all the disputants involved

stepped forward and stated their claims in turn. While the officials used Pidgin, the disputants spoke only Fasu, even when they were Pidgin-speakers. Every statement of the disputants and the officials was translated by the Foi translator who accompanied the patrol. The Fasu attitude toward the hearing is marked by its formality: the disputants stand straight with their hands behind their backs, facing the officials and giving statements only when asked to do so. Some are timid about being in front of the officials. In contrast the officials appeared quite relaxed, the hearings being informal, although their final instructions were tinged with some authority.

The following is a summary of and my comments on the cases handled at the meeting. The order of the hearing has been changed for the sake of convenience¹⁾.

Case Summary 1: alleged sorcery

Meno accused Teta and Isia of sorcery on Kitafa, his wife then dead. Meno, of the Kunihia clan in the Yorogobayu longhouse community, is a deacon of the E.C.P. mission and married Kitafa, of the Ketogo clan in the Ubogo longhouse community, in 1975. Teta, a komiti (a committee member) of Ubogo, is stepfather of Kitafa. Isia is a headman of the Hebaiya clan in the Hebaiya longhouse community. According to Meno, his wife had a dream repeatedly while she was very ill. In her dream, Teta and Isia approached her canoe from under water and turned it over; when she walked along the road, they came and chased her, and then she was chased and stung by bees; when she walked under a large tree, Teta came and chased her, and then Isia also came and chased her. Dreams of this kind are believed to be the signs of the dreamer being attacked with sorcery or poisoning by those who harmed him or her in the dreams. Kitafa died in 1982. Meno reported the issue to the Local Government Councillor. The councillor held a *koto*, in which no agreement was made about the problem of sorcery, though Teta promised that he would pay back the bridewealth he received from Meno. Meno paid bridewealth twice: the first, main bridewealth, was paid to and distributed by Kitafa's patrilineal and matrilineal kin when she married; the second was only for Teta who did not receive a portion of the first. Teta had not returned any bridewealth items to Meno yet. Meno reported the whole issue to the officials' *koto*. Isia, who did not participate in the councillor's *koto* and had not heard of the accusation, got angry and excited when he was accused of practising sorcery on Kitafa. He was calmed down by the policeman, who said that there was no truth in attributing such meaning to a dream and told Meno to forget the issue. Meno agreed but referred to the previous arrangement of the return of the bridewealth. The policeman asked Teta whether he would pay it back. Teta said that he would make a return payment as soon as he received enough wealth items. The policeman ordered him to do so and Meno agreed.

Sorcery and witchcraft are still matters of great concern for the Fasu. Most deaths, especially deaths of adults, are attributed to such supernatural attacks. Often, the fear of being attacked by a sorcerer is openly expressed and temporary refuge is sought to avoid such an attack. Those elders who are believed to have detailed knowledge of sorcery techniques, especially headmen of the community, never threaten to attack others with sorcery, as it has been prohibited by the administration. Their claims, however, are sanctioned by their supernatural powers, and much more respected and more often accepted than those of young and inexperienced men. It is said that one may also pay those well-known sorcerers to make an attack on one's enemy. Sorcery deterrence still functions in Fasu society to maintain social order.

European patrol officers in the 1950s repeatedly reported that the practice of and the belief in sorcery was wide-spread among the Fasu [Lake Kutubu Patrol Report, 1950-1960]. They often arrested the possessors of sorcery equipment, *i.e.* poisonous substances, and sentenced them to gaol. They told Fasu villagers to stop practising sorcery and also tried to drive out the belief in it. The missionaries also acted for the relinquishment of the native belief in supernatural powers. Despite these endeavours, sorcery is still believed to be practised by elders.

Though the practice of sorcery is difficult to find because of its secret nature, it can be evidenced and punished as a crime by the administration, just as can the use of physical violence. There exists, however, a great difference between the two. When an injury caused by physical violence is reported to the officials, they must handle the case: the offender must be identified, sentenced, and ordered to pay compensation. It is clear both for the officials and the Fasu that someone must be responsible for such an injury. In contrast, when someone is accused of being a sorcerer believed by the accuser to have caused the latter's injury, the officials can reject the case, saying that the trouble has nothing particular to do with sorcery and that no other person is responsible for the problem. Unless reliable evidence, *i.e.* possession of sorcery equipment, is brought forward, the officials do not try to establish the connection between a particular illness or death and any practice of sorcery. For them supernatural attacks do not exist.

In the above case, the policeman rejected the problem of alleged sorcery and turned the issue into the return of the bridewealth. He succeeded in preventing the disputants from developing hostility toward each other by arranging such payment. Although the payment will be made as a return of the bridewealth, it may function as a conciliatory payment.

This, however, is an exceptional case. It is usual for officials simply to reject a case of alleged sorcery, without any punishment of the alleged sorcerer nor any arrangement for compensation payment. Their tendency to disregard cases of alleged sorcery is evidenced in the following case.

Case Summary 2: alleged sorcery

Kagorea, of the Kunihia clan in Yorogobayu, was told by his fellow clansman Nama to report sorcery toward him to the officials in his place. Nama had had the same kind of dreams as Kitafa had. Then his right leg swelled up, and later he became lame. Isia was accused of being the sorcerer. When Kagorea finished the report, the policeman asked him where Kagorea was. Nama answered that Kagorea was in his bush-house unable to walk to the *koto*; the policeman said that as Kagorea was not present the issue could not be handled.

The policeman was right to reject hearing the case because of the absence of the plaintiff. He showed, however, a negative attitude toward the accusation, and it is clear from Case 1 that he would have dismissed the case even if the plaintiff had attended the *koto*.

The administration's recent attitude toward accusations of sorcery or witchcraft accusations may be characterized as that of not taking such matters seriously. The existence of supernatural powers that would injure and even kill humans is not accepted by patrol officers. For the Fasu, the matter is quite different. The threat of and the actual use of force has been the only effective means of social control among the Fasu. It has been thought that injury could be done to one's enemy both through physical violence and sorcery. As the use of the former has been strongly prohibited by the administration, the latter is the only possible way of self-redress open to them. It is natural, therefore, that they have relied more on supernatural powers, rather than physical force, to make strong claims or to take revenge. Indeed, it is very difficult to know whether sorcery is still practised among the Fasu. Informants always told me that they no longer practise it. The fear of sorcery, however, is frequently expressed. Belief in supernatural attacks is still very strong.

Case Summary 3: adultery

Yatipinu, of the Wagutuba clan in Yorogobayu, had an adulterous relation with Kari, Tokonena's wife. Tokonena, of the Kigiri clan (originally Ira clan), is a komiti of Hebaiya. The issue was discussed in the councillor's *koto* and an agreement was made that compensation would be paid to Tokonena by Yatipinu and Kaeyago, Kari's clan brother in Yorogobayu. As both Yatipinu and Kari were to blame, the obligation of the compensation payment was shared equally by the adulterer's and adulteress's clans. The compensation was subsequently paid to Tokonena. He, however, much grieved, hit Yatipinu. The issue was again discussed in the officials' *koto*, and the officials told Tokonena to pay back the compensation that Yatipinu had paid to him. This was later returned to Yatipinu, but not to Kaeyago.

Kaeyago was not satisfied with this arrangement, and again brought the matter before the officials' *koto*. The policeman and administrative officer disregarded his claim, saying that the return had been made because Tokonena had hit Yatipinu and that the matter did not concern Kaeyago. Kaeyago reluctantly accepted the officials' statement to the effect that the whole issue was over.

The case was once handled in the officials' *koto*, and the conflict was solved there between Yatipinu and Tokonena through the arrangement involving the return of the compensation payment. The relation between Tokonena and Kaeyago remained unadjusted through this arrangement. It was Yatipinu, not Kaeyago, who was actually hit by Tokonena. Kaeyago was, however, also involved in the brawls: Tokonena and his supporters fought with those who were to pay him compensation. In other words, Tokonena's party was opposed not only to Yatipinu's group but to an amalgamation of Yatipinu's and Kaeyago's parties. In the case of adultery, compensation should be paid both by the adulterer and the representative of the adulteress' clansmen; the adulteress' husband has legitimate claims equally on the former and the latter. These two parties are linked not only by affinity but also by the same interest in the issue. Yatipinu's party and Kaeyago's party thus cooperated to oppose Tokonena's party. Kaeyago, who was not actually hit but assaulted by Tokonena, had a right to demand the return of the compensation that he had paid. The official who handled the case at the previous meeting missed this point by concentrating only on the fact that only Yatipinu had been hit. At this meeting the policeman and administrative officer did not hear the case in detail and simply supported the previous arrangement. Kaeyago's claim, which had been legitimate at least for the other Fasu villagers, was declared illegitimate again. No dispute have arisen between Tokonena and Kaeyago since then.

Kari, still young, may be categorized as a 'trouble-maker'. The following case is also concerned with her.

Case Summary 4: alleged adultery

Tokonena accused Kinu, of the Hebaiya clan (originally Kigiri clan) in Hebaiya, for having an adulterous relation with Kari. One day when Kinu was playing the guitar at the entrance of Hebaiya longhouse, Kari and he fixed their eyes on each other. Watching this, Tokonena suspected a love affair between them. Later on another occasion Kinu went to his bush-garden to collect some vegetables to sell them at the market held every Saturday near the Waro community school. He returned to the main track from Hebaiya to Waro, and somewhere on the way went into the bush and hid the vegetables as usual. Kari was also in the bush, close to where Kinu hid the vegetables, to collect bamboo tubes for cooking and for water. This

was reported by some witnesses to Tokonena. The policeman asked Tokonena and Kari whether they met in the bush. They both answered in the negative, saying that it was a mere accident that they were close to each other in the bush at the same time. The policeman dismissed Tokonena's appeal because of the lack of sufficient evidence.

If an adulterous act is witnessed or sufficiently evidenced, the dispute over the issue will be settled in the councillor's *koto* through the arrangement of compensation payment. In contrast, alleged adultery is often brought before the officials' *koto*, and usually dismissed by the officials because of lack of sufficient evidence, as was true in this case. Although the officials made an authorized statement that adultery was not committed, the problem remains unresolved: the husband continues to suspect the alleged adulterer. Hostile relations between them lasted for some time. Kinu, finding things unpleasant, later left for Kikori and found a job there.

Case Summary 5: adultery

Keno, of the Nari clan in Ubogo, had an adulterous relation with Fufu's wife, Henogo, of the Yaferaka clan in Ubogo. Fufu is a man of the Kigiri clan in Ubogo. The issue was discussed in the councillor's *koto* in two meetings, the latter of which I attended. In the *koto*, after a long and sometimes excited discussion, an agreement was made concerning the arrangement for compensation payment between Keno and Fufu and between Keno and Senagi, Henogo's foster father. Some of the compensation was already paid to Fufu by Keno. The policeman rejected Fufu's appeal that the matter should be discussed again before the officials, saying that an agreement had been made among all the disputants. As Keno and Senagi told Fufu that they would pay the compensation as soon as possible, Fufu retracted his appeal.

Fufu tried to urge Keno and Senagi to pay compensation as soon as possible by bringing the case before the officials' *koto*. Although no official order was made to Keno and Senagi by the policeman, they were obliged to make a promise to him that they would make the payment soon. They did not wish to have the case discussed before the officials for fear that that would complicate the matter. Fufu also did not expect the case to be formally handled by the officials. He merely wished to legitimize his own claims by recourse to authority, and, in this respect, he succeeded in it. The threat that one will report the trouble to the officials is a highly effective means of forcing one's claims over disputants.

Cases concerning bridewealth payment are basically of the same nature as those of compensation payment over adultery:

Case Summary 6: bridewealth

Pare, of the Kutu subclan of the Wagutuba clan in Ubogo, married Hi, of the Sanemahia clan in Yorogobayu, with an agreement that the bridewealth would be paid later. Quarrels sometimes broke out between Pare and Hi's clansmen about the mistreatment of Hi or the delay of the payment of the bridewealth. When the bridewealth was bargained, an agreement was made on the amount of shells and pigs, but not on the cash. Teraiya, of the Kosayu subclan of the Wagutuba clan, who would receive half the payment as a representative of Hi's matrilateral kin, demanded 440 Kina from Pare, while Taguno, of the Sanemahia clan in Yorogobayu, and Taguhi, of the Tatugaya clan in Yorogobayu, who were to receive the other half of the payment as representatives of Hi's patrilateral kin, demanded 140 Kina. No agreement was then reached. Teraiya, Taguno, and Taguhi reported to the administrative officer and policeman that Pare had yet to pay the bridewealth. Pare told the officials that he had not been able to pay because the amount of the bridewealth had not been agreed upon. The policeman asked Teraiya, Taguno, and Taguhi how much cash they each wished to receive, and suggested that 140 Kina would be adequate. Pare and the other disputants agreed on this suggestion.

Among the Fasu bridewealth is shared equally between the bride's patrilateral and matrilateral kin. In the bargaining over the amount of bridewealth items, the claims of these two parties must be adjusted. Although there is a fixed standard concerning bridewealth, it is not rare that the two parties demand quite different amounts, as this case shows. In such a case, the officials' arbitration is inevitable. The headmen and the Local Government Councillor have no right or authority to mediate between the parties. The policeman, however, treated the three men's claims on equal basis. This is not in accord with the Fasu way of deciding the amount of bridewealth items. The policeman's suggestion, which is regarded as a formal order, prevented the trouble from developing into severe hostility between the wife-taker and the wife-giver, however.

Case 7, which was concerned with a brawl, arose during discussion over the arrangement of compensation payment, but is too complicated to summarize here. What is important about this case is that while the disputants reported the trouble to the officials in order to ask them to arbitrate among them. It was referred to as a 'criminal' case by the policeman. The brawl, which I witnessed, was quite ordinary in which no injuries were sustained. A number of disputes developed into such brawls during my research, most of which were quickly calmed down by the intervention of elders. Although the disputants gave a detailed account of the trouble, the policeman only picked up the fact that the disputants had exchanged blows. He told them that the problem would be treated as a criminal case by the official magistrate. He took all the main brawlers to Pimaga and brought the case

before the Local Court. They were found guilty, sent to Mendi, and sentenced to 5 or 8 weeks in gaol. No arrangement for compensation payment was made by the court. The gaol sentence in Mendi is much feared by the Fasu, most of whom have not been to the Highlands. All the convicts concerned repeatedly stated, after returning from the gaol, that they would never again like to be put in gaol, and also that the whole matter was over and they would not discuss it, as told by the magistrate. Although the conflict was not solved among the disputants, they behaved as if they had no grievances one against each other.

5. Conclusions

As I mentioned before, Fasu villagers are eager to have their disputes arbitrated by patrol officials. This does not mean, however, that they are satisfied with the official's court itself. They often complain privately about the manner in which disputes are handled at the court. The most common complaint is that the patrol officials in general do not listen to the claims of disputants seriously. In fact, some of the disputants in the above cases made the same complaints to me after the hearings.

At the court mentioned above, the disputants were first told to give an outline of the dispute, and the two officials allowed them to finish their stories. Then several questions were asked of them. While answering these questions, they tried to explain every detail of the dispute and its background. Their claims were, however, often interrupted by the officials' questions. Finally some suggestion was given by the officials, who never allowed the disputants to discuss the matter any further. The disputants thus had to leave the court quite discontentedly, having been given little chance to make their claims in full. It was clear that the two officials intended to lead the hearings quite formally, as if they were magistrates of an actual court. The claims of the disputants were heard only on a 'questions and answers' basis, most of the claims being ignored in that they had little to do with the matter in question. Moreover, as they did not have a detailed knowledge of the Fasu customs, they often failed to recognize to what degree those claims were relevant to the matter. It was natural, therefore, for the Fasu disputants to complain that the two officials did not listen to their claims seriously.

The two officials' adherence to the judicial formality justifies this complaint in another way. They not only ignored the claims of the disputants in a literal sense, but also in the sense that they formally rejected most of the cases. In fact, they simply dismissed cases because of the absence of the accused (Case 2), because of the lack of sufficient evidence (Case 4), or supporting the previous decisions made by other officials (Case 3) or confirming the previous agreement reached at the councillor's court (Case 5). The same may be true to Case 1, in which the problem of alleged sorcery was rejected 'scientifically', or to Case 7, in which the 'civil' conflict itself was not handled at all. In these cases a final decision of dismissal was made with little inquiry into the matter concerned.

We should note here that at the court the disputes themselves were little managed because of the judicial formality to which the two officials attached such importance. It is not an overstatement to say that in most of these cases that they missed the main points of the disputes and that the conflicts were not resolved in the least through their arbitration. In order for the court to satisfy the disputants more, it was necessary for the two officials to allow them to make their claims in full and to concentrate on investigating the real causes of the disputes. This does not mean, however, that the administrative official and the policeman in particular were inept as arbitrators, for, according to the Fasu, the official's hearings are always conducted in as formal a manner as in these particular cases. If other officials handled these cases, their decisions would not have been significantly different from those of the two officials. The Local Court Magistrate, as a specialist in the formal court procedures, would have made the matter worse. In fact, he dealt with Case 7 merely as a 'criminal', just as the policeman did, simply ordering the disputants to dispense with the 'civil' matter².

We now turn to the apparent contradiction, a contradiction between the willingness of the Fasu to have their disputes arbitrated by the patrol officials and their discontent with the official's court itself. If they are not satisfied with the official's court, why do they often make an appeal to it nevertheless? To answer this question, Case 5 may give us a clue. In this case, no substantial discussion was conducted about the compensation payment. All the accuser expected of the court was to have his claims legitimized by the officials. He retracted his appeal as soon as the previous agreement reached at the councillor's court was confirmed by the officials. This procedure of legitimization was necessary for the accuser, for he had no power to urge the accused to pay the compensation as arranged at the councillor's court. In fact such power is not given to anyone among the Fasu, including the Local Government Councillor. He was, therefore, obliged to rely on the outside power, that is, the patrol officials.

For the Fasu, patrol officials are still believed to hold ultimate power. Their orders are absolute and cannot be disobeyed. Once some suggestion is given at the official's court, therefore, it is regarded as an official decision and must always be followed, however unsatisfactory it may be for the disputants, or even if the conflict concerned is not resolved in the least by it.

The existence of the holder of such absolute power is quite new to the Fasu whose society is traditionally egalitarian. Basic to the Fasu egalitarianism is the idea that others are fundamentally impossible to control and to force one's own will upon. Without any political authorities, therefore, the Fasu had developed their own system of sanctions through which one might control others. The system includes blood feud, payment of compensation, sorcery, supernatural attack by ancestral spirits, and so on. Most of these mechanisms was abolished when the administrative control pervaded the Fasu society³. The European system of sanctions, in which gun power of the kiap was the final sanction, was introduced in its stead. Since the Fasu were prohibited to use their own system of sanctions, they

soon became dependent on the new system. It is certain today that minor conflicts can be resolved by the disputants themselves, or by the intervention of headmen or the Local Government Councillor, without the mediation by the outside power. When these disputes are managed, however, indirect, and sometimes direct, references are always made to the new system; what the patrol officials would probably say about the matter must be taken into consideration in the discussion. In the cases of disputes which can not be reconciliated through these internal procedures, external mediation by the outside power is inevitable. Otherwise, the Fasu say, who can manage disputes? Even if the disputants themselves wish to resolve the conflict, they are not allowed to use either their own system of sanctions or the European system. The long history of their dependence on the outside power has disabled them from dispensing with its intervention to manage disputes.

Recently it is widely acknowledged that customary or traditional law should be respected and revived by the local authorities in Papua New Guinea [CLIFORD *et al.* 1984; SCAGLION 1983]. In line with this the Village Courts have gradually been introduced to officialize unofficial native courts. It is expected that if a native person with much local knowledge acts as a Village Court Magistrate, customary law will be respected to a large degree. It may be said indeed that if among the Fasu such a person had handled the cases mentioned above, the decisions would have been much more acceptable to the Fasu disputants. It should be noted, however, that the Village Court is based not on the system of sanctions inherent in customary law, but on the European system, or the outside power. When customary law is enforced by the alien system of sanctions, it is not customary law any more, for a system of sanctions is an essential attribute of law in general. In order to revive customary law in the strict sense of the term, not only its norms but also its own system of sanctions should be revived. As far as the Village Court forms a part of the introduced judicial system, therefore, the restoration of customary law cannot be achieved.

Andrew Strathern [1984: 60] pointed out the fundamental defect of the Village Court from another perspective.

The purpose of these (the Village Courts), as envisaged by their legal planners in Port Moresby, was to restore customary powers to the local people. Yet where such power did not customarily exist, it is evident that this was impossibility. To give themselves legitimacy, these courts had rather to inherit the mantle of the kiaps and of the itinerant Local Court magistrates who had replaced them.

The court system in general presupposes the existence of absolute authority, and the Village Court is clearly no exception. The court system itself is, therefore, wholly inconsistent with the egalitarianism of the local people. The Village Courts are dependent on the outside power, as the kiap's courts or the Local Courts were, or as the official's courts held among the Fasu are, and the same was true to its

precedents, unofficial native courts. In other words, however localized they might seem, it was the outside power that finally enabled unofficial native courts to manage disputes. In this respect, the introduction of the Village Court changes nothing. This does not mean, however, that the Village Court should not be introduced. In reality the local conflicts can not be resolved by the local people themselves, and the intervention of the outside power is inevitable. The introduction of the Village Court should be welcomed, therefore, in the sense that it makes clear the fact that the local people are totally dependent on the outside power to resolve their conflicts, even if this is quite contrary to the revivalists' original plans.

It is highly probable that the introduction of the Village Court in place of the official's court will be welcomed by the Fasu, as far as their customary social norms are respected. They will never want their customary law itself, particularly their own system of sanctions, to revive, for this will make peaceful settlements of disputes as difficult as in the pre-contact time. They are well aware that if the outside authorities lose their power or the European system of sanctions does not function well, self-redress will flourish among them as in the Highlands or other parts of Papua New Guinea. When a centralized authority was established and the local people began to be controlled by outside power, their legal life became totally different from what it had once been. The introduced judicial system is, whether customary social norms may be respected by it or not, always alien and quite new to the local people, as far as it is based on the European system of sanctions. To revive customary law, the European system of sanctions should be replaced by their own traditional one, although in reality this is impossible. It is clear indeed that customary social norms should be respected to make the introduced judicial system suit the present legal situation. In order to prevent 'law and order' from breaking down, however, all that is needed is to make sure that the European system of sanctions functions well. The revivalists' dream that 'law and order' will be fully maintained if customary law is respected by the introduced judicial system will never become reality.

Notes

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This paper was originally written in 1986 and is now published virtually unamended, for I found that the content of this article did not need to be revised by the new data I obtained in 1986–1987 and 1991–1992. A number of land disputes, however, have arisen among the

Fasu since the Kutubu Petroleum Project started in late 1980s in their territory, and most of these cases were handled in official courts.

- 1) All the personal names are pseudonymous.
- 2) It was only from the Fasu villagers who was sent to gaol in Mendi that I heard of the decisions of the Local Court on Case 7. I did not attend the court nor did I hold an interview with the Local Court Magistrate in Pimaga. Therefore my comment on his decision is based only on indirect data.
- 3) To a certain degree supernatural sanction still functions in the Fasu society, cf. KURITA 1989.

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