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Stone Age and Twentieth Century Law in the Independent State of Papua New Guinea

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STONE AGE AND TWENTIETH CENTURY LAW
IN THE INDEPENDENT STATE OF PAPUA NEW GUINEA

by
William John Stewart*

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INTRODUCTION

Papua New Guinea ["PNG"] is the third largest island nation in the world.\(^1\) Independent since September 16, 1975,\(^2\) the country is an incredible mosaic of language

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\(^2\) A brief recounting of the country's history is essential to an understanding of PNG's legal system. The Independent State of Papua New Guinea is composed of two former territories, each of which eventually came under the control of Australia. British New Guinea, which came to be known as the Territory of Papua, was in the southeast quadrant of the island of New Guinea, the second largest island in the world. The island of New Guinea and surrounding islands have an area of approximately 310,829 square miles, of which 178,765 square miles belong to PNG. The remaining land area belongs to the Indonesian territory of Irian Jaya. Geographic Atlas, supra note 1; 10 Encyclopedia Britannica (1955). The northeast quadrant of the island was called Kaiser Wilhelmsland while under the control of Germany between 1884 and 1914. When the Australians evicted the Germans at the start of World War I, the land formerly named after the Kaiser became the Territory of New Guinea. Britain annexed Papua in 1884 and turned the administration of the territory over to Australia in 1906. J. Ryan, The Hot Land 5 (1969). Eight years later, in 1914, Australia took over the former German territory of Kaiser Wilhelmsland. Thus, by 1914, the Australians administered the entire eastern half of the island of New Guinea. The Dutch claimed possession of the western half of the island in 1848. The Dutch claim was recognized by Germany and the United Kingdom in 1885. Indonesia wrested control from the Netherlands and renamed Dutch New Guinea "Irian Barat" on December 31, 1962. The Indonesians later renamed their half of the island "Irian Jaya."

The inhabitants of the island of New Guinea had little contact with Europeans before the late 1880's and few people living in the interior of the island had seen Europeans before the 1920's. For many New Guineans, the first sustained contact with foreigners came as a result of World War II. Japan invaded New Guinea in February of 1942 and fighting continued along the Bismarck and Solomon Seas coastlines until the end of the war. While the fighting was fierce along the northern coast and on some of the off shore islands, most of the people in the mountains and high plateaus had no contact with combatants from either side. R. Howlett, Battleground South Pacific (1970).

Prior to the introduction of European jurisprudence, in Kaiser Wilhelmsland by the German New Guinea Kompagnie, and in Papua by the Australian state of Queensland, the only legal system in what is now Papua New Guinea consisted of the customary law of an extended family or group of clans within a given linguistic group. There may be more than
PNG is a heterogenous society and generalizations concerning customary law as it exists in the country would be futile. Nevertheless, there are some common areas of customary law among the disparate peoples of PNG. This paper will explore certain customs found in numerous language groups and relate the law surrounding such customs to Anglo-Saxon principles of jurisprudence as they apply to present day Papua New Guinea. Section I will briefly discuss the background of the PNG legal system. Section II will analyze cases interpreting indigenous custom such as payback, provocation, sorcery, cannibalism, and the unique tort action of the loss of expectation of life resulting from wrongful death. Section III will draw some conclusions with respect to the unique blend of PNG local customs and Anglo-Saxon common law.

(footnote 2 continued)

one tribe within a given linguistic group, although a linguistic group may consist of a single tribe. A linguistic group might have only a few hundred members or more than 100,000, as is true in some areas of the highlands. A tribe has two or more clans. Clans may be patrilineal or matrilineal depending upon whether succession is through the male or female line.

Queensland law was applied in Papua because of the Australian state's annexation of Papua in 1883. The annexation was later repudiated by Britain because Australia was still a British colony. In 1884, Britain declared a protectorate over British New Guinea which in 1906 became the Australian Commonwealth Territory of Papua. Queensland is the Australian Commonwealth Territory of Papua and is the closest Australian state to PNG. D.E. Edgar & P.M. Edgar, Australia and Her Northern Neighbors 5 (1969); Geographic Atlas, supra note 1, at 165.

Because of the great diversity of languages and cultures in PNG, customary law in one area of the country may be unknown in another. Certain customs, however, are known with variations throughout the country.

3The Summer Institute of Linguistics in Dallas, Texas, lists 711 language groups within PNG, of which only 200 have been transcribed. See also Leydet, supra note 1, at 150.
I. BACKGROUND OF THE PAPUA NEW GUINEA LEGAL SYSTEM

After Australia began to administer the territories of Papua in 1906 and New Guinea in 1914, law within the two territories consisted of such customary law as the courts found applicable and codified law which consisted of the Queensland Code of 1899, which took effect May 9, 1921 in New Guinea. As a result, PNG tended to follow Queensland precedent until independence. The Supreme Court of Papua New Guinea has held that since independence, PNG courts are not bound to follow Australian (usually Queensland) precedent but instead, where appropriate, are to apply the common law of England in effect as of September 16, 1975. The PNG Constitution directs the courts to consider local custom where there is no codified rule of law applicable and appropriate to the circumstances.

Custom cannot create a crime which is not contained in the Criminal Code of PNG, however, custom may create a

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4 As will be discussed, all customs are not necessarily compatible with the PNG Constitution or Codes and hence do not have the force of law.

5 The Queensland Code of 1899 was adopted by Criminal Ordinance No. 7 of Papua in 1902, when Britain administered the territory. Queensl. Pub Acts 7 (1899).


7 McEnroe v. Mou, 302 (M) Appeal 59 (1981) (unreported); State v. Woila, P.N.G.L.R. 99, 100 (1978). The PNG Constitution provides that the Supreme Court is not bound by pre-independence decisions of the Court but should only disregard them for cause. P.N.G. Const. part II, division 1, § 9.

8 P.N.G. Const. part II, division 1, § 9, schedule 2.3.
Pursuant to schedule 2.1 of the Constitution, customs cannot conflict with "general principles of humanity," the Constitution or statute.\(^9\)

II. CASES INTERPRETING CUSTOM

One case, *Tatut v. Cassimus*,\(^11\) holds that the courts will apply only nationwide custom. This unreported Supreme Court decision seems unworkable in practice because of the diversity of customs throughout the country. As will be seen in the following subsections, the courts apply local custom if it is not an isolated aberration and if the custom does not conflict with "general principles of humanity."\(^12\)

A. Payback

One custom unquestionably found throughout the country, though in varying degrees, is the concept of "payback." Simply stated, payback is similar to the Old Testament concept of an eye for an eye. The concept is unrelated to culpability. For example, if a pedestrian is injured or killed by a motorist, the family and friends of the pedes-


\(^10\)"General principles of humanity" as used by the PNG courts refer to such principles as might be generally accepted in Western societies. P.N.G. Const. part II, division 1, § 9, schedule 2.1; See Regina v. Nobol-Bosai, P.N.G.L.R. 271 (1971).


\(^12\)The application of local custom, which is not in violation of general principles of humanity, seems to be more practical than the attempt to apply "national" custom, assuming there is such. The country is simply too heterogeneous for the concept of national custom to have any validity, except in situations where local custom has, over the centuries, become similar to customs existing all over the country.
trian may well attempt to "payback," i.e., injure or kill the motorist without regard to whether the motorist was at all responsible or culpable in the accident. Payback has certainly been the subject of more judicial commentary than any other PNG custom.

The fear of retribution through payback is found throughout PNG and, paradoxically, this ancient custom has become more common with the introduction of the automobile. In March of 1982 two police officers were rushing a pregnant woman to the hospital in Rabaul, New Britain Province.\textsuperscript{13} The trip resulted in the death of a child pedestrian. The car became inoperable and the two officers abandoned their vehicle and passenger and fled into the jungle through fear of being killed by payback.\textsuperscript{14} The passenger was left to walk the last mile to the hospital alone and was fortunate that she herself was not a victim of payback.

While payback is known throughout the country, it is most common in the highlands, the rugged mountains and high plateaus in the interior of the country.

The least sophisticated people in PNG live in the highlands, and the opening of the Highlands Highway has brought increasing automobile accidents to the area. Accidents nearly always invite payback. As a result, the courts have been increasingly called upon to wrestle with this

\textsuperscript{13}Rabaul is the third largest city in PNG, and has had long contact with Europeans. Its population is probably as sophisticated as any found in the country.

\textsuperscript{14}New Guinea Post-Courier, Mar. 12, 1982, at 2, col. 5.
custom. One case has stated: "The offense of dangerous driving causing death has reached staggering proportions in PNG over recent years. It is a notorious fact that almost every one of the tribal fights of the last two years stem from such an incident." 15

The Supreme Court discussed the relationship between the concept of foreseeability and payback in The Government of PNG v. Moini. 16 In that case, a physician was a passenger in a vehicle which collided with a pedestrian on the Highlands Highway, killing the pedestrian. The decedent's kinsmen rushed from the bush and killed the driver and passenger using bows, arrows, and axes. The heirs of the passenger sued the estate of the driver claiming that his negligent driving was the foreseeable and proximate cause of his passenger's death. Counsel for the driver's estate argued that the passenger's retribution killing by third parties after the accident was not foreseeable, i.e., that the payback killing was a superseding intervening cause. In a case of first impression, the Court held that "any reasonable driver of a motor vehicle in the highlands should reasonably have foreseen the possibility of what did happen actually happening." 17 The Court noted that payback is disappearing in some parts of PNG but not in the highlands: 18

17 Id. at 193.
18 Id.
It must be known to all driving members of the community that even in Port Moresby as a matter of prudence, one does not stop after a motor vehicle accident... but proceeds straight to the nearest police station -- in some districts even to seek sanctuary for oneself against payback despite completely blameless behavior.

The heirs of the passenger were held to have a cause of action against the driver, even though the passenger was not injured in the auto accident but was later killed by the pedestrian's kinsmen.

An extreme example of payback killing occurred recently in the city of Port Moresby, although the killers were emigres from the highlands. The defendant was being tried in the national court for the crime of "dangerous driving causing death." During the trial, the presiding Chief Justice, court personnel, the defendant, and police went to view the scene of the accident. Upon arrival, the court party was ambushed by sixty to eighty relatives of the decedent and, in the resulting melee, the widow of the decedent killed the alleged tortfeasor. She and others of the payback party were prosecuted and convicted of wilful murder and of aiding in wilful murder. It is not uncommon for such payback killings to occur concurrently with judicial proceedings, as New Guineans are not yet fully confident of the ability of the judicial system to bring about

19 Id.
20 Port Moresby is the capital city of PNG.
21 The National Court is the highest trial court of PNG and is composed of the Justices of the Supreme Court of PNG. See P.N.G. Const. part VI, division 5, §§ 163-167.
justice.

Golu v. State\textsuperscript{23} was an appeal against a life sentence for murder. The underlying action concerned a death that occurred during a clan war. The decedent in Golu was merely a spectator at a previous court proceeding which was interrupted when relatives of the decedent involved in the previous proceeding attacked the court and killed him. As can be seen, payback killings, in the eyes of a Westerner, seem little more than a desire for revenge. Anyone who interferes with a "paybacker," intentionally or otherwise, may be killed, although the victim may have nothing to do with the original crime or tort.

In Regina v. Ketapi,\textsuperscript{24} the Court noted the criteria that should be considered in sentencing a convicted payback killer. The important factors to be considered are: 1) the state of sophistication of the payback killer; 2) the state of development of the killer's community; 3) the offender's knowledge of government procedure; 4) the degree of accessibility to, and protection afforded by, government agencies in the killer's area, and 5) the nature and force of native custom insofar as it requires or sanctions payback killings.\textsuperscript{25}

As noted previously, native custom, no matter how strong or pervasive, will not be allowed to exonerate an

\textsuperscript{24}Regina v. Ketapi, P.N.G.L.R. 44 (1971).
\textsuperscript{25}Id.
individual when the custom conflicts with the Criminal Code, Constitution, or standards of humanity generally accepted in a civilized society. In this regard, some Papua New Guineans consider it unjust to prosecute a tribesman for a payback killing which is in accord with the accepted mores of his community. Such perceived injustice, with a resulting disrespect for the law, is lamentable but inevitable in a society where some members although living in the Stone Age, are within sight of an airfield.

In Regina v. Melin the government appealed the rather minimal sentences given ten respondents who pled guilty to wilful murder in a payback killing. The sentences were initially three years and four months or less for each defendant. The Supreme Court examined the lifestyles of the defendants insofar as they might have relevance to the factors set forth in Ketapi which should be considered when sentencing a payback killer. In Melin, it was noted that all defendants wore the traditional male dress of the highlands, loincloths and long pieces of grass. The defendants lived a nine-hour walk from Mt. Hagen (a small provincial capital town) and a three and one-half hour walk from the nearest administration post. The area was not completely beyond the penumbra of civilization, however. Kiaps, Austra-


28 Id.
lian police officers, patrolled the area with some regularity and the offenders spoke New Guinea Pidgin in addition to their own native tongue or "tok ples," as the local language is termed. One defendant had a partial elementary education. After evaluating all factors, the Court increased the sentences to six years imprisonment for eight defendants and ten years for the remaining two.29

The concept of payback seems certain to endure in parts of PNG for the foreseeable future, especially in the highlands. The geography of the country is so rugged that some tribes seem certain to be isolated from Western ways for many years to come despite hundreds of airstrips carved into the most inaccessible places.30 Payback killings would be less common in PNG were it not for the advent of the motor vehicle. The newcomer to PNG, behind the wheel of an automobile, is soon given advice directly contrary to that received in most countries. Even the Supreme Court in Moini31 has ratified the advice to flee from an accident scene, rather than risk retribution by payback.32 This twentieth century means of conveyance has reinforced a barbarous Stone Age custom, one of the many incongruities of New Guinea.

29 Id.
32 Id.
B. Provocation

A defendant in PNG may interpose the defense of provocation just as in any Anglo-Saxon jurisdiction. Certainly in American jurisdictions, an accused who acts in the heat of passion would be charged with a lesser crime than had he acted with cool premeditation. The same is true in PNG, however, the fact situations, as they relate to the social structure of the islands, present some unusual cases.

In Regina v. Kauba-Pavuwo, the accused was charged with a payback killing. The payback killing occurred during a fight which ensued after the accused had seen his father killed. The defense of provocation was raised on the ground that the accused was sufficiently provoked by seeing his father killed. The defense, however, was not allowed on the grounds that the accused did not payback one who killed his father or who had participated in the killing of his father but, instead, killed a person who was completely uninvolved. The court held that the force which is provoked must be directed against the person who supplied the provocation.

Regina v. Iawe-Mama is an interesting case from a

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33"A person is not criminally responsible for an assault committed upon a person who gives him provocation for the assault if he is in fact deprived by the provocation of the power of self control." Provocation is a valid defense if it occurs when the perpetrator acts in the heat of passion and the force used is proportionate to the provocation. P.N.G. Crim. Code, § 272 (1902).


35Id.

sociological viewpoint. The accused, on trial for killing his wife, was sick and malnourished at the time of the killing. His wife had lost interest in him, and he became convinced that she was unfaithful. It was a commonly held belief in the Mendi area of the highlands, that if a wife were unfaithful, her husband would become sick when she brought food to him. Iawe-Mama suspected that his wife was unfaithful and became sick after eating her cooking. The afternoon before the killing occurred the wife offered her husband money to buy a new wife so that she could divorce him and remarry. In addition, the wife moved her eyebrows in such a way that meant, in Mendi, that she was about to leave her husband. The next morning the accused told his wife to accompany him to the village constable. During the journey, she moved her eyebrows as before and spat on her husband who thereupon struck his wife numerous times with an axe. The accused voluntarily reported the killing and confessed. 37

The court decided that the husband was guilty of manslaughter rather than wilful murder. 38 The court considered the fact that the accused was ill and that his sickness was

[^37]: Id.

[^38]: There is no jury system in PNG although before independence, four-person juries were in existence in Papua if a European was charged with a capital offense. In such a case, the members of the jury were also European. The Territory of New Guinea also had a jury system for a time after World War II. R. Gore, Justice v. Sorcery (1965). Given the extremely high illiteracy rate, the difficulties in contacting prospective jurors, the animosities among some of the disparate linguistic groups, and the large numbers of languages that may be spoken in a small area, the lack of a jury system seems appropriate.
a factor in his losing control in a situation where the wife's actions would have been provocation to the ordinary male member of Mendi society. The defense of provocation is always likely to be important in any society where mens rea is an element of a crime. Although this writer encountered no cases on the subject, it seems probable that provocation will become a more common defense as liquor becomes readily available in PNG, with the predictable bar fights that will result.

C. Sorcery

The issue of the use of sorcery as a plea of provocation or as a mitigating factor arises with some frequency in the PNG courts. Sorcery takes many forms but usually refers to the use of witchcraft or magic to perform the unexplained. The use of sorcery is greatly feared by many New Guineans. It is sometimes used to determine the name of a villager who has committed some evil or illegal act. Sorcerers either claim to have, or are alleged to have, all manner of occult powers. In an isolated community where

39 Provocation should not be confused with diminished capacity or the inability to form an intent to commit a crime.

40 The killers of sorcerers are generally considered to be heroes. The PNG courts must thus contend with the struggle between just punishment for unlawful killings and the mores of PNG which dictate that killers of sorcerers should not be punished, but praised, for their acts.

41 Rats might be placed in green bamboo tubes with the name of a given suspect assigned to each tube. The tubes are then placed in hot coals and after a time are opened before they catch fire. The tube containing an uncooked rat will bear the name of the guilty party. Yams may be used instead of rats.
retreat to the outside world is impractical, such individuals may become targets of assassination if their reputed powers are perceived to be harmful to the community.

Secretary for Law v. Amanatasi discussed the premeditated killing of a claimed sorcerer who bragged of killing eleven people in the upper Sepik River region near the border with Irian Jaya, perhaps the most remote area in PNG. The attack was planned by ten men of a linguistic group composed of only one hundred people, however, only two of the ten men actually killed the deceased. The assault, carried out by the use of cassowary bird leg bone daggers and arrows, was considered necessary to protect the existence of the very small language group. The assault on the sorcerer was not a payback killing for which a much harsher sentence would have been imposed. The Court found that a sentence higher than one year would not discourage this type of sorcery killing because the assailants acted in what they perceived to be the best interests of their society: the death of the sorcerer was necessary to preserve the group. The court noted that extended sentences could actually threaten the existence of the small tribe and a one year sentence was affirmed.

In Regina v. K.J. the deceased, while fleeing from an accident, burst through the bush into a coffee garden where

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43 Id.
he was immediately struck with a volley of arrows and then killed with an axe. The defendants claimed to have heard a cry of "sanguma man" just before he rushed into their view. The defendants believed the decedent was a sorcerer. The defendants were charged with wilful murder but were found guilty of the lesser charge of manslaughter. The court held that an act of sorcery may amount to legal provocation under the Sorcery Ordinance. 

Another case involving sorcery, Regina v. Hatenave-Tete, arose in the provincial highlands capital of Goroka. Loso, while attending the funeral of her kinsman, began to feel tremors within her body. Leading her relatives through town to the house of Sepaya, Loso told the crowd following her that Sepaya was responsible for the death of her kinsman Loso claimed the death resulted from sorcery. After listening to Loso's harangue, Hatenave-Tete killed Sepaya, the alleged sorcerer. Loso and Hatenave-Tete were each charged with murder. Loso was acquitted when expert testimony showed that her claim of being, in effect, an "automaton" without control over her conduct, was a valid defense. Loso's defense was that she was in a trance-like state as the result of her belief in the existence of the sorcerer and was, therefore, not acting of her own free will.

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45 A Sanguma is a sorcerer or person with magic and harmful powers.

46 Regina v. K.J., P.N.G.L.R. 93 (1973); See also P.N.G. Sorcery Ordinance, § 20 (1971).


48 Id.
Westerner might say that Loso believed she was possessed by the devil. Her defense of automatism was similar to a plea of insanity. This case is important because it shows the effect of sorcery in the lives of Papua New Guineans. One wonders why Hatenave-Tete did not use a similar defense on the grounds that he felt it necessary to rid the community of an evil that was potentially life threatening and, indeed, had already killed.

D. Cannibalism

There are two reported court cases which discuss cannibalism in PNG. Cannibalism is not widespread and is probably now confined to isolated areas of the highlands where it rarely appears. There is no Code section proscribing cannibalism but, of course, murder is unlawful. The cases have presented the issue of whether the eating of human flesh is unlawful, assuming the cannibals did not kill the decedent.

Section 236(2) of the Queensland Code of 1899 as adopted by Criminal Code Number 7 of 1902 prohibits interference with a corpse. Under that section, seven persons were charged with cannibalism in 1971. The seven defendants lived along the Fly River where it bulges into West Irian, an extremely remote area of PNG. Their tribe consisted of only 798 members and had had no contact with missionaries or

\[\text{49} \text{Regina v. Nobol-Bosai, P.N.G.L.R. 271 (1971); State v. Faema, P.N.G.L.R. 301 (1978).}\]

\[\text{50} \text{Regina v. Nobol-Bosai, P.N.G.L.R. 271 (1971).}\]
anthropologists. It was difficult to communicate with the defendants, and at trial it was necessary to use the interpreting services of an acknowledged sorcerer, then serving time for the murder of a rival sorcerer. 51

The court noted that funeral customs in PNG, judged by Western standards, were "bizarre in the extreme." This observation was important because it would be unfair to the accused to judge them by Western standards embodied in a turn of the century law borrowed from a country with mores far different from those of PNG. The court decided that it would be appropriate to look to the community standards of the accused rather than to the customs of the country as a whole. If the trier of fact were to do otherwise, the accused would be judged by standards unknown to them. The group's isolation and total lack of familiarity with Western ways should not be held against them. The court decided that the Queensland Code section under which the defendants were charged was not designed to prohibit the eating of human flesh, although there was no discussion of the legislative purpose behind the enactment of the section. The defense introduced testimony to show that cannibalism along the Fly River was practiced primarily to acquire protein to supplement a diet which consisted mainly of the starchy trunk of the sago palm. The court, therefore, held that cannibalism along the Fly River was normal and reasonable

51 Id. at 273.
behavior in 1971.\textsuperscript{52}

The first and only post-independence case to discuss cannibalism was \textit{State v. Faema}.\textsuperscript{53} In \textit{Faema}, the decedent died a natural death, and the accused consumed part of the legs and buttocks. Again, the court noted that protein in the area was hard to acquire. The witnesses' behavior and testimony at trial showed that the defendant's tribe was very unsophisticated. One witness went so far as to profess ignorance that murder was illegal, and another testified that villagers often sneaked off into the bush to eat human flesh "because they don't want the kiaps [patrol officer] to be cross."\textsuperscript{54}

The court, in overruling \textit{Nobol-Bosai},\textsuperscript{55} decided to apply the standard of custom found in all of PNG and not just that common to the tribal area of the accused. Most Papua New Guineans and even most Bisai, the tribe of the accused, were found not to practice cannibalism. The court noted that the PNG Constitution adopts custom as part of the law of the country.\textsuperscript{56} As noted previously, however, the custom cannot conflict with general principles of humanity, the Constitution, or statute. The court specifically found that cannibalism lessens respect for mankind and is not a

\textsuperscript{52}Id.


\textsuperscript{54}Id. at 304.


\textsuperscript{56}See P.N.G. Const. part II, division 1, § 9, schedule 2.1.
"worthy" custom. The accused was found guilty of interfering with a corpse. In sentencing the defendant, the court took into account the lack of sophistication of the defendant and the fact that compensation had been paid to the family of the victim by the defendant. In Faema, the court clearly wanted to reach the conclusion that cannibalism had no place in New Guinean society. In reaching that conclusion the court adopted not local custom but PNG custom as a whole. This case is somewhat of an anachronism in that the court found it necessary to adopt "national" custom to reach the desired result. As noted earlier, one unreported Supreme Court case does hold that the courts should look toward national custom when interpreting the law. In practice, it would be a mistake to apply national custom where there is none.

The court in Faema decided that there was a lack of national custom as to the practice of cannibalism and held that the absence of cannibalism is the appropriate standard to be used. In all countries, courts sometimes enunciate policy as well as interpret laws. Papua New Guinea is a developing society with a desire to bring its people into the modern age. It is, therefore, not surprising that the courts would be reluctant to render a decision that would sanction cannibalism in a newly independent country.

57 The family of an alleged tortfeasor or criminal will sometimes elect to recompense the family of the victim. The family's efforts do not diminish the tort or crime, although the court may consider such factors when sentencing the defendant.

E. Loss of expectation of life

In PNG there is an additional element of damages not found in American jurisdictions: "loss of expectation of life," a concept borrowed from Queensland. Loss of expectation of life should not be confused with pain and suffering, as it is synonymous with "loss of expectation of happiness." It is not related to loss of support or loss of care, comfort, or society that traditionally make up the elements of damages in a wrongful death action. Compensation for loss of expectation of life results in a monetary payment awarded to the heirs which would otherwise go to the deceased had he lived. The amount of the award is not related to the life expectancy of the deceased had he not been killed. Although there is no statutory requirement as to the amount of the award, the amount is traditionally a set figure. Until recently the courts always awarded K 800 ($800 Australian before independence) regardless of the age, sex, earning capacity, or any other characteristics of the decedent. 59 The amount, due to inflationary pressures, has now been raised to K 1500. 60 In theory, the courts could award whatever amount they deemed appropriate, however, this is not done in practice.

F. Wrongful Death

As in this country, the PNG courts do award loss of earnings in a wrongful death action. In a wrongful death


action in the United States a declaration made by the deceased while under a sense of impending death is, in most jurisdictions, an exception to the hearsay rule. 61 The rationale for this exception is that members of Western societies believe in a life after death and are unlikely to utter falsehoods just before going to meet their Maker. Apparently, if one is an atheist one still receives the benefit of the rule. Papua New Guineans do not have the same belief in a hereafter as is found in Western or Eastern cultures. There is no belief among the over seven hundred language and culture groups in PNG in a life hereafter, as Westerners would use the term, nor is there a belief in a Judgment Day with the exception of Papua New Guineans who have converted to Christianity. Accordingly, the courts have held that the rationale underlying the admission into evidence of a dying declaration, as an exception to the hearsay rule, is not applicable given the present nature of New Guinea society. 62

III. CONCLUSION

Papua New Guinea is a fascinating country both from an anthropological and a legal viewpoint. Seven hundred language groups are crowded into a county the size of Sweden; 63 five hundred of the languages have not been reduced to

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63 Geographic Atlas, supra note 1.
Jet aircraft land every day in a country where there is still strong belief in the "cargo cult." Airplanes landing in newly carved airstrips are still examined in an effort to ascertain their sex. The incredible geographical and cultural diversity of the country is simply overwhelming to the visitor. In such a country, the legal system seems to be more sophisticated than one might have reason to suspect. Yet, due to the isolation of much of the populace and the incredible transportation difficulties, many Papua New Guineans have little or no contact with the country's legal system. Except in Port Moresby, Lae, and Rabaul, resident attorneys are unavailable.

As the law school at the University of Papua New Guinea in Port Moresby graduates additional lawyers, one questions whether these young men and women will be willing to return to isolated areas of the country to practice and, if they are, whether a society such as that of PNG would be improved or disadvantaged by an influx of attorneys.

As can been seen in this brief sketch, some of the customs of certain tribes are simply incompatible with the

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64 See supra note 3.

65 The cargo cult takes various forms. It is generally believed that if certain rituals are performed properly, material wealth will come to the members of the cult. The cargo cult is practiced in several islands within the South Pacific region. Leydet, supra note 1 at 155.

66 People living in a society which is primitive by Western standards might logically believe that the first aircraft they see possesses attributes usually associated with the animal world. This mistake is fairly common in New Guinea and has been noted by numerous observers fortunate to have witnessed the first arrival of an aircraft in a primitive area.
generally accepted mores of Western civilization. Other customs chafe against the strictures of a modern society. This dichotomy will be the cause of social and legal difficulties for many years to come and the source of frustration for many Papua New Guineans who are struggling to fit the customs of their ancestors into a developing society.