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Colonialism, Gender, and Socio-Economic Change: A Case Study of Legal Action for Family Maintenance in Papua New Guinea

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Abstract

This paper aims to show how state law as a symbol of colonialism is encompassed into the politics of women striving for a better life by analyzing civil cases for family maintenance in Papua New Guinea. "Family maintenance" is a generic term for the expenses of bringing up children or for living expenses in general. Because a state-run social security system does not exist, lawsuit for family maintenance seems to be an effective and important means of resolving economic problems concerning desertion or divorce. On the other hand, especially in post-colonial critics, the legal institution has been regarded as a legacy of colonialism because it was imported from Australia through colonial governance. Referring to it, in this paper I put positively emphasis on the instrumentality of law to serve the economic interests that women perceive in specific historical contexts. In brief, I will describe maintenance action by women as a kind of income-generating practice to improve their standard of living or to make their life easier. What represents in this paper is the flexible adaptation of women to domesticate rather than resist colonialism.

I. Introduction

The potency and meaning of law is multivocal and even paradoxical. In "contested states," Hirsch and Lazarus-Black pay attention to ambivalent and paradoxical aspects of law; "symbols of the law are important vehicles in the making of hegemony and in the display of resistance" (1994, p. 11). With respect to gender and power, law is not only an instrument used to subordinate women categorically and a dominant mode of regulating life in specific ways. It also serves as a resource for empowerment; to give rights and self-respect, to salvage the voices of women as an oppressed "muted group" (Ardener 1975), to deal with discriminative situations, and to secure their livelihoods (cf. Merry 1994; 1997; 2000, Chap.7 and 8: Hirsch 1994; 1998). The paradox results from the positioning of legal phenomena as complex sites of struggle with multiple purposes.

In Papua New Guinea [1], it is also important to recognize the paradoxical nature of law in rapid socio-economic change. From the late 19th century to the contemporary era, the process of colonialism, missionization, and the development of the nation-state have been an unprecedented experience for Papua New Guineans; the modernization of legal and administrative institutions, the penetration of western/Christian life style and the money economy, articulation with the capitalist mode of production and scientific technology, the expansion of population mobility, and so on. These introduced new interpersonal conflicts and economic turmoil

into the domain of gender (Herdt and Poole 1982, p. 20). Contemporary state law and legal institutions, which were mostly imported through colonial governance, have had a great impact on the sphere of gender. Though its assessment is divided with differing perspectives, there are many arguments emphasizing the negative effect of law. Tujimura's (1997) generalizations about gender and law are also true in Papua New Guinea. State law serves to buttress, reinforce and perpetuate existing gender roles and also restricts the capacity of women (Johnson 1979, p. 5). Further, the village court system [2] in which "customary laws" of native societies have legally authorized effectiveness as "underlying law," justifies discriminative treatment under the name of "native justice" and simply reinforces the oppressed position of women (Mitchell 1985). "Native justice" is not necessarily compatible with gender equality. Johnson has already emphasized that, "what is a consistent theme is that women are generally disadvantaged in terms of power and opportunities under both (customary and western) systems" (p. 79). This is concretely demonstrated in Meggitt's thesis (1989) about the women of Enga in the New Guinea highland. Because the traditional ideology of male domination continues as a hegemonic force that restricts female autonomy and capability in all social activities, Enga women have been structural "losers" and worse off in spite of radical social change (pp. 150-153). To sum up, as "tradition" and "modernity" are connected and mixed, gender inequality has been reshaped but persists to this day (Macintyre 1998).

On the other hand, arguments concerning positive effects, which focus on the idea of gender equality and women's rights in the Constitution, are extremely rare compared with those concerning negative effects. The "modern" conception of gender is a resource to emancipate women from the "traditional" politics of gender and makes it possible for women to resist gender inequality. Though modernization of law plays an important role in empowering women, it might take a certain amount of time to strike root in the legal culture of Papua New Guinea. In fact, it was not until as late as 1990 that the National Court regarded discriminatory treatments in the customary sphere (village courts) as illegal acts or decision, referring to the spirit of the Constitution (Jessep 1991).

As a matter of fact, it is difficult to praise the state law uncritically. One of the fundamental problems which cannot be overlooked in consideration of state law in Papua New Guinea is otherness and the colonial implications of state law. To begin with, as in many third world countries, state laws concerning civil and criminal cases originated from the modern Western society. In other words, legal postulate and rules are not drawn from customary practices of Papua New Guinea, but are based on the social reality of "other." As a result, dispute settlement in the statutory institution is quite alien to customary practices of Papua New Guineans and rouses perceptive unfamiliarity, conflict and tension with the normative order in local communities (Chalmers and Paliwala 1984). Therefore, there are many people who take

[1] Papua New Guinea consists of the eastern half of New Guinea Island, the Bismark Archipelago (New Britain, New Ireland, Admiralty Islands), and a part of the Solomon Islands in the south-west Pacific Ocean. Colonization began in 1884 when the German and British imperial states divided New Guinea and Papua respectively. Australia took administrative responsibility over British Papua in 1906 and German New Guinea since WWI. The territory of New Guinea was temporally occupied by the Japanese Army during the Pacific War, and after the War became a UN trust territory under Australia. Though Papua and New Guinea were separate political states, they were integrated into a single entity for administrative purposes under the *Papua and New Guinea Act 1949*. On 16th September 1975, Papua and New Guinea gained independent statehood.

[2] The village court system was established under the *Village Court Act 1973* and came into operation in 1975. It is a complex product; anti-colonial imputes of the late colonial period, "concern about inadequacies of western style such as over-formalized procedures and difficult terms," and so on. Thus, it has been expected to operate "as more appropriate regulatory instruments for an emerging Melanesian nation than the imposed legal system" and is principally aimed at putting importance on maintenance of community stability. Citation comes from Goddard (2002, p. 3).

a critical attitude toward the state law. Especially educated elites, who maintain an anti-colonial sensitivity, tend to share an awareness of such colonial implications and the otherness of imported law (cf. Narokobi 1989).

However, there is doubt whether this fundamental problem prevents women from mobilizing state law. Native elites and laypeople — in other words, non-elites — hold different interests (Yoshioka 2000, pp. 29-31). Even though most people would agree with post-colonial critics on many points, I am just afraid that overemphasis on such a negative or colonial aspect of state law conceals the politics [3] by those who try positively to mobilize the legal system. As I have confirmed above, the significance of law is not fixed or simply intended to uphold post-colonial elites, but more flexible and various in its purposes.

In this paper, I intend to show how state law as a symbol of colonialism is mobilized in the form of politics of women for a better living. The focus of analysis is on civil cases of family maintenance claimed by deserted wives and single mothers. (Family) maintenance is a generic term for expenses of bringing up children or for living expenses in general. Because a state-run social security system is absent in Papua New Guinea, this lawsuit seems to be the most effective and important means of resolving economic problems concerning desertion or divorce. Though otherness and the colonial implications are certainly inherent in state law, I lay stress on the instrumentality of law to serve the economic interest that women perceive in specific historical contexts (cf. Riles 2003). In this paper, I will describe the women's maintenance action as, rather than practice based on the western notion of maintenance, a kind of income-generating practice to improve their standard of living or to make their life easier. Thus, colonialism is neither resisted nor refused, but domesticated in the context that laypeople attempt to mobilize state law instrumentally and conveniently.

Firstly, I outline the institutional aspect of family maintenance, and consider articulation between the institution and Papua New Guinean societies (II). Secondly, case records of lawsuit will be concretely shown and analyzed (III). Finally, I will connect my discussion to a reconsideration of the dichotomies between state law and everyday life, the western and the native, or modernity and tradition.

II. The institution of family maintenance in Papua New Guinea

1. Outline of the Institution

The institution of family maintenance (or maintenance institution) is an omnibus label for a set of legal programs based on four laws (or maintenance acts as a generic term). These legislations have different legal interests in response to marital status and forms of marriage. Following these points, I will delineate an outline of the institution.

The *Child Welfare Act* or the *Lukautim Pikinini Act* (Ch. 276) [4]; CWA (acronym) allows one to seek the expenses for bringing up a child born out of marriage [5]. Therefore, it is neces-

[3] "Politics" in this paper, following the sentence in which Strathern summarizes Fardon's notion of politics, means "an aspect of the network of impingements of individual agents, such that we may recognize a set of activities which seek their transformative effect through influencing the agency of others" (Strathern 1984, p. 64).

[4] The *Child Welfare Act* was replaced by the *Lukautin Pikinini Act* in 2004. There are concomitant changes; for example, the age limit of maintenance awards was extended from 16 to 18 years of age. However, because case records in this paper were issued before the late revision, I will transcribe in conformity with regulation of the former, namely the *Child Welfare Act*.

[5] As with a legal claim over a child, Jessep comments on the legal significance of 1961 when the *Child Welfare Ordinance* was legislated and the *Deserted Wives and Children Ordinance* was amended. Though the former was not intended to repeal or replace any provision of the latter, despite the unchanged definition of "child," the *Deserted Wives and the Children Ordinance* was to be confined to children of marriage, and ex-nuptial children were to be dealt with under the *Child Welfare Ordinance* (Jessep 1988, pp. 153-154).

sary to prove father-child affiliation by means of a story concerning sexual intercourse and pregnancy, cross-examination, and rarely a blood test. In fact, affiliation proceedings are often contested. Under the Act, a single mother is not able to seek maintenance for herself. S1 allows a complainant to claim a specific maintenance limited for four months, the so-called "confinement expense", that covers reasonable medical and nursing expenses relating to the birth of a child. Jurisdiction is given to the Children's Court or District Court.

The *Deserted Wives and Children Act* (Ch. 277); DWCA (acronym) is intended to provide a maintenance award to a wife and children who are deserted or left without sufficient means of support on condition that the marriage, whether statutory or customary [6], persists. Jurisdiction is given to the District Court. Under the Act, proof of marriage is first necessary. Secondly, a complainant also has an obligation to prove "the unjustified conduct of the husband or father" (Jessep and Luluaki 1994, p. 90). Though such a proceeding is often contested and complicated, the Central Magistrial Office requires magistrates of the District Court to judge along constituent prerequisites of the Act from the viewpoint of efficiency and rationalization of legal management. DWCA has some conditional clauses concerning the wife. Maintenance order for a wife will cease to operate once the divorce is granted. Further, according to S11 (7), if a wife who has obtained an order for her support has committed adultery since the date of the order, the court shall withdraw the order in her favour unless the adultery was a result of the husband's failure to comply with the order. However, as is notified in S11 (7) (b) (i) (ii), the wife's new relationship will not affect a maintenance award in favour of children. As with the case of spousal maintenance, it is important to note that DWCA allows only one side, that of the wife, to claim against the husband and does not cover the reverse situation.

The *Matrimonial Causes Act* (Ch. 282); MCA (acronym) aims to secure maintenance for a former spouse and children when statutory marriage ends in divorce. Jurisdiction belongs to the National Court. Unlike DWCA, a wife's adultery or drunkenness will not bar her claim, and her remarriage will not automatically terminate this order. Generally speaking, however, there are only a few divorce petitions in the National Court (Jessep and Luluaki 1994, p. 95). One of the reasons for this is the fact that the number of statutory marriages is still minor in comparison with customary ones.

Maintenance awards for children continue up to the age of 16 (CWA, DWCA), or 21 (MCA). During this period, there are some actions concomitant with an action for a new maintenance order. Maintenance Variation is intended to change contents of former maintenance order; for example, a claim for increase or decrease of the award, withdrawal and cancellation. Maintenance Arrears is an institutional program enforced to collect outstanding money.

Finally, the *Maintenance Order Enforcement Act* (Ch. 279); MOEA (acronym) aims to ensure fulfillment of a maintenance order issued under above maintenance acts. Especially, it is noted that MOEA allows a complainant to offer an "application of imprisonment" in the phase of Maintenance Arrears. Unless a defendant can fulfill the court's decision to pay part(s) of or the full arrears within a specified date, the defendant could be sentenced to penal servitude of up to a year. So to speak, MOEA enables a case to be converted from a civil affair

[6] In contemporary Papua New Guinea, both customary and statutory marriage has been legally recognized and effective. The latter includes civil marriage under the *Marriage Act* and religious marriage based on the British-Australian concept of church (ecclesiastical) court (cf. Jessep and Luluaki 1994, p. 22). The former, which is the most popular form of marriage in this country, is established under the customary way of native communities. In the judicial world, bride-price payment and its ceremony is regarded as evidence and mark of customary marriage. It must, at the same time, be added that bride-price is not necessarily an absolute condition of the marriage.

into a criminal offence.

2. Otherness and the colonial implication of maintenance acts

What we have to recognize firstly is the fact that these legislations were imported continuously since Australia undertook administrative responsibility over the territories of Papua and New Guinea respectively. The process had already started in the 1910s; the *Deserted Wives and Children Ordinance* of Papua territory was enforced in 1912. In addition, what is surprising is that in the original enactment, this law was intended to apply only to foreign residents (especially Australian) in Papua New Guinea, not to native people. This discriminatory provision persisted until the amendment of 1961 [7]. Through such a legislation, amendment and rearrangement, the contemporary institution of family maintenance had been established by the early 1970s [8]. Though the Australian legislature radically revised family law in the 1970's (cf. Finlay 1983), Papua New Guinean maintenance acts have continued to operate as they were. That is the reason why the institution is a legacy of colonialism.

Jessep and Luluaki, as an "underlying principal" of their book, argued concerning inadequacy of state law that, "colonial legislation is not and has never been suitable as a means of regulating family relationships in Papua New Guinea" (Jessep and Luluaki 1994, p. 2). Now, I will shed concretely light on the otherness of this institution, focusing on the differences of the family model between the legal level and customary, or everyday level.

The maintenance institution is modeled on the nuclear family, not the extended family that is widespread in Papua New Guinea. Frankly speaking, its legal postulate was drawn from "white-middle class" realities of Australia and the West. In particular, DWCA is prominently constituted by the cultural assumptions of the modern Western family that husband and wife are assigned to wage worker and housekeeper respectively and that she depends on the husband economically. Therefore, "while it recognizes the right of woman to her husband's income it does not recognize any such right on the part of the husband"(Luluaki 1982, p. 55). This "specific belief" could be translated as "Beveridge Plan." The Beveridge Plan originated from Britain and had global influence as a basic idea of welfare states after WWII (Fukasawa 2003, pp. 3-9). DWCA implicitly represents a genealogy of colonialism; from Britain to Australia, and Papua New Guinea.

However, the subsistence unit in Papua New Guinea societies is organized not on basis of the nuclear family but the extended family, whose members are related to each other through such customary logics as genealogy, adoption and marriage. Married woman is not so much economically dependent housewife as an important contributor to the household economy. Roles within nuclear family are often shared with near relatives or group (lineage, clan) members. The nuclear triangle relation is just encompassed into a communal relationship. Therefore, problems of family maintenance are beyond the individual spouse. Even nowadays, child-bearing is deeply rooted in interaction with kin-based human relations.

Generally speaking, networking and mutual support among wantok is well-known in Papua New Guinea. Wantok means literally "one language" in Melanesian-Pidgin Language,

[7] The *Deserted Wives and Children Ordinance 1951* became the unitary legislation for Papua and New Guinea. But a previous provision that "natives exempted from provisions of Ordinance" (S 30) still remained even after WWII. It was repealed by the amendment of 1961 (*Law of the Territory of Papua and New Guinea 1961* (annotated), p. 123, Port Moresby).

[8] According to "Statues in force" as of 1991 (Elliot 1992), the principal acts were established as follows; the *Child Welfare Act 1961*, the *Deserted Wives and Children Act 1951* (see for example, note 5 and 7), the *Matrimonial Causes Act 1963*, the *Maintenance Order Enforcement Act 1970*. Though I omit the year and detail of amendments here, these principal laws is followed by its amendment.

while it substantively implies kinsmen or countrymen belonging to the same place or culture. Especially in such an urban place as Port Moresby, wantok becomes a symbol indicating familial relatedness and plays an important role in supporting all aspects of everyday life. In brief, maintenance and nurture can be conceptually extended from family to wantok.

Thus, McRae, a member of the Law Reform Commission concerning family law, mentioned;

> "…… there is no concept in either patrilineal or matrilineal societies that the husband and wife retain obligations to each other, or to children not in their care, to provide maintenance following divorce." (McRae 1981, p.109)

There is a clear cleavage between legal reality and social reality. Even if it could be exaggerated in similar manner to the rhetoric of post-colonial elites, it might be noted that legal assumption of family maintenance is incompatible with customary perception in Papua New Guinean societies. Thus, maintenance action belongs to "other" world.

3. Socio-economic change and maintenance action – the case of Port Moresby

As I have described above, maintenance institution is quite alien to the social realities and customary perceptions in Papua New Guinea. However, this does not necessarily mean that people never mobilize the maintenance institution. The following table shows the number of cases of maintenance action in the Family Court of Port Moresby, National Capital District.

Table; Case Statistics of Port Moresby Family Court

Year	Number	Source
1978	47	Luluaki (1982)
1979	43	Luluaki (1982)
1980	60	Luluaki (1982)
1981	48	Luluaki (1982)
1986.9-87.9	332 (157)	Gabi (1989)
2001	262	The present writer
2005	204	The present writer

At first, I have to point out a crucial problem with case statistics. Frankly speaking, the statistics are not consistent. Luluaki and Gabi counted only cases pursuant under DWCA. I counted maintenance cases of the Family Court without distinguishing between cases pursuant under CWA and DWCA. Therefore, it is not possible to compare easily statistics of the 1980s and 2000s.

Comparing Luluaki and Gabi, case numbers run parallel until around 1980 and have begun to rise since the late 1980s. According to Gabi's explanation (1989, pp. 26-27), though a total of 332 cases were heard in this period, he could actually find only 157 cases. Anyway, Gabi's number (September 1986 to September 1987) is over three times (157) or five times (332) as many as the number of cases in 1981.

The increasing trend seems to be an undeniable fact despite the different nature of the statistics. My statistics (2001, 2005) include only cases that actually resulted in some decision and do not include such cases as an adjournment or sine die because there is some possibility of the overlap of cases counted in monthly statistics. If I were to calculate these interim pending cases, the case number would be enormous. For example, trying to count simply, there are

664 interim pending cases in 2005.

The trend is related to the socio-economic development of Port Moresby. Originally, Port Moresby was established as a colonial town. Except for foreign residents, public servants and private employees, it was not a place where ordinary villagers lived easily. Since 1970s, however, the influx of migrants has changed the landscape of Port Moresby (Skeldon 1978). Most of those who obtained formal jobs were migrants from the Island region where colonial institutions such as education had already been in operation for a long period. Though binary composition is useless today, at least in those days newly migrants from the Highland region were either poorly educated or totally uneducated and also not employable (cf. Strathern 1975). Some of them lived parasitically with kinsmen who had formal jobs with stable salaries, and others opened up squatter settlements, where they lived as they did in their home regions (cf. Kumagai 1994). The tribal hybridity and anonymity of Port Moresby have essentially changed the nature of interaction and human relations. Countrymen have been inseparably bound up each other in various ways, while it is true that city life has taken customary relatedness apart to "one piece," namely the individual as an isolated unit [9]. Luluaki, who conducted fieldwork in Port Moresby in the 1980s, reported.

> "The support needs and other economic constraints faced by women in the urban economy are greater and perhaps a greater social concern than the situation in the rural economy. In contrast to the rural areas where mutual support and dependence through the medium of kinship may offer some help, women who get geographically separated from this source cannot expect this help on the breakdown of marriage." (Luluaki 1982, p. 55)

Since then, various urban functions of Port Moresby have rapidly expanded and improved as the city is the National capital of the country. In parallel with this process, the situation that Luluaki described above has accelerated more and more. As the tertiary (service) industry has developed prominently, Port Moresby has become the site of consumption rather than production. Nowadays money is the primary concern of survival. Though it goes without saying that there are various ways of life, this fact is a characteristic common to all people living in Port Moresby. Monetary activities hold the key to a better living. For those who have no symbolic or social access to money, Port Moresby is too hard to live straight. Disparity in wealth is in progress, which is one of the reasons why public order is unstable.

Statistics should be read in terms of the historical context in which Port Moresby has been urbanized and developed into a modern city. The significance of maintenance institution seems to be a function of the penetration of money economy. It must, however, be added the fact that the percentage of cases is still only a handful when compared with the total population [10].

4. Support agency

Once a case is brought to the Family or District Court, dispute processing of family maintenance is structured under western assumptions and legal logics. For local people who have no knowledge of law and legal practice, a lawsuit seems to be essentially an unfamiliar,

[9] Soava's novel (1977) entitled "Wanpis" in Melanesian-Pidgin (literally, one piece in English) describes an individual in the city that is isolated, independent, and fragmented as compared with customary or communal relationship in their home.

[10] According to Provincial Report (NSO 2002), citizen population of National Capital District was total 112, 429 in 1980 and 248, 948 in 2000. Of this, female population aged 18 years and over was 23, 200 in 1980 and 64, 100 in 2000.

extraordinary, and even oppressive experience. Let me consider the support agencies that enable such a person to act in the legal sphere conveniently and smoothly.

At first, I think, the Welfare Office is the most important agency for laypeople conducting lawsuits in the Family or District Court. Their work includes counseling on domestic problems, providing information about laws, proposing various solutions, and even informal reconciliation if the person concerned wishes. What I put more importance on is legal proceedings. The welfare officer has the authority to prepare a Complaint and Affidavit that is attached to a Complaint. Thus, the Welfare Office stands as an institutionalized middleman mediating between the legal sphere and the customary sphere (Luluaki 1982, pp. 58-60).

Now I will outline the process leading to court proceedings, based on my participant observation in a Welfare Office. Whoever comes to the office firstly has to counsel with an officer. Even though she has already decided to take action, it takes several visits to complete the legal procedure. In counseling, the officer collects basic data about the person and problem concerned, and fills in the Case Report [11]. Confirming her will to take legal action, the officer writes a Complaint and Affidavit, referring to the Case Report and interviews. These contain as little interpretation as the officer can confine himself to. Incidentally, there are some women who come to write the statement by themselves. This statement, as reference material, is attached to the Complaint. The Complaint and Affidavit created by such a process is confirmed by the person concerned and sometimes revised if need be. Completing this legal procedure in the Office, they step into "other" world where dispute settlement is predominantly controlled by state law.

As a second agent for supporting laypeople's lawsuits, I point out the roles of Clerk and other staff working in the Court. They also support litigants in some ways. The Clerk of Court plays an important role in legal support for the litigants; control of schedule, giving advice on various legal steps, managing the maintenance file and so on. The typist is cooperative and often helps Clerk's works. The Central Magistrial Office, headquarters of the District Court located at Port Moresby, required that the court should settle disputes "timely, effectively and efficiently." Those who put this into practice are not only the magistrate but also the staff in the court.

III. Action for family maintenance

In this chapter, I take up two cases, one in Port Moresby and one in a distant rural area (Manus Province) respectively. I will explain a brief background of the case, summarize lawsuit records, and give some comments. For privacy, all individual names represented in the two cases are pseudonyms.

1. The Case of Eve – a woman in Port Moresby [12]

Eve [pseudonym], who comes from Milne Bay Province, met Mike [pseudonym] in Port Moresby, in May 1994. While she was 16 years old and a student, he was 24 years old and

[11] Case Report is just 1 page of A4 size. It consists of the following contents; Client Number, name, sex, age, marriage, home village, occupation, religion, address, phone number, names and number of child(ren). The final section is "nature of case" in which the Officer has to write a remark or information for the background of the problem concerned. The source is "NCD Family Welfare Services: Case Report" which I obtained at the Welfare Office in Boroko, National Capital District.

[12] Eve's case is based on the Child Maintenance File (ES v RM: Original No. CC 54/97); Complaint and Affidavit (29/04/1997), Application to vary a maintenance order (13/06/1997), Welfare Report, FAX sent from Security Company (11/07/2001), Complaint and Affidavit (20/09/2001), Court Order (17/10/2002), Receipt of Dept. of Finance (03/12/2002), Affidavit (13/12/202), etc. These are kept at the Family Court of Port Moresby.

engaged in formal wage labour (Dept. of Lands & Physical Planning). In November 1995 when she realized she was pregnant, he refused his paternity unpleasantly. After childbirth in July 1996, he did not come to live together with her and the son. Eve became a single mother and lived with her parents. Although he worked in the governmental department and received a salary, he was unwilling to give money for supporting the child. Realizing that "the love between us was no longer there so I had to take a stand for my child's future," Eve appeared at the Family Court of Port Moresby.

On 23 May 1997, a maintenance order (40 kina [13] per fortnight to the son) was made pursuant to CWA. He seemed not to pay from outset. However, arrears on the record of child maintenance file were automatically accumulated despite his intention. On May 1998, a year later, his arrears reached 730 kina.

Even if a maintenance order is issued, it is difficult for women to collect money. This is because all men do not necessarily pay money for a wife and children. One reason is that men do not have sufficient economic power to support a former family, or even an ex-nuptial child, in addition to their present family (Gabi 1989, p. 28). It was clear that Mike was also unwilling to pay. Does Eve have no choice except to give up his maintenance payment? Does she really have to bear it in silence? The process through which Eve succeeds in collecting the arrears is as follows;

【Case Summary】

On 1st May 1998, Eve simultaneously claimed arrears of 730 kina and a variation to increase 40 kina (the former order) to 60 kina. A decision of 5th June ordered Mike to pay 50 kina per fortnight (40 kina as formerly and 10 kina for arrears).

Mike resigned from the Department of Land & Physical Planning around the second half of 1999. In March 2000, he obtained a position in a security company. And on September 2001, Eve made a claim to the court for the arrears. According to her Complaint, his arrears totaled 2330 kina (not counting the period when he was out of work). On 5th October, a magistrate of the Family Court decided on imprisonment for 4 months with light labour unless he could pay the money within one week. On 23rd of that month a warrant for his arrest was issued, and soon after he was sent to Bomana CIS (prison). Thus, the company dismissed him for absence without due notice.

Finishing penal servitude, on 20th May 2002, Mike re-started work again as a "casual employee" in the office of Registrar of Titles, an office within the Department of Land & Physical Planning, where he was once engaged. Eve took the arrears to court again. A Court Order of 17th October states as follows; "Defendant be committed ten (10) months with light labour at Bomana CIS major until outstanding maintenance of 3600 kina is paid soon." On 27th November, Mike was sent to Bomana prison again. But his relatives contributed to pay all the arrears, and as a result he was released on 3rd December.

This case is an ideal sequence in terms that the reality is constructed according to the plan of maintenance institution. What attracts our attention above all is compulsory execution, which plays an important role in this case. This is an institutional program for enforcing payment with the background of imprisonment pursuant to MOEA. Because the statute regards default on financial obligations as a criminal offence, these proceedings transfer a civil case to

[13] Kina is the unit of Papua New Guinea currency. For example, according to a daily newspaper of Papua New Guinea, on 12th March 2006, 1 kina is equivalent to 0.32 US dollar and 38.39 JP yen (13th March 2006 , *The National*).

a criminal one. Without compulsory execution for imprisonment, Eve would not be able to collect all the maintenance arrears.

However, it is also true that this case would not be feasible without Mike's economic power. Mike was a wage labourer in a governmental department and received a regular salary. Even if he lost his formal job, he looked for and got a new job. That was because money was necessary for him to spend on his own life in Port Moresby and cater for his wife and children who lived in Bougainville, North Solomon Province. Ironically, maintenance action holds good for such a kind of man. If Mike were a man who just crawled around the city, out of regular work, taking a stroll and dawdling away his time, Eve's case would pursue a considerably different course. As the case may be, there is some possibility that maintenance order would not be issued for the defendant who had no means to pay because it is of no use obviously. Of course, as I will show in next case, the defendant's ability to pay money is not an absolute condition of a maintenance order, but it is one of the most important subjects which a magistrate must take into account; the income, expenditure, needs of the parties concerned, the style and standard of living previously enjoyed by the spouses, and further plans for the children's future (Jessep and Luluaki 1994, p. 93). Especially when a case for maintenance arrears steps into criminal procedure for imprisonment, the defendant's means should be assessed more strictly and deliberately.

Finally, it is impossible to overemphasize the ceaseless efforts of Eve who has, never giving up, been positively involved in the legal system during the five years. Each action entails cumbersome procedures and costs. The driving force behind her action seems to be an intense desire to obtain money, which is absolutely necessary for her to live straight in this city.

2. The Case of Sapuma – a woman in Manus Province [14]

This section focuses on a maintenance action in a rural area. Most of the area of Manus Province is covered by sea. Lorengau, provincial capital on the north-east shore of Manus Island (the biggest and main island), is located about 800 km distant from Port Moresby. As a center for administration, justice and commerce, there is a District Court, governmental offices and many stores in Lorengau. Both Litigants live in a coastal village, about 25 km west of Lorengau, and they are not employed but simply villagers. The data of this case is based on not only the records of District Court but also on participant observation and interviews during my fieldwork.

In 1991, when she was 21 years olds, Sapuma [pseudonym] began an intimate relationship with Rouka [pseudonym]. Their relationship was unstable and did not eventually result in marriage. The following year she gave birth to a female child. Nevertheless he had been attached to another woman and did not take care of Sapuma and the daughter. And then she took out a maintenance action at the District Court. Because they followed neither the statutory nor customary procedure of marriage, the maintenance order was 20 kina per month for only the daughter, pursuant to CWA. Her action lasting up to now is as follows;

【Case Summary】

On 24th October 2001, Sapuma claimed an increase from 20 kina (the former order) to 40

[14] Sapuma's case is based on my observation and interview, and the Child Maintenance File (SM v KP; No. 68/01, No. 239/03, No. 170/05) kept at the Lorengau District Court; Application to vary maintenance order (24/10/2001), statement manuscript by magistrate as of 27/11, Complaint and Affidavit (29/09/2003), Receipts paid into District Court (21/11/2002, 16/10/2003, 23/12/2004), Warrant of Commitment (16/08/2004, 21/03/2006), Complaint (7/09/2005), Court Order (5/12/2001, 16/10/2003, 7/10/2005), case of Adultery (File no. 39/06) and its Complaint (6/03/2006), etc.

kina per month because, according to the Complaint, the daughter had reached the age to attend elementary school and "need uniform and materials. ……that goods at the store are too expensive for an unemployed mother." On 5th December, the District Court approved her complaint for variation.

On 29th September 2003, Sapuma called for arrears. This reached 880 kina (January 2002 to October 2003). A decision was made soon. The order of 16th October states; "Defendant would be imprisoned for 8 months to take effect on 10/12/03 on condition that defendant pay half of arrears by the date."

Rouka paid 420 kina soon, but after that, the 460 kina outstanding was ignored. On 16th August 2004, Sapuma again took the arrears to court. Rouka failed to pay all arrears before 10/12/2003. It was clear that Rouka had not complied with the order made on 16/10/2003. Thus, a decision was made on that day. Though Rouka was ordered to go prison for a period of 8 months with hard labour, in fact he was not sent to prison. It was on 23rd December that he paid all outstanding arrears. The payment of his arrears claimed on September 2003 was completed in that way.

However, the dates of actual payment and discharge are different. His arrears since November 2003 had been allowed to accumulate automatically.

On 7th September 2005, Sapuma brought a Complaint for arrears again. Rouka's arrears were 960 kina (November 2003 to September 2005). Though she called for 960 kina in full or imprisonment, on 7th October the District Court made a decision as follows; "Warrant of Commitment not issued this date. Defendants take grace period of 2 months to pay up at least 2/3 of arrears by 07/12/2005." Because Rouka ignored the order again, Sapuma offered arbitration to the above order on 21st March 2006. The Court ordered him to be imprisoned for 2 month with hard labour. At last, on 24th, Rouka was arrested and sent to prison when he came to court for another case (adultery).

In comparison to the court decision made at Port Moresby, the District Court in the rural area seems to be more flexible. They often give litigants a long grace (mostly three months). Further, even if a court order for imprisonment of the defendant be made, it would not necessarily be put into practice. The legal reality that Rouka confronts must be different from Mike's experience in Port Moresby. There may be multiple causes for this; underdevelopment of infrastructure, police seizure of power and authority, and the magistrate's consideration of the economic situation surrounding local villagers, in which income-generating activities are generally small-scale.

Incidentally, this case might deny general understanding about the relation between women living in rural areas and the official institution of state law. In other words, educational level is unrelated to women's usage of state law. Sapuma, who completed only grade 6 of elementary school, did not seem to have legal literacy. In the early 1990's, when the specific relationship between Sapuma and Rouka was coming to an end, she did not know about the institution of family maintenance. The one who made it possible for her to be involved in the legal system was an intelligent villager. Sapuma says, because child-bearing became one topic of that meeting over separation, the village court magistrate recommended her to go the Welfare Office and wrote a letter so that the officer would be able to understand her situation easily. She visited the Welfare Office with this letter. Thus, she began to step onto the institutional ladder for maintenance action.

Whatever she thought at first, economic interests have made it possible to continue a long lawsuit over and again. For example, in court of October 2001 when increasing the main-

tenance award, Sapuma said;

> "……he has to pay maintenance or give any food for the child. I spend K20 on rice, kerosene, soap, breach, sugar, noodle and K20 does not cost even a week. At home the prices is much higher than Lorengau. 1pkt rice 2.30 kina, kerosene 60 toea a day, 4.50 kina for one fish (tinned), 3.50 kina for one sugar, 80 toea for one noodle. I find 20 kina not enough even in a week……" (manuscript by magistrate as of 27/11)

This statement does not mean that village life consists of cash and imported commodities. Villagers do not always eat rice and tinned fish everyday. Rather, the money economy is encompassed by a complex whole of subsistence activities such as gardening, hunting, fishing, gathering in the bush and on the coast. What we should understand is the fact that money makes it easy to live. In fact, people think of earning money and try to do so. Nobody would deny that money is a practical need. From this point of view, I have proposed that maintenance action becomes significant as a kind of income-generating activity (Baba 2005).

Another point I pay attention to is Rouka's ability to pay the maintenance fee. Rouka, unlike Mike in Eve's case, is just a typical villager who has a remarkable lack of opportunities for employment or to earn substantial amounts of money. No matter how much Sapuma might want money, it would be difficult to expect payment if the opponent is penniless. Nevertheless, the case record shows that Rouka paid maintenance fees in response to Sapuma's action. This case should be considered in terms of not individual economic power but family and kinship. As a matter of fact, Rouka's elder sister Celia [pseudonym], who lives in Madang, one of the big cities, on the north coast of New Guinea Island, declared;

> Rouka "is a villager and does not pay for the maintenance on time so as a sister I usually pay for all his maintenance arrears." (Affidavit as of 29/09/2003)

Although the defendant is Rouka, the person who pays money for maintenance is not always Rouka. His sister has been involved in the maintenance action against her brother. He has asked his sisters for money to pay maintenance. His sister has complied with his request and remitted some cash. Either migrants or villagers such as Rouka regard remittance as proper and reasonable behaviour.

In rural Papua New Guinea, especially in the Island region such as Manus Province, it is well-known that out-migrant kinsmen remit and support the economic life of their home (cf. Carrier and Carrier 1989). As in this case, Rouka stays at home, while his sister migrates or marries out from home. The former looks after the land and property of family, while the latter sends money to the home. Home residents receive money and various materials, while migrants preserve their relationship with home, and eventually secure something for their old age. This is what Carrier and Carrier call "symbiosis between resident(s) and migrant(s)" or a "bizarre sort of division of labour" (1989, p. 224).

Sapuma knows well that Rouka has powerful backup in the economic side of life. Especially the three sisters, including Celia, are married to men who are working at PTC (Post & Telecommunication Corporation), in the Defense Force, and on a foreign ship. Their money flows into intra-family circulation from which Rouka can draw money whenever he wants. Rouka is villager but has plenty of money. The reason why Sapuma persists in maintenance action against him is clearly because it has good prospects for income.

IV. Concluding Remark

The two cases show that women actively mobilize state law in spite of the fact that maintenance institution is a legal system of "other" and a legacy of colonialism. In this paper, state law has somehow a familiar or positive rather than a negative relation with women. This may give an optimistic impression as if women flexibly transformed unfamiliar state law into a source of politics for themselves. However, I never intend to underestimate the hegemonic and oppressive aspects of colonial legislation. It just relies on strategic methodology through which I cut out an aspect of reality; the more women's tactics living through socio-economic change are in the foreground, the more the colonial implication of imported law is in the background. Finally, I will bring my above description into a significant conclusion concerning the relation between maintenance action and everyday life, from the viewpoint of the instrumentality of law.

It is true that law (re)shapes politics of gender in specific ways. Because the complainant is a deserted wife or single mother and the defendant is a husband or non-nuptial father, dispute settlement for family maintenance takes on the politics of gender. In brief, strategic moves and impingement among litigants can be described as a specific form of politics of gender, which statutory program and rules regulate. Remarkably, compulsory execution concomitant with maintenance arrears makes gender more antagonistic. That Eve and Sapuma could succeed in collecting arrears certainly owes to the retributive program of the institution. But connected to advisory style, such a blunt retributivism creates, strengthens and perpetuates antipathy and "resentment" among litigants (Gabi 1989, p. 27). Once they step into sphere of retributivism, the action becomes an "attack" against the man and his life. This does not come so much from their willingness as from a legal structure for actualizing payment.

Though it is impossible to overemphasize the structural aspect, it is equally necessary to comprehend subjectivity and agency in the background of their lawsuit. As Goddard (2002) discusses about the 'state-in-society' model in Papua New Guinea, the "state" never regulates the way of social life. Rather it is only one corner of social space and often appropriated in the process of social dynamics and politics. That is to say, actor's interests and expectations become so much significant in mobilizing state law. Especially because maintenance action entails negative side-effects (the advisory nature and retributivism that make relations among the parties worse, many troublesome burdens such as formal proceedings, periodical attendance at court, and the difficulty of understanding legal expressions), I guess that maintenance action requires firm purpose and high motivation. What encourages women to mobilize the maintenance institution? The focus in two cases, I understand, is on an economic interest and the desire to obtain money for securing their life comfortably and easily.

Since colonial penetration, the gradual permeation of the money economy has actually made money a very important matter in the lives of many Papua New Guineans. Though the money economy is not replaced by, but just articulated with, the existing mode of subsistence, especially for people living in urban areas such as Port Moresby, money becomes an essential component of their living. Referring to this context, maintenance action by a deserted wife or single mother seems to be evaluated as something like struggle for survival. Eve's case could certainly approximate to legal practice in the western developed countries.

This can, to a greater or lesser extent, apply to rural areas such as Manus Province. Even in a peripheral village far from the provincial capital, as Sapuma claimed, contemporary life entails money. It must, however, be added that the degree of needs and significance is clearly different from the one in Port Moresby. In brief, money is not a prerequisite of survival, but just a means to make her life easier. There is not doubt that to earn money is a kind of practi-

cal need, particularly practical gender need. The person who busily earns money to maintain the economic life of the household and family in everyday life is mostly women; go to the garden, collect, harvest, and decide to divide the products into one for stock or consumption and the other for selling in market. And in rural life where sources for income-generation are exceedingly restricted, the local market is the best opportunity to earn money. Women try to get money mainly through market activity. Sapuma's action seems to overlap the market activity in which she is vigorously engaged. As I interpret her practice, maintenance action is an optional move in the game for money, but securely integrated into everyday practice to make out in her life (cf. Baba 2005).

Although the significance of maintenance action is different in urban and rural areas, a common characteristic of the two women is that maintenance action appears to be a kind of income-generating practice to secure their living or to make their life easier.

By the way, this does not necessarily mean that maintenance action in Papua New Guinea is not based on a western notion of maintenance in which rights and obligations are distributed between members of a nuclear family. In fact, we are no longer indefinitely able to maintain conceptually clear-cut oppositions between western notions and native notions of family maintenance, the nuclear family and extended kinship relations, money/commodity and gift exchange, tradition and modernity. The boundary may be vague nowadays. The time to rethink the notions of family maintenance in Papua New Guinea might be already coming. In the early 1980s, Luluaki stated that these dichotomies were dissolving in Port Moresby.

> "Today, although kinship continues to act as a social security mechanism for many rural and urban Papua New Guinea, it cannot be expected to provide this security in all cases. As a result of the various social and economic changes associated with capitalist production being experienced by Papua New Guinea, traditional support from kin may no longer be sufficient and in some cases inappropriate, particularly because of new material requirements like clothing, shop foods and education." (Luluaki 1982, p. 52)

Similarly, in the 1980s, Mitchell, on the basis of field research in North Solomon Province where a mining company made rapid progress in socio-economic development, pointed out that "it was questioned whether traditional support from kin was adequate now that women and children have material needs such as clothing, education fees, and so on" (1985, p. 87). Therefore, she continued, "western practices such as maintenance payments are becoming more prevalent" and reached the conclusion that "it is likely that custom will change as the requirements of the society change" (Mitchell 1985, p. 88). The situation seems to have moved forward extremely rapidly since the time when they were writing. In Manus Province, where I conducted anthropological fieldwork, women feel that bringing up a child is "hard work" and express the responsibility of "papa bilong pikinini" (father of the child) to the economic burden of everyday life. Though I am not immediately going to draw conclusions about whether customs have changed or not, perceptions and practices of laypeople seem certainly to be changing according to socio-economic contexts.

Of course, maintenance action is still a minor practice in terms of statistics. However, as I describe in this paper, maintenance action as a colonial legislation has already been encompassed into strategic practice for women living through everyday situations. Whether the majority of the population will make use of maintenance action or not, or whether local perceptions and customs will change through mobilization of law or not are matters that must become the subject of field research in future.

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