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## TO HEAR IS TO OBEY: ORAL TRADITIONS AND CHANGING NOTIONS OF LAW AMONG THE MAISIN OF PAPUA NEW GUINEA

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Customary law among the Maisin, like hundreds of other small sociolinguistic groups in Papua New Guinea, is based and legitimated in oral traditions. The close association is put most succinctly in the Maisin language itself. The verb "to listen" or "to hear" connotes an obligation to act accordingly, "to obey". This is especially so when one is listening to a parent, an elder sibling or an elder. The "oral tradition" of the Maisin, however, is made up of far more than words. Besides narratives and songs, people collectively remember the past by participating and observing dances, sacred places, bark-cloth designs and ritual actions, among much else. People associate such things with the moment of creation and with the ancestors. To hear or see the traditions impels respectful obedience. The moral expectations of the community, and the sanctions to uphold them, are embedded in the traditions.

This all sounds very conservative, but the Maisin villages are far from conservative places. The Maisin first came into contact with colonialists in 1890 and are well-integrated into the Papua New Guinea economy and state. Their situation resembles that of Ambae Island in Vanuatu as described by William Rodman.<sup>1</sup> The central legal institutions of the state are very weak. By necessity more than any concerted resistance against state rule, many rural communities in Melanesian countries have long held much of the law in their own hands, dealing quietly with most local conflicts, finding their own solutions. As on

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<sup>1</sup>Rodman, William, "The Law of the State and the State of the Law in Vanuatu," *Contemporary Pacific Societies: Studies in Development and Change*, ed. Victoria S Lockwood, Thomas G. Harding, and Ben J. Wallace, (Englewood Cliffs: Prentice Hall, 1993): 55-66.

Ambae, the law among the Maisin is a shifting mix of Melanesian, colonial and post-colonial elements. Its ideological foundation, however, rests solidly upon a shared sense of unwritten tradition, passed down through the generations by word and (ritual) deed.

This paper pursues the riddle of how the practical law of a community can simultaneously be based upon the unchanging fact of the creation and the ever-shifting motions of modernity. I am interested in the first place in the historical processes by which Maisin incorporated mission and government rules into dealing with conflicts without abandoning their own old ways. I argue that the Maisin "baptize" changes in local law with the waters of tradition. This kind of process has been observed in many contexts in a variety of Melanesian societies. Recognizing the power of the state and its agencies, some scholars see the insistence by rural peoples that local social innovations be legitimated in traditions as amounting to a kind of ideological capitulation, an "inventing of traditions" to serve the hegemonic master of the capitalist state. There is no doubt that people's memories of traditions and the use to which remembered traditions are put change over time, often greatly.<sup>2</sup> However, when understood as including the full range of means by which people construct social memory, Maisin oral traditions have provided an ideological anchor through times of difficult change. Further, I will argue that this anchor, by giving real continuity to their lives, has enabled Maisin by and large to mould imported means of handling conflicts to the general benefit of the society. This marriage of oral traditions and practical law is vital to the survival of the Maisin community.

This paper examines the specific experience of the Maisin to make three points which I believe have general validity for much of rural Melanesia:

1. "Customary law" conveys different meanings at the state level and the local level. These distinct understandings only meet or clash in particular, limited circumstances.

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<sup>2</sup>A large number of historians and anthropologists have studied the relation between indigenous custom and encompassing colonial and post-colonial states. For an excellent overview, see Jolly, Margaret, "Specters of Inauthenticity," *Contemporary Pacific* 4.1 (1992): 49-72.

2. In semi-autonomous village societies, "customary law" can be defined as a shifting mix of received ("traditional") social habits, rules of etiquette and rituals; Christian ideology; and colonial and post-colonial laws and introduced forms of administration.
3. Local customary law gains coherence and political strength primarily and most dramatically through the shared experience of oral traditions. For this reason, major shifts in the practice or scope of local customary law are "baptized" in large public displays of oral tradition.

### **The Law of the State and Local Communities in Papua New Guinea**

The basic legal system of Papua New Guinea – its laws, enforcement system and judiciary – derive from the country's former colonial master, Australia and thus, ultimately, British common law. Through the colonial era, however, administrations enacted laws that recognized cultural practices and institutions that differed from those found in Western countries. Colonial law recognized and to differing degrees legislated upon such things as bridewealth exchanges, sorcery accusations and notions of collective property. In addition, the administrations experimented with a variety of enforcement and judiciary techniques adjusted to local conditions and designed to win the approval of local peoples. As areas came under colonial control, local government officers (who often also served as magistrates) appointed representatives in each village to serve as government assistants: letting villagers know about government law, on the one hand, and informing government officers of problems and violations on the other. Government officers usually enjoyed considerable latitude in how they enforced many laws, allowing them to take local customs into account. In the southwestern colony of Papua before the Second World War, for instance, most perpetrators of homicide were treated with what outside observers would consider great lenience.<sup>3</sup> They were jailed for a few years, during which time they would contribute to the upkeep

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<sup>3</sup>I'm referring here to customary forms of homicide through warfare and pay-back killings. Natives who murdered white people usually ended up on the gallows.

of a regional government station and then released. Many prisoners were encouraged to join the colonial police force. This policy explicitly recognized that most homicides in native society were socially endorsed, even if carried out by individuals. Australian justice was served by incarcerating the individual who did the killing. But at the same time, the communities involved were encouraged to make peace with their enemies by exchanging compensation payments. The "guilty" man would be returned to his people quickly enough so that his punishment would not itself become a basis for furthering local feuds.<sup>4</sup>

Administrations saw such acknowledgments of local practices as temporary expedients, to be discarded as Papua New Guineans became more "civilized". Most of these laws and practices, however, remained on the books after Independence in 1975, sometimes in modified form. The movement towards Independence also brought with it a new appreciation of customary law as a value in itself. The Constitution explicitly demanded a re-orientation "toward Papua New Guinean forms of participation, consultation and consensus". Many clearly hoped and expected that basic customary law would provide "an appropriate foundation for a national legal system".<sup>5</sup> Courts were thus encouraged to "look first to custom and fall back upon an English rule only when no customary norm is applicable".<sup>6</sup> To help further hasten the transformation, the newly-appointed Law Reform Commission of Papua New Guinea set up a Customary Law Project. The Project's mandate was to study customary law throughout the country and determine if and how local law could become the basis for a national legal system. Under the direction of legal anthropology Richard Scaglion in 1979-81, the Project elected not to attempt to codify customary laws. Instead university students working in their home villages collected around 600 detailed case histories of dispute resolutions. These were made

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<sup>4</sup>Murray, J.H.P., "The Scientific Aspect of the Pacification of Papua," *Report of the Twenty-first Meeting of the Australian & New Zealand Association for the Advancement of Science* 21 (1933): 1-11.

<sup>5</sup>Scaglion, Richard, "Legal Planning in Papua New Guinea," *Applying Cultural Anthropology*, ed. Aaron Podolefsky, and Peter J. Brown. 2nd. ed, (Mountain View, CA: Mayfield, 1994): 200.

<sup>6</sup>Zorn, Jean G., "Making Law in Papua New Guinea: The Influence of Customary Law on the Common Law," *Pacific Studies* 14.4 (1991): 5.

available for the use of legal practitioners working on specific cases. They were also analyzed to determine the underlying patterns of Melanesian customary law. This initiative led to experiments with a system of local village courts and proposals to modify the country's marriage laws to recognize customary forms of union (including polygamy).<sup>7</sup> Despite such initiatives, customary law has been applied very inconsistently at the national level. Customary law, as we shall see, provides the underlying rationale for many of Papua New Guinea's laws concerning land ownership. However, in most other areas, politicians, police and courts continue to draw mostly upon English traditions of law. Zorn articulates a common complaint when she observes that lawyers and judges working in the country seldom mention customary law in court cases. When they do bring up custom, "it is usually dismissed as irrelevant".<sup>8</sup> Zorn believes that national law is slowly adjusting to customary beliefs and practices as judges attempt to apply the common law to Papua New Guinea settings. Change is thus not a matter of deliberate thoughtful policy, therefore, but a largely unconscious process of evolutionary change.

The goal of making custom the underlying law of the land has come up against two main obstacles since Independence. The first is a lack of interest and political will on the part of those who make and enforce national law.<sup>9</sup> Second, "customary law" is itself a very problematic concept. To begin with, the term is very ambiguous. Should "custom" refer only to behavioural patterns and beliefs that have existed in local societies prior to European colonization? If we accept that customs are subjective – that is, they are the product of consensus in local communities (as opposed to the state) – should we reserve the

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<sup>7</sup>The village courts are meant to integrate customary law with the national legal system by giving "traditional" leaders the right to hear certain kinds of cases and flexibility to either impose fines or arbitrate according to local customs. Village courts have been introduced in Maisin villages. For details on the courts, see Scaglione, Richard, "Customary Law Development in Papua New Guinea." *Antropological Praxis: Translating Knowledge into Action*, ed. R.M. Wulff, and S.J. Fiske, (Boulder: Westview, 1987): 98-108; Westermark, George, "Court is an Arrow: Legal Pluralism in Papua New Guinea," *Ethnology* 23.2 (1986): 131-149.

<sup>8</sup>Zorn, *supra*, p. 5.

<sup>9</sup>See Zorn, *supra*, for a discussion.

term for "norms and shared beliefs or ... common behavior patterns?"<sup>10</sup> Further, even if Papua New Guineans could come with a common understanding of what customary law is, they are faced with the problem of reconciling different systems of local law. The country is a fantastic cultural and linguistic mosaic in which some 4 million people are divided into more than 700 languages and thousands of semi-autonomous clans and tribes. As Scaglione and his colleagues in the Customary Law Project observed, most of these local forms of social control share general patterns, but from this arises another problem: customary law dictates that people treat their close relatives very differently from more distant kin and in-laws and especially from strangers who are regarded with great suspicion. How can national laws, which must apply to all citizens, draw from customary behaviour and beliefs that rest so firmly upon personal social relations?

As many legal anthropologists have observed, the dominant legal tradition in Papua New Guinea continues to be "characterized by a set of substantive rules as well as by a dispute-resolution ethos and procedure that bear [sic] little relation to the norms, values, and processes of the customary legal systems indigenous to the country".<sup>11</sup> The national and local legal systems, however, only rarely (if sometimes spectacularly) come into conflict. The vast majority of Papua New Guineans live in rural areas, often far from towns and road systems. While they are citizens of Papua New Guinea, the state has limited means to enforce the rules and privileges of statehood the further one moves from the urban areas (and arguably even there). Most local groups are fiercely protective of their rights to make decisions on their own.<sup>12</sup> Ironically, even if Papua New Guinea politicians, police and judges

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<sup>10</sup>*Ibid.*, p. 22.

<sup>11</sup>*Ibid.*, p. 5.

<sup>12</sup>Papua New Guinea presents a fascinating case in which localized anarchy has acted as a guarantor (so far at least) of democracy at the state level. Reflecting the underlying tribal fragmentation, a fantastic number of candidates run in parliamentary elections - 50 or more in some districts in 1997. Most governments since Independence have been unstable coalitions of regional parties and independents. While enormously complicating the process of government, this fragmentation also means that any would-be dictator in or outside of parliament would find it virtually impossible to engage enough loyalists to stage and maintain a coup.

were able to agree on an authorized version of customary law, they would largely lack the means to enforce it in most of the country. There is, thus, no direct relationship between "customary law" as it is practiced in a particular place and customary law as it is recognized in the state's legal system. As Rodman puts it for Ambae in Vanuatu, the law of the state is different from the state of the law in most village societies.<sup>13</sup>

The Maisin illustrate this disconnect between the state and locality.<sup>14</sup> Numbering around 3,000 people, the Maisin dwell in four communities along the southwest corner of Collingwood Bay in Oro Province. The villagers live in an economic backwater: there are no roads into the area. Their only connection to urban centres and markets is via a small grass airstrip and irregular coastal shipping. The Maisin produce small quantities of painted bark-cloth but few other commodities. Since the late 1960s, about a third of the total population has worked and lived elsewhere in the country, sending remittances of money and goods home to their relatives. Villagers themselves make their livelihood much as their forebears did, through subsistence gardening, hunting, fishing and gathering.

The Maisin came under government control in 1901. A church and school were established in the largest village of Uiaku the following year. Yet the colonial presence was always rather indirect in the Maisin villages. White missionaries and government officers lived some distance away from the villages, visiting them only on irregular patrols. Since the early 1970s, the effective presence of the government has declined even from the colonial low. The only police and court are situated at Tufi, some 60 kilometres away – a very long distance even when a speedboat is available. Government officers ceased patrolling villages in the 1970s and the police come only when urged to do so by village leaders. This happens only in cases of the most heinous crimes of violence. Essentially, Maisin handle almost all conflicts in their communities on their own.

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<sup>13</sup>Rodman, *supra* n.1

<sup>14</sup>Anne Marie Tiejten and myself have worked among the Maisin since November 1981. The observations in this paper are largely based upon twenty-five months of fieldwork conducted in 1981-83, 1986 and 1997.

This is not to say that local law – “customary law” – as practiced by Maisin is not affected by the national legal system. As we shall see in the next section, Maisin have over the years adopted and adapted many rules and institutions from the colonial period and continue to do so. The example of the national legal system thus has had a historical impact. The national legal system itself, however, only sporadically comes into play in the villages. This can happen, as I mentioned earlier, in reaction to particularly brutal crimes that villagers feel are too heinous to be handled locally. It can also happen when the interests of local people clash with the powerful economic interests that aligned with the state.

The Maisin, like many other rural folk, have clashed with the state in recent years over land and resources. Nowhere does customary law have a greater presence than in rules governing land. In Papua New Guinea as a whole, only 3% of land is directly controlled by the government and available for public purposes or leasing to private individuals and corporations. The remainder is owned directly by indigenous land-holders, overwhelmingly according to customary rules of land tenure and inheritance. This unusual situation was enshrined in law by the *Land Groups Act* of 1974 which recognized the legal rights of customary landowners over land and resources and set up rules by which they could exercise these rights. Commercial interests have long criticized the recognition of customary land title as a serious impediment to economic development. And, indeed, land is a very sensitive matter in Papua New Guinea. Government and private interests must deal with incessant complaints from landowners who feel, rightly or wrongly, that they have been inadequately compensated for use of their lands. Violent clashes, in which enraged landowners destroy property or attack persons, and are themselves attacked by the police, are not uncommon. The civil war on Bougainville Islands, now in its ninth year, have been driven to no small extent by the demand of landowners for just compensation for the giant copper mine and the environmental destruction it has caused. Such problems have led several of Papua New Guinea's creditors to put pressure on the government to create a national system of land registry.

While the land situation places unusual constraints upon those doing business in Papua New Guinea, it is hardly the case that economic development is either unwanted or impossible. Two large min-



ing projects – the Ok Tedi and Porgera mines – were started after extensive and continuing negotiations with the landowners (which is not to say that the companies' dealings with local people have not been difficult or controversial). The *Land Groups Acts* sets out procedures by which customary owners can have themselves officially recognized as "incorporated land groups" (ILGs) and undertake major initiatives as long as they have the demonstrated consent of the group's members. ILGs are customary groups who have the traditional rights to the lands and resources in their territories.

Unfortunately, politicians and civil servants are often unwilling or find themselves unable to enforce the national law. Nowhere has this been more evident than in the booming forestry sector of the economy. Exports of forestry products, mostly unprocessed logs, earned 90.2 million kina in 1991 and doubled the following year despite new conservation restrictions enacted by Parliament.<sup>15</sup> A Commission of Inquiry into forestry practices, set up in May 1987, uncovered a situation of widespread corruption, environmental destruction and unsustainable logging practices. The Barnett Inquiry revealed what was common knowledge to many: that the logging companies were grossly under-reporting the scale of their operations, including the amount of logs they were exporting, and that in most cases local landowners were poorly compensated and exercised little or no control over logging operations in their forests. In response to this and increasing national and international concern, the government enacted a new *Forestry Act* in 1991, declared a two year moratorium on new logging projects, and announced a series of reforms intended to slow the pace of logging and increase government oversight. These reforms were vociferously protested by logging companies, led by a giant Malaysian consortium which successfully postponed or stopped the most sweeping.

The Maisin claim a large sweep of primal rainforest lying behind Collingwood Bay. In a pattern repeated all over Papua New Guinea, different Maisin individuals both in the villages and in urban centres were wined and dined by representatives of logging companies seek-

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<sup>15</sup>Contributors, ed., *The Far East and Australasia 1996*, (London: Europa Publications, 1996).

ing access to the forest. A small group of individuals who had lived outside the villages for many years, incorporated themselves as the Collingwood Bay - Musa Development Company and signed a contract to permit logging on customary land. No one in the villages was consulted or aware of this arrangement until word leaked out after the Forestry Department was approached for approval. Villagers were outraged. After a series of large meetings in each of the Maisin villages, a delegation of leaders flew to Port Moresby to have the project blocked and to publicly denounce the Company and its contract. This series of events in 1993-94 initiated contacts and a close collaboration between the Maisin and several non-governmental organizations concerned with environmental matters and the rights of landowners. One of the most important has been the Individual and Community Rights Advocacy Forum (ICRAF) which has represented Maisin interests before the government as continual attempts have been made to give logging companies access to Maisin lands without landowner approval. ICRAF also held an important workshop in the Maisin area informing villagers of their legal rights under national law.

To sum up: The Papua New Guinea constitution enshrines custom as the underlying law of the state. In practice, however, the national legal system continues to rely heavily upon the traditions of English common law. Given the weakness of the national government, debates concerning the makeup of national law have had little relevance to rural people like the Maisin who must largely deal with social conflicts using the local means available to them. Laws concerning the land have, in recent years, become an important exception. Faced with the prospect of unwanted industrial logging, the Maisin effectively employed national laws recognizing customary land tenure to fend off commercial interests. It is important to stress that this identification of local understandings of customary land tenure with the national law came about through the initiative of the Maisin, not the government. That the Maisin made this protest, and have continued to effectively employ national law to protect their lands, is a testimony to the strong leadership and consensus existing in the community – points which we will examine closely below. It is also evidence of the important role non-governmental advocacy groups like ICRAF have assumed as the government cedes more and more power to transnational corporations seeking to exploit the country's rich resources. Maisin are keenly aware

of the fragility of government protection. During a visit in March 1997, villagers often expressed fear that the government would rescind its recognition of customary land tenure as it became more desperate for tax dollars (and open to corruption).

### Customary Law in Village Society

The Maisin believe that their ways of life – including their moral rules and means of dealing with conflicts – find their foundation in traditions which pre-date European contact. This is not to say, however, that their society has remained unchanged after more than a century of interactions with colonial outsiders. Indeed, while still distinctively Melanesian, Maisin society has been greatly transformed. The Maisin continue to adapt to change in the larger Papua New Guinea society. The Maisin's faith in a stable tradition that embraces changes is a paradox one finds in many Melanesian village societies today.<sup>16</sup> While "custom" provides the foundation of local law, Maisin nevertheless recognize and themselves practice a kind of legal pluralism within their own villages. I examine Maisin views on village law in this section. In the next I turn to the importance of oral traditions in Maisin adaptations of received and introduced laws.

The problems of defining "law" in traditionally-based communities are well-known and require no special comment here.<sup>17</sup> In writing about "customary law" in Maisin villages, I am referring to those social norms and practices, many of them commonsense to local folk, that order acceptable social behaviour, guide people's reactions to disruptions in the social order, and condition attempts to resolve conflicts.

When speaking of the local social order, Maisin often refer to "three sides": the village, mission and government. Each of these "sides" is associated with certain defining institutions, activities and expectations. When they speak of the "village side," for instance, Maisin have

<sup>16</sup>White, Geoffrey M., *Identity Through History: Living Stories in a Solomon Islands Society*, (Cambridge: University of Cambridge Press, 1991).

<sup>17</sup>Moore, Sally Falk, *Law as Process: An Anthropological Approach*, (London: Routledge & Kegan Paul, 1978).

in mind such things as the clans they belong to, the formal exchanges and ceremonies that mark various stages of one's life, and the expectation that people share the food they grow with their kin and affines. They associate the "mission side" with the clergy, Sunday worship and marriage rules. On the "government side" Maisin place the village councilor, cooperative work on public buildings, and meetings to deal with land disputes. This ideological division of the social order clearly reflects colonial experience when missionaries and government officers directly intervened, in distinct ways, to change local societies. It is critically important to remember, however, that these outsiders have long been absent from the local scene. These are now localized categories that distinguish social sphere primarily in terms of their remembered origins.<sup>18</sup> As we shall see, Maisin do not worry themselves overmuch concerning the lines between these spheres. Singly and collectively, the village, mission and government sides form a single social field within which Maisin customary law is recognized and put into effect. In some ways, the "sides" Maisin speak of are better understood as perspectives rather than distinct domains of life.

In this section I briefly outline features of each of the "sides" in turn. I then discuss their articulation.

*The Village Side:* Maisin live in multi-nucleated villages, stretched out on sandbars along the coast, with the ocean in front and mangrove swamps behind. The hamlets making up each village are named after the founding ancestors of the patri-clans that jointly own them. Within each hamlet, adult males build houses on land passed down by their fathers and fathers' brothers. Upon marriage, women normally move to their husband's hamlets. Most property, including land, passes down through the male line. However, people commonly garden on land owned by their in-laws and maternal kin. On occasion, marked by ritual exchanges, mother's brothers may pass land and other properties to their sisters' sons.

Village people spend almost all of their waking hours engaged in subsistence activities, in manufacturing the basics of material culture, and in formal and informal exchanges. As in other oral cultures, the

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<sup>18</sup>Barker, John, "Mission station and village: cultural practice and representations in Maisin society," *Christianity in Oceania: Ethnographic Perspectives*, ed. John Barker, (Lanham: University Press of America, 1990): 173-96.

"laws" governing interactions and rights are not codified. People learn proper behaviour by observing others, listening to elders and, not least, by watching and participating in disputes and their resolutions.<sup>19</sup> Law in this context is very much a process, not a corpus of rules. That process for the Maisin largely revolves around two general moral principles that are best expressed in their own language. The first, *muan*, roughly translates as "respect". The second, *marawa-wawe*, refers to a state of social amity. Both of these principles reflect common aspects of the social structure. *Muan* reflects the cultural assumption that senior kin have the responsibility (not right) to "advise" (not command) junior relatives. Thus parents advise their children on moral behaviour, elder siblings guide younger sisters or brothers, and parents-in-law speak to the spouses of their children about proper behaviour. In turn, junior kin and affines should listen with "respect" to their elders. As I mentioned at the start of this paper, to listen respectfully strongly implies obedience. In Maisin oral traditions, the relation of "respect" is symbolized in a division between two types of clans headed by two types of leaders. *Kawo* clans occupy the position of elder brothers. They have the right to sponsor inter-tribal feasts in their hamlets, a major means of creating alliances (and peaceful relations) with neighbours who otherwise would be enemies. The *kawo* should be assisted in this work by lower-ranking *sabu* clans, who they refer to as "younger brothers". *Sabu* are often pictured in stories as hot-heads, always hankering for war. They are often described as "spears". The *kawo*, who control the "drums" (for dancing during feasts) act to calm the temper of their junior *sabu*.<sup>20</sup>

*Marawa-wawe* literally means "emotions that are given away". The term refers to an ideal: a state in which individual kin or kin groups who are not in relations of senior-junior deal with each other as equals. Moral equivalence among Maisin, as with other Melanesians, is achieved largely through informal and formal exchanges of raw and

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<sup>19</sup>Tietjen, Anne Marie, and Lawrence J. Walker, "Moral Reasoning and Leadership among Men in a Papua New Guinea Society," *Developmental Psychology* 21.6 (1985): 982-992.

<sup>20</sup>Barker, John, "Village Inventions: Historical Variations upon a Regional Theme," *Oceania* 66.3 (1996): 211-229.

cooked food and wealth (both traditional and Western, including money). Maisin expect blood kin normally to be in a state of *marawa-wawe* in which kin freely assist each other with food, labour and other forms of support. The quantity and variety of exchanges in this condition of "generalized reciprocity" is such that people do not worry about exact balance.<sup>21</sup> The case is different when one deals with more distantly related or unrelated peoples – potential inlaws and outsiders. Here *marawa-wawe* refers to an achieved condition of perfect balance obtained via a series of carefully managed exchanges between large groups. Such exchanges are managed by senior kin "advising" those junior to themselves. At this level it is groups, not individuals, who ideally come into balance, into a state of equivalence. Much of Maisin politics and ritual activities focus upon these kinds of exchanges.<sup>22</sup>

So much for the ideal. In practice, the two simple principles of *muan* and *marawa-wawe* inform most social interactions, moral evaluations and attempts to deal with conflict. Much of the behaviour is habitual. To show "respect," for instance, one should bow one's head slightly when walking past seated elders. The principle of equivalence is more vividly enacted in a peculiar Maisin custom. If one stumbles or falls in public view – say from a verandah – those who witness the accident must fall as well before offering help. This puts the victim of the accident in the debt of those who fell in sympathy; the later must later be compensated with gifts of food or money. Common rules

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<sup>21</sup>Sahlins, Marshall, *Stone Age Economics*, (Chicago: Aldine, 1972).

<sup>22</sup>A number of anthropologists have observed that a sense of social debt—the result of the powerful cultural imperative to engage in reciprocity—provides the central structural of Melanesian societies. The Maisin distinction between *muan* and *marawa-wawe* plays out in other indigenous societies as a contrast between asymmetrical exchanges, in which one party is forever indebted to another, and those exchange relations which can, ideally, be brought into balance. Reciprocity figures centrally in Melanesian notions of personhood, gender, morality, politics and religion. For further discussion and ethnographic examples, see Burridge, K.O.L., *Tangu Traditions*, (Oxford: Oxford University Press, 1969); Errington, Frederick, and Deborah Gewertz, *Cultural Alternatives and a feminist Anthropology: An Analysis of Culturally Constructed Gender Interests in Papua New Guinea*, (Cambridge: Cambridge University Press, 1987); Schieffelin, Edward L., *The Sorrow of the Lonely and the Burning of the Dancers*, (New York: St. Martin's Press, 1976); Weiner, Annette B., *Women of Value, Men of Renown: New Perspectives on Trobriand Exchange*, (Austin: University of Texas Press, 1976).

of etiquette, learned in childhood, thus reinforce the basic moral principles. Those who break with moral rules by stealing garden food, engaging in adultery, refusing to share with their neighbours, and so forth, face common sanctions of negative gossip, public ridicule and, ultimately, sorcery attacks. The aim of such sanctions is to bring parties in conflict back into relations of respect and equivalence, often by bringing them together to share food and exchange wealth. Resolving disputes becomes progressively more difficult with social distance. Maisin typically feel little moral obligation to those outside of their extended kin. Relations between wife-givers and wife-takers are especially prone to conflict, often played out in the form of sorcery feuds. Again, this is a very common Melanesian pattern, where many people say, "We fight those whom we marry".<sup>23</sup>

*The Mission Side:* All Maisin are Christians, mostly third and fourth generation members of the Anglican Church of Papua New Guinea. In colonial times, the Anglican mission had complete responsibility for village schooling. Although the national government has for many years set the curriculum, most villagers continue to associate the two community schools with the "mission side". When they speak of the "mission side", Maisin refer to the institutions of the church and school and the activities that go on within them. They also use the term in reference to the explicit rules articulated by bishops and priests concerning the Christian life. Finally, the "mission side" has to do with a general attitude, a Christian appreciation of morality, that Maisin interpret differently depending on the situation.

The church has a body of "laws", well understood in the villages, concerning such things as tithing and marriage. Church law is backed

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<sup>23</sup>This is a common phrase among the Enga of the New Guinea highlands, one of the largest socio-linguistic groups in the country see Meggitt, Mervyn, *Blood is Their Argument: Warfare among the Mae Enga Tribesmen of the New Guinea Highlands*, (Palo Alto: Mayfield, 1977). For more information on the ideology and experience of sorcery disputes among the Maisin, see Barker, John, "Encounters with Evil: The Historical Construction of Sorcery in Maisin Society, Papua New Guinea," *Oceania* 61.1 (1990): 139-55; Barker, John, "Western Medicine and the Continuity of Belief: The Maisin of Collingwood Bay, Oro Province," *A Continuing Trail of Treatment: Medical Pluralism in Papua New Guinea*, ed. Stephen Frankel, and Gilbert Lewis, (Dordrecht: Kluwer, 1989).

by a series of formal sanctions, the most important of which are refusal of the Eucharist and denial of baptism to infant children of individuals who are in conflict with church rules.<sup>24</sup> Unlike village "law", church rules are explicit and relate primarily to the relation between individuals and the church. While Maisin universally support the right of the church to proclaim such rules, a large minority at any time will be in violation of some of them. Most Maisin, for instance, hold off having the priest acknowledge marriages until one or more children are born, recognizing the difficulty of obtaining sanctioned divorces. Conversion to Christianity has not ended the practice of polygamy. While denied the Eucharist themselves, however, men in polygamous unions usually join other villagers in maintaining local church and school buildings. And they expect their children to be baptized once they reach adulthood.

The ideological orientation of the church side is more easily assimilated into village side practices and assumptions. Older Maisin told me that clergy, both White and Papuan, are the equivalent of the *kawo* leaders. That is to say, the clergy act as elders to the Maisin, tempering villagers predilections towards violence by giving them advice and providing a place where all can come together and share – much as the old *kawo* organized the *sabu* and held feasts to bring together traditional enemies. The key difference with the village sphere comes from the knowledge that the Christian God represents all people. The peace brought by missionaries is thus understood by Maisin as a universal peace – and thus an ideal that has yet to be obtained.<sup>25</sup>

*The Government Side:* The Papuan colonial government, like the Anglican mission, introduced new sets of rules to Maisin villages. Unlike the church, however, Maisin experienced direct sanctions, in-

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<sup>24</sup>Elsewhere and at other times, churches have taken a much more proactive stance in enforcing their rules. See, for instance, Westermarck, George, "Church Law, Court Law: Competing Forums in a Highland Village," *Anthropology in the High Valleys: Essays on the New Guinea Highlands in Honor of Kenneth E. Read*, ed. L.L. Langness, and T. Hayes, (Navato: Chandler & Sharp, 1987).

<sup>25</sup>Barker, John, "We are 'ekelesia': conversion in Uiaiku, Papua New Guinea," *Christian Conversion: Historical and Anthropological Perspectives on a Great Transformation*, ed. Robert Hefner, (Berkeley: University of California Press, 1993): 199-230.



cluding beatings from government police and gaol, if they chose to ignore government edicts. The edicts written and enforced by the colonial government were of two kinds. The first applied to a variety of "crimes", most notably those involving physical violence, major theft and refusal to assist government officers. A second group of edicts included laws meant to improve social welfare in the village, ordaining such things as the planting of community plantations for commercial crops, the building of latrines, and the payment of community taxes. Government agents had the power of magistrates. They would visit Maisin villages once or twice each year, hold court to deal with various crimes and announce new government ordinances concerning village upkeep. A Native police force accompanied White officers on patrol and could also be dispatched when word of trouble reached the government regional office at Tufi, some sixty kilometres north of the Maisin.

From the start, local people like the Maisin were incorporated into the administration of colonial law. Government agents appointed village constables in every community to act as their eyes and ears. Increasingly, the more ambitious constables also acted as administrative mouthpieces, announcing and explaining policies and laws to villages. By the early 1930s, the Papuan administration began experimenting with village councils. Through the 1950s and 1960s, the Maisin created new village-level committees to deal with government initiatives meant to improve village life. During the same period, the government patrols dropped off and finally ceased entirely in the early 1970s. Today each Maisin village has an elected council and a number of village-wide committees which oversee public works, including economic projects.

The heads of village councils also serve on a Local Government Council based in Tufi. The village councilor today blends qualities of the old patrol officer and village constable. He is called upon to adjudicate the more serious village disputes (which usually concerns conflicting claims over garden lands). In serious cases of violence or theft, the councilor may call in police from Tufi to make an arrest. Village committees are mostly affiliated with regional and national organizations and initiatives – youth, women and development programs for instance. Villagers understand both councils and committees as the representatives of the national government within the village.

That is to say, councils and committees are the creatures of national law that (in theory) pertains to everyone. In practice, however, the councils and committees depend upon the consensus of the community to operate. They have few if any sanctions of their own. To give a typical example, village councils set aside a day a week for cooperative work on public buildings and grounds. It is well understood that all adults should pitch in and most usually do. There is little a councilor can do, however, to force everyone to help. While all Maisin villages have Western forms of local government, they are often ineffectual especially in cases where councilors command little respect among fellow villagers.

*Articulation of the Sides:* In thinking about the ways Maisin experience and manipulate the three "sides", I find the term "articulation" more useful than "fusion" or "synthesis". Often in Maisin experience the "sides" are quite distinct. The concerns of the church differ from those of the village council, neither of which concern themselves overly with the messy details of marriage exchanges between kin groups. However, as they participate in each of the three domains, Maisin inevitably reflect and temper their understanding of what is right in one domain in terms of the others. If James, for instance, takes a second wife, he will be criticized by other Maisin immediately for breaking a mission law. In addition, however, James' immediate kin will also complain that, by having an extra wife, he has put himself above his brothers and increased the obligation of his clanmates to pay bridewealth in exchange for his marriages. They will pressure him to give up the second wife. The village council may also object since wives in plural marriages frequently quarrel and thus "disturb the peace".

The three sides of village life offer the Maisin different perspectives on aspects of the social order and, potentially, distinct ways of dealing with social conflict. When the community is hit by a major crisis – one that is difficult to resolve – villagers quite explicitly draw upon the three perspectives in their search for a solution acceptable to all. To give one example. In May 1983, an adolescent boy was badly beaten by the men of one hamlet when he was discovered one night attempting to visit a resident girl. Several weeks later, the boy's senior kin retaliated by attacking one of boy's assailants while he was sailing his canoe near their village. A baby almost drowned during the attack. The village councilor of the boy's village attempted to end the crisis

by organizing a large food exchange. This was foiled when the councilor of the girl's village called in the police. Tensions ran high for several months as people argued whether or not the "government" (in the form of the police) should have been called in. Tempers cooled only after the two councilors arranged exchanges of food between the villages, to calm anger concerning the original attacks and the decision to bring in the police. At the several meetings held to reach a consensus, a number of senior men reminded the villagers that, as Christians, they had a duty to make the peace final and not enter into an endless series of payback actions.

The village, mission and government "sides", with their associated assumptions about social order, derive from distinct sources. It would be easy to see them as ultimately incompatible, as indeed they are if considered in the abstract. If we see Maisin as living in a "modernizing" society, it would be tempting to imagine that this is a typical case of imported Western law and morality imposed upon village-based customary law. Maisin, however, have not experienced Christianity or Western forms of administration as abstract systems and are not so cognizant of philosophical contradictions. For them, the village, mission and government "sides" refer to different facets of one social order. Maisin expect the ways of the three side to be distinct but compatible and mutually reinforcing – as means to deal with conflict not to cause it. What we see in Maisin villages is not a unilineal evolution from traditional to modern law. Instead, the Maisin engage in a dialogue between conditions and types of social order, all of which are evolving together as the community deals with ever-changing circumstances. "Customary law" in Maisin communities is thus made up of the evolving mix of village, mission and government perspectives and practices.

The mission and government aspects of customary law have their origins in written sources. However, as Maisin have incorporated them into the body of customary law these origins have lost much of their significance. Customary law among the Maisin is built upon the foundation of oral tradition. First, law for the Maisin is based upon consensus-building. An important part of this comes from a shifting consensus on the ways of the ancestors. Second, the primary goal in Maisin dispute resolution reflects the core values of "respect" and "balanced exchange" – it is to create or recreate social amity rather

than to punish wrong-doers. Maisin have thus accepted certain rules and institutions from outsiders, but they have molded them in conformance with key cultural values. They have been able to do this in part because the state is too weak to enforce its own system of law. And they have been able to do this because oral traditions provide the people a flexible and creative means of assimilating the new.

### **Oral Tradition and the Validation of Customary Law**

Thus far I have argued that the Maisin retain most responsibility for their own legal matters. The state is weak in Papua New Guinea; except when approached by large organizations, like logging companies, the Maisin have little reason to deal with courts or police. This state of autonomy should not imply that the Maisin have resisted let alone rejected introduced change. Far from it. Through most of the past century, the Maisin have shown themselves to be remarkably open to new ideas and institutions. The pluralistic "customary law" of the villages draws on local heritage, church and government sources. Ultimately, however, the acceptance of local law rests upon consensus among villagers and not the authority of the state.

A major question remains: acknowledging the fact of local autonomy, is it accurate or useful to characterize local law as "customary"? Clearly if we imagine "custom" as referring to a primordial culture that supposedly existed before European contact, the present-day situation is hardly customary at all. Some customs undoubtedly persist, but they have been subverted and compromised by a century of colonial rule. Scholars have largely rejected such static views of custom and culture. Instead, they suggest that we think of custom as a type of frameworks, rooted in local understandings and experience of history, which people employ to comprehend and adjust to new situations. Maisin local law is "customary" in that it derives its authority from local consensus based in a shared appreciation of history. This consensus, in turn, is formed and molded in oral traditions widely experienced by the people.

The key word in understanding the importance of oral traditions is "experienced". Intellectuals have an understandable tendency to think about oral traditions as analogous with literate heritage. Indig-

enous narratives – myths, legends, poetry and the like – are easily “collected” and recorded in books. Invaluable as such collections are, they provide a distorting mirror on indigenous oral traditions. On the one hand, they necessarily edit out the *experiential* nature of the narrative form – the performances of narrator and audience and the defining quality of the social contexts in which story-telling takes place. On the other hand, they neglect the much larger range of oral traditions that do not lend themselves to ready recording as texts. The Papua New Guinea historian John Waiko argues that our understanding of “oral tradition” must be widened to include any conventionalized form of verbal art in indigenous societies: magical chants and spells, songs, jokes, ritual speeches, parental instructions for building canoes, and so forth.<sup>26</sup> Beyond this, oral traditions are further reinforced in plastic arts, such as carvings, house designs, and textiles; in performances, such as marital exchanges, community meetings to deal with sorcery, and puberty ceremonies; and in conventional associations, such as sacred sites, trees marking garden boundaries, and certain sounds and odours encountered in the jungle (which many Melanesians associate with ancestral spirits). For Waiko, “oral tradition” has to do with the way people in non-literate cultures collectively remember their past and make it relevant to the present.

Oral tradition, in Waiko’s broadened sense, operates in Maisin local law on two levels. Perhaps the most important of these is the level of everyday life. Most days, villagers engage in similar subsistence activities; activities which they have learned by watching and helping their own parents. They carry out their work in locations which they associate with their elders and which, during their own childhood, their elders associated with more distant ancestors. Such widely shared activities provide a strong sense of continuity. This is made even stronger by the reality that there is very little privacy in Maisin society. People observe each other closely because they need to. Most subsistence tasks require cooperation. Successful exchanges require sensitive

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<sup>26</sup>Waiko, John D., “Binandere Oral Tradition: Sources and Problems.” In Donald Denoon and Roderick Lacey (eds.), *Oral Traditions in Melanesia*, pp. 11-30. Port Moresby: University of Papua New Guinea and the Institute of Papua New Guinea Studies (1981).

responses between the parties. Conversation during the evening meals revolves around observations of what one's neighbours and family have been up to. Paul Connerton<sup>27</sup> argues that such ordinary gossip, in intimate small-scale societies, forms a crucial component of oral traditions.

Village gossip is composed of ... daily recounting combined with lifelong mutual familiarities. By this means a village informally constructs a continuous communal history of itself: a history in which everybody portrays, in which everybody is portrayed, and in which the act of portrayal never stops. This leaves little if any space for the presentation of the self in everyday life because, to such a large degree, individuals remember in common.

Such gossip obviously also serves to monitor and control the actions of individuals either through self-observation or collective action against nonconformists. In a real sense, villagers are continually subject to the structuring of ongoing collective histories – histories that are strongly grounded in habitual activities which themselves have deep cultural roots.

Maisin also encounter and reproduce oral traditions at a public level. The most common occasion for this is in story-tellings, a frequent evening activity. The most spectacular, however, are public ceremonies marking life crises and exchanges between social and political groups. The largest public ceremonies, since at least the 1930s, have centred on church or state occasions – Easter or the celebration of national independence, for instance – and in honour of important visitors, such as members of parliament, bishops and international aid workers. When there are visiting dignitaries, a good deal of time will be spent on activities symbolizing the Maisins' connections to national and international institutions. There may be church services, gospel concerts, and speeches on economic development. Yet Maisin organize even the most outwardly oriented gatherings around public performances based upon ancestral traditions: ritualized greetings, dances in traditional costume, and feasts (involving food exchanges between

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<sup>27</sup>Connerton, Paul, *How Societies Remember*, (Cambridge: Cambridge University Press, 1988): 17.

clans). Such activities explicitly enact customs that Maisin believe derive from the moment of creation. They are strong claims of continuity that symbolically contain novel situations.

In August 1997, the crew and visiting dignitaries on the *Rainbow Warrior*, the flagship of Greenpeace International, were treated to several days of feasts and traditional dancing when they visited the Maisin in Collingwood Bay. The dancers, lavishly decorated with colourful headdresses, shell ornaments and beautifully designed *tapa* cloth, were meant to impress the visitors as were the dance sessions, involving scores of people from all the clans and lasting all through the night. The ceremonies succeeded in the immediate aim of the organizers – to unify the entire Maisin community behind a new alliance with international conservation organizations.

Yet it would be wrong to see such ceremonies merely as displays meant to impress outsiders. To a very large extent, these ceremonies convey messages to Maisin that are different from what outside observers may pick up. The dances, for instance, self-consciously commemorate the ancestors. Dancers decorate themselves with ornaments and *tapa* designs thought to be identical to those worn by the first ancestors when they emerged from underground in the origin of time. Villagers have no trouble identifying clan members based on the designs. The dancers perform ancient choreography to songs chanted in an ancient language that no one today understands. As the drums beat and men and women sway and shuffle from dusk to dawn, the spirits of the ancestors “impersonate” the dancers themselves – spirit and human become one.<sup>28</sup> On a more practical plane, the ceremonies embody fundamental exchange relationships. All preparatory work, donations of food for feasts and cultural performances involve exchanges of food and labour between participating kin groups and villages. These exchanges begin weeks or even months before the event and they continue long after it is over. If the event is successful, it is appreciated by the participants as an enactment of *marawa-wawe* – as a balanced exchange that demonstrates social amity between the exchange partners. In large ceremonies, like the one held in August 1997, the ex-

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<sup>28</sup>The term “impersonate” is used in reference to ritual in Wagner, Roy, *Habu: The Innovation of Meaning in Daribi Religion*, (Chicago: University of Chicago Press, 1972).

change partners include not only the participating Maisin clans and villages, but their guests and the ancestors, all of whom are symbolically represented as in being a state of moral balance.

The Greenpeace volunteer who told me about these ceremonies thought that the Maisin were experiencing a renewed pride in their culture, encouraged by the success of the local anti-logging movement. He was impressed by the many young men and women who joined the dancers. He saw some older people break down into tears when they saw dances that had not been performed in decades. These ceremonies, however, differed from earlier ones mostly in their scale. All public ceremonies among the Maisin are revivals for they draw selectively from a much wider pool of remembered traditions. The general form of the rituals, however, are familiar to all. Even the youngest villagers have a habituated sense of the aesthetics of feasts, exchanges and dances, having witnessed and participated in many smaller ones. Organizers may vary the elements, make the ceremonies more lavish or extended, but they may not wilfully add new elements or tamper with the old.<sup>29</sup> The ceremonies commemorate, enact, a founding ancestral reality. They draw their power from this. By performing the dances, the Maisin in effect baptize new situations in the "headwaters of tradition".<sup>30</sup>

A consideration of how oral traditions are experienced thus helps us to better understand how the Maisin manage legal pluralism within the villages and beyond. The never ending communal history, constructed in gossip from habitual daily practices, acts as the moral consciousness of the community in everyday life, smoothing out conflicts over nonconformists. Oral traditions also provide a pool of resources to be drawn upon when Maisin deal with major innovations and outsiders. The legitimacy of any new social arrangement rests, in

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<sup>29</sup>This is not say, of course, that the ceremonial elements have not changed over time as the result of faulty memory and recontextualization.

<sup>30</sup>Rutz, H.J., "Occupying the Headwaters of Tradition: Rhetorical Strategies of Nation Making in Fiji," *Nation Making: Emergent Identities in Postcolonial Melanesia*, ed. R. Foster, (Ann Arbor: University of Michigan Press, 1995): 71-94.



the end, upon consensus which in turn is understood to derive from ancestral traditions.<sup>31</sup>

### Conclusion

The Maisin experience of legal pluralism is probably fairly common in Papua New Guinea. The national law applies to all citizens, but the central government is weak, especially in peripheral rural areas like Collingwood Bay. For the most part, Maisin only indirectly experience the constraints of national law. On rare occasions, they may call upon police and courts to deal with conflicts in the community. And in recent years they have had recourse to lawyers to deal with land issues. For the most part, however, Maisin rely upon local resources for the management of their own communities. These resources derive from three distinct sources which the Maisin identify as the village, mission and government "sides" of village life. These are thought to deal with different aspects of the community but to be compatible. Most importantly, the rules of each "side" find their legitimation in local consensus and not in any outside authority.

Oral traditions provide the roots of consensus. The routines of daily life form the most important context within which people learn and recreate the community memory that informs opinion on moral and immoral actions and what should be done about them. When confronted with larger challenges, including alliances with outside organizations or threats to their land, Maisin leaders self-consciously appeal to oral traditional dancing form the most effective and spectacular means of connecting new situations with ancestral realities. The success of such commemorative ceremonies provides an important measure of the degree of consensus there is behind a political venture. The hugely successful ceremonies held in August 1997 to honour the visit of the *Rainbow Warrior* to Collingwood Bay, for example, indicates a strong consensus within Maisin communities against commercial logging of their rain forest. It also indicates that

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<sup>31</sup>I have discussed this point in several articles already cited in this essay in reference to the Christian cooperative movement of the 1950s. See especially, "Village Inventions," *supra*.

most Maisin believe that their alliance with groups like Greenpeace conforms with – indeed, marks a direct continuity with – ancestral truths as conveyed in oral traditions. This is a very potent connection. It implies to Maisin that they continue to listen to the ancestors. And to hear is to obey.

We are left in the end, however, with the difficult question of whether this apparent victory of Maisin oral traditions over Western modernity is, to some extent at least, illusory or at least insecure. In the course of a century of dialogue with outsiders and amongst themselves, Maisin understandings and experiences of oral traditions have changed dramatically. Among other things, the pool of knowledge about ancestral traditions has been shrinking pace. There are far fewer people in the village today than a decade ago who can relate clan histories and ancient stories; an influx of western goods has meant that most adults today no longer know how to make many basic utensils; and those Maisin who have spent years living outside the village have little knowledge of the historical significance of the local landscape almost all Maisin today achieve at least Grade 6 and many have been to high school and beyond. Experience of schooling and urban ways may act to undermine the commonsense orientations of subsistence life as villagers become comfortable with commodities, consumerism and Western orientations to time and wealth. As the pool of common knowledge about ancestral traditions shrinks, public ceremonies commemorate an ever more stereotypic picture of ancestral times. The clans may merge into the singular figural figures of a male and female ancestor.

Such trends are readily visible in the Collingwood Bay villages as the Maisin become drawn into the global economy and engaged in the international politics of conservation. In a few years time, the customary law of the villages will most likely still rest upon a consensus built from an oral tradition generated by daily gossip and shared memories of the ancestral past. Yet as the lives of the villagers become reoriented to the hegemonic values of the global consumer culture, the end result

– the actual understanding and practice of law – may not look much different than that of small municipalities in the industrialized world.

**John Barker\***

\* Associate Professor  
Department of Anthropology & Sociology  
University of British Columbia  
Canada.

