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Traditional Justice and the 'Court System' of the Island of Roti

James J. Fox

This paper outlines the historical formation of courts on the island of Roti. Drawing on the model of a court convened by the Dutch East India Company, each domain on the island fashioned its own court with local clan representation. In the case of the domain of Termanu, this court functioned from the 18th century through to 1968. The paper examines the functioning of this court in 1965–66, its procedures, its recourse to precedence and its invocation of a rich array of local knowledge and tradition frequently embodied in poetic phrases and aphorisms. Finally the paper considers the effectiveness of this court in mediation and dispute settlement and the consequences of the dissolution of the court in 1968.

Keywords: Traditional justice; Dispute settlement; Mediation; Justice; Timor

Introduction

Located on an island off the western tip of Timor, the Rotinese share many of the basic traditions of Timor. As a language closely related to Tetum, Rotinese comprises a variety of dialects and may be seen as the Westernmost extension of an expansion of the 'Tetum-related' populations of Timor (see Fox 1993, 1996, 2006 for a comparative exploration of some of these traditions).

This paper describes the history, traditions and workings of the court system on the island of Roti, which took shape, under Dutch influence, towards the end of the seventeenth century. During this period and well into the eighteenth century, Roti became divided into a number of local domains (*nusak*), each with its own ruler (Manek) recognised by the Dutch East India Company (Fox 1971, 1979a, 1979b, 1980). As each ruler gained recognition, he established his own independent court.

James J. Fox is Professor in the Resource Management in Asia Pacific Program, Research School of Pacific and Asian Studies, The Australian National University. Correspondence to: James J. Fox, Resource Management in Asia Pacific Program, Research School of Pacific and Asian Studies, The Australian National University, Canberra, ACT 0200, Australia. Tel: +61 (0)2 6125 0192. Fax: +61 (0)2 6125 1635. Email: james.fox@anu.edu.au

Thus the 'court system' of Roti developed not as a single system but in a variety of forms in line with each domain's internal organisation and traditions.

I concentrate on the central domain of Termanu where, as elsewhere in Roti, the court became the focus of social and political life. The opportunities provided by these courts for speaking and contending with one another fostered a fondness for particular forms of oration and disputation. This special fondness for dispute has prompted many to see the Rotinese as a litigious and contrary population.

The Rotinese courts continued to function, in more or less traditional fashion, until 1968 when New Order Indonesian policies eliminated the role of the traditional ruler in each of the local domains. Thereafter certain capacities to adjudicate local disputes were transferred to village heads. An immediate consequence of this change, however, was the loss of judicial scope. Whereas previously the *nusak*-court had the capacity to adjudicate among all members of the domain, village heads could settle only disputes that were internal to a particular village. Disputes between villages required the cooperation of two (or more) village heads who were often partisans in the conflict. Hence, such disputes had to be formally referred to the local government court on the island, part of the national court system. The process invariably involved a considerable expenditure of time and was rarely suited to adjudicating on complex traditional issues. As a result, when the *nusak*-court ceased to function, there was an increase in physical confrontation between neighbouring settlements within the domain.

I conducted my first fieldwork on Roti in 1965–6 primarily in the domain of Termanu. During that time, the domain court met on a weekly basis and I was regularly able to attend these sessions as well as those court sessions convened for specific purposes, often at large feasts. I begin this paper with a brief description of the domain of Termanu with particular regard to its political as well as its cosmological underpinnings.

The Ordering of the Domain of Termanu

Termanu possesses a long oral history that sets out the formation of the domain and the establishment of its ruling clan, the expansion and conquest of other domains, its involvement with European powers and the succession of its rulers among different lineages within the royal clan. Although the domain is conceived of as the result of a process of struggle and development, certain of its features are regarded as grounded on fundamental cosmological principles.

At the most basic level (as in all other domains on Roti) there is a division in Termanu between the ruler and a personage designated as the 'Head of the Earth' (Dae Langak). Initially, in Termanu, the ancestors of these two lines disputed precedence within the domain. The ruler was able to triumph by cunning and deception but in the end was forced to acknowledge a complementarity of functions. Whereas the ruler was accorded power of rule, the Head of the Earth was accorded authority over the rituals of the land. In Termanu, this complementarity extends to

the naming of the domain. From the perspective of the Head of the Earth, the domain is known as Pada, in honour of his first ancestor, Pada Lalais, whereas from the ruler's perspective, Termanu is the proper name of the domain (Fox 2006).

A further phase in the development of the domain is a fundamental division between 'male' and 'female'.¹ In Termanu, this occurs within the ruling clan, again through a dispute in which the ruler triumphs by cunning. In this division, the ruler becomes 'male' (Manek) in relation to the lesser ruler who becomes 'female' (Feto/Fetor).² Among the Rotinese, the terms for 'ruler' (Manek) and for 'male' (*mane*) are the same. The lesser 'female' lord was known as the Mane-feto or Fetor. Thus, on Roti, all domains are 'male-centred' political entities.

Termanu's historical narratives describe the expansion of the domain and the incorporation of other neighbouring domains as separate clans under the authority of the ruler. Each of these clans was named with its own headman and specific prerogatives based on a relationship to the ruling line. This complex clan structure was spoken of as a grouping of 'nine' (*sio*), that being the number that stands for 'totality'.³ Each of the clan lords was thus referred to as a Manesio, 'Lord of Nine'. In Termanu, one of these clan lords was the 'Head of the Earth', who presided at court as Dae Langak.⁴

On Roti, the terms for a 'domain' and for its 'court' were synonymous. Both were referred to as *nusak*. Thus the ruler or Manek presided over his court. This court consisted of the clan lords of the domain, the 'Lords of Nine' or the Manesio together with the 'female lord' or Mane-feto. In Termanu, the lord of one of the smallest clans in the domain had the title of Manedope, 'Lord of the Knife'. The function of this figure was to pronounce and deliver the judgments of the Manek.

Each of the lords of the domain who sat in judgment represented a specific clan group. In this structure, each of the 'Lords of Nine' could be referred to by the name of their clan. The ruler and the 'female lord' each represented their own clans together with a few smaller, mainly immigrant lineages.

The formal historical structure of the court of Termanu, in terms of its constituent clans from the middle of the nineteenth century onward, was as follows:

<i>Title</i>	<i>Clan</i>
Manek	Masa-Huk
Mane-Feto	Kota-Deak
(1) Manesio (Manedope)	Ulu-Anak
(2) Manesio	Kiu-Kanak
(3) Manesio	Sui
(4) Manesio	Ingu-Nau
(5) Manesio	Dou-Danga
(6) Manesio	Ingu-Beuk
(7) Manesio	Nggofa-Laik
(8) Manesio	Ingu-Fao
(9) Manesio (Dae Langak)	Meno

The Historical Background to the Courts of Roti

According to its own oral narratives, the domain court of Termanu took shape over a period of time and was presided over by a succession of rulers, whose personal characteristics influenced the way judgments were made. Memories of these rulers form part of the traditions of the domain.

It is also possible to identify, through the records of the Dutch East India Company, some of the outside influences that contributed to the creation of this court system. In 1653, the Dutch East India Company established itself in Kupang by occupying an abandoned Portuguese fortification. Shortly thereafter it also established regular contact with various local rulers of Roti. Initially company officers were fearful of being driven from their toe-hold on Timor and were prepared to withdraw to Roti if they were forced to by the Portuguese-speaking Topasses who dominated much of western Timor.⁵ In time, the Dutch were able to secure their position in Kupang, strengthen their fortifications and fashion a network of alliances, first with local rulers from Timor, Solor and Roti and then later with some of the rulers of Savu and Sumba. Thus, for a period of a hundred years, the Dutch East India Company signed formal treaties of alliance and trade with local rulers whose legitimacy they recognised and supported (see Fox 1971, 1977, pp. 61–112).

The company signed four successive treaties of alliance with the rulers of Roti, each time recognising a greater number of these rulers. The first of these treaties was in 1662, the second in 1691, the third was in 1700 and the fourth in 1756. A ruler from Termanu was signatory to each of these treaties. Generally, in these treaties, there was no differentiation among rulers, each of whom was referred to as 'Regent' or as 'Radja'. The female-ruler or Fetor on Roti was referred to as 'Mede-Regent' or 'joint-regent' and clan lords were designated as 'Tumukun'. Thus the Dutch gave titles to positions within each domain for which there was an equivalent title and position in Rotinese. As such, the title system in each domain became an historical composite of Rotinese and Dutch-designated titles (see Fox 1980, pp. 102–13).

Initially the Dutch were able to intervene with devastating effect to punish disloyalty and to support their allies on the small island of Roti. However, when in 1656 the Dutch attempted to direct a large troop of soldiers into the interior of Timor, they were entirely routed by the Topasses and thereafter confined themselves to activities along the coast. Nevertheless in 1756, the company, under a special commissar sent from Batavia, claimed to sign a formal treaty with no less than forty-eight rulers from most of western Timor, parts of eastern Timor as well as Roti, Solor, Savu and parts of Sumba (see Fox 1971, 1977, 1996).

To maintain its extended inter-island network of alliances, the Dutch would regularly convene gatherings of their loyal allies. Rulers or their representatives were required to meet at least once each year at Fort Concordia in Kupang. They convened as a court and were often called upon to settle disputes among rulers. Thus in effect, the company's chief merchant (Opperhoofd) in Kupang presided at a court made up of local rulers who sat in judgment on disputes of their peers with each other and

with the company. The company's annual 'Timor Book' contains the records (*proces verbal*) of many of these cases. Paintings and sketches that have survived from this period show this court in session with the rulers seated in an assembly dressed in the formal attire of eighteenth-century gentlemen. It was this rulers' court in Kupang that provided the model that the Rotinese adopted for their own domain courts.

Transformations of the Court System in the Nineteenth and Twentieth Centuries

The court system that the Rotinese adopted and fashioned within their domains centred on the ruler—the Manek as judge supported by his court of clan lords. The judgments of the Manek were equated with those of the Rotinese god of lightning and thunder, the Tou Manek (literally, 'The Male Man'). In the words of an old Rotinese saying, 'When the Manek speaks, it is like the rolling of thunder and the flashing of lightning.' As the Rotinese converted to Christianity, the Manek's position came to be seen as analogous within the domain to the position of 'The Great Lord of Heaven' (Mane Tua Lain) whose conception was fostered by Christian influence.

The organisation of the domains on Roti, which had taken shape and had been upheld by the Dutch East India Company, was reaffirmed and institutionalised by the Dutch colonial government in the nineteenth century. Towards the end of the century, the position of the Manek was even further enhanced. In 1870, on an inspection tour of the island, the Dutch Resident from Kupang discovered that the staffs of office (*tongkat*)—most of which had been bestowed by the company on the first ruler in each domain whom they recognised—were kept, not by the Manek, but by the Dae Langak, the Head of the Earth. Only after proper ritual sacrifice would this staff of office be ceremonially delivered to the Manek when he was obliged to meet a visiting Dutch official. The Resident ordered an immediate end to this ritual custodianship, thus strengthening the authority of the Manek within his domain.

Only in the twentieth century were administrative changes made to the structure of the domains that had an effect on the court system. The Dutch endeavoured to consolidate various domains into larger groups and eventually established a titular Radja Roti. By the time these changes were initiated, many of the domains had been in existence—and had been recognised formally by the Dutch—for over 200 years. As a result, the domains continued to function at a local level, even as the Dutch set in place new higher-level administrative arrangements.

More insidious for the structure of each domain was the attempt by the Dutch to shift local governance from a system of clans to a village-based administration. During the nineteenth century, clans were recognised as the components of a domain and could be called upon for levies of manpower, including armed men to fight for the Dutch in the campaigns of pacification in West Timor. In the twentieth century, the Dutch tried to designate villages and appoint village heads. Since settlement is scattered on the island, it was often difficult to demarcate the boundaries so the establishment of villages was, to some extent, arbitrary. Instead of compact,

definable villages, the pattern that was produced consisted of named 'village areas' whose centre would shift to wherever a village head resided.

Appointing village heads and recognising these officials in the place of, or alongside, clan lords produced a clash of authority, especially since it was the clan lords—not village heads—who sat in judgment at the court. In the end, a hybrid system was created. The Dutch recognised clan lords as 'Great Temukun' (Temukun Besar) and village heads as 'Lesser Temukun' (Temukun Ketjil). And, in many cases, the Rotinese would attempt to resolve this ambiguity by selecting clan lords to represent particular village areas.

The Court of Termanu in 1965–6

The *nusak* court of Termanu convened regularly throughout the period of my fieldwork in 1965–6. Generally the court gathered every Monday (Maandag) as was the practice from the time of the Dutch. The Manek of Termanu, Ernst Amalo, had been appointed as the Camat of central Rote and was required to live in the town of Ba'a. He therefore had appointed a Wakil or Deputy, Frans Biredoko, a member of his clan Masa-Huk whose father had previously deputed as Manek. Frans Biredoko was a decisive authoritarian who commanded considerable respect. His commitment to his position, for which he received no formal compensation, was unswerving.

The position of the Wakil Manek of Termanu was supported by that of the Dae Langak or Head of the Earth, Stephanus Adulanu from clan Meno. Stephanus Adulanu, who was known simply as 'Old Meno' (Meno Tua), had previously been *jurutulis* or scribe to Termanu's court from an early age. He remembered beginning as scribe at the time of the great influenza that struck the island after the First World War and, with an interruption during the Japanese occupation, had continued in his role. His age, experience and position provided the court with substantial authority. In deference to him and because he often suffered acute arthritis, the court would normally gather near his house in the settlement of Ola Lain rather than in the capital of the domain, Feapopi.

The attendance of other clan lords and leading elders was not fixed and often depended on what case or cases were being heard. Clan Kota Deak was represented by an elder, who was generally referred to by his residential designation as 'Temukun Hala'. Mias Kiuk who was Clan Lord of Ingu-Beuk was also a frequent attendant at court sessions. He was the brother-in-law of the Wakil Manek and invariably supported the Wakil in his comments and interventions. Nggi Muloko, Clan Lord of Nggofa-Laik, was an infrequent attendee. As an elder, he was credited with great knowledge but by nature he was a taciturn individual and rarely, if ever, ventured an opinion in public. There was no longer anyone to represent the Clan Ulu Anak so the court functioned without its Manedope.

In popular understanding, the term '*nusak*' conveyed three intertwined conceptions: *nusak* as 'domain', in this case, Termanu; *nusak* (or *nusak-lain*: 'high *nusak*') as 'the residence of the ruler', normally Feapopi; but, most importantly *nusak* as 'court'

whenever and wherever it was convened. Its proceedings, litigation and judgments were all considered the *dede'ak nusak*: 'language/speech/cases/sessions of the court'.

Court sessions were open to participation by anyone who wished to offer an opinion or observation. Elders who attended were generally expected to proffer a considered comment or to give advice to litigants when a judgment had been delivered. Most sessions took place on large mats set out on the ground and seating was usually arrayed in a rough circle.

The court could also be convened, purposely, at large ritual gatherings, principally funeral feasts at which ritual payments had to be made by the deceased's family to appropriate maternal relatives. The right of inheritance is confirmed by these payments and it is therefore necessary to determine who has the right to make and receive them. Often an *ad hoc* court session would be convened on the day of the burial to make the necessary determinations before the deceased could be buried.

The court (in a somewhat reduced mode) could also go 'on tour' or convene at a particular site, where there was a land dispute and the area had to be inspected. I once joined the Wakil, Old Meno and Mias Kiuk when they rode on a 'court visit' to a distant settlement in the domain. On our way, our horses were stopped and their reins held by a group of villagers until the Wakil agreed to have a meal and briefly hear a particular dispute. On our arrival in the settlement for which we had set out, the court was convened again but this time with the addition of elders and at least one clan lord from the locality.

Procedures of the Court

The procedures of the court of Termanu were well known and, to a large extent, informal. Cases involving marriage and divorce were common as were those involving inheritance. Disputes over land and property were generally linked to questions of marriage, divorce and inheritance. Interestingly, cases of the insult or mockery of the 'name' of an individual and thus of a person's clan or lineage occurred and were particularly bitter (Fox 1989, 1992a). On Roti, disputes were frequent and were regarded as a regular, almost essential feature of social life. Most of these disputes were expected to be resolved informally by local elders or the clan lords or lineage heads of those in dispute. Cases that came before the court were mainly those that occurred between individuals of different lineages or clans for which a higher level of mediation and judgment was required.

There was no ritual to mark the beginning of a court session. Litigants invariably positioned themselves opposite each other on a mat and the Wakil or Old Meno would indicate to one or the other to begin to present the case. Depending on the case and individuals involved, a litigant might speak on his or her own behalf or have a representative to present the case. The court tolerated interjections and counter-statements from the other side as long as they were limited and did not interfere with the presentation of the case. When one side had finished speaking, the other side was given its turn. After both sides had been given sufficient time to present their case,

witnesses would be called, if they had not already spoken. The role of the witness (*saksi*) and the questioning of witnesses was a critical component of court proceedings. The evidence invoked depended on the case. Often specific genealogical information was presented to clarify relations among the parties to a dispute, even though much of this information was known among participants.

A crucial feature of all proceedings was what might be called the ‘full and public airing’ of the dispute, with all its grievances or justifications. In the process, contradictions and confusions on one or the other side would become evident. As a result, virtually no case that came before the regular Monday court was ever settled on the day. Cases could be drawn out for weeks or months before a ‘full airing’ was completed, witnesses questioned and sites visited. Only then was a judgment rendered. Often Old Meno would tell me how a case would be resolved—long before the actual judgment was delivered.

When a judgment was given, either Old Meno or the Wakil would set forth the decision and the reasons for it. The litigants were formally asked to accept the judgment and, when they had done so, each was obliged to present at least one bottle of distilled palm gin to ‘nail’ (*paku*) their agreement to accept the judgment. This gin was then drunk by the litigants and their supporters together with the judges and other participants. During this ritual drinking, which could become high-spirited, various elders could be called up to provide ‘advice’ to both sides—another lengthy opportunity to ‘air’ the case in the light of its current resolution. Most such elders would emphasise the importance of the ‘traditions’ (*hadak*) that bound members of the domain.

As part of its decision process, the *nusak*-court could and did levy fines to settle grievances. These fines were invariably expressed in units of ‘one female water buffalo’ (*kap’in’esa*). In gathering information about past court decisions, I was initially surprised by the high level of fines that had previously been levied—some as high as a dozen or more water buffalo. On further inquiry, I discovered that all such fines were negotiable. In most cases, the concern following the court’s decision was in how these fines were negotiated. In all cases, the aggrieved party could claim to have been compensated at a high level but in fact would receive far less, and in some cases a paltry compensation. Frequently a ‘chicken’ or possibly a ‘goat’ might be negotiated as the substitute for one or more female water buffalo. Thus, in effect, most fines were symbolic in nature—as appropriate to a claimed grievance—rather than punitive.

In general, in 1965–6, there was little possibility of appeal in cases that came before the court. Taking a case to the court in Ba’a (part of the national court system) was costly and time-consuming. By a tacit understanding, cases based on the application of specific local domain traditions remained outside the jurisdiction of the court in Ba’a. This was particularly true for cases involving family relations, such as divorce, inheritance or insults to lineage or clan honour. Some disputes involving land were taken to Ba’a but, during my stay, such cases seemed to be interminable. Cases involving school teachers, who were public servants and

may not have been born in a particular domain, did, however, have to go to the court in Ba'a.

Without any mechanism for further appeal, a decision of the *nusak*-court was final and had to be accepted—at least for the time being. In some cases, such as the granting of a divorce, it was possible for the parties to move forward with their lives. The resolution of an insult by the symbolic payment of a fine would dampen hostilities and keep the peace. Decisions on the distribution of movable property would also be reasonably effective. But decisions concerning land were less certain to be finally resolved. Often such disputes, especially when they involved members of competing lineages, would simmer through generations and re-emerge in a new guise.

One particular dispute over land—in this case land claimed by the Wakil's lineage—occurred during my stay. As far as I can trace the matter, this dispute has continued between two lineages within the clan Masa-Huk since the nineteenth and possibly the middle of the eighteenth centuries. Each attempted settlement of the dispute has been only a temporary resolution that has kept the peace for a period of time.

The Invocation of Precedence and Tradition

'We are children of tradition' (*Ita ana hadak*): this statement, first enunciated to me by the Wakil, epitomises the fundamental understanding that underlies the court system. Each domain has its *hadak*, 'adat or tradition' that is supposed to guide the court in its decisions. Underlying this tradition is a host of oral traditions that set forth the origin of relationships between groups and their transformation. Termanu has a large number of historical narratives (*tutui teteek*: 'standing tales') whose authenticity is tied to individuals identified in long genealogies and to named places within the domain. Segments of these narratives would be cited at court as 'evidence' of past relations and of claims to land or to water sources.

The traditions of the domain are also expressed in numerous short phrases and parallel sayings (*bini kekeuk*) that name specific payments or elements of a ritual sequence or encapsulate 'rules' and 'procedures'. Thus, for example, in the case of marriage, one must be aware of the meaning of the names for all the possible payments that can occur at different stages in the process of contracting a marriage, as, for example, 'spear and sword', 'to wash with water', 'to pay the domain' (*te-tafa, nalou oe* or *huta nusak*). In a divorce case, a saying such as 'a husband is the keel of the house, a wife is its steering oar' (*touk uma kenik ma ina uma uli*) might be cited or, more cryptically, reference might be made to 'the cat in the loft' (*meo nai uma lai*).⁶ All of these expressions are specific and metaphoric; none of them is immediately transparent, and each needs to be interpreted and clarified if a dispute is to be settled according to tradition.⁷

In principle, the court acted only on precedence—relying on what had been done before (*maka-ulu-na*). The traditions of the domain are a distillation of this principle. Hence every case was concerned with finding the ‘origins’ or ‘base’ (*hun*) of the dispute and adjudicating in terms of what had previously been established by tradition.

In reality, tradition was a rich source of precedence and there were many pathways to arrive at particular decisions. Explicitly in some cases but implicitly in all cases, the court’s goal was to seek a resolution to situations that created hostilities whose repercussions threatened social life. All decisions could be regarded as ‘balanced’ in order to achieve a degree of harmony. By this same token, there was no invocation of a concept of justice or any sense that decisions that were made thereby promoted a better, more just society. Society was as it was and thus required the court to keep it functioning as such.

The Idea of *Dede’ak*: Speaking as Display, Dispute as a Relationship

To appreciate the role of the court in Rotinese social life, it is essential to recognise the importance of speaking as a display of one’s personal qualities and ability. Speaking, for the Rotinese, is a social skill that is cultivated as a mark of one’s identity. Most of Rotinese cultural performances focus on speaking in different modalities. Ritual eloquence, narrative ability, cleverness in argument and facility in repartee are all valued modes of verbal display (see Fox 1974, 1983, 1988a, 1992a, 1992b).

Among the most esteemed of these capacities is the ability to engage in argument. The *nusak*-court provided the prime forum for demonstrating this capacity. A judgment at court did more than simply establish the rights of a particular case; it was also a public acknowledgement of the capacity of a litigant (or his or her representative) to present a case coherently and convincingly.

In Rotinese, the term for ‘court case’ or ‘dispute’ (*dede’ak*) refers to any ordered speech, as opposed to conversation (*kokolak*). *Dede’ak* emphasises what is current, still in process and generally personal. Such disputes, in effect, focus sharply on relationships and individuals become known by their involvement in interesting disputes. Living in Termanu in 1965–6, I was urged to have disputes (*dede’ak*) to establish a closer personal participation in the life of the community.

The overwhelming majority of these disputes never reached the court. Most *dede’ak* are given a local hearing and are usually resolved within the family circle or within the clan or village. In this sense, the *nusak*-court—particularly the official Monday court—was in effect the forum of final appeal within the domain for cases that could not be more simply resolved. Cases that would be heard at feasts could usually be resolved on the day; if they could not, they would be referred, for a further hearing, to a regular court session. This Rotinese obsession with dispute as a vital part of social life was well noted in the nineteenth century. In 1891, the Dutch naturalist Herman ten Kate made a tour of Roti and observed:

Nearly everywhere we went on Roti, there was a dispute over this or that. The native, to wit the Rotinese, can ramble on over trivia like an old Dutch granny. I believe that his loquaciousness is partially to blame for this, for each dispute naturally provides abundant material for talk. (ten Kate 1894, p. 221)

Violence as an Admission of the Lack of Speaking Ability

A corollary to the emphasis that Rotinese place on the ability to speak persuasively is a strong aversion to physical violence for the settlement of disputes. Resort to any physical attack is taken as evidence of a lack of verbal ability and ridiculed as inappropriate. Thus the few cases that were reported to have occurred in 1965–6 were the subject of considerable humour. Such aggressors became the laughing stock of the community and recurrent jokes were made of such incidents.

The domain set the boundary within which recourse to speaking was the recognised mechanism for dispute settlement. This attitude, however, did not apply to relations across borders. A small island, Roti was divided among eighteen *nusak*, all of which fiercely defend their boundaries. Cross-border violence, which often takes the form of raids on another settlement, is a continuing, serious problem on the island.

The same rules about physical violence apply to marital relations. Any physical aggression—even a single slap—by a husband toward his wife is immediate grounds for divorce. Evidence of such an action was the main—indeed the only—grounds for divorce by a woman. In most cases, at the first sign of such behaviour, the woman would leave her husband's house and move to her father's or brother's house. Her lineage would quickly perform a ceremony known as *songo aok* (literally, 'to make offers to the spirits for the body') to receive her back; and, if the husband sought her return, as frequently happened, he would have to make a further payment to coax her into returning.⁸

One divorce case heard at Termanu's court is illustrative. The wife of a high-ranking noble heard that her husband was carrying on with another woman and was proposing to take her as his second wife. The noble's wife, who had a young child, therefore came before the court to request a divorce. Since there was no 'evidence' of any physical assault by her husband, the court endeavoured to persuade the husband to coax his wife back. He remained silently adamant while his wife—standing outside the main circle of the court participants—proceeded to recount the husband's physical attributes and graphically describe their inadequacy. Although I could not follow all the explicit details in Rotinese, a man sitting nearby me whispered that he could not see how any man could bear such a public humiliation. In the end, the court adjourned. It could not grant a divorce.

Outside the court, it was generally agreed that the husband did not want a divorce and that the wife was only seeking to end her husband's affair. She, too, would not want a permanent divorce. For this reason, her brother and her father were both eager for a divorce and they were already preparing to perform the *songo aok* ceremony with the intention of demanding at least one female water buffalo

(*kap'in'esa*) as a payment for the woman's return. The noble was wealthy enough to pay this price for the return of his wife.

The next day the court reconvened briefly. The wife had continued her tirade against her husband after the previous court session until he finally struck her. There was a witness to the blow and so the woman was able to return to the court and gain her divorce. She immediately left for her brother's house, which was in another settlement; a pig was slaughtered and the *songo aok* was duly concluded. And eventually, as everyone had expected, the husband came to coax (*kokoi*) his wife to return, and paid the fine that was demanded.

The Effectiveness of the Court of Termanu

The key features of the traditional court of Termanu were: 1) its accepted legitimacy, 2) its congruence with local social patterns, 3) its general representativeness and 4) its openness to participation by all members of the domain. The initial foundations of the court had cosmological underpinnings and its representation was originally established to include all clans of the domain. Over time, both of these aspects of the court lessened but the court's long existence, dating from the eighteenth century, gave it a 'taken-for-granted' element in local social life. It functioned effectively in dealing with disputes among individuals from different groups. Hence on issues of marriage, divorce and inheritance, its decisions were broadly accepted and carried out.

These three areas of dispute invariably involve a complex set of exchange payments and many of these payments, particularly in Termanu, are given in stages over generations. Thus the first substantial payments, made at perhaps a majority of marriage negotiations for a woman, are in effect the final payments of the bridewealth for her mother. According to a saying in Termanu, 'the daughter pays for the mother'. Hence when a divorce occurs, what has been given and pledged in these exchange relationships has to be sorted out. Similarly at every funeral, payments have to be made to at least two generations of former wife-givers and since use-rights to land can be transferred at marriage, these matters must also be settled. In all of these issues, local knowledge of relationships and the memory of past actions are essential. The details are often bewilderingly complex, especially as they are usually expressed in metaphoric phrases and allusions to past practice. In all of these areas, the court was particularly effective in rendering judgments that were seen as acceptable and appropriate.

Another critical feature of the court was its use of local dialect (*dede'ak Pada*). Each domain possesses its own distinctive vocabulary for ritual transactions and similarities exist. Hence the arguments and oratory of the court were exuberant but could be followed by everyone. The discourse at court also invoked a recognised symbolic world from which it was able to draw moral judgements about proper behaviour. Ruptures that had occurred could be resolved as much by symbolic means as by formal restitution with payments that were in the end mostly token gestures.

On minor cases involving land—the dividing line in a grove of coconuts where the difference was a matter of a couple of trees or the return of use-rights at the end of a

marriage—the court was able to be effective. In other cases involving disputes among large clans over particular tracts of land or borders between domains, the court could at best provide mediation.

No case of serious violence came before the court in 1965–6. Previously, even in the Dutch period, serious crimes, such as murder, were considered outside the jurisdiction of the court and had to be referred to the court in Ba'a. This, then, defines a major difference with Timor. In 1965–6, the domain of Termanu was a stable social entity. Its traditions were claimed to extend in time to the origins of the first ancestors to whom reference was still made in defining relations among groups. Even the disturbances following the events of 30 September 1965 had relatively few direct reverberations in Termanu (although other domains were more directly implicated). The cases that were heard at court were mainly concerned with keeping intact the accepted fabric of a traditional society—not a society that had been disturbed, disrupted and divided within itself. The traditional authorities of Termanu continued to be recognised and the Camat himself, who was the highest Indonesian official at that time on the island of Roti, was in fact the Manek of Termanu.

The *nusak*-court of Termanu presents a case of how a traditional court once functioned. There are lessons to be learned from it—the most important being that, in various guises, formal traditions of local mediation and dispute resolution were once an integral part of life.

A second lesson relates to the question of authority. Authority is not easily created, particularly in the realm of customary practice. The stability of the court of Termanu was greatly dependent on an authority—political as much as ritual—that derived originally from the ruler of the domain.⁹ But the workings of the court were a product of historical development and a succession of precedent deliberations.

When the Indonesian Government's recognition of the domains of Roti was formally withdrawn in 1968, the courts' authority was ended and not replaced. There was a transfer of dispute settlement to village heads (*kepala desa*), most of whom would hear disputes but often did not have the authority to resolve them. Moreover they lacked the scope to mediate or resolve disputes between villages. Historically each *nusak* developed its own customary practices over which it could offer acceptable judgments in cases of dispute. Each *nusak* was comprised of a number of clans, whose members lived throughout the domain—not in any one particular village. Mediation and dispute settlement was a matter between clan members, not village members. Reducing dispute settlement to the level of villages undermined the traditions of clan relations and social identity within the former *nusak* and, in its place, erected a new form of more localised identity.

Two noticeable changes occurred in social life: an outbreak of disputes between village areas within the same domain, often involving physical attacks by one group of young men on another and a stunning increase in sorcery accusations, since there was only a limited outlet for antagonisms to be settled through litigation.

Now, in a spirit of reform and autonomy, efforts are being made to reintroduce traditional structures on Roti. Although it is too early to discern how these recent efforts

will proceed, it is difficult to imagine that once-disbanded, *nusak*-courts could be revived in their entirety. Those former *nusak*-courts were embedded in social and ritual practices to which there is no going back. Nonetheless some system of local traditional courts would certainly seem to be required to adjudicate on matters of tradition specific to each *nusak*. If such local courts were given *nusak*-wide jurisdiction to hear cases on social issues in accordance with current accepted understandings of the various different *nusak*-traditions, one could imagine that these courts could and would provide a viable complement to the national system. The future is open and the Rotinese can be counted on to be creative in the development of their traditions.

Notes

- [1] Throughout Timor, this male-female division is conceptually essential to the creation of any social entity but the ways in which this pattern is socially conceived and put into practice are extraordinarily various. Equally significant is the different 'weighting' given to the 'male' or 'female' side of this division. A classic example of this is the Tetum domain of Wehali, which as a 'female-centred' domain contrasts markedly with the domains that surround and protect it.
- [2] The term '*fetor*' was in fact a title bestowed by the Dutch but on Roti this title was symbolically reinterpreted to create a necessary cosmological division between 'male' and 'female'.
- [3] In Termanu's ritual language, the word '*sio*' pairs with the word '*hus*', derived from the word for 'origin'; together these terms refer to the clan 'origin ceremonies'.
- [4] The Dae Langak was a member of Termanu's court but this was not the case in all domains. In some domains, the division between ruler and Head of the Earth was one of mutual antagonism. Thus, for example, the Head of the Earth in the domain of Korbaffo would never appear in the presence of the ruler.
- [5] For discussion of the role to the Topasses on Timor, see Boxer (1947) and Fox (2000, pp. 6–11).
- [6] Reference was frequently made to the symbolic layout of the traditional house as a template for the expression of social relationships (see Fox (1993) for a discussion of the house and its interpretation).
- [7] Much traditional knowledge is encapsulated in metaphoric terms and expressions that serve as 'frames' for particular ritual actions. See Fox (1988b) for a discussion of the critical importance of these 'verbal frames'.
- [8] The traditional phrase '*songo aok*' is the recognised 'frame' or designation for the ceremony at which a woman is received back by either her brother or father. Most Christians, however, are uncomfortable with the use of the term '*songo*' which implies a traditional sacrifice to the spirits. Instead most Christians hold a *syukuran* (thanksgiving) meal as an expression of 'gratitude' for the return of the woman.
- [9] The Wakil and Old Meno acting on behalf of the Manek of Termanu were able to maintain the court's authority. By the time the domains of Roti were officially abolished in 1968, Old Meno had died; the Wakil became a village head for a period in the 1970s but then he retired and not long thereafter died.

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