

## HANDLING DISPUTES

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### INTRODUCTION

During the early part of 1978, our group investigated the ways which Trukese handle major disputes and conflicts between individuals and/or groups. Our prime objective was to learn if the Western court system is adequate for dispute settlements in the Micronesian, and in particular, Trukese culture. The findings of this paper are based on 17 case histories, we picked out seventeen criminal and civil, taken from the courthouse records on Moen. These case conflicts ranged from manslaughter to land disputes. The majority of the cases examined involved people from Moen. After researching each court case we would try to interview the parties involved. If unable to do this, we would then interview those people who had reliable second-hand knowledge of the conflicts and the disputants.

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TRADITIONAL SYSTEM

In the years before our ancestors came into contact with the Western world, there were no such things as the court and written laws as we have them today. However, violation of customs was considered a crime. In order to understand better how the Trukese custom differs from the Western way of settling disputes, we are first going to look at these customs which, when violated, led into lineage war or dispute. Some of these customs were the breaking of an engagement, eloping, trespassing on taboo areas, and of course, manslaughter.

It was customary that after the burial of a person, his lineage would restrict a piece of land in his memory. When a person trespassed on this land, the lineage of the dead person could either demand lands, food, or some prestigious materials and sometimes could even execute the trespasser or one of his relatives. In cases of elopement, the breaking of an engagement, or the taking of somebody's wife, the offender injured not only the individual, but his relatives as well. This was because the marriage arrangement involved not just the two individuals, but also their families and lineages. Thus, when a person eloped, broke his/ her engagement or ran away with the spouse of another, he or she showed a sign of disrespect and insulted the feelings of another lineage. When offended, the clan would not impose a penalty upon the doer(s), but also on all of his lineage.

Despite the absence of the court or any written laws, our ancestors stressed the idea of working together, of living in harmony, and of cooperation in their communities.

When a dispute occurred between two parties, the traditional leaders would step in to settle the dispute. Unlike in the Western court system, the traditional leaders did not wait for a complaint to be filed. The leaders from the offender's side would initially approach the offended side with some native goods and talk the matter over. Sometimes the traditional leaders would approach the offended side and if everything seemed alright, they would then make another approach, this time to the offender. This was usually done in serious cases such as manslaughter. During the settlement, the traditional leaders would call all the members of the offended party and the offender side to meet together. During this meeting the offender and his family would apologize for what he did. The role of the mediators during the meeting was not to make decisions, but to make sure that no conflict occurred during the settlement. If the mediators acting on behalf of the offender knew that the other side would not readily agree to a settlement, they would then present some prestigious items to the offended party so as to ease their hurt feelings.

These prestigious items could be a turtle shell belt worn around the waist, or perhaps the turtle shell itself that was used as a piece of ring by our ancestors. Once gifts like these were presented to them, the aggrieved party would easily forget their hard feelings and accept the offender's apology. The offenders usually offered lands, food, or material goods. In manslaughter cases the family of the victim could demand a person from the offender's side to work for them. The person would be kept under the surveillance of his chief -- either clan chief or island chief.

There were three different kinds of people who could negotiate the settlement: The chiefs (village chief, clan chief, and island chief), first born sons and the Itang (traditional prestigious leaders who could influence the people through their actions and words). All, with the exception of the first born son, could be called upon to handle any kind of settlement. The first born son could not handle inter-island conflicts alone unless he was accompanied by others or he himself was an Itang. He could only handle disputes among his family members or between his family and lineage.

There was no hard and fast distinction between minor cases and serious cases, nor were there set penalties for each crime. However, minor cases can be distinguished from serious ones by looking at the kinds of settlement involved. For example, in a manslaughter case, the time for the offender's side to make an apology was limited. They could not go to the other side before the funeral, but if they waited for a long period of time, the offended party would assume that they were not concerned about the killing and would prepare themselves for war. Once this happened, not even the leaders from the offended side could stop their party from fighting.

When cases like this occurred, and the traditional leaders from the offender's side still wanted to make an apology, they would bring small children and women along with the prestigious items to the other party. Once the offended party saw the children and the women, they would refrain from attacking, for they could not kill them or the mediators. They would accept them and proceed to settle the dispute. The procedure mentioned previously would then carry on. Once the dispute was settled, the two parties would become friends and again live in harmony.

Nevertheless, the offended side had the option of imposing punishment on the offender or on his clan. If the offender's side made no attempt at reconciliation, the offended party could execute him, one of his relatives or one of the people from his island. At times they would publicly disgrace a person by shaving off his hair and giving him a special necklace to wear that would identify him as a criminal. Shaving the head was mostly done to girls who eloped or broke their engagement. Our ancestors, then did not simply punish a person for the sake of his wrong doing but to maintain peace in the community and to restore harmony between the two groups.

WESTERN COURT SYSTEM

Although the Trukese people still often use their traditional ways for settling disputes, more and more people are using the Western Court system. In the Western court system, when a crime is committed the victim notifies the police for help.

If the crime is serious, it is filed and the case is brought before the court. In the court, both defendant and plaintiff are represented by hired lawyers. It is the job of the lawyers to convince the court- the jury and judge- that the other side is wrong. Witnesses and other material evidence is used in the presenting of both sides of the case.

The judge listens to the evidence given by both sides. He tries to see which side gave reasonable, and sufficient evidence concerning the particular case. It is upon the strength of the evidence presented and the testimony of the witnesses that a verdict is given and judgment passed. The punishment for the offender equals the type of crime he committed. The punishment depends on the crime.

The judge is one of the highest persons in the Western court system. He is the only one besides the District Attorney or the prosecutor who can dismiss a case before a hearing. However, he can not act as a go-between as in the traditional way of settling disputes. His role does not comply with the role of the traditional go-between. However, it could be said that the judge is a go-between in the Western way of settling disputes. Since the major role of a traditional go-between deals with the prevention of continual trouble, it is more or less similar to the role of a judge in the Western court system. The judge tries to give punishment to the offender in order to satisfy the offended side.

The Western court is divided into four levels. The lowest type of court is the community court; next is the district court; then the high court; then above the high court is the appellate court.

The community court handles minor cases, such as disturbing peace, breaking community rules, etc. Minor cases tried in the community court includes fines of no more than \$100, and imprisonment for no more than six months.

The District Court handles such cases as: assault and battery with dangerous weapons, land disputes, petty and grand larceny, and destruction of property. A person who violates the District

Court's law may be fined up to \$1000 in civil cases and \$2000 in criminal cases, or receive up to five years imprisonment.

The High Court handles mainly manslaughter cases. However, it can also handle the cases referred to it by the two lower courts. A person sentenced by the High Court is liable to be fined any amount exceeding district court's and from one month to life imprisonment.

The authority and responsibility of the judges in the two lower courts is almost similar. The only major difference is in the type of cases they handle. The community court judge can handle district court cases during the absence of the district court judge. And the district court judge can handle community court cases during the absence of the community court. The judges of the High Court are also the judges of the Appellate Court. When a case from Truk, for instance is appealed to the Appellate Court, three judges from the high courts in the other districts of Micronesia serve on the Appellate Court, excluding the judge of the High Court in Truk. The decision of the Appellate Court can not be appealed -- it is final.

Although, the two systems, traditional and western, have the same purpose of settling disputes, they are essentially different in approach and function. All that the Western system wants is justice, and in all of the crimes, justice has to be done. When a person does something with malicious intent, he has to be tried in the court and the charges against him justified. Both parties are represented by paid men trained in legal matters. These lawyers argue their case before a disinterested judge -- a civil servant paid by the government.

On the other hand, the traditional system wants peace and harmony among the people. When an individual is injured, he does not bear the injury alone, but all his lineage shares in the hurt.

There is no court -- like proceedings, but the chiefs, Itang, acting as mediators come together with the two parties. These mediators stand between the two sides to reconcile them in such a way that they will not have any more hard feelings toward each other. Once the meeting is finished, the two parties are satisfied with the settlement and no longer bear hard feelings. The hope of this settlement is to bring the individual back into the community and to restore peace and harmony.

The Western system tends to bring bitterness, the separation of people and continual hatred or conflicts between the two sides, while the traditional system, tries to bring the people back into the community with good relationships.

DISPUTE SETTLEMENT AS PRACTISE TODAY.

The people of Truk today, have three alternatives for settling there problems. They can settle their problems either in court, where the judge makes all the decisions, out of court, where both parties are involved in the decision-- making, or a combination of both in and out of court settlements.

The following are nine sample cases. The cases will be presented and compared in an attempt to determine which of the three means of settlement is more successful.

Sometime in 1970, a fight broke out between Fred and Sam. During the fight, Fred stabbed Sam, and killed him. He was arrested and the complaint was filed. On the day of the trial, Fred was tried, found guilty, and was sentenced to thirty in jail. The offended side was not satisfied with the court's decision, but neither of the two sides made a move to work out something with the other. Up to now the people on Sam's side and his relatives still want Fred dead. They are waiting for his release, when they will avenge Sam's death.

In another case, a fight resulted in one of the two men being stabbed to death. This case was then taken to court for hearing, and the murderer was sentenced to twenty five years imprisonment. After the court's decision, there was still hard feelings on both sides. The offender's side went to the offended side for apologies, but they were turned down. So the case is still unsettled between the people. The offended side especially, still hates the offender's side.

In the case of Peter, he stabbed John, and nearly killed him. He was tried for the crime and the court found him guilty and sentenced him to six years in jail. According to John's side, they still feel bad about the case because Peter's side did not make any move to apologize for the incident. The mother of the boy who was stabbed said that if the offender's side had come for apologies, she would have forgiven them.

So we can see from the three cases we just talk about that, although, the court made a judgement on each of them, it did not sufficiently satisfy the concerned parties. The court did not and could not bring back the good relationship the groups use to have with each other before the cases took place.

The following are three cases that were settled out of court.

Phil was drunk, and he hit a boy with the car he was driving. He was arrested for the incident. His clan and relatives went and apologized to the offended side. According to one of the old men who went with apologies, they brought along \$300, 70 bags of rice, 20 baskets of taro, and some cases of canned meat. When they arrived they gave a sign, which the Trukese call Itang, to tell the offended side that they came in peace.

The offended side accepted the apologies, and the two groups settled the case.

In another case, a boy hit another fellow's head and cracked it. Right after the incident, the offender's side went and apologize to the offended side. They brought along with them, \$40, and five to six bags of rice. Upon interviewing some of the people involved, we found that the offended side was already expecting apologies. When the offender's side arrived to apologize with gifts, the offended side freely accepted them and forgave the offender's side for the incident. Further gatherings were made by the two groups and resulted in having the two boys becoming brothers.

In another case, a boy drove a car and accidentally hit another boy, killing him. This case was never taken to court because, like the other two cases, right after the incident, the offender's side went to apologize to the offended party. The offender's side went to apologize, and brought along \$600. Later, the offender's relatives met again and decided to give the offended side a piece of land. At first, the offended side was not going to accept the gifts and apologies from the offender's side, but with the help of some people from another island, they finally accepted and forgave the offender's side. From then on, the boy who hit the other one, usually went to the offended family with food, and has come to consider the victim's family as his own family.

None of these cases was ever brought to court. There was no move by any of the offended parties to file a complaint because the offender's side apologized right after the incidents took place. In all the cases, the offended side accepted the apologies and had the cases settled. They restored good relations. Neither party has any more hard feelings for the other. The next group of cases consists of those handled both inside and outside of court. The inside and outside settlements exist because at times when the court gives a judgment, the people involved do not like it and so they also make an outside settlement.

In one particular case, Thomas stabbed Paul and killed him. The case was taken to court and the court sentenced Thomas to more than six years in jail, but because there was an outside settlement, the offended party asked the court to reduce the sentence to six years only. In the outside settlement, the offender's side went to the offended side with \$175, in cash, \$150 worth of food and clothes. During the time Thomas was serving his sentence, his relatives used to give money to the offended side when they met. This went on until Thomas was released from prison. From then on, the two families developed a better and stronger relationship between them. Thus, the two parties will not have to worry about any further conflicts

Let us take another case. Colbert was drunk while driving Manny's car. He happened to lose control of the car, and hit a nearby coconut tree and damaged the car. Manny filed the complaint and the court gave its decision on the case. Colbert had to pay for the remaining amount of money Manny owed on the car. Colbert's relatives donated the money and went along with Colbert himself to the owner of the car and apologized. Manny accepted the money and apologies, and the case was settled. Manny forgave the offender's side and assured them that he did not have hard feelings about the case any more.

The third case came about when Ohner tried to hit Jack with his car, but Jack managed to avoid him. Ohner stopped his car and confronted Jack. In the fight, Jack got beaten up, Jack filed a complaint and the case was taken to court. Even though, the court gave the offender a suspended sentence, his family also went and apologized to the offended party. The apologies actually took place before the hearing of the case. Since the offender's side apologized, the whole incident was forgotten.

Examining the cases presented it will be noticed that all the cases that were settled in court did not bring about a reconciliation between the involved parties. This would seem to indicate that the court is doing what the book, or the T.T. code says, but it is not resolving the root of the conflicts between people. The court may punish the individual for the crime he did, but the people still feel injured. The court's justice does not restore the good relations people had before conflicts occurred. The people only reach peaceful settlements when the offended party and the offender's side come together and both parties take part in the decision making.



CONCLUSION

When conflicts are settled according to the traditional system the result is an easing of hard feelings between the two parties. Friendship is restored between the two sides, regardless of how serious the injury was to the offended side. The traditional means of settlement satisfies the people. Its main concern is to make the individual become part of the community again. Thus, the welfare of the people as a whole is protected.

In the Western court system, a legal settlement means finding out who is right and wrong so that a judgement can be passed on the wrong doer. This is justice according to the west. This has not always proved effective here in Micronesia. Often, when parties are not satisfied with a court settlement they try to amend the court's decision with an out of court settlement. It would seem that by itself the Western court system does not meet the cultural needs of the Micronesians. Only when this system is by -- passed or used in conjunction with the traditional methods of settlement are disputes truly settled between people and/or groups.