

Case Study of an Intriguing "Primitive" Murder Trial: Financial Settlement Between the Murderer and the Victim's Family

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I was recently privileged to witness an intriguing "primitive" or traditional murder trial, on the island of Mindanao, in the Philippines, which offers both possible psychiatric undertones, as well as apparent lessons for our own supposedly more sophisticated legal system.

The trial involved the fatal shooting of a man by four suspects. The murder, which took place in a field on the victim's large farm, had been witnessed by the victim's oldest son, Folding. Folding, who was walking some 200 feet behind his father, heard three gunshots and saw his father fall. He heard running and noticed four men, all of whom he recognized as neighbors or acquaintances of his father. It was Folding's belief that the four men had acted in a misguided hope of taking over his father's thirty-five acres of land.

Folding brought the murder to the attention of the national police. Three of the suspects were arrested and brought before the government's formal Court of First Instance in a nearby town. The fourth man had fled into the forest. Folding demanded a 6,000 peso fine (about \$1,000).

Disposition of the case had been postponed several times, when three of the suspects came to Folding's house, knelt before him and pleaded that he decrease his 6,000 peso demand and allow the case to be settled before a traditional tribunal, or kukum (ku-KOOM), rather than before a government court. (The fourth suspect remained in prison.) Folding took pity on the men. Three of the four had spent time in prison; the fourth had been forced to hide in the forest. He agreed to lower his demand to four carabaos (a carabao is a valuable water buffalo commonly used in farming and transportation) and would ask for a transfer of the case to a traditional tribunal. Folding later expressed this wish to the prosecutor in his case. In light of the unanimous consent of the parties, the prosecutor agreed to dismiss the charges if the tribal kukum would be able to resolve the conflict by its own means.

Folding and the four accused were members of the Blaan tribe (a tribe is generally a group with shared language and customs). Folding brought the request for a tribal trial to Musa, the Blaan barrio captain of the village where Folding lived. The barrio captain, however, decided to ask for help

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from their neighbors, the Tboli, who were the largest and most powerful tribe in the area. No Blaang had experience in handling such major cases. In addition, a few of the participants had some Tboli blood: Folding's mother, for example, was Tboli. So Musa and Folding took the day-long walk to the village where the chief of the Tboli lived to arrange for a kukum.

The Tboli had settled disputes by a kukum for longer than anyone knew. Its strikingly simple procedure was to assemble the relatives of the parties to the dispute, the tribe's datus (tribal elders), and the parties themselves. This group, led by a presiding leader, would resolve the conflict by consensus. There was no vote taking; the decision was always reached without dissent. Tradition — and not written law — guided the proceedings.

In times past, the kukum had decided all conflicts major and minor. One Tboli remembered a kukum murder case when he was five years old, in which his own family member had been the son of the murdered man. The kukum had applied the traditional rule in murder cases, that the closest relative of the victim could demand from a convicted murderer whatever he wished, including the murderer's death in the chief's presence. The victim's oldest son commanded other men to tie the convicted man's hands to two stakes behind his back. "Is this how you killed him?" a man repeated as he stabbed the murderer slowly but repeatedly in the belly, causing wounds increasingly serious until the man died.

Since their recent increased contacts with the government, however, the Tboli had transferred their most serious disputes to the Philippine courts. Legally and formally, Philippine law and the government courts governed all Filipinos, including tribal minorities such as the Tboli.¹ In practice, however, the kukum continued to handle matrimonial, land and personal property disputes, and minor assault and theft cases. Serious assaults and thefts, arson, and murders were generally reported to a government court. Infrequently, as in the present murder case, a government court recommended that a serious criminal matter be tried, for purposes of expediency, by a traditional court.

Unlike Western law, kukum customary law did not distinguish between "civil" and "criminal" disputes. The kukum treated all cases as "civil" disputes: the complaining party was an individual, usually representing a family group, who benefited from whatever compensation the wrongdoer paid. There was no separate concept of a "criminal" dispute, one considered as a wrong against the governing body — that is, the tribe — to which a particular moral opprobrium attached and in which the tribe, itself, was the complaining party, benefited from punitive fines, and segregated wrongdoers in a prison. Even a murder trial that ended in execution still maintained a "civil" basis: the complaining party, for example, not the tribe, demanded and exacted the execution.

The kukum's contemporary procedure differed in certain respects from its procedure years before. In murder trials, for example, while the victim's closest relative continued to receive whatever payment he demanded from

the murderer, tribal mores no longer tolerated demands for the murderer's death. Contemporary demands in all disputes centered on farm animals, land, or money.

One unchanging procedure of the kukum was ordeal by boiling water, the test for veracity in the event of conflict between two people's testimony. Years earlier, for example, a Tboli woman had denied her husband's accusations of adultery. The kukum resolved the conflict by the boiling water ordeal. She first promised to pay 1,200 pesos (about \$200) worth of goods and her family promised to return all her marriage dowry if the ordeal proved her guilty. Her husband promised to pay her a like sum and to allow her to keep the dowry, if she were proved innocent. She slowly dipped each hand into a pot of boiling water and scooped out several stones that lay at the pot's bottom. Her hands emerged unblistered and otherwise unburnt. Thereupon the kukum declared her not guilty of adultery. She and her husband were divorced, but her family kept the dowry, and the husband paid her 1,200 pesos in goods. Philippine government lawyers who have witnessed the ordeal by boiling water verified its procedure and corroborated that it proved some truthful and others not.

The Tboli arrived by truck in Basag, Folding's home village, for the kukum, to be convened at the home of the barrio captain of Basag. Men sat cross-legged around the floor of the room. Fludi, a Tboli leader who would serve as the head of the kukum, placed himself on a metal chest. Both Tboli and Blaan datus would participate in the kukum, though the Blaan predominated.

Folding Pandian, the twenty-four-year-old son of the murdered man, entered the room unsmiling, was greeted by Fludi, and headed for a corner of the room, silent. Another man entered the room and politely shook hands all around. Like most of the dozen Blaan men present, a towel was wrapped around his head and he wore no shoes, his muddied feet coal black. A slyness and a toughness attached to the appearance of this solidly built, ranch caretaker. He was Terio, one of the four men on trial today for the murder of Kusim Pandian.

"You will agree to the decision of this kukum, is that right?" Fludi directs this first question to Terio in the Tboli language. Terio nods. He and the other Blaan can understand but not speak Tboli, whereas Fludi understands but cannot speak the Blaan language. So Fludi speaks in Tboli at the kukum, the Blaan speak Blaan and communication is real.

"Do you all accept to decide the case right here?" Fludi next asks the Blaan men. They grunt out their assent. He turns to Terio. "You used to hunt and plant bananas near Kusim's house. You are charged with the murder."

Musa's wife carries in a large dish of rice that, added to some meat, constitutes lunch for the throng. But kukum-oriented discussion continues during the meal.

"Folding wants the payment to come not only from me but also from the

others," says Terio. "I agree to give one carabao, not because it is asked of me, but because it comes from my heart." His sincerity is very weakly communicated. He has not contested the charge against him.

Florenzo, a brother of another of the murder suspects, Blahang, adds his piece: "I will help my brother and give one carabao to Folding, provided my brother will be let out of jail." Blahang was the only one of the four suspects to remain in a Philippine jail. Two others — Terio and Lahol — had been imprisoned for a few weeks before they were freed on bail. The final person accused, Batol, fled into the forest after the murder and escaped detention.

"Can you bring the carabaos this afternoon to the barrio captain's house?" Fludi's question is answered by nods from Terio and Florenzo.

Folding, who had left the room when lunch was served, was called back to be told by Fludi what had occasioned so far. He nods his satisfaction. Then, Florenzo startles the proceedings with an impetuous retraction of his carabao offer: "I will give you 400 pesos and not the carabao!" Perhaps Folding's recently re-emerged presence has made Florenzo more contentious.

His statement adds an immediate tension to the room. Several Blaandatus ask Folding (some rather emphatically) to accept the 400 peso offer. But Folding is undaunted; he holds out for what he sees as his determined principles.

Voices are louder now, and emotions are raised. A stringy bearded datu begins to shout. This whole trouble, he screams, would not have come about if it weren't for Sangking, who should be fined if she doesn't stop her incessant talking. (Sangking, absent from this kukum, is the widow of the murdered man; the sister of Lahol, one of the murderers; who after the murder had married Batol, another of the suspects. Her curious connections with both the murdered man and his murderers are as yet unmentioned by the kukum.)

A Tboli datu describes to Folding the traditional end to a kukum: how both sides to the dispute exchange bolo knives, symbolizing the future friendship of the parties. They are to treat the dispute as at an end and to live together in peace.

After Folding withstands further encouragement to settle for Florenzo's money offer, Florenzo finally restates his earlier carabao offer, leaving to be settled only the payment from two of the suspects.

Both remaining suspects live far from Basag, however, and are not yet present. The kukum's business stops to await their arrival. After perhaps a half hour, a runner arrives, sent by Batol, a murder suspect who lives a day's walk away. The runner relates Batol's willingness to give Folding one carabao.

Neither Terio nor the other three suspects or their relatives contest the charge against them during the entire proceedings of the kukum. Their collective responsibility for the murder is never publicly doubted nor are their individual roles in the homicide discussed. The dominant issue is the

form and method of payment for the murder, not the undisputed guilt of the suspects.

Lahol Fluk has arrived. He listens to Fludi's brief explanation of the kukum's proceedings to that point, then states his mind.

"I don't want to pay one carabao because I, too, have been shot. By one of the Christian enemies, Richard."

"You can't complain about the gunshot wound. That is your personal problem. Besides, you wouldn't have been shot by that Christian if you hadn't shot his father!"

After further persuasion, Lahol finally offers a carabao. "But what can I do now? I don't own a carabao because I don't own my own farm any more. My father doesn't live here. I have no one to help me."

Not acceptable. "You'll have to find someone to help you resolve this case."

"I want to ask Terio for help."

Terio smiles slowly. "How can I help him? If I give him a carabao, I'll have nothing to plow my own land with."

Lahol next tries unsuccessfully to borrow from his brother-in-law, Sus. Then suddenly he offers a new solution: "I'll give my land to Folding in place of a carabao."

Folding has again left the kukum. He has not participated in the discussions nor do they appear to particularly interest him. After fifteen minutes, however, he climbs the ladder into the room.

Fludi explains Lahol's problem in obtaining a carabao and his counteroffer of land. "Do you prefer three hectares of land (about seven acres) or a carabao?"

"I want the carabao," he responds, curtly and quietly.

Fludi follows Folding's decision. "You've heard that Folding doesn't want your land. You must give him a carabao. You must sell your land to someone who will help you."

"What about giving me time to go to my father's camp to ask for a carabao?" His father lives about ninety kilometers away.

Folding shakes his head negatively in response.

Discussions commence concerning who might buy Lahol's land. Meanwhile, Fludi writes down a brief agreement of payment to be signed by the parties. Although Fludi does record some cases in which the Philippine government may take an interest, a written record is not commonly kept in kukums. Because the community population is small, the witnesses to a kukum many, and the group pressure ponderous, it is almost unthinkable to deny, or in any way to disobey, the oral terms of a kukum's decision. The only practical alternative is to flee from the village. Recently, a married Tboli woman and a man not her husband fled Kematu in order to live together, fearing the certain sanctions of a kukum against adultery. After their flight, the kukum did meet without them to resolve the return of the marriage dowry by the woman's family to the lawful husband's family.

Fludi briefly summarizes what he has written. Lahol steps up first. While most Tboli and Blaan can neither read nor write, Lahol additionally cannot sign his name. For his benefit, the bottom of a dish is blackened by a flame. He smears the blackness with his thumb and then presses his blackened thumbprint on the paper next to his printed name as located for him by Fludi. Terio then steps up and signs without difficulty. That Blahang and Batol are not present has concerned no one. Neither their representatives nor Folding is asked to sign.

The kukum continues to search for a method that would enable Lahol to acquire his promised carabao. Sus and Lahol discuss the matter quietly between themselves, then leave the house to search for a possible loan arrangement.

After a half hour's absence, Lahol returns without Sus. Lahol tells Fludi that he and Sus have determined a solution whereby Lahol would receive a carabao. The controversy appears resolved. Fludi announces that the transfer of the carabaos should take place the following morning.

Later that evening, Folding expressed some of his thoughts of the kukum. He was very happy that the case was finally resolved and that he could again be friendly with the murderers. He paused before answering that he was glad he had settled the case by kukum rather than by a government trial. The lingering bitter taste from directly confronting the anxiety provoking issues of his father's murder (in whatever form) may have provoked his less than enthusiastic response. He noted that he did receive what he had asked for, but he feared that the men may try again to take the land. Only next time, the victim would be Folding.

Terio expressed his own satisfaction with the kukum's decision. "After the kukum we can be friends and can live together. But even before, we were not enemies. It is other people whose talk causes misunderstanding between us."

Thus, Terio and Folding both voiced an often-repeated theme: the kukum's conclusion was to be accompanied by a cessation of all divisiveness between the opposing parties. The dispute that initially brought them before the kukum would in no way influence their future behavior.

By late the next morning, only Terio had brought his carabao to Musa's house. Terio and Folding exchanged bolo knives informally, each smiling. After goodbyes, the Tboli boarded their truck and returned to Kematu, the major Tboli settlement.

Unforseen by them, however, the kukum's business was not yet ended. Later that day Florenzo transferred his carabao, satisfying Blahang's requirement. But Batol's and Lahol's carabaos went undelivered for the next three days. On Sunday, Musa sent a runner to Kematu to advise Fludi of the nondelivery. The message, however, first reached Mai Tuan, chief of the Tboli and Fludi's older brother. Mai, himself, had chosen Fludi to direct the kukum in Basag. Mai directed most kukums but frequently delegated Fludi to replace him when more pressing tribal business required his attention as

chief. Mai immediately sent the runner back to Basag with word that the kukum was to reconvene in Kematu the following day. Mai would preside.

Kematu was a neat and well-planned barrio of perhaps 1,500 people. The next afternoon, Blaán participants of the kukum entered Kematu, most having walked from Basag. Musa and other Blaán datu were joined by Folding, Terio, Florenzo, Sus, and Sangking.

Sangking had not been present at the kukum in Basag. She had been mentioned there, in passing, in allegations of her divisive talking about the murder. She was the mystery woman of the crime from a contemporary Western perspective. Her strong connections to both the murdered man and to the murderers would have thrown immediate suspicion her way, were this a different setting. She was the widow of Kusim, the murder victim; a sister of Lahol, one of the murderers; and after the murder she married Blahang, the murderer presently in prison. Her possible role in the murder was not discussed at the kukum in Basag because Folding, her step-son, whose judgment was final in this matter, had not charged her with complicity. His concern was directed only toward those whom he knew were present at the crime. My own suspicions of Sangking's at least indirect involvement were tempered, however, by thoughts of the difficulty for an individual conditioned in Western thought to comprehend in any basic way the motivations and thoughts of people whose life reflected a vastly different culture.

After random discussion, the talk focused on the unresolved matters before the kukum.

"What is your decision about Lahol?" Mai asks Sangking. The earlier arrangement at Basag to pay Lahol's carabao had been made between Lahol and his brother-in-law, Sus, but it had involved other members of their extended family. Mai passes over Sus to ask Sangking, who is Lahol's sister, to explain the failure of the family's promised carabao delivery.

"Lahol has gone to Halilan to ask his parents' help. He will return here today." She adds that Sus, Sangking, and another sister of Lahol had continued to dispute over the exact method of payment of Lahol's carabao.

"We must get Blahang out of jail," she continues.

"Anybody not paying will also be put in jail. Lahol must give his carabao today." Mai thus effectively threatens that Sangking's desired family reunion might take place inside the prison rather than outside, if an agreement is not worked out.

Mai quickly adds: "You are close to Lahol. If he asks you for help, there must be a reason for it." He hints darkly that this reason was other than her blood relationship to Lahol.

Without consulting Sus, Sangking abruptly offers to pay the carabao. After warm congratulations from Mai, she left the room with Sus.

Mai later gave his own views on Sangking's complicity: "Sangking's actions show that she probably took part in the murder. The fact that she was so quick to help Lahol shows this. But since Folding is satisfied with the

proceedings so far, the problem is over. She will not be publicly charged or punished.”

The kukum waits only for Batol's arrival. Batol had sent a runner to the kukum's meeting in Basag, promising payment, but he has inexplicably not acted on his promise. Meanwhile, Sangking, who lives close to Kematu, returns with a carabao and ties it to a tree outside.

The substantive conflict before the kukum reaches a sudden end. Batol enters Mai's house, leaving a large carabao tied next to Sangking's carabao outside.

This is Batol's first appearance before the kukum. Though he, alone among the four suspects, escaped the burden of prison, his story is perhaps the saddest. Shortly after the murder he fled to the mountains and successfully hid from the police for over a year until pressure for his capture lifted. But the forest served as his prison. His fear to visit even his family resulted in his not seeing his young daughter when her health worsened. She died even as he hid.

The proceedings over, everyone enjoyed a late dinner together. Folding sat with Terio, and they joked together with an impressive naturalness. Folding displayed no apparent animosity toward his father's murderers, despite his earlier spoken concern that they might strike again, at which time he would be their victim.

But for now, he had properly avenged his father's death. He could be proud for having exercised the duty expected of him by the community. Terio and the others, meanwhile, had paid for their deed as they would pay for some rice: clearly no stigma attached. Now all could look to the future. Philippine government officials as well as the Tboli insist that harmony between the parties is the typical result of a kukum's deliberations.

Later Mai sent a message to the government court to free Blahang from prison. The conflict was over.

Discussion

The dispute settlement just described is by no means representative of all traditional trials. “The beginnings of law are diverse, not unified.”² Yet the question might well be posed, to what extent can psychiatrists and lawyers benefit from study of this and other contemporary legal trials that most closely resemble those that virtually disappeared centuries ago? A psychiatrist might profitably analyze the mechanism whereby a serious felony can be successfully resolved with a payment by the felon to the victim or his representative. And the lawyer might well ask how our supposedly more sophisticated legal system compares in trial efficiency and result with the kukum, particularly in the typical rapport shown between a man and his father's murderers after the trial.

A British lawyer, Sir Henry Maine (1822-1888), Professor of Civil Law at Cambridge University, was the first to give credibility to the customary law area, with his studies of Indian village courts.³ He seems, though, to have

left the field to anthropologists and sociologists,⁴ with a few notable exceptions.⁵ Among lawyers today, the British-trained pay the most serious attention to the area.⁶

Psychiatrists have been almost totally uninvolved in primitive law. Psychoanalytic anthropology, which attempts to apply psychoanalytic insight to cultural data, dates from Freud.⁷ It was refined by later scholars who combined anthropological training and field work with psychoanalytic principles of interpretation, particularly Geza Roheim, Eston LaBarre, Abram Kardinar, and George Devereux.⁸ In the work of Margaret Mead and Ruth Benedict, both students of Franz Boas, psychological insights from a variety of sources infuse and illuminate ethnographic description.⁹ But many of the most significant contributions are by anthropologists who are not identified primarily with culture and personality.¹⁰ Rarely are psychiatric terms or concepts used to help describe or explain elements of a traditional dispute settlement mechanism.¹¹

It is hoped that both psychiatrists and lawyers might pay more attention to traditional dispute settlement mechanisms, such as the trial just described.

References

1. In the United States, the government initially accepted traditional Indian trials for reservation Indians. In *Ex parte Crow Dog*, 109 U.S. 556 (1883), the Supreme Court held that an Indian who had murdered another Indian on a reservation was not amenable to criminal law but only to tribal law. This situation, however, was terminated by statute two years later. 23 Stat. 385, 18 U.S.C. 1153.
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3. Maine, H.J.S., *Ancient Law; Its Connection with the Early History of Society, and Its Relation to Modern Ideas*. London, 1861.
4. See, for example, Krader, L., ed., *Anthropology and Early Law: Selections from the Writings of Paul Vinogradoff*. New York: Basic Books, 1967; Malinowski, B., *Crime and Custom in Savage Society*. New York: Harcourt, Brace & Co., 1926; Hoebel, E.A., *The Law of Primitive Man; a Study in Comparative Legal Dynamics*. Cambridge: Harvard University Press, 1961 (c 1954); Nader, L., ed., *Law in Culture and Society*. Chicago: Aldine Pub. Co., 1969; Gluckman, M., *The Judicial Process Among the Barotse of Northern Rhodesia* (2d ed.). Published on behalf of the Institute for Social Research, University of Zambia. Manchester: Manchester Univ. Press, 1967. (c 1955); Gluckman, M., *The Ideas of Barotse Jurisprudence*, New Haven: Yale Univ. Press, 1965; Pospisil, L., *Kapauku Papuans and Their Law*, Published for the Dept. of Anthropology. New Haven: Yale Univ., 1958; Bohannan, P., *Justice and Judgment Among the Tiv*. Int. African Inst. Publication. Oxford: 1957.
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6. In Britain (at the University of London) and not in the United States, for example, we find law students studying under a "Professor of African Law," and helping to edit a *Journal of African Law* and a "Restatement of African Law Project," all emphasizing customary law in Africa.
7. Freud, S., "Totem and Taboo," v. 13; "Moses and Monotheism," v. 23; "The Future of an Illusion," all in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*. Translated from the German under the general editorship of James Strachey, in collaboration with A. Freud, assisted by A. Strachey and A. Tyson. London: The Hogarth Press and the Institute of Psychoanalysis.
8. Roheim, G., "Psychoanalysis of Primitive Culture Types," *Int. J. Psychoanal.*, 13:1, 1932; LaBarre, W., *The Human Animal*. Chicago: Univ. of Chicago Press, 1955; Kardinar, A., *The Individual and His Society*. New York: Columbia Univ. Press, 1939; Devereux, G: *Mahave*

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10. For the previous quotations concerning psychiatry, I gratefully acknowledge my debt to Wallace, A.F.C., "Anthropology and Psychiatry," p. 366, in Freedman, A.M., Kaplan, H.I., and Sadock, B.J., eds., *Comprehensive Textbook of Psychiatry-II, Vol. I*. Baltimore: The William & Wilkins Co., 1975.
11. Even the exceptional series of volumes — Muensterberger, W. with Esman, A.H., and Boyer, L.B., eds: *The Psychoanalytic Study of Society*. New Haven: Yale Univ. Press, 1960 to present, founded as *Psychoanalysis and The Social Sciences*, Muensterberger, W. and Axelrad, S. eds. New York: International Universities Press, 1947-1958 — nowhere treats subjects directly related to primitive law. □