Tribal conflicts, rape, lawlessness—Papua New Guinea's fragile liberal democracy is straining at the seams. At the heart of the crisis, argues Brian Brunton, is the narrow reach of law.

In paper the constitutional and legal institutions that protect rights and provide for the rule of law in Papua New Guinea are impressive. The Papua New Guinean Constitution has a detailed Bill of Rights. Basic rights such as the rights to life, freedom from inhuman treatment, the right to the protection of the law for accused persons, and the rights to freedom of speech, conscience, religion, assembly, association are guaranteed. There are independent courts, a public solicitor, a public prosecutor's office, and an Ombudsman.

Despite the array of constitutional institutions the system has worked only with difficulty, after a fashion, sometimes slowly, and not as well as one might like.

However, Papua New Guinea's peculiar variety of constitutionalism, modelled on the Westminster system, is now in crisis. The universities were closed down in July 1991. April saw a transport strike in support of a general election. The defence force and the police have far more autonomy than they have ever had. There has been a curfew in the capital and in most other towns for most of 1991, which has at least brought some respite from one of the major symptoms of social unrest: violent crime. Parliament has amended the constitution to permit vagrancy laws to be re-enacted and allow the passing of a Peace and Good Order Act which regulates the holding of processions and meetings. The Morobe provincial government has sent the bulldozers into urban migrant settlements and cleaned out non-Morobeans by destroying their houses, ignoring a national court order. In July parliament will debate a death penalty.

There has been a major civil war, and the national government has lost control of one of its provinces. The world's largest mining corporation, RTZ, was thrown out of Bougainville by a ragtag peasant army. Earlier this year RTZ's partially-owned Mt Kare mine was closed for a short time by violent landowner action and more recently Placer's Porgera mine was closed by violent workers. These events are set against a background of endemic tribal fighting in some parts of the Highlands region, routine violence by the police everywhere and, in the Bougainville operation, by the defence force.

Politically, the essence of constitutionalism in Papua New Guinea is the Westminster system 'PNG-style', incorporating national, provincial and local elections. However, the
Placer's Porgera mine was closed by violent workers. These events are set against a background of endemic tribal fighting in some parts of the Highlands region, routine violence by the police everywhere and, in the Bougainville operation, by the defence force.

Politically, the essence of constitutionalism in Papua New Guinea is the Westminster system 'PNG-style', incorporating national, provincial and local elections. However, the reality is that strategic power is concentrated in the hands of cabinet, a group of senior bureaucrats and some influential businessmen. The opportunities for popular participation in decision-making are limited, particularly in matters affecting natural resources and economic development. Seemingly, popular movements are only taken seriously when they threaten to destabilise the whole system, a situation which leads to increasing cynicism and alienation in the community.

The practical limitations on the rule of law in Third World countries are well known. In extreme cases judges and lawyers have been dragged from their courts and offices and have disappeared. A greater part of the faculty of Law in El Salvador was murdered by the military during the 1970s. Less extreme were the pressures placed on the judiciary by Marcos in the Philippines, or by Rabuka in Fiji.

In Papua New Guinea the pressures facing the judiciary are more subtle. They are to do with the problem of legitimacy that arises from the impotency of the system and the failure to deal with human rights abuses. On the one hand the courts deal with matters that are of great concern to many ordinary people: public safety and the protection of the individual's private property. On the other hand the judicial institutions are perceived to support existing inequalities and promote further disparity.

These contradictions raise fundamental questions of legitimacy. Is the social function of the legal system to safeguard the interests of elite power structures? Or is it a system primarily concerned with its own institutional survival and well-being? Certainly many judges and magistrates would aspire to the protection of human dignity, but practically the problems of maintaining basic operational systems mean that the law often operates roughly and has to close its eyes to human rights violations in order to maintain institutional viability. At best these compromises have the tendency to identify the legal system with the state, and with the move towards authoritarianism.

In Third World countries generally, and in Papua New Guinea in particular, the danger is that constitutionalism comes to be seen as part of authoritarianism. This view is not without some material basis because Third World authoritarianism has its roots within the indigenous culture, colonial history, and the post independence settlement.

There is a tendency to romanticise pre-colonial society, but in Melanesia life expectancy was probably between 25 and 35 years, with a high rate of infant mortality. It was a life, at times brutal, with the constant threat of outside aggression, internal conflict, disease and hunger. The idea that pre-contact Melanesian communities experienced a form of human freedom is a romanticism, and does an injustice to their history. Nevertheless, there is much that is positive in Melanesian tradition, in common with all tribal and communal peoples, that points the way to those who seek to transform the modern state.

European colonialism extended into the Third World practices common to all peoples who sought to acquire by force the territories of others. The methodologies were uniform: piracy, theft, genocide, slavery, brutal repression, economic exploitation of the crudest and most vicious kind. But crucial to the understanding of colonialism is the idea of dependency.Dependency arose because of the destruction of indigenous institutions, or at best their subordination, and the restructuring and imposing of economic and political institutions that tied the colony to the metropolis. The
tragedy of the Third World is that at independence only some of the colonial institutions disappear, others merely change their form.

Colonialism laid another part of the modern foundation for repression in the Pacific: most post-independence settlements were based upon the exclusion of the masses from effective control of society. The backward and dependent nature of the colonial economic and political structures led to a poor level of social consciousness about constitutionality, the rule of law, legality and equality. After independence, there was no opportunity to mould a democratic practice, nor to build up the conventions necessary to maintain a multiparty, pluralistic political framework. With few exceptions (some would argue that Papua New Guinea is one of them) constitutions were imposed and borders drawn with scant regard to community sensibilities, promoting ethnic or religious tensions and the spilling of much blood.

However, it would be a mistake to think that human rights violations in the Pacific and elsewhere are simply grounded in subjective factors that have become ingrained in either indigenous or neo-colonial consciousness. Third World countries like Papua New Guinea exist in a set of economic conditions that locks them into a cycle of crisis.

Papua New Guinea has at least three economies. The first is modern, dynamic in character, regulated and responsive to global markets. It also has an isolated, introverted indigenous economy that has little or no link with the dynamic sector. Finally, there is a peasant sector, with one foot in both the modern and traditional economies. While the traditional and peasant sectors employ the bulk of the population, it is the dynamic modern economy that creates the national surplus. This sector of the economy is dependent upon metropolitan markets and commands. Importantly, the linkages with the metropolis limit the country’s autonomy and capacity to accumulate. Indeed the rate of accumulation in the modern sector does not keep pace with population growth and it is this shortfall that fuels much discontent.

The distorted nature of the economy affects the nature of society. First there is a significant declassed element: large groups of traditional farmers, unemployed rural youth, unemployed urban migrants and quasi-criminal elements, small business, service sector elements, peasants, public employees, the police and military.

Underdevelopment and low economic growth rates compel a high level of state intervention in the economy. The state is the biggest employer and property owner; it is expected to provide the infrastructure and a suitable climate for foreign investment. A burst of monetarism attempted to contain state intervention during the 80s, but the bureaucracy in Papua New Guinea has remained intact, as has the idea of state intervention in civil life.

Endemic economic crisis is common among post-colonial societies; certainly it is to Papua New Guinea. The cyclic economic crises of the metropolitan economies are compounded in countries at the periphery of the global market because of their dependency upon conditions in the First World, and because of their adverse demographics. The effect of this endemic crisis is to limit development strategies and, more importantly, to create a consciousness that existing development strategies are doomed. In the long term this consciousness fuels unrest and creates tensions that affect all aspects of a country’s life. The economy cannot satisfy popular expectations. In the extreme case youth are alienated, women marginalised, traditional institutions fall apart or are dislocated. People respond either inchoately and negatively through criminal acts, or more systematically and politically in co-ordinated rebellion.

In Papua New Guinea youth are not just marginalised and subjugated; they are abandoned with no dignified function or place in society. The danger is that this can lead to continuous and intensified generational struggles and a lessening of traditional institutional restraints.

Increasing state lawlessness and human rights violations also call for attention. The police use punitive raids as
regular means of intervening in rural areas and an almost routine use of unlawful force during investigations, to such an extent that judges now examine carefully the admissibility of all records of interview challenged in the national court.

Police and soldiers routinely commit atrocities in the field. Before Papua New Guinea withdrew its forces from Bougainville 19 people were allegedly ill-treated or tortured by the security forces. The link between the human rights violations in Bougainville and economic policy was all too clear. The dispute was about and in part caused by the presence on traditional land of a huge foreign-owned mine, but not all human rights violations are so directly linked with policies of foreign investment-led growth.

Human rights violations of women are more complex in their origins. There is evidence of continuous threats of and actual acts of violence throughout the lives of women who tend to be pushed out of the dynamic sectors of the modern economy and are confined to the mundane of subsistence and reproduction. Broadly, this is a reflection of social conditions and structures in traditional society, exacerbated and intensified by colonialism and neo-colonialism, and shows the inability of a more modern ideology to penetrate community and the relative ineffectiveness of Christianity, liberalism and social democracy within small introverted agrarian and traditional communities. Women’s reaction to oppression is a symptom of their marginalisation. When they strike back it tends to be as individuals; co-wives, competing girl friends, boy-friends and husbands are killed, generally because society offers no recourse for their grievances.

Perhaps the most useful insight into the relationships between human rights, community and state is found in the perception of a high incidence of pack-rape in Papua New Guinea. The basis of the subordination, manipulation, and exploitation of women in traditional societies was men’s control over most economic resources. Traditionally, ideology portrayed women as dangerous, inferior, untrustworthy creatures who were to be kept under control. Violence, including rape, was one of the methods by which this subjugation was achieved. The ideas and practices have not diminished with independence, but have been accentuated as men scramble to compete in the cash economy among themselves. The state and missions have perpetuated women’s role in domestic production and the family.

Old men used the ideology of the contamination of women to maintain their monopoly over the exploitation of women’s labour, particularly with pig rearing. Young men who wanted to progress in traditional society had to conform to this monopoly if they were to rely on the largesse of the old men to pay their bride price. But the cash economy has disturbed the hold of the older generation over the younger. Some young men can now buy their own brides. This breakdown in economic control over the behaviour of young men is seen by one recent analyst, Laura Zimmer, as one element in the rape complex. The other is the incomplete socialisation of young men who drift between town and village. Young men no longer learn how to live with women as enjoyable and trustworthy partners.

The inability of the Papua New Guinean state to provide a firm democratic basis is not just a matter of political disposition; it is structural. The narrow basis of the modern economy means that the nightwatchman state is unable to apply sufficient resources to the task of modernisation.

In PNG the legal system and constitutionality have historical associations with state repression, the manipulation of power elites, and the toleration of much that is cruel within the community. This is not a rejection of constitutionality; rather it is a search for a more respectable basis on which it should rest.

Constitutionalism and legality gain their legitimacy by fulfilling real social needs within complex societies. People want to see an end to disputes, to bring about reconciliation and healing and to feel justice in the texture of the acts of the law. Although legality may ultimately rely on coercion, coercion is not a value which a legal system should prize. Indeed the struggle within legality and constitutionality over the centuries has been to wrestle with, isolate and formally (if not always in practice) abandon the cruelest and most extreme forms of coercion, while attempting to maintain a system of quality control over the coercive elements that remain in place.

The coercion within the legal system is partly a matter of the tradition of authoritarianism within the Western state itself, but not exclusively so. Community shares with the state a dark side. Controlling blood feuds and ‘a rhetoric of just deserts’ are part of a struggle with community that is by no means over. A positive feature of this slow process has been the increasing importance given to the ideal of human dignity.

In the short-term the prognosis is by no means optimistic. The economic, political and social crisis of Papua New Guinea is intensifying. The legal system is part of a mediating complex and cannot withstand determined political pressure. The failure of the judicial institutions to deal with the Bougainville crisis meaningfully is testimony to that. We have seen recent moves to close the political space in Papua New Guinea by restricting the right to freedom of expression. Greed, ethnocentricity, chauvinism and tribalism lie behind the moves to control urban migration through vagrancy laws. Next month parliament will debate the death penalty. It can be safely predicted that human rights and human dignity will come increasingly under pressure, not only from the state but also as people respond to the narrowing of the political sphere. One thing we can be sure of is that violence generally begets violence. There are no easy solutions.