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Customary Law in One Area of 20th Century Africa: The Chagga of Kilimanjaro in Tanzania

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Introduction. A customary practice reviewed: the after-death meeting of the relatives of a deceased man

A scene in a rural Kilimanjaro district in 1993.

Let us begin with the *matanga* of Elifasi, a very prosperous man who left a wife, a number of ex-wives, and many children. A few days after the man's death a group of his kin and neighbors and creditors met to hold the *matanga*. At this ceremony the distribution of a man's assets are confirmed and any remaining debts are claimed. Elifasi had already allocated plots of land to his several wives and sons. It emerged that there was a remaining debt.

Many years earlier, in 1952, Elifasi had fathered a girl, Anastasia, outside of his marriage. At the time her mother was a housegirl/helper in the household of Elifasi. The father of the housegirl was Ndeleioki Mlai. The housegirl and her baby went back to her father's household. Ndeleioki Mlai demanded that Elifasi pay a cow and a goat to legitimate his paternity of Anastasia. Elifasi paid him.

Later Anastasia's mother married and went to live with her husband. (It was customary for women to leave the natal household on marriage and live at the husband's place. This is still the practice.) Anastasia did not move with her mother. Instead she grew up in her grandmother's house (mother's mother).

What emerged at the *matanga*, was that there was a debt associated with this affair. The grandmother of Anastasia, the mother of her mother, appeared and asked for the payment of a goat to repay her for her costs in raising Anastasia over many years. When Anastasia was a child the grandmother requested that Anastasia live with her because she, the granny, was alone. It is Chagga custom that a grandmother who is alone has the right to ask that she be given a grandchild to stay with her. Satisfying that request is more or less mandatory. Anastasia duly moved in with her. The debt was acknowledged at the *matanga*. The grandmother was to be paid later by Elifasi's heirs. They would give her the cash equivalent of a goat to indemnify her for her expenses, but the payment was spoken of as a payment of a goat, which would formerly have been the proper object.

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This case is a minor part of the complex distribution of Elifasi's property, his various plots of land, and his other assets. It was a minor matter altogether, particularly because there were no disputes involved. However it demonstrates a number of things about an ongoing customary law system administered by the householders in the Kilimanjaro area. For most matters they had no recourse to government officials. They managed their affairs among themselves. Legitimate claims had to be met, not only because everybody in the neighborhood knew about the merits, but also because the failure to pay debts could incur the anger of the creditor with the consequent risks to the debtor and his kin of later supernatural punishment. This could be brought on by witchcraft, by God as punishment for wrongdoing, or by the indignant spirits of the ancestors. Much has been written about the urgency of reconciliation in customary law systems. But make no mistake about it, reconciliation is not just a philosophical position. There are often powerful beliefs that the refusal to reconcile can bring about severe supernatural penalties.

The *matanga* of Elifasi case is a small instance of customary practice. I met Elifasi and knew many of his kin and neighbors. Beyond this local group, I collected information about many other people, listened to cases in court, read many dozens of magistrates' case records, and learned of many practices in which customary law was the background story (Moore, 1986). This brief article will fill in the background of this work, the concepts I devised to handle the analysis, and will convey some of the sense in which customary law often intersected with state law and its policies and adapted to changed conditions.

In one of his books, published around the time I first went to do fieldwork in Africa, the legal anthropologist Max Gluckman said, in effect, that in general "anthropology is the study of custom," (Gluckman, 1965: 31). Certainly a great deal of the social anthropological work done in Africa until the 1960s was in that spirit, an attempt to understand indigenous African customs, including "customary law." This was very much in keeping with the plan of "indirect rule" of the British colonial government in Africa, a policy put in place by Sir Frederick Lugard, once the Governor General of Nigeria (Lugard, 1926). The gist of the policy, as far as law was concerned, was that the local rules and administrative practices of Africans (i.e., their customary law) should continue as long as these were not inconsistent with British legislation, policy and morality. The purpose of this paper is to show two things: (1) that aspects of customary law have persisted on Kilimanjaro into the present, sometimes strangely intertwined with national law; and (2) that customary law has a history, and that parts of it have changed over the years.

In the British colonial period African customary law was deemed to be an important part of indirect rule. However, supporting it was not just an ideological position, not just a way of crediting Africans with having had their own social order in the pre-colony. The maintenance of customary law was also a practical decision, since there was no way that the small staff of the colonial government could possibly insert itself into the ongoing affairs of the thousands and thousands of African villages it purported to control. In some places, the government nominally incorporated existing local courts into its administration, naming them "Native Courts." In principle, the colonial administration undertook to supervise these courts as best it could, but, depending on the date, and the place, this oversight was often superficial, and as expected, Africans carried on in their own ways (see Moore, 1992).

Anthropologists were interested in these legal matters for a variety of reasons. Their focus for the most part was on indigenous culture. They thought they could reconstruct how the society operated in pre-colonial times. This was useful to the colonial occupiers. For example, Professor Isaac Shapera studied Tswana customary law not simply out of academic interest but to compose a guide book for colonial magistrates (Schapera, 1938). He assembled lists of native rules to which a colonially appointed white judge could turn in making decisions for African litigants. It was not until 1955 that Max Gluckman published the first fieldwork account of the goings-on he had

observed in one of the African run "Native Courts." His book contains many case studies and a generalized analysis of what he saw as "the judicial process" of the Barotse of Northern Rhodesia (Gluckman, 1955).

When I proposed to go to Kilimanjaro in 1968 to study the law of the Chagga of Kilimanjaro, in and out of the courts, the colonial period was over. Tanzania had become independent in 1961. Professor Antony Allott, at the School of Oriental and African Studies in London, who specialized in African law, told me he was delighted to hear of my plans. He hoped that I would make lists of legal rules similar to Schapera's. He thought this could be used later on in what he anticipated would be the eventual codification of local systems of African law. As he imagined the future, such codification would be the next step in modernizing African legal systems. That projected codification of customary systems never took place. It was not an objective of African governments which had other agendas in mind. In Tanzania the introduction of African socialism was the first priority of the regime, with the long-term plan of adapting the legal system to socialist and modern concerns.

I was not interested in simply making lists of Chagga rules. I wanted to know about the social context of Chagga law, the way the law worked in practice, how it was used in and out of the courts. In addition, I was also ready to question the general assumption that if customary law was "traditional" it was unchanging. I could consider this historical question because a much earlier study of Chagga law had been done by a remarkable German missionary (Gutmann, 1926). Even before I went to Tanzania, I could not believe that after nearly a century of the European presence and more than half a dozen years of independence that customary law went on being what it had always been on Kilimanjaro. As it turned out, some of the ideas and practices Gutmann described were still in existence when I got there, although some were altered, among other things, changing out of adaptation to a changing economy. Yet when I got to Kilimanjaro I was told both by ordinary African farmers and by the recently appointed African magistrates that outside of criminal law, which was governed by statute, customary law went on being what it had always been. When asked about the issue in general, they insisted that custom was king, that in family matters tradition ruled.

Needless to say, when questioned more pointedly, and in more detail, they were aware of the historical realities, of major changes that had taken place. However, when speaking in a casual, general way, they persisted in emphasizing what they still had. And indeed, as we shall see, although for a brief period the state tried to legislate the abolition of customary law (Fimbo, 2004: 20) abolition was an effort that failed in practice. For the most part the state has not only had to informally acknowledge the existence of customary law. It recently recognized it legislatively. Customary law continues to be used to this day.

Fieldwork: Intermittently, from 1968 to the 1990s

I set out to find out what customary law was, both in substantive content for local farmers, and as a kind of political compromise by the new government. What became clear was that matters of central concern to the state, matters of public order, the political reorganization of the citizenry and the nominal nationalization of certain properties including land, were topics on which the state legislated or on which it made administrative rulings. Until recent legislation customary law was a residual category of local practices, matters on which the government had not legislated.

Yet for local people their customary law was much more. It was a source of collective autonomy, pride and expectations of normal behavior. Their patrilineages, which in the eyes of the Party were merely unofficial kinship structures, still controlled many of the affairs of their members including matters of inheritance, the allocation of the right to occupy land, and most valuable of all, the reputation and well-being of individuals.

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The socialist government was not the first entity to try to change Chagga ways of thinking. Missionary efforts to convert the Chagga to Christianity began even before the German colonial government officially took over in 1896. Missionizing was both Catholic and Protestant. This process was eventually successful and endures to this day, though for the Chagga, like many African peoples, the Christian message did not by any means entirely replace a deeply held system of indigenous beliefs. Spirits of the dead, as well as other invisible beings, are assumed to be part of the enveloping life-atmosphere. The possibility that the ill-will of the living, or of the spirits, can lead to misfortune is still part of the ongoing ambience of social relations in Chagga neighborhoods. This spills over into the domain of claims and controversies which nowadays are often related to landholding.

Land is not only valuable as a place to live, and as a source of subsistence. It is a source of cash. For more than a century, beginning in the German colonial period, the cash-cropping of coffee was introduced to the Chagga. Beginning on a small scale, it was a crop that slowly spread everywhere over the mountain. It grows in all areas where the altitude is suitable. The British colonial government (which took over in 1916) enthusiastically encouraged coffee growing. The British thought that cash-cropping would lead to other forms of modernization.

This was not plantation agriculture. Chagga growers could use the small gardens around their houses to plant coffee. They placed the coffee bushes in the shade of the banana plants which they already grew, and which provided their staple food. Thus coffee growing could be carried on household by household without any major displacement. Coffee growing was intensified year by year. In the 1920s, under the benign influence of a local District Commissioner, a Kilimanjaro cooperative was formed to sell the coffee into the world market. This cooperative replaced exploitative individual traders who had previously dominated the trade. With coffee came money, and some small service businesses and tradesmen.

But most remarkable of all was a parallel circumstance over which no government had any control, and which disrupted the customary law rules of inheritance. There was an enormous population increase. By the 1930s, a land shortage was beginning to be felt. The shortage grew increasingly worse. This circumstance affected almost every family, and in many cases led to disputes. The practice under the old customary law described by Gutmann was for a father to plant bananas in a a new plot for his eldest son to be given to him when he married, and to leave to his youngest son the already developed plot the father himself occupied. If there were middle sons, they were supposed to fend for themselves. But families had many children, often several sons and several daughters. The old custom presumed that there was plenty of unclaimed land. The new post-coffee reality was that in the areas that were long settled there was none. Shortage led to dividing and sub-dividing plots of land. When the subdivided plots were too small to support a family, people turned to off-farm occupations whenever they could. Ultimately, by the 1980s there was considerable out-migration of the younger generation to the cities. Education became a highly valued asset since it made non-agricultural employment possible, and with it out-migration. But there remains a strong nostalgic preference for continuing to have sons living near their fathers, i.e., when possible, to continue to have localized patrilineages. Many city workers left wives and young children on Kilimanjaro while they lived near their jobs in town.

The courts and their litigants

Among the administrative changes that were instituted in the British colonial period (and which continued for a time after independence) was a system of local courts, one per chiefdom on Kilimanjaro. In the early colonial period the chiefs and their deputies ran the courts. The British gradually replaced them with salaried magistrates. When I was there these magistrates were treated

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with deference by all those who appeared before them. Yet the judges had had a very few weeks of training and were not in any sense legal professionals. They decided cases as best they could. In the disputes and claims that came before them, the magistrates also did a great deal of the questioning of parties and witnesses. The records of the proceedings were all handwritten by the magistrate, including a record of the testimony and of his own decision. Hearings proceeded very slowly because the magistrate had to write down what was said before the next statement was made. No lawyers appeared in these courts. Their presence was prohibited. However, in the early period of my observation, the magistrates had two assessors to assist them. These two lay citizens gave their opinions of each case, and were supposed to affirm the existence of any local traditions that applied. I listened to some cases, and I collected the records of many such courts, in several districts, covering hundreds of lawsuits over a number of years. A small percentage of the cases directly concerned customary law. Most customary law issues were sorted out "at home," by kinsmen or neighbors.

After independence in 1961, the post-colonial government planned to reorganize the society and incidentally, the system of courts. After a few years, the local magistrates' courts were prohibited from hearing any controversy about land holding since the doctrines of the government derived from the abolition of title, and the nationalization of all land. The government wanted to be sure that its policies were understood and would be carried out. In the Kilimanjaro area a special court was established to handle land cases. It was situated in the town of Moshi far from the villages where the land and the disputants were located. Few people with complaints had recourse to the new court. Further reorganizations of the courts followed in later years. Eventually there were fewer local courts. Many controversies had always been handled outside the courts, and after various socialist reorganizations, there was all the more reason to do so.

It is evident, even from this cursory history of the area, that for the Chagga the surrounding economic conditions and the land shortage changed customary practice with respect to land. On top of that was the socialist state's land policy. When all land was nationalized it was decreed to belong to "all the people." As there was no longer any such thing as title to land, all that anyone could have was the right to occupy it. And no one could have more than he could cultivate himself. On Kilimanjaro this meant that generally people continued to live where they had always lived. They were deemed by the government to have the right of occupancy, provided they did not claim "too much" land. For land holders having many plots, there was a threat of confiscation. To head this off and to show that they were good socialists and good Party members, some large landholders gave away some of their land, in one case giving a piece of land for a school, in another for a clinic. There were some confiscations by the Party, especially of church-held lands, but sometimes of the land of individuals.

The distant, overarching state made enforceable general rules for everyone. But locally, on the ground, particularly in rural areas, there were two regimes in place, the rules and administrative institutions emanating from the state, and those long founded in local ethnic practice, enforced both by habit, and by community social pressure. These ethnic traditions had some political significance. They legitimated as much local autonomy as could be maintained by the local community under the radar of the national system.

Fieldwork: Three methodological and analytical approaches

This fieldwork situation was one in which there was a colorful, ongoing Chagga culture on the ground to which virtually all the local people on Kilimanjaro were committed, and a national system that encompassed the local one. There were, of course, local Chagga who became Party representatives, ready to preach the ideology, enforce the laws, and admonish everyone to embrace

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the new way. Their local loyalties were as important (more important?) than their national ones. They performed their duties with an eye to their local reputations.

The socialist way was publicized as something not simply imposed from above, but as a regime that was morally right and desirable. The fact that it was also legally enforceable did not escape anyone's notice. The national system existed together with the local one. This dual circumstance, local encompassed within national, led me to construct three framing concepts to clarify my analysis. All three are methodological approaches applicable to situations far beyond the special case of the Chagga. They facilitate a general sociological/anthropological approach to law. These concepts are:

Semi-autonomous social fields

Chagga society was a semi-autonomous social field which had its own language, and rules and customs at the same time that it was within a post-colonial state that legally encompassed it, but that, in practice did not control many matters. The idea of a semi-autonomous social field allows one to consider the dynamic importance of social sub-categories in any society. Semi-autonomous social fields have their own internal rule-generating and coercive capacities, since they can require conformity of their members. To know how law "works" in any context requires an understanding of any semi-autonomous social fields with which it may intersect.

A processual approach to social analysis

At one time anthropologists were interested in societies as social types, characterized either as a social system or a cultural system. The focus was on interrelated, putatively durable traditions, systematically interconnected. More recent anthropologists have distanced themselves from the timelessness and rigidity of these typologies. The fieldworker today is markedly aware of the flow of time. Observations and inquiries are now made with an acute awareness that any society is necessarily in the midst of active processes, that its way of life is continually under construction. This does not only refer to the process of change. It also implies close attention to the process of maintaining ideas and practices which are made to continue or repeat. This presumed conception of continuous activity is now the center of social analysis. I have called such a focus, "a processual approach."

Diagnostic events

One method that clarifies this time-oriented approach is the identification of diagnostic events. These are events chosen by the researcher for special attention because they illuminate the processual features that are shaping the society. Legal concerns, whether disputes, or transfers of property, or allegations of wrongdoing, or other such matters, often can be used as diagnostic events.

At their simplest what these three concepts mean for an anthropologist is that while what is being observed in fieldwork is action at a particular moment, it is conceived as being in the midst of a longer period, historical and prospective. With a processual approach in mind what is happening before your eyes, is, to the extent possible, considered in terms of what is being actively maintained out of the past, and what is being actively transformed in the present. It raises conjectures about what is going to happen next. It calls attention to trends in the flow of action.

It is easy enough to see why these three perspectives, the semi-autonomous social field, the processual approach, and the identification of diagnostic events, were useful in the study of the legal system that emanated from and impinged on the Chagga in Tanzania. To try to sort out what

was customary in their law and what was new and how they intersected was a complex task full of contradictions

The administrative organization: Traditional and as introduced in the socialist era

By now there are well over the 700,000 Chagga (counted in the 1988 census) living in the Kilimanjaro district. There are also many who have migrated to the cities, but the Chagga virtually own Kilimanjaro. Most of them cultivate the gardens that surround their houses. They have been very loathe to permit outsiders to hold land in their area. Many families have some off-farm source of income, jobs working in local institutions. Many are in the town at the foot of the mountain leaving their wives and children in the house-garden complex. The absent workers come home on weekends if they can, or on holidays if they work further away. To the extent that Kilimanjaro is an administrative and ethnic unit, the whole of Chagga territory could be seen as a large semi-autonomous social field.

Within that territory there are many effective sub-fields. Chagga settlements consist of one house plus its garden plot next to another, spread out all over the mountain. Adjacent house-garden plots are often, but not always, occupied by related men. Thus patrilineages, many of them localized, are the most fundamental units of organization to which everyone belongs from birth. It is through the patrilineage that land is inherited. Family rituals are observed by patrilineal groups, linking the living to their dead ancestors who can have benign or malevolent effects on the lives of their descendants.

The area is further divided into so-called "villages." These are not concentrated like European villages. They are extensive areas of house-garden plots, named as units for administrative purposes. Many of these collectivities were former chiefdoms or sub-chiefdoms. Groups of "villages" in turn were aggregated by the socialist government into wards for administrative purposes.

Cutting across these were loyalties to the churches, protestant and catholic. There was also an important network of connections formed by the coffee cooperative and its local branches. On top of these collective units there was the overarching national Party (TANU, the Tanzanian African Union) to which everyone belonged. It subdivided the neighborhoods into ten-house cells, to one of which each resident belonged. Each ten-house cell had a leader, a head. The hope of the Party was that the ten-house cell would eventually supersede all other local forms of social authority.

Each of these domains had resources to allocate. Good standing in each was essential if one wanted to prosper, to be respected, and sometimes helped, by one's neighbors. Customary law is not maintained just because the Chagga are traditionalists. Below, I will describe two examples from Tanzania of the maintenance of customary law even when it flies in the face of state law or policy. They are examples of customary law as a resource in an "economy of social practice." This practical strategy means that to arrive at your goals, there is a tendency to use an old practice unless you need to invent or follow a new one.

Two cases in which customary law and state law intersected

Case # (1)

In the mid-1970s the Tanzanian government moved against large landholders with a policy designated by the phrase, "land to the tiller." A person could only keep as much land as he/she was actually working him- or herself. Any plots not being farmed by the possessor could be confiscated and reallocated. Now for a case in point:

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In the following case a prosperous, middle-aged, Chagga man who had been an agricultural officer during the colonial period continued in similar salaried jobs under the socialist regime. Over the years by purchasing them, he had accumulated numerous plots of land in different districts. In fact, he had a large family to look after. He had five wives and seventeen children. Being a good Christian, he did not consider himself polygamous. Most of the wives were in some sense, "divorced," but he recognized his continuing obligations to them and their children. As he became familiar with the government plans to confiscate "surplus" plots he decided to head them off. To show what a good and compassionate socialist he was, he donated a good banana grove to a poor old widow who had two daughters. He "adopted" the two. His calculations in doing this were that, all things considered, eventually the land would return to him.

In customary law no woman could hold a transferable interest in land. A widow would only hold a life estate. The daughters could not inherit. When they would marry and the widow would die it was understood between them that the land would be returned to the donor. By then, he also figured that the government might have changed, or at the least the policies about land would change. In any case, he wanted to avoid a present confiscation.

What kind of customary law is this? What kind of state imposed policy is being defeated by it? It is one example of the local control of land allocation even in the face of state policies to the contrary. Analytically it would be a profound distortion to see this formally as the clash of two legal systems, state law and local law. It is a single working social system in which the two bodies of rules and institutions are completely intertwined in everyday life. They are both drawn on as resources as local people strategize their way through the maze of local competition and contestation.

Case # (2)

Another case shows that "customary law" is not only drawn on by individuals for personal gain, but also can be a resource available to government and Party officials. The instance that follows is Case # 100 from Keni Mriti Mengwe land court in 1967. To understand the circumstances one must know about the ten-house cell system established early in the socialist period.

What was the intention of the Party with respect to the ten-house cells? First of all each cell was to choose a Party representative who was to report to the next higher set of Party officials in the ward organization. In this way, the government thought it would receive information of two kinds, census data and information about any disturbances or subversive activities. Another function of the ten-house cell was to serve as a rotating credit association. In fact, people had the habit of appealing to their kin for financial assistance when needed. But the Party wanted to establish a non-kinship, Party-based unit, as the basic social grouping.

The Tanzanian decimal system was an attempt to legislate national political and legal homogeneity in the whole country. For the Chagga this was an attempt to replace the authority of the patrilineage and the cohesion of the local neighborhood with a new social structure. The government had a self serving rationale for the change. The associated policy of depluralization, i.e., of detribalization, was presented not as an eradication of ethnicity, of local domestic customs, but rather as an eradication of the public political significance of ethnicity. No one belonged to the Party as a member of a "tribe." The Party recognized only itself as the official organizational base of society. There was a national language, Swahili. There was a national system of law. But local languages could continue as the domestic language in the family, and customary law could continue as long as it did not interfere with national policy. In short the new system was to be added to, added on top of, the old system, not to replace it immediately, but to begin to work a transformation. In practice, of course, for the rural Chagga, since representation in the Party was territorial, to the extent that

territory also coincided with tribal membership, the Party reflected this fact. And as we shall see, as all local officials (including the magistrates) were also Chagga there were powerful reasons why local ethnicity and local customary norms were maintained in the shadow of the socialist cause. The local organization into named patrilineages had no official existence, but as the following case will show, even local officials on occasion had recourse to its powerful social effects.

The facts of the case were these: the house of an old widow burned down. Her youngest son, who would traditionally have been responsible for taking care of her, was away working in Mombasa. He would have been the customary law heir of her land.

The widow appealed to the ten-house cell leader, and he in turn, went to the Village Executive Officer. The V.E.O. knew what to do. He said, "call a meeting of the local members of your son's patrilineage . I will attend." The meeting duly took place. At that gathering, one Damiani, a patrilineal relative of the son, was given responsibility for the widow until the son would return. Eventually, the son returned, but did not reimburse Damiani for his expenses in taking care of the old widow. The case in question arose when Damiani sued the son in the local Primary Court. He won the case and recovered all that her care had cost him.

To study the way the law works in life in such a setting means giving up certain time honored preconceptions about the meaning of cultural tradition and its relationship to the state. Customary law, that is a set of rules, ideas and practices, is used locally as ethnic "intellectual property" inherited from the ancestors. But that is only one thread that intertwines with left-over traces of colonial legal institutions and new socialist frameworks, both imposed from above. Actions by governments and local reactions mix together in practice. Customary law is not maintained just because the Chagga are traditionalists. As we have seen, there are other motives. And there are consequences other than cultural continuity in a setting in which there are many non-traditional situations, such as labor migration.

Case #2 was underpinned by the customary right of a younger son to a mother's land plot which was, however, dependent on meeting filial obligations. The case indicates that though, from one point of view, patrilineal groups are not formally recognized, and officially, all that prevails in the way of local social structure is embodied in the TANU ten-house cells and the Ward Development Committee, from another point of view, the patrilineal groups are recognized and are treated as a basic social resource. The case is also adduced to indicate that Chagga "customary law" was not just a matter of rules that apply to individuals, but that customary law was at the heart of local kin groupings, i.e., complexes of social relationships.

To be a respectable member of the lineage and the community you have to meet your kinship obligations. The parish (*mtaa*) and its localized lineages constitute what I call a "semi-autonomous social field." Such a social field can generate rules and customs and symbols of its existence and practices. It can also give rise to inducements and pressures on the membership to conform. Conformity becomes a condition of membership itself. The lineage can ostracize, or even expel a member who rebels. But the lineage is also penetrable and can be invaded by rules and decisions and other forces emanating from the larger world by which it is surrounded.

Thus the localized lineage and neighborhood not only perform social services, but constitute a basic source of social control. The lineage-neighborhood nexus provides some of the coercion and some of the inducements that make people meet their obligations, insofar as they do. Members of the local lineage branch, together with trusted (and often intermarried) neighbors and the in-resident ten-house cell leader constitute the basic forum for sorting out disputes, for allocating property rights, and for enforcing interpersonal obligations. They are witnesses to all significant transactions, for example: to the transfer of land from a father to a son, or a father's brother to a nephew; to wills, spoken or written; and they participate in the *matanga,* a meeting of kin and neighbors after a death which sorts out the assets, debts and personal responsibilities of a deceased

person, including the responsibility for a widow, minor children, as well as the aged and ill. A good reputation is thus important for local lifemanship.

The kinds of disputes that are handled in local, informal neighborhood hearings deal with all manner of wrongdoing. For example: (1) theft, as for instance, cutting grass without the landowner's permission, taking a banana cluster, or coffee from another's garden; (2) brawling fights, which are not uncommon after drinking a good deal of *pombe* (local banana beer); (3) property borrowed but not returned such as a coffee pulping machine, a saw, a dress; (4) the use of insulting language such as threats, or accusations of witchcraft direct or implied; (5) trespass over boundaries; and (6) disputes arising from marriage. These are so much to be expected that a dispute settler is traditionally appointed before the marriage takes place. The *mkara* together with his wife are trustees of the marriage. He keeps track of bridewealth payments, quarrels, and acts as a go-between and case-hearer. However he will turn to other agencies of dispute settlement if he fails to work out a suitable compromise. Those agencies include the pastor or priest, ward officers, and others.

Conclusions

The analytical questions to which the concept of the semi-autonomous social field is directed are these: First of all, to what extent is a particular social arena autonomous? What matters can it control internally? To what degree is it subject to controls of external provenance? Is all political, legal and economic direction from outside converted to internal purposes whenever possible?

These questions underline the tension between degrees and kinds of central control and degrees and kinds of local autonomy in all large organizations. As a theoretical concept the semi-autonomous social field is as pertinent to advanced industrial societies as to multi-ethnic developing societies. In industrial society the distinction has often been made between "law in the books" and "law in life." Both efforts to codify customary law and colonial interpretations of custom, as well as various ethnographies have managed to produce something like "law in the books" for African societies in which, a century ago, there was only "law in life." There is nothing wrong with this kind of abstraction if it is understood for what it is, a limited and often highly interpreted restatement, not much of an indication of how the ideas and rules were used in practice. Once law is detached from its social context and the ongoing life in which it figures, it can be worked on intellectually and abstractly and treated as part of a system of concepts, principles and rules.

Once legal ideas are separated from life in this way, they become very much like the cultural ideas separated out by some anthropologists as key concepts or central metaphors that are supposed to characterize the systems of thought of particular societies. Clifford Geertz's famous essay on Fact and Law is in this vein. In his hands fact and law cease to be a set of technical categories used by judges in Anglo-American law (Geertz, 1983). They become epitomes of philosophical questions. Of "fact" he asks "what is true," and he sees "law" as defining the moral issue, "what is right." (Never mind the reality that fact and law have quite different meanings in American law.) Geertz then applies these two ideas to three different cultural traditions, Islamic, Indic and Malaysian, to show their differences, choosing words that approximate these meanings in each tradition.

He concludes from the comparison he has set up that "the law … is not a bounded set of norms, principles, values, or whatever from which jural responses to distilled events can be drawn, but *part of a distinctive manner of imagining the real*" (italics mine, Geertz, 1983: 173). For Geertz each legal tradition has its own moral vision and this is encapsulated in certain key terms. He then goes on to elaborate on the referents of certain words in the Islamic (*haqq*), Indic (*dharma*), and Malaysian (*adat*) tradition. He speaks of each variety of "legal sensibility" as powerful and enduring over broad spans of time and place.

I have no doubt that there are varieties of ways of "imagining the real" and that these are culturally variable. But can these be condensed in a few terms? And should one not consider any cultural ideas as temporally variable. The same legal term or concept may have quite different practical applications in different periods or places. One must ask to what extent a particular named set of ideas actually informs action. Or instead, one must ask to what extent a culturally hallowed set of legal terms is simply being referred to in order to legitimate action. That distinction cannot emerge from a discussion of the terms alone.

To find out what legal concepts "mean" they must be examined situationally, as actually used in transactions and disputes and administrative action, in short as they appear in the working through of diagnostic events. That is one of the foundational assumptions of the "case method" of teaching law. Where the concepts are part of an enduring cultural tradition there is all the more reason to ask the question whether these are durable forms with variable practical applications depending upon current circumstances, and whether the ideas by themselves really account for what is done. This raises profound questions about the relation between ideas and social action which are not easily answered in the abstract. Geertz sought to embody three distinct legal traditions in the differences in their conceptions of fact and law, truth and what is right. Cases would surely have given the argument more depth.

The Tanzanian experience suggests that the question whether customary law is durable requires a nuanced answer. It is and it isn't. "Customary law," the residual category that refers to non-state law, continues to command the obedience of many people in the ethnic group. However, as we have seen, its content is not static. It can change over time and be used differently in different circumstances.

In his elegant and succinct 2004 book on Tanzanian land law Professor Fimbo, long the Dean of the Law School at the University of Dar es Salaam writes: "Customary tenure soldiers on despite attempts at its conversion or attempts at its extinction by statute. The state had to cave in on seeing reality. Now customary laws are among bodies of law recognized by the Land Act as well as the Village Land Act" (Fimbo, 2004: 20). These Land Acts setting the latest terms of the law surrounding land holding in all of Tanzania were passed by the legislature in 1999. While there is much that is new in the Acts, they also embody the official recognition of the legitimacy of customary law by the state.

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