

73-96

GLAZIER, Jack, 1943-
CONFLICT AND CONCILIATION AMONG THE MBEERE
OF KENYA.

University of California, Berkeley, Ph.D., 1972
Anthropology

University Microfilms, A XEROX Company, Ann Arbor, Michigan

© 1972

JACK GLAZIER

ALL RIGHTS RESERVED

Conflict and Conciliation among the Mbeere of Kenya

By

Jack Glazier

A.B. (Butler University) 1965
M.A. (University of California) 1968

DISSERTATION

Submitted in partial satisfaction of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

Anthropology

in the

GRADUATE DIVISION

of the

UNIVERSITY OF CALIFORNIA, BERKELEY

Approved:

E. Colson
.....
William A. Dress
.....
Carl G. Raby
.....

Committee in Charge

.....

PLEASE NOTE:

Some pages may have

indistinct print.

Filmed as received.

University Microfilms, A Xerox Education Company

Acknowledgements

In the course of graduate studies, field-work, and the preparation of this dissertation, I have accumulated many scholarly debts which can be acknowledged here but can be repaid only through further anthropological endeavor. Initially, I wish to thank the Department of Anthropology, University of California, Berkeley, for the award of an NIH Training Grant (No. GM 1224) which made possible both my graduate education and fieldwork. My sincere thanks go to Professor George M. Foster, Director of the Training Grant Program during the period of my support; thanks are also due to Mrs. Gerry Moos, secretary for the Traineeship Program and Mrs. Virginia Raphel, graduate secretary, for their assistance in administrative matters during the period of graduate school and research.

In Kenya, I received the kindest cooperation of Professors B. A. Ogot and Alan H. Jacobs, both of the Institute of African Studies (formerly the Institute for Development Studies). To them I am grateful for their assistance in securing my appointment as Visiting Research Associate of the

Institute. The various associates of the Institute including Stanley Mwaniki, Jurg Mahner, and Tom Weisner, both informally and in seminars, provided stimulating criticism and discussion of key ideas presented in this study. I also wish to thank Alan Jacobs for first suggesting Mbeere as a research site.

Once in the field, the people of Mbeere gradually took me into their confidence during the particularly anxious and difficult period of changing land tenure. Patiently, they taught me Kimbeere language and custom. Those who greatly helped me are too numerous to name. In the difficult days of struggle with a new language and new way of life, my wife and I were aided for brief periods by the following assistants: Steven Meruti, Jonathan Mwaniki, Gerald Njiru, Dunstan Mugo, Catherine Ngungi, Caramelina Ciaina, and, for a longer period, David Kariuki.

During the writing up stage, I was assisted with helpful criticism from Professors William A. Shack and Carl G. Rosberg, Jr. To Elizabeth Colson, I owe a special debt of gratitude for her numerous letters of comment, criticism,

and encouragement during the period of fieldwork.

Both in the research and writing of this work, she brought to bear criticism that was both cogent and penetrating, enabling me to develop and refine major points of argument.

Just before my departure from Kenya, David Brokensha arrived to evaluate the Special Rural Development Programme for Mbeere. It was a welcome opportunity to talk with another anthropologist on the spot about matters which had consumed my attention for a year. As I was writing up my material, frequent exchanges, especially concerning land and land tenure, between Brokensha and myself were very profitable.

I also wish to thank Bjorn Moe and the Eastern Province Planning Team for permission to reproduce their excellent maps of Mbeere.

My wife, Phyl, experienced with me the joys and frustrations of living and doing research in rural Kenya. She actively participated in the research, particularly in those areas of special concern to Mbeere women who, according to Mbeere custom, did not wish to discuss such matters with a man. In addition, she undertook a collection of

Mbeere folklore, which I have drawn upon, in pursuit of her own scholarly interests in that field. Most especially, I am grateful to her both for criticism of my writing and ideas and for her own numerous insights into Mbeere life. She brought to the field-work the creativity of an artist and the discernment of a literary critic and, by so doing, helped me to see relationships which otherwise might have escaped me.

Finally, I wish to thank Oberlin College for financial assistance in the final typing and duplication of this manuscript.

Jack Glazier

Oberlin, Ohio

May 26, 1972

Note on Kimbeere/Kikuyu
Orthography and Pronunciation

The transcription of Kimbeere words and texts follows the standard orthography of Kikuyu as it appears in Benson's Kikuyu-English Dictionary (1964). Kimbeere and Kikuyu are very closely related, separated for the most part by phonological and minor lexical differences; grammatical differences between the two languages are not significant. A high degree of mutual intelligibility exists between Kimbeere and Kikuyu.

A seven vowel system characterizes both Kimbeere and Kikuyu: a, e, i, o, and u appear and, in addition, two other forms, ĩ and ũ, occur. These vowels are pronounced approximately as follows:

- a father
- e rent
- i greet
- o ought
- u boot
- ĩ bay
- ũ boat

Consonant sounds are similar to those in English, but a brief word is necessary concerning the Kimbeere/Kikuyu c, th, and ng'. C is normally pronounced in Mbeere as English sh, although one may hear a ch version in parts of Kikuyuland. Th is

usually voiced as in that, but again, voiceless th may occur. Finally, ng', the velar nasal, is pronounced as the ng in singer, and it should be distinguished from initial ng in Kimbeere pronounced virtually as one sound, the hard g of get.

Phonetic differences within Kimbeere exist between administrative Locations. To the north, in Evurore Location, for example, v is more prevalent than b, although the situation is reversed as one moves southward through Nthawa and into Mavuria (official spelling). In the latter area, people are more apt to say kabiũ (knife), mũbirĩga (clan), etc. People in Evurore, on the other hand, tend to say kaviũ, mũvirĩga, etc. My fieldwork was carried out in both Mavuria and Evurore Locations, with greater time spent in the latter area. For that reason, Kimbeere terms which appear in this work will be as they are used in Evurore, except in those instances where I give Kimbeere texts recorded in Mavuria.

Finally, official government spelling of the group and territory is Mbere, but the people themselves pronounce the word by drawing out the middle vowel, as in "Mbeere". I have selected the

latter spelling. In Facing Mt. Kenya, Kenyatta's one brief reference to Mbeere uses that form. I am using the word Mbeere to refer to the territory and to the people, either in the singular or plural. The Bantu prefixes, mu- and a-, referring to one Mbeere or to two or more, respectively, have been dropped for convenience. I do, however, use the term Kimbeere in reference to the language of Mbeere.

LIST OF MAPS AND TABLES

Maps

1.	Mbeere in Relationship to the Lands of the Kikuyu, Embu, and Meru	21
2.	Population	302
3.	Locations and Sublocations	303
4.	Altitude	304
5.	Land Adjudication	305

Tables

1.	Comparative Censuses of Mbeere 1939-69	27
2.	Incidence of Polygyny	62
3.	Multiple Garden Holdings	205
4.	Number of Registered Land Cases Mbeere Divisional Court January, 1959 to August, 1970	237
5.	Land Disputes in Nguthi Between Groups Within a Moiety and Between Groups From Different Moieties	270

TABLE OF CONTENTS

Acknowledgements	i
Note on the Orthography and Pronunciation of Kimbeere/Kikuyu Terms	v
List of Maps and Tables	viii
I. INTRODUCTION	1
The problem, its investigation, and the research setting	1
a) The problem	1
b) The investigation of the problem and the research setting	15
The ethnographic context	18
The administrative organization of Mbeere	23
Physical environment, population, and economy	25
Ethnographic and historical research in Mbeere	29
II. MBEERE SOCIAL ORGANIZATION	32
Moieties	32
Descent and descent groups	40
Parish and homestead: organization and composition	50
Marriage and bridewealth	60
The age organization	72

III.	CIRCUMCISION CEREMONIAL	84
	The physical operation in its historical setting	85
	The ideology of circumcision	88
	Changing age at circumcision	106
	The ceremonial complex of circumcision	110
	a) Opposition of the parental descent groups of the initiate: a processual view	112
	b) Secular sources of conflict expressed in the circumcision ceremonial	121
	c) One Mbeere circumcision: an illustration	128
	d) Men vs. women	147
	Summary and conclusions	154
IV.	THE OATH IN LITIGIOUS CONFLICT: AN APPEAL TO SUPERNATURAL SANCTIONS	159
	An oath-taking procedure: litigation and ritual	169
	Conclusion	197
V.	LAND AND LITIGATION	202
	Rules of land tenure	203
	Land consolidation in Central Kenya and its delayed extension to Mbeere	222
	The anticipation of land consolidation, increasing land disputes, and the failure of the oath	231

a) The process of land consolidation in Mbeere	231
b) The anticipation of land consolidation and changing land disputes	233
c) The use of the oath in settling land disputes	240
d) Analysis of recent land disputes and the ineffectiveness of the oath	249
e) Recent land disputes: a case study from Nguthi	259
VI. CONCLUSION	292
Appendix	301
Bibliography	306

CHAPTER I

INTRODUCTION

The problem, its investigation, and the research setting

a) The problem

Studies of conflict in the context of ritual and ceremonial are well established in anthropology and have particular relevance to the African field; most notably Gluckman (1955, 1963, 1965) and Turner (1957, 1968), as well as Fortes and Evans-Pritchard (1940), Evans-Pritchard (1948), and Wilson (1957, 1959) have examined the role of conflict in ritual and ceremonial. Conflicts expressed in rituals studied by these scholars are of one particular kind -- those emerging from a conflict of values or social principles. Ritual action is seen as temporarily harmonizing relationships by calling on people to affirm their collective loyalties to commonly held interests or values; conflict is thus temporarily masked under a veil of consensus. Gluckman has distinguished conflicts which can only be submerged in ritual from disputes which can be settled through secular, judicial processes. Thus he

reserves the term "conflict" for discrepancies between structural principles, values, loyalties, and moral duty and self-interest. These he sees as leading to redressive ritual (1965:246-247); Gluckman then utilizes terms such as quarrel, strife, and dispute for tensions whose resolutions lie in secular judicial or legal proceedings (1965:109). I shall term this latter category of disputes litigious or legal conflict.

This study concerns itself with the analysis and comparison of two types of conflict in their relationship to ritual and ceremonial activity. The theoretical framework derives from Gluckman's work in this field. The first type of conflict I term structural conflict for it arises from individuals' adherence to legitimate but contradictory values or principles. The conflict lies within the very ordering of society. Because people who are in such conflict may each refer to socially acceptable but mutually contradictory values (which lead the actors into opposition), litigation or other forms of secular dispute settlement cannot be used to resolve the conflict; each individual acts in a socially sanctioned manner so neither is legally guilty of wrongdoing. Rather, neither is guilty, but their

adherence to contradictory social values is the source of interpersonal and social conflicts, leading them into disagreement. Or, an individual may face claims upon him that are mutually conflicting, yet imperative; he is then lead into inevitable wrongdoing, no matter what his course of action.

Structural conflict is thus endemic in a society and leads individuals and groups into unavoidable strife. Temporary mitigation of structural conflict occurs in ritual and ceremonial activities which bring together those individuals and groups (in conflict) on the basis of interests which they share. As they collectively affirm loyalty to shared interests, the underlying conflicts which divide them on other secular occasions are for the ritual moment expressed, then shrouded, only to emerge once again during social crises, to be again expressed and submerged in further ritual action.

The second type of conflict analyzed in this study I term litigious conflict (here I depart from Gluckman's terminology). Unlike structural conflict, litigious conflict arises when parties in dispute make reference to single social principles or values which themselves are not contradictory. Legal

Mechanisms may then be brought into play to adduce evidence and to resolve the controversy. Litigious conflicts, in which one party may emerge as the winner, arise over theft, adultery, land holding, or in any dispute over the control of scarce resources or over a violation of customary law. Litigious conflicts in Mbeere traditionally give rise to ritual activity, namely, oath-taking. Through oath-taking rituals, the Mbeere invoke mystical forces both to punish litigants who lie and to effect reconciliation. In oath-taking rituals, the actors collectively appeal to the same sets of values as legal procedure is brought to bear on the schism. The analysis of oath-taking rituals which follows represents a point of departure from Gluckman's approach to conflict and ritual; although litigation is referable to a single set of social principles or values which themselves are not mutually discrepant, the Mbeere nonetheless utilize ritual action as an important part of dispute settlement, bolstering secular authority with mystical sanctions. Gluckman has argued that judicial action, in contrast to redressive ritual, develops when values and social principles them-

Selves are not incompatible. In this study, I place within the scope of ritual action the oath-taking procedure so vital to traditional Mbeere legal procedure and dispute settlement. That is, litigious oath-taking ritual is not generated by structural conflict, yet it affirms unchallenged social values to settle legal dispute and to effect reconciliation of antagonists.

To elaborate briefly the structural conflict which so much of the initiation plays upon, it is important at this point to summarize the nature of Mbeere initiation ceremonial and the secular issues which underlie it. The initiation of males and females occurs as part of an all-night ceremonial culminating in a circumcision operation at dawn. The ceremonial both mimes and masks social conflict as the descent groups of the initiate's parents act out mutually agonistic feelings until dawn, when they collectively sanction the actual operation and submerge their differences temporarily. The agon between wife-givers and wife-takers, as well as between men and women, is an exaggeration of accepted secular relationships. The initiation not only celebrates the status

change of the youth but also the relationships between the participating groups. Although at particular points the ceremonial stresses antagonism between groups through exaggeration of secular relationships of dominance and submission, people unite to accept the legitimacy of those relationships defined by mutual opposition. The initiation above all brings into focus the relationships and obligations about which people agree. By being submissive and amenable to demands, wife-takers in effect accept the moral order and admit the social superiority of wife-givers, although they do not always act in terms of that moral order in everyday life. Mbeere recognize the initiation ceremonial as a period of license. The agonistic interaction is often displayed in song and verbal abuse recognized as wholly inappropriate in daily activity. For example, in the ceremonial relationship of men and women (when they are not acting as components of wife-giving and wife-taking groups), exaggeration of their secular roles culminates in limited role reversal; women can act aggressively, use sexual terms, and otherwise behave in a manner normally proscribed for them and most often

associated with men. Men accept the aggressiveness of women, and from each group can emerge one or two transvestites; women's efforts to "become" men during a period defined as liminal reiterates and sanctions the established secular order. Reversal is at once a release from and a reinforcement of the normal order.

The secular issues, which stimulate so much of the initiation ceremonial, are rooted in bride-wealth exchange and affinal relationships. Since a group of wife-givers has a set of residual rights in a woman and her children as long as bridewealth for her remains unpaid, the extension of bridewealth payments justifies a woman's descent group making demands on her husband for various forms of compensation. Initiation is one occasion for those demands, expressed in a spirit of antagonism. The agonistic display between descent groups at initiation arises from their mutual interest in the initiate and his or her mother. Her descent group aggressively demands hospitality from her husband (and his agnates) as they brag about their beneficence in conferring their daughter and her reproductive capacities on him and his descent

group. They emphasize their prerogative, unchallenged by the initiate's agnates, to prevent the initiation or withhold their blessing from the initiate. Yet the initiation always proceeds; I heard of no instances in which an initiation once underway was ruined by a recalcitrant wife-giving group. The conflicts at the center of the ceremonial focus on the parents of the initiate and their proper relationship to their agnates and affines.

What are the agnatic and affinal responsibilities which lead people into such conflict? In Mbeere, as in other patrilineal societies, unilineal descent groups are perpetuated by women who themselves are not members of those groups (owing to the rule of clan exogamy). At marriage, a woman must leave her parents and agnates at her natal home and join her husband and his patrilineal kinsmen. Although a woman continues to maintain strong emotional ties to her natal home and kinsmen, especially to her mother, these loyalties are no longer exclusive, for she assumes new domestic obligations to her husband and his agnates. Such legitimate loyalties may clash on occasion. For

example, a woman's visit to her natal home may be fraught with tension. Although she may wish to visit her parents frequently, her husband fears that her father will use the opportunity to coerce her to remain at home; in this way the father can exploit her prolonged presence as a lever to force her husband to make bridewealth payments. Husbands whose bridewealth payments are incomplete or delinquent are especially wary of their wives' visits home. Often such visits are conditional on the wife's agreement not to spend the night. Yet women are expected to be both loyal wives and dutiful daughters, which effectively requires their submission to the demands of two distinct agnatic groups. In bridewealth controversies, particularly, a woman possibly faces contradictory demands from her father and brothers seeking her return and from her husband trying to maintain the marriage. In other disputes between the descent groups of a husband and wife, a woman is expected

to support unequivocally her husband's group while maintaining amicable relations with her own agnatic group.

Principles of patriliney and virilocality thus introduce the potential for role conflict for a married woman seeking to fulfill the contradictory demands of two agnatic groups. Gulliver has remarked that:

The difficulty [role conflict] is largely avoided where a woman relinquishes her membership of, and rights and responsibilities in, her natal patrilineal groups (i.e., those of her own father and brothers), and is incorporated as a full and permanent member of her husband's groups. . . . If, however, a married woman retains formal membership in her natal group, and continues in some degree to exercise rights and obligations there, whilst she is progressively involved with her husband's and sons' group, then the area of ambiguity is larger, and the possibilities of role conflict and divided loyalties are likely to be important in their effect on her social activities (1963:141).

In Mbeere the possibility of role conflict for women is present, although women are expected to relinquish rights in their natal agnatic groups and to marry into other agnatic groups for life -- the latter practice supported by the levirate and widow inheritance within the husband's lineage. But a woman never completely relinquishes membership in her agnatic groups, although

she progressively involves herself in the affairs of her affinal group. Protracted bridewealth payments insure at least a jural interest of a woman's agnates in her, and she retains emotional ties to her mother and patrilineal kinsmen. Her father has the recognized right of compelling her to leave her husband if the father is dissatisfied with the amount or frequency of bridewealth payment. And for her own part, a woman seeks refuge at her natal home should she find life with her affines oppressive. A woman's lifelong membership in her natal agnatic group coupled with increasing involvement in her husband's agnatic groups creates a degree of ambiguity and potential conflict; as I shall demonstrate, the initiation ceremonial presses the theme of ambiguity through song before ultimately deflecting attention to the manifest purpose of the celebration, the operation itself.

Just as women may be the center of conflicts concerning divided loyalties, so are men the center of similar conflicts between equally just but contradictory demands or between moral duty and perceived personal self-interest. A man is morally obligated to pay bridewealth to his affines; very few men, even under the influence of Christianity, openly challenge

the legitimacy and moral imperative of bridewealth exchange. Yet each man in a subsistence economy easily incurs more financial and material obligations than his resources allow him to meet. Material demands from numerous kin, as well as personal aspirations, easily outstrip a man's capacity to satisfy various obligations. One must decide where to allocate his limited resources, requiring the temporary neglect of some obligations. Rather than make a bridewealth payment, a man may decide to use the funds to pay school fees for his children or younger siblings. Or he may choose to put a metal roof on his house rather than pay his wife's father what he is believed to deserve. Others may simply evade payment and hope both that litigation can be avoided and that they will somehow escape their responsibilities. To be sure, people are very aware of the potential for conflict to develop over bridewealth. They may enter legal disputes over the amount owed, when it should be paid, and the like. Here reference is made to a set of commonly shared values about the legitimacy of bridewealth. Therefore there can be no litigation over the legitimacy of the principle of bridewealth itself; nor can litigation settle the

structural conflict between the moral duty to pay bridewealth and the moral duty to utilize those resources for one's agnates and one's children. It is this structural conflict which mobilizes groups of wife-givers and wife-takers at the initiation ceremonial.

Throughout this study, I shall follow the distinction between ritual and ceremonial drawn by Wilson (1957:9) and Gluckman (1965:251). Ritual is a religious act designed to secure a blessing of the social order through the invocation of mystical forces; ceremonial, on the other hand, is a formalized activity of either religious or secular significance in which the mystical element is not present. Hence, ceremonial, which lacks mystical elements, cannot be used to bless the social order. Oath-taking is thus a ritual act, for it seeks to effect harmony in the social order through mystical powers. Initiation, on the other hand, although it contains within it ritual actions such as the blessing of the initiate, is largely devoid of mystical connotations; its performance is not seen as a way of securing a blessing for society. I thus refer to initiation as a ceremonial act.

People are so aware of bridewealth quarrels and have accepted them to such an extent as routine that it is impossible to submerge completely the conflicts to achieve a blessing. Mbeere initiation cannot be employed to reduce real tensions between participants, who are quite aware of the real threat of the conflicts they enact. Initiations are sometimes the scene of sharp verbal exchanges and physical fights, which punctuate the formalized singing and dancing. Gluckman, citing Lienhardt's work, explains the ceremonial nature of the installation of the Anuak headman in these terms (1965:252-253). The ceremonial confirms rather than mystically blesses the secular order.

The initiation ceremonial creates a stage for the dramatization of conflicts through song, dance, and formal action. Just as the artifice of the stage requires the coordinated efforts of actors, so too does the ceremonial demand a degree of cooperation and consensus for a proper performance, despite the themes of conflict enacted. The ceremonial must be planned for a given time, beer and food prepared, affines and neighbors invited. And in the open demonstration of strife at the ceremonial, people agree to disagree.

They are united in their efforts to enact conflict and, by so doing, to bring it under control; they are made aware of the principles which create social relationships while at the same time they make explicit the factors which threaten those relationships.

Initiation ceremonial and litigious oath-taking ritual are shaped by the conflicts which disrupt the flow of social life, although the nature of the conflicts generating those activities varies. Both represent collective efforts to control conflict; the initiation ceremonial emphasizes the moral imperatives of affinal and agnatic obligation, and their acceptance enables a group of wife-takers to perpetuate itself through the creation of new adult members. The secular relationship of affinal groups is both conjunctive and disjunctive, and those complementary features of their relationship are emphasized in the ceremonial. By granting the demands of the wife-givers, the wife-takers accept the justice of those demands and the rules governing affinity; yet in the ceremonial delay in meeting those demands and in the attendant agon, the wife-takers create a model of real life bridewealth exchange with its numerous delays due to the operation of other moral principles leading wife-takers to meet

other obligations. Oath-taking rituals in litigation, on the other hand, seek to control conflict by affirming non-contradictory values; oaths are taken periodically as people fail to conform to ideal rules of conduct which must be ritually upheld.

b) The investigation of the problem and the research setting

My wife and I lived in Mbeere (Embu District) from the latter part of July, 1969 through mid-August, 1970. Our first home was at Nyangwa in Mavuria Location where we lived for one month before moving to Kanyuambora, Evurore Location, for the remainder of fieldwork. During the first month, I acquainted myself with the area, made important contacts with local people, and began to study the Kimbeere language. I also made inquiries into many aspects of Mbeere history and social life and attended male and female initiations in Mavuria Location. August is the most important month for initiations, which are the major extant public ceremonies.

In Evurore Location, my research focused on the Kanyuambora community in Nguthi Sublocation, but I did not restrict myself to that geographic domain. From time to time, I returned to Mavuria Location

(Kithunthiri, Mbita, and Kirima Sublocations) to gather census materials and to check important points learned in Evurore Location, thus assessing the extent of unity and diversity between northern and southern Mbeere. Moreover, I visited other Sublocations of Evurore to investigate markets, or to attend events of importance I was aware of, such as weddings.

Just as I discovered that initiation is a focus of Mbeere interest especially during the month of August, so too did I find that the imminence of land adjudication, the settlement of land disputes through a ritual oath, and land consolidation dominated Mbeere attention, especially in the relatively richer agricultural areas. On my arrival in the Kanyuambora area, which is certainly one of the more productive areas of Mbeere, people of the Sublocation suspected that I was from the government and that I would begin the process of land adjudication and consolidation. The process of changing land tenure has introduced a period of great insecurity, for people fear that they may be deprived of good land by unscrupulous neighbors or outsiders. Thus it was not surprising that I was initially regarded with great suspicion; it took several months to dispel anxiety about my role there.

Mbeere preoccupation with the land issue intrigued me, nonetheless, and I decided to study this problem if possible. After I posed a number of early and therefore poorly timed questions concerning land, I decided to acquire information about land indirectly and only later to pursue the question more actively. My indirect approach was facilitated by court records of land cases in the Kanyuambora area; those records acquainted me at an early period with important clan leaders, issues, disputes, and local history. Thus I did not need to pursue these questions with informants when I had not yet won their confidence. Subsequently, I interviewed intensively about the land issue when informants cooperated in my investigation.

Before undertaking research in Kenya, I studied Swahili for six months, expecting to do a study in an area of Kikuyuland where Swahili is generally spoken. In Mbeere, Swahili is not a sufficient field language, for it is spoken by only those people with some education or with labor experience in towns or other areas outside of Mbeere. The category of Swahili-speakers included mostly men between the ages of twenty and sixty. In Mbeere, very few women or children know Swahili, and many men do not know it

well. But my study of Swahili facilitated learning Kimbeere, a related Bantu language. Throughout the fieldwork, then, I used Swahili with some informants, although I employed field assistants who also acted as interpreters from Kimbeere to English. During the last three months of fieldwork, I had grasped Kimbeere sufficiently to conduct short interviews in the language. Meanwhile, I continued speaking Swahili with some informants and English with educated people, e.g., local teachers, some sub-chiefs, and students.

The ethnographic context

The Mbeere of Embu District, Kenya, are one of a number of groups collectively referred to as the Northeastern Bantu. Among this large cluster of peoples inhabiting the periphery of Mt. Kenya, the Kikuyu and Kamba are the largest in number and the best known in the ethnographic literature. Smaller related ethnic groups include the Ndia and Gicugu of Kirinyaga District (formerly a part of Embu District), the Embu and Mbeere, who together inhabit Embu District, and finally the Meru groups including the Tharaka, Chuka, Mwimbi, Imenti, Igembe, Tigania, Igoji, and Muthambi, all of Meru District. All of these groups practice a

mixed economy of herding and cultivating, although the major reliance on one or the other form varies between groups and may indeed vary within a single group, as it does within Mbeere. The Northeastern Bantu groups share significant social, cultural, linguistic, and historical features, although equally significant differences define each group as a distinct ethnic unit.

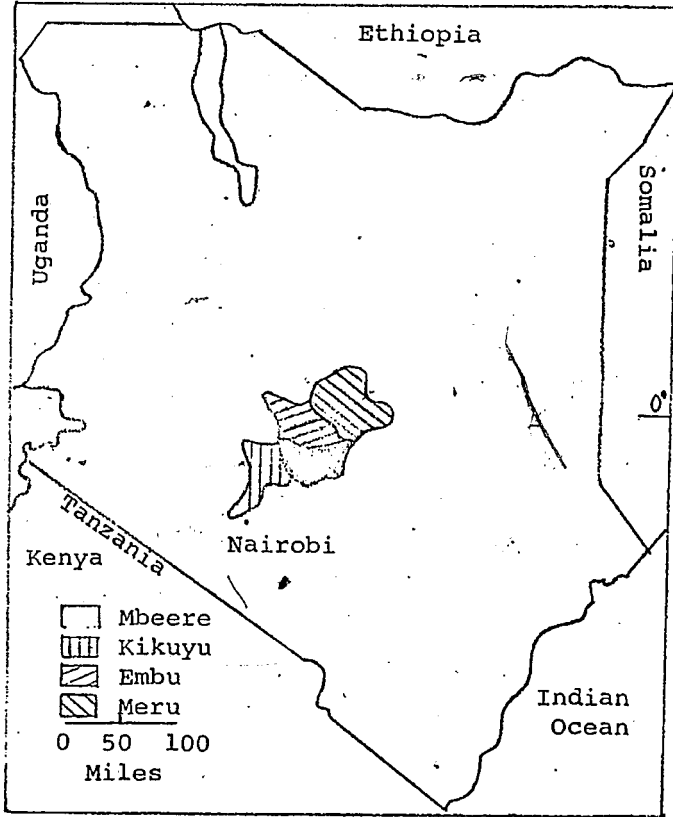
The name "Mbeere" derives from the ordinal number, mber, meaning first. The people refer to themselves as the "first people" (andũ a mber), and they believe that they were the first people to occupy their present land. According to a legend explaining Kikuyu origins, recorded by Lambert (1950:19-20), Mbeere is the point of dispersion of the Masai, Kamba, and Kikuyu. In the legend, a man called Mumbere, after travelling westward, reached the present land of Mbeere, where he married. Mumbere had three sons, to whom he presented a spear, a bow and arrow, and a digging stick, with instructions to choose from among the three items. The son choosing the spear became the father of the Masai, and the sons choosing the bow and arrow and the digging stick became the fathers of the Kamba and Kikuyu, respectively. In Mbeere I heard

another version of this story, as well as completely different etiological traditions which did not mention a founding ancestor. The legends reflect ethnic affinities between the Northeastern Bantu as well as important links to Masai.

Another very important origin legend is told both by the Meru and the Mbeere, although in altered fashion among the latter. The Meru claim Mbwa -- a point somewhere on the East African Coast -- as their place of origin. Their migration to Meru, according to the story, required crossing a body of water. Those groups crossing during the daytime became the white clans, those crossing at sunset became the red clans, and those crossing at night became the black clans (Lambert 1950). This tripartite divisions of clans by color recognized throughout most of Meru is not found in Mbeere. Some Mbeere mention a place on the Coast from which the Mbeere migrated; it is called either Mbwa or Mbwari, but I found little elaboration of the story. Significant in these various tales is a purported coastal origin of the various groups and the likelihood that the Northeastern Bantu groups are part of a great inland migration from the East African Coast. The migration to Mbeere most

MAP 1

Mbeere in Relationship to the
Lands of the Kikuyu, Embu, and Meru



likely occurred in successive waves from different directions; some Mbeere clans, for example, find their origin in Tigania (Meru) while others point to the southwest, in the area of Thika, as their dispersion point. Lambert (1950) reports a number of Northeastern Bantu origin tales and attempts to analyze and date the various waves of migration. The precise reasons for the migration, the notable influence of the Masai on these groups, and the process and time period of ethnic differentiation of the Northeastern Bantu are, however, outside the scope of the present work.

The administrative organization of Mbeere

Mbeere is integrated into the national governmental structure of Kenya through a hierarchy of administrative units introduced during the colonial period. Embu District is part of the Eastern Province, and those two units are headed by a District Commissioner and Provincial Commissioner, respectively. Embu District is then divided into two administrative divisions -- Mbeere Division and Embu Division -- each corresponding for the most part to the territory of the ethnic group of the same name living within the division. A division is led by a Divisional Officer; in Mbeere his office is located at the Divisional Headquarters in Siakago, Nthawa Location, also the site of the Mbeere Divisional Court.

Mbeere Division is further divided into five Locations, each led by a chief. A Location is in turn divided into Sublocations; the Sublocation is led by a subchief (headman). Both chiefs and subchiefs are salaried, elected officials. In the colonial period those offices were appointed. Neither the chief nor the subchief had a precise counterpart in the traditional, precolonial society; when those offices were first established by the British, noted war leaders received

the first appointments. Currently, chiefs and sub-chiefs take responsibility for collecting taxes, maintaining order with a police force at their disposal, and supervising or assisting local dispute settlement brought to their attention by elders of the communities in their domains.

The three oldest Locations of Mbeere -- Evurore, Nthawa, and Mavuria -- were established early in the colonial period. The population of those Locations, according to the 1969 Kenya National Census is 45,297; the total area is 545 square miles. Since Kenyan Independence, two new Locations -- Mbeti and Mwea -- have been added to Mbeere Division. Mwea is separated from the rest of Mbeere by the Thiba River and Mbeti comprises some areas formerly part of Embu Division. In parts of Mwea and Mbeti, Mbeere people are a minority; Embu Town, for example, now part of Mbeere Division, is populated mostly by people who are ethnically Embu. Similarly, many Kamba people have settled in Mwea Location. I would thus like to make clear that general remarks concerning Mbeere refer to its oldest Locations, unless otherwise specified.

Physical environment, population, and economy

Lying in the southeastern part of Embu District which itself is southeast of Mt. Kenya, Mbeere is ecologically varied. Parts of the Division are capable of supporting cash crops such as cotton and tobacco and demonstrate greater economic potential than the desiccated plains of the Tana River, which forms part of the eastern and southern boundary of Mbeere. But despite this potential, many of the streams running through Mbeere dry up seasonally, thus contributing to chronic water shortages in many areas. Just as the streams frequently run dry, so too do the rains fail more than occasionally. Famine has been a recurrent theme in the life of the people.

Large areas of Mbeere are stony and sandy, covered by dry grasses, scrubby trees, and bushes. Despite threats of water shortage and tsetse fly, the lower, drier areas have been the major pastoral loci in Mbeere. These occur along the margins of the Tana River, from where the land rises to over 5000 feet on the slopes of the highest hills in Mbeere -- Kiang'ombe in Evurore Location and Kianjiru in Mavuria Location.

Brokensha suggests that three ecological zones occur in Mbeere. The first zone, averaging 3600 feet in

elevation, is the most fertile, suitable for a range of crops including tobacco; it receives about 40 inches of rain per year. The second zone lies between 2600-3600 feet and receives an average of 25-40 inches of rainfall annually. The second is not as fertile as the first zone, although it is amenable to cotton growing. The last zone includes those areas below 2600 feet and receives less than 25 inches of rain per year; it is suitable only for herding (1971:1).

Despite the relative poverty of Mbeere, compared to Kikuyu and Embu (Division) areas of Central Kenya, the population has steadily increased as enumerated for the four periods on the following table. Some variation appears in the size of Mbeere Locations after 1962. At Independence, boundaries between Locations were adjusted and two new Locations were added to Mbeere Division. As I explained before, however, I am dealing with only the three oldest Mbeere Locations.

Mbeere economy is mixed, although the relative emphasis on cultivation or herding varies with the ecological zone. Major crops in Mbeere include millet, sorghum, varieties of beans, cassava, arrowroot, maize, sugarcane, bananas, and mangoes; the latter three

TABLE 1

Comparative Censuses of Mbeere 1939-69

	<u>1939</u>	<u>1948</u>	<u>1962</u>	<u>1969</u>
Mbeere				
area	591 sq. mi.	591	591	545
pop.	23,314	26,863	38,262	45,297
density	39.5	45	66	83.1
Evurore				
area	134	134	134	157
pop.	8,203	10,475	13,277	16,495
density	61	78	99	105
Nthawa				
area	126	126	126	143
pop.	5,511	6,913	9,272	11,085
density	44	55	74	78
Mavuria				
area	331	331	331	245
pop.	9,600	12,390	15,713	17,717
density	29	37	48	72

Sources: Embu District Annual Reports 1939, 1948
 Kenya Population Census, 1964
 Kenya Population Census, 1970

survive only in upper zones, about 3500 feet in elevation. The dominant mode of cultivation requires only simple hand tools such as the iron jembe (hoe), panga (Kikuyu long knife), or digging stick; production is almost exclusively for subsistence. Relatively few cultivators engage in cash-cropping or make use of animal-drawn plows.

With an overall population density of 83 people per square mile, Mbeere contains large uncultivated and unpopulated areas. But in the richer agricultural areas lying in excess of 3500 foot elevation, population density increases significantly over the average for Mbeere as a whole.

Two rainy seasons occur -- one from March through May and the other from October through part of December. Prior to the rains, a cultivator begins the preparation of his fields for crops by clearing away bushes that have sprung up; if the field is reclaimed from fallow or is being claimed for the first time, the cultivator may clear it through burning, although that practice is condemned by the government as leading to soil erosion. Men clear the fields, although both men and women participate in cultivation as well as in the ensuing weeding and harvesting activities.

In addition to reliance on subsistence crops and livestock, Mbeere once engaged in hunting. From an early age, Mbeere males still learn the use of bow and arrow, yet that skill does not provide any significant food supply. Men and boys primarily use archery skills today in killing monkeys and squirrels (which are not eaten) and other animals which ravage food crops. With increases in population, edible game has been greatly depleted in many areas of the Division, and government opposition to hunting further discourages people from that pursuit.

Ethnographic and historical research in Mbeere

An extensive literature concerns the Kikuyu and Kamba who, at an early period, were studied by the trained ethnographers Routledge (1910) and Lindblom (1920), respectively; very little, however, has been written about the related Mbeere, Embu, and Meru. Mbeere is mentioned briefly in a variety of books focusing either on the Kikuyu or Kamba, or on the peoples of Kenya, generally (e.g., Orde-Brown 1925, Kenyatta 1938). H. E. Lambert, for many years a government official in Kenya (District Commissioner of Embu and Meru), conducted research in Mbeere for a

brief period in the 1930's. He published his results along with results of other research into the Kikuyu and related peoples, in Kikuyu Social and Political Institutions (1956). Lambert unfortunately gives no details about informants or locations where he worked within Mbeere, and his account is obscure. Later, Father Guido Baggio, a long-time resident of Mbeere, briefly assisted Father Bernardi in the latter's researches into the Mũgwe, a very important ritual figure among the Meru groups, who has no counterpart in Mbeere (Bernardi 1959). Baggio unsuccessfully sought a link between the Mũgwe clan in Mbeere and the Mũgwe of the Meru peoples; he also investigated a well-known group of Mbeere medicine men residing at Uvariri, on the northern slopes of Mt. Kiang'ombe in Kathera Sublocation, but his work was not published independently of Bernardi's. More recently, Stanley Mwaniki of the University College, Nairobi, has conducted research into the history of the peoples of Embu District, including the Mbeere. Satish Saberwal (1967) also makes reference to the Mbeere in his study of the Embu people. Mbeere thus was not the focus of intensive social anthropological inquiry until the research on which the present work is based. Just

prior to my departure from the field, David Brokensha began anthropological research in Mbeere in connection with the Special Rural Development Programme; he completed his investigations in August, 1971.

CHAPTER II

MBEERE SOCIAL ORGANIZATION

This chapter deals with Mbeere social organization generally. It serves as background to subsequent chapters which examine in depth the problem outlined earlier.

Moieties

All Mbeere clans are classed in one or the other of two moieties, each comprised of approximately half of the number of clans. The Mbeere have no distinct word for moiety; they use the word clan (mūviriga) to refer both to a single clan and to one or the other divisions which I call moieties.

The moieties are named -- Thagana and Irumbi in Evurore Location, Mūruri and Ndamata in Mavuria Location. Other moiety names, e.g., Ngua and Gatavi, are known but infrequently used. The names have some metaphorical significance. Thagana, for example, is the Kimbeere name for the Tana River, the largest river in Kenya, which forms part of the southern and eastern boundary of Mbeere. The Tana carries other rivers and streams which flow into it, informants

explain, just as the Thagana moiety carries within it its constituent clans. Irumbi, on the other hand, means mist or clouds, referring specifically to the clouds around Mt. Kenya, the major landmark northwest of Mbeere. Those clouds, members of Irumbi moiety explain, make rain, and are thus necessary for the existence of the Tana River (Thagana), implying the superiority of Irumbi over Thagana. Mūrūri, the counterpart of Thagana in Mavuria Location, is the name of a large, hardy tree; one informant explained that the Mūrūri moiety thrives as does the tree for which it is named. No informant could elaborate for me the significance of the name Ndamata. The existence of differing sets of moiety names is one example of strong regional tendencies within Mbeere.

Various sketchy oral traditions explain the origins of Mbeere clans and moieties. Commonly, informants say that Thagana and Irumbi were two men whose daughters founded the constituent clans of each moiety. The attribution of the founding of strongly patrilineal Mbeere clans to females is paradoxical; it can be seen as a mythic counterpart to redressive ritual. Just as the latter serves to disguise conflicts between social principles and values which

lead people into strife, so too may myth serve to reconcile contradictions (Levi-Strauss 1967:202-228). Thus the belief that the clans were founded by women can be interpreted as rationalizing the fact that women perpetuate patrilineal clans other than the ones into which they are born.

My initial hypothesis concerning the moieties was that they might be the basis for a marriage system organized on the principles of symmetrical exchange. That notion was not confirmed either by informants or by marriage statistics. Informants insisted that they could marry women from either their own or the opposite moiety, although some individuals believed that recent tensions between groups of different moieties over the land issue could make bridewealth negotiations between these groups very difficult. Nevertheless, a sample of 421 marriages, both past and present, which I drew from Evurore and Mavuria, revealed that 129 unions were contracted between people of the same moiety and 232 between people of opposite moieties. This finding is skewed, I think, by the disproportionate representation of Irumbi people in one neighborhood in the sample, thus greatly increasing the probability of marriages within.

that moiety. However, in Kanyuambora, an area settled within the last forty years by migrants from multi-clan areas of the Sublocation, data on 112 marriages showed that half were contracted between people of the same moiety and half between people of opposite moieties.

The importance of the moieties in Mbeere lies in their classificatory function, enabling clans to unite ideologically into rather loose ongoing alliances. Mbeere say they turn to people of other clans within their moiety for support and assistance. Moieties then also emerge as political groupings, for they assume significance in situations of social conflict. Moiety unity is not expressed in the idiom of kinship; I never heard individuals addressing one another by kinship terms, simply on the basis of common moiety affiliation.

To provide a system of alliances for its constituent clans, each moiety requires some degree of internal unity; that unity is not insured simply by clans identifying themselves together under a single rubric. Certainly, unilineal groups and individuals within a single moiety engage in disputes with each other, and those disputes threaten moiety solidarity.

Each moiety, then, attempts to overcome internal divisiveness through a ritual oath known as "drinking charcoal" (kūnyua makara). The significance of that name typifies Mbeere analogical reasoning and ideas concerning homeopathic magic. Thus one informant explained that, although no charcoal is consumed in the oath, the oath unites different clans together as a single moiety, just as a piece of charcoal is a single entity despite its potential division into numerous parts.

The ritual oath of the moiety presents an excellent example of how ritual activity may be employed to mask basic conflicts between moral duty and self-interest. Inevitably, people of the same moiety disagree and quarrel over such matters as bridewealth, land, kinship obligations, and the like; such quarrels may lead to litigation as in a case I witnessed between a man and his classificatory father. The latter had been accused of committing adultery with the plaintiff's wife. Vituperation and anger flared in the case and each litigant had to swear an oath that he would not use sorcery against his opponent. Clearly, litigation threatens the solidarity of clans and moieties as people follow personal impulse or

perceived self-advantage, even in violation of moral duty to kinsmen. Through the periodic oath of moiety unity, such conflicts can be temporarily shrouded through the swearing of collective allegiances to principles of social solidarity and group morality.

The Irumbi moiety take their oath in Evurore Location (sometimes at Uvariri), the Location of that moiety's greatest numerical strength. Thagana moiety, on the other hand, swears its oath in Mavuria Location, where it maintains its greatest numbers of people. The two groups take their oaths during the same year, although I have no evidence of any specific coordination of events between the two moieties. The length of time between oaths within a moiety appears to vary, although people believed that the oath should be taken in each generation, thus suggesting a period of no more than thirty years between moiety gatherings. Representatives drawn from all of Mbeere swear the oath with their moiety on these occasions, which I was told had last been observed in the early 1960's. In addition, the "charcoal" oath may be sworn by members of a group of clans of a single moiety, a single clan, or any lower level of social segmentation when elders determine that unity should be ritually

affirmed.

The oath requires the preparation of particularly powerful medicines (mīthege, sing. mūthege), believed fatal to oath-takers who violate the injunctions of the oath. The oath enjoins individuals to swear on pain of death, as they consume the medicines, that they will never resort to sorcery (ūrogi) against people of their own moiety, nor join with people of the opposite moiety against their own group. Here the oath establishes one's priorities around moiety obligations. The moiety oaths taken in the early 1960's occurred when intermoiety antagonism resurfaced after a time of quiescence and when the most intense land disputes began to develop.

Each moiety is recognized as having its greatest power in particular administrative Locations. Thagana moiety, for example, is considered to be particularly powerful in Mavuria and Nthawa because in both of those areas Thagana people appear to outnumber Irumbi and dominate the office of chief. Mavuria and Nthawa, from the institution of British rule through Independence, have been under the rule of chiefs from Thagana moiety. The political situation in Evurore Location, where the population of Irumbi moiety appears

to be greater than that of Thagana, is reversed; in Evurore, Irumbi moiety has controlled the office of chief. Every chief of Evurore, with a single exception, has been from Irumbi. The single Thagana chief of Evurore was in office at the beginning of the 1960's, an important period alluded to above; people of Irumbi in Evurore Location accuse their former Thagana chief of undue favoritism toward people of his own moiety during his office. Similar complaints are made by Irumbi people about chiefs in Mavuria. Alleged favoritism concerns either legal disputes (against people of the opposite moiety) or influence in the assignment of business licenses for shops. Similar criticisms are levelled against sub-chiefs not sharing one's moiety affiliation. In the organization of clans into moieties, one's out-group grievances find a convenient target in chiefs and subchiefs who, as Mbeere people, are members of one or the other of two mutually exclusive groups.

Since moiety oaths, as well as all others, require the explicit renunciation of sorcery, it is necessary at this point to briefly describe Mbeere beliefs about sorcery. The Kimbeere term, ūrogi, may be translated as sorcery or poison. It includes

both the manipulation of magical paraphernalia to effect injury as well as the deliberate adulteration of food or drink with poisonous substances. It is never used toward good or socially acceptable purposes. Techniques of sorcery are always learned; I wish to distinguish it from witchcraft -- the putative, innate, metaphysical condition of the human soul leading to evil. The latter alleged condition, strictly speaking, does not exist in Mbeere. Its closest manifestation occurs among a small number of people known as andũ a kioni; people with the power of kioni. These individuals are believed to inflict disaster simply through utterances. If such an individual admires a child, for example, it is believed the child will die. People with that power are generally known to the community and, for the most part, belong only to two clans -- Gekara and Kamũturi of the Irumbi moiety. The power of kioni, compared to sorcery, is of little concern to the Mbeere and is not renounced in oath-taking; sorcery is much more feared.

Descent and descent groups

Mbeere are organized into patrilineal, non-

totemic, exogamous clans (miviriga). Within each moiety, some clans bear a special relationship to one or two other clans based on descent from a putative ancestor. Although each is recognized as a distinct clan, a rule of exogamy encompasses these pairs or triads of clans, and the clans within each group are mutually supportive. This phratry relationship bears upon the case considered at length in Chapter IV.

Three informants provided lists naming twenty, twenty-four, and twenty-eight clans, respectively. Through time, I collected names of forty-two different clans, and Brokensha (1971:21) lists fifty-two clan names. Part of the difficulty in tabulating a definitive list of Mbeere clans is due to the restricted distribution of some clans. Also, the use of alternate clan names by my three informants reflects the restricted distribution of clans as well as informants' own lack of experience in Mbeere beyond their neighborhoods or Locations.

Some Mbeere clans exist in Kikuyuland, Chuka, Ukambani, and more commonly, in Embu, although names may vary. Rules of clan exogamy do not appear to apply between people of different ethnic groups be-

longing to the same clan. For example, I recorded a marriage between an Mbeere man and a Chuka woman; both belonged to a single named clan. The union was not condemned and the partners were not punished. Common clans and putative historical links between these ethnic groups currently provide a basis for political solidarity.

Members of a single clan are highly dispersed, residing in different neighborhoods or Locations. This dispersion militates against the assembly of an entire clan as well as social interaction between clanmates from widely separated areas. Indeed, the clan, strictly speaking, is not a corporate land owning or residential group in Mbeere. Certainly, informants express little concern about clanmates living beyond the neighborhood, and especially beyond the Location. Yet informants speak of a clan assembly (kiama kia mūvirīga) or clan affairs (maūndū ma mūvirīga); but in these contexts, informants are usually referring either to members of a clan residing in the same neighborhood or to members of a single maximal or minimal lineage. The Mbeere term clan may thus refer to all members of the clan in Mbeere or, more commonly, to any lineage segment of

the clan within a given neighborhood.

Just as the Mbeere term mūvirīqa is flexible in usage, so too are the rules governing assemblies of clanmates. The following example of a moot assembly illustrates these points:

My neighbor disputed with his son over money the latter had received from his tobacco crop. A moot was to be convened to settle the conflict. The day before the moot I asked my neighbor which elders would hear the case. He said that the moot would be comprised of his minimal lineage (mūciī) and he proceeded to name three men with whom he had close agnatic ties. I asked him if one particular elder of his clan and neighborhood, noted for his skills in mediation, would attend. My neighbor replied that this elder would not attend, for the case was strictly a concern of only his small agnatic core. On the day of the moot, however, that elder appeared and took a leading role in settling the dispute; he had been invited by the classificatory brother of my informant and no objection was raised concerning his presence, for, as my informant later explained, he was a clanmate.

The term clan is used in reference to different levels of agnatic segmentation within the clan and clanmates are expected to render mutual support and assistance. In clearing land, planting, or harvesting, an individual may enlist the aid of his clanmates (and their wives) both inside and outside

his lineage, in exchange for beer and/or his labor at a subsequent time. Or, he may reward his clanmates with beer if, for example, he is too old to reciprocate their aid with his own labor. People are more likely to heed the summons of a clanmate or affine than that of a non-kinsman. Clan solidarity is expressed through the extension of kin terms within the clan; moreover, people observe clanmates' prescribed avoidance and joking relationships. But clanship assumes greatest significance only at a local, neighborhood level.

The clan, then, lacks corporate status in Mbeere, for its geographic dispersion throughout Mbeere strongly militates against significant social interaction or the collective ownership of particular rights. Rather, segments of single clans, either maximal or minimal lineages, are the principal descent groups exercising corporate rights.

Mbeere recognize two lineage segments, nyumba and mūcii, which I term maximal and minimal lineage, respectively. Each consists of a group of agnates able to trace their patrilineal ancestry to a named, historic forebear. The two types of lineages vary in genealogical depth. Mbeere assign names to

particular lineages, especially minimal lineages, by prefixing the phrase "people of" (andũ a) to the name of the lineage founder; most commonly, the maximal lineage is referred to as "house of" (nyumba ya) prefixed before the name of that lineage founder.

Maximal and/or minimal lineage may function as a corporate group in relationship to rights in land. The Mbeere maximal lineage then corresponds to the Kikuyu mbari, a patrilineal descent group central in discussions of Kikuyu land tenure (see e.g. Kenyatta 1938, Middleton and Kershaw 1965, Sorrenson 1967).

Although members of a particular lineage cultivate gardens which they may bequeath to their sons, final rights in relinquishing the land (e.g. through sale) lie with the lineage elders acting in concert.

Typically, a lineage is founded by a man moving away from his natal lineage and bringing into cultivation new land which is subsequently cultivated by his male descendants. Mbeere lineages claiming corporate rights in land may have varying genealogical depth (usually not exceeding seven generations) depending on which ancestor is recognized as the founder of the group and its land. Owing to the fragmentation of Mbeere land holdings, residences of maximal and

minimal lineage members are usually dispersed within a single neighborhood. (I shall subsequently explain territorial designations.) I shall consider at greater length the lineage and clan in relationship to land-holding in Chapter V.

Although common interests in land link members of a single maximal lineage together, an ideology of kinship, mutual support in litigation, and general mutual assistance further bind together the maximal lineage. The generic term for the maximal lineage, nyumba, suggests its supportive, solidary characteristics; nyumba is the Kimbeere term for a woman's house in the homestead cluster, and it is here that children find residence and security and have close kinship ties with siblings of the same mother. Geographic proximity of maximal lineage members is an important variable in the extent of mutual support and assistance. For help, one is more likely to turn to lineage-mates residing in adjacent homesteads than to those who live miles away; those lineage-mates living nearby frequently are also members of one's minimal lineage. Mbeere verbalize the supportive roles of the clan and maximal lineage but in actual behavior they first turn to kinsmen of

the minimal lineage for aid.

Solidarity within a maximal lineage extends beyond commonality of interest in land. Members of a single maximal lineage may also be subject to a supernatural curse (kirumi) of a common ancestral shade (ngoma). One informant related that the founder of his maximal lineage had issued a curse against the people of the group should they relinquish control of any of the land claimed by him. If the maximal lineage does not recognize common rights in land, its integrity as an important social group is much diminished. The maximal lineage then resembles a clan in its expectations about social support and cooperation from agnatic kinsmen because those expectations are not bolstered by a common corporate identity vis a vis land rights.

The minimal lineage is always numerically smaller and less residentially dispersed than the maximal lineage and interactions between its members are more intense. For assistance in litigation with non-agnates or for advice about land or homestead affairs, an individual is more likely to seek aid from the sons of his father and the sons of his father's brothers than from others. Although

competition, particularly over inheritance, may characterize relationships between brothers, a man initially turns to them for needed support, material and social.

Underlying the organization of Mbeere descent groups is a strong patrilineal ideology reflected in virilocal marriage, the levirate, and widow inheritance. Moreover the house-property complex and strong male authority obtain in Mbeere. After initial bridewealth payments (and sometimes before), a woman with rare exception joins her husband at his homestead and strongly identifies herself with his descent group. To maintain his rights to a woman as wife and childbearer, the husband must continue payments of bridewealth to her father and full brothers. Children born to the woman as a result of adultery are affiliated to the clan of her legal husband; the genitor has no recourse in this matter. At a man's death, his widow is inherited either by his younger brother (real or classificatory) or by the son by a wife senior to the woman to be inherited. A woman thus ideally marries into a clan for life and identifies with it from an early stage in her marriage. On most occasions, for example, I found

that a woman, when asked her clan affiliation, would name her husband's clan rather than her natal clan. Her husband's clan thus becomes her clan, in effect.

The Mbeere emphasis on the patriline finds further expression in the system of inheritance. A woman cannot inherit significantly from her father. She may receive a few goats, or other moveable property, at his death, but she cannot inherit land. At death, a man's property normally devolves to his sons, with the eldest son of the senior wife also succeeding to his father's position of authority within the homestead. Yet each son receives, at some period, land and livestock from his father; moreover, a son inherits from his mother land and livestock allocated to her by her husband, according to the principles of the house-property complex. If a woman is widowed but still able to bear children, she may enter a leviratic union to produce male heirs for the deceased. In the event that a man dies without male heirs, leaving only daughters and a wife beyond child-bearing, his widow may enter a fictive marriage with a young girl; the latter will then cohabit with a clanmate of the deceased man,

perhaps a younger brother, in order to produce sons who can inherit the livestock paid as bridewealth for the deceased's daughters. Those sons will be members of the clan of the deceased and will be considered his children. Mbeere believe that the most significant property, land and livestock, should not be permanently relinquished to females or outside the patriline; women are nonetheless important in linking sons to fathers for the purpose of inheritance.

Parish and homestead: organization and composition

The basic settlement unit in Mbeere is the ituūra, a term often translated "village" by Mbeere English-speakers. But Mbeere, like many other areas of Kenya, lacks nucleated villages. Because an ituūra is a dispersed collection of homesteads, I have chosen not to translate it "village". Rather, following Gulliver, I call this unit a parish, as it fits his definition of the living unit of the Arushá of Tanzania. Gulliver defines parish as "a socially and geographically defined collection of scattered homesteads, each of which is built on the separate land holding worked by the family which occupies it"

(1963:17). In addition, I refer to a cluster of contiguous parishes (matũũra) as a neighborhood, which is for the most part coextensive with the administrative Sublocation.

Mbeere parishes are named, bounded geographic units, varying both in number of constituent homesteads and in clan and moiety composition. Of the four parishes in my sample, the smallest contained less than twenty homesteads affiliated with only two clans, both of Thagana moiety; the largest parish contained more than sixty homesteads representing many clans of both moieties.

The role of the parish and neighborhood has changed over time, diminishing in importance today. In the past, the parish and neighborhood were significant loci for defense against cattle raids or other hostile actions by either Mbeere or other ethnic groups. Today the local area (parish and neighborhood) is the focal point for clan activity; it is also the site of age-set organization activities but these are not as common as in the past. Within the parish, disputes which arise are normally settled by parish elders of senior age-sets, although the dynamics of dispute settlement are variable and

outsiders may be called to assist parish members.

The parish also maintains some ritual unity based on communal sacrifice, although these and other parish rituals are less frequently observed today. Parishes contain iri, which are sacred places -- groves of trees, special rocks, depressions in the ground, or other natural formations; all share an association with ancestral shades.

Some places where individuals of particularly noteworthy achievement are buried have emerged as sacred places by virtue of that fact; these persons may have been very rich in cattle or very old at the time of their deaths. Traditionally, other corpses were exposed in the bush for hyenas to consume; everyone is now buried at death -- a rule instituted early in the colonial period. Only these special individuals were previously buried, to preserve their auspicious attributes which would have been dissipated by exposure.

Ideally, parish residents annually sacrifice to God in the sacred places (prior to the millet season) for rain and prosperity; sacrifice (igongona) also propitiates ancestral shades, believed to affect the living only malevolently. Although sacrifices in

sacred groves seem to be diminishing, cutting trees within a sacred grove is still a serious taboo (mūgiro), punishable by a fine of stock to be eaten by people of the parish; that fine, in effect, "washes" away the taboo (kūthambia mūgiro).

Just as members of a parish can collectively propitiate the ancestral shades of the parish, so too can individuals within a homestead propitiate individual shades who may afflict them. Illness, for example, may be divined by a medicine man as due to such causes as sorcery or affliction by a shade. In the latter case, an individual will prepare beer to pour out in the homestead area as he requests the shade to cease affecting him. Ancestral shades are believed to bring only harm; they are not looked to for assistance. They are believed particularly to affect those who violate their dying wishes.

People always wish to keep ancestral shades at a distance and do not simply await affliction to carry out propitiation. Before undertaking particular tasks, an individual may pour out beer over the ground as a libation to a shade. For example, prior to beginning work at his forge, a blacksmith poured a libation of beer for dead smiths, including his

father, who taught him the craft.

Within the parish, localized agnatic groups of kinsmen reside in homesteads (mīciī, sing. mūciī). The Mbeere use the term variously to include both the minimal lineage (not necessarily localized within a single parish) as well as the homestead and its inhabitants. The Mbeere homestead may include a cluster of huts for a man, each of his wives and her small children, married sons and spouses, and unmarried sons and daughters.

The senior male maintains the greatest authority within the homestead, making important decisions about the allocation of gardens and livestock to his wives and sons. He is the link between the separate houses of each of his wives and children. At his death, the eldest son of the senior wife normally assumes his father's authority, possibly leading to fraternal conflict and segmentation.

To insure his authority within the homestead, a father has resort to at least two critical sanctions, one secular, one supernatural. His secular authority is exemplified if he denies a chronically disobedient son the use of good land or threatens to

withhold from him a portion of his estate.

Informants agreed that it would be unlikely for a man to deny a son bridewealth assistance; to do so, although informants do not explicitly state it, would punish the clan by not helping its perpetuation.

A man's supernatural sanction lies in the power of the curse. If uttered while he is dying, a curse against a specified individual or against anyone in the group violating certain rules is particularly feared, for it cannot be revoked. In dividing his estate before death, for example, a man may issue a curse against anyone who may subsequently violate his final disposition; a violator may be later stricken by illness due to the wrath of the ancestral shade. The power of this curse extends an individual's familial authority even beyond death.

Mbeere homesteads, whose male members form agnatic cores, differ in important ways from larger lineages whose members are dispersed. Authority in the homestead is jurally unambiguous; it is the domain of the senior male who is publicly recognized as the homestead leader by virtue of age, control of property, and power of cursing. If he is senile or otherwise incompetent, the elder gives way to the

leadership of other men of the homestead. He takes an active role in the propitiation of ancestral shades and is the link between the homestead and other homesteads of the lineage. Within lineage segments, authority is more diffuse, shared by groups of elders, within the lineage group, who prove themselves adept leaders. The integrity of the maximal or minimal lineage is thus not dependent on the survival of a single individual. In the homestead, death of the senior elder may signal an immediate segmentation of the homestead by the sons, who may move off to found new homesteads on land of the maximal or minimal lineage. At the very least, the elder's estate is divided, a senior son succeeds to his authority, and the homestead acquires new leadership. Through birth and death, the personnel of the homestead, the minimal and maximal lineages, and the clan are continually replenished and diminished; the most apparent effects of this process occur in the homestead where internal authority and organization are markedly affected by the death of the senior male.

A further difference between the homestead and lineage segments concerns the role of women.

Women are jurally inferior to men and do not take part in litigation over lineage land. Leadership within the lineage is the exclusive domain of men. The organization and functioning of a homestead, on the other hand, require unequivocally the participation of in-marrying women. Major activities of the homestead group -- including child-rearing, food preparation, cultivation of food crops, securing water and firewood, and manufacture of many household utensils such as baskets and pottery -- fall almost entirely within the domain of women.

Although she bears children for her husband's group and contributes significantly to the operation of his homestead, a woman's jural status remains very low. Earlier I mentioned that a woman cannot inherit land, and only rarely receives a token number of livestock from her father's estate at his death. Similarly, rights of inheritance in her husband's livestock and land are only residual for through her livestock and land are inherited by her sons.

Although women can initiate some forms of litigation such as suits against alleged sorcerers and can also take oaths, they cannot serve on moots

nor can they administer ritual oaths in litigation. Men consider women to be wholly bereft of councillor skills such as argumentation, negotiation, and knowledge of customary law. For example, hoping that a moot concerned with an adultery case would dispense with the proceeding, an old man wished that the moot elders would "assemble like women", i.e., be unable to conduct a legal proceeding. A woman's political and jural position generally is summed up in the Mbeere proverb:

Uge nĩ arũme ndũregagwa nĩ aka
What is said by men is not opposed by women

In most rituals, particularly sacrifices and oaths, men assume the leading role. In homestead propitiation of ancestral shades as well as in sacrifices, men dominate the proceedings. Although some women become specialists in magic, informants named particular men as the most powerful practitioners (andũ ago). Even the knowledge and use of the most malevolent magic are monopolized by men, and male and female informants agreed that men comprise the majority of sorcerers.

Despite a relatively low jural and political status, particular women may exercise great influence

and initiative. One woman in Nguthi, for example, is particularly noted for her wealth and marketing abilities; she is considered very shrewd and highly capable in the management of her numerous resources. Having been widowed without sons, she "married" a young girl so that the latter might bear males (by a clanmate of the deceased husband) to inherit the widow's cattle and goats, acquired as bridewealth paid for her daughters. Thus despite her notable skills and independence this woman follows the principles of a strongly patrilineal society. Although she has residual inheritance rights, she cannot relinquish the property outside of her husband's patriline. Another noteworthy woman, famous today in Mavuria Location, is mentioned (but not named) by Orde-Browne (1925:36); she led a group of Mbeere warriors in repelling a major Kamba raid into Mbeere from across the Tana River early in the century. Yet her nickname, Ciarũme (literally, "of manhood" or "bravery"), credits her with masculine skills, as warrior and leader.

Although the Mbeere pattern of dispersed settlement and homestead organization remains essentially unchanged from its precolonial arrangement,

the organization and functions of the parishes have changed markedly. No longer does the parish serve as a defensive unit, for raiding has long ceased. And to the extent that sacred grove sacrifice by parish residents has declined, the ritual unity of the parish has been weakened. Moreover, the parish as a political unit -- a locus for the assembly of parish elders of senior age-sets for the settlement of intra-parish or neighborhood disputes -- with other parishes of the neighborhood falls under the authority of the subchief, administrative officer of the Sublocation. Although the parish remains an important site for the convening of moots, composed mainly of parish elders, to settle intra-parish conflict, the moot is increasingly subject to the subchief's participation and supervision; the subchief in turn links the parishes of his sublocation into a hierarchical, governmental structure, thus giving Mbeere a political unity unknown to it before the colonial period.

Marriage and bridewealth

Mbeere place an exceedingly high value on children -- sons to increase the size and power of

the lineage and daughters to bring in bridewealth.

Toward these ends, polygyny is an ideal, but one that tends to be realized only in a man's later years.

The following table represents a summary of information I collected about 211 living males, from my census and genealogies in Evurore and Mavuria

Locations:

TABLE 2

Incidence of Polygyny

<u>Approximate Age of Men</u>	<u>Number of Wives</u>							<u>Total Men</u>
	0	1	2	3	4	5	6+	
20-30	15	41	1	-	-	-	-	57
30-40	-	36	7	-	-	-	-	43
40-50	1	32	6	1	-	-	-	40
50+	1	37	25	2	2	-	4	<u>71</u>
								211

Analysis

<u>Ages</u>	<u>Wives Per Man</u>	<u>Per Cent Polygamist</u>
Total	1.3	23
30-40	1.2	16
40-50	1.2	18
50+	1.8	46

A relatively low incidence of polygyny among men in their younger and middle years reflects heavy obligations to pay bridewealth for first wives and to assist younger brothers and sons with bride-wealth payments. The polygyny rate increases to 46% among those men over fifty, in the sample; this suggests that by his later years, a man has had the opportunity to accumulate sufficient wealth to meet his initial bridewealth obligations, help sons with theirs, and then assume new obligations for himself. The incidence of polygyny among younger as well as older men is also affected by widow inheritance.

Although she is born into a patrilineal clan, a woman's highly valued reproductive capacities do not perpetuate her natal clan and descent group; rather she leaves her natal home at marriage to produce children for another unilineal descent group. Concomitantly the importance of membership in her natal descent group diminishes, and she maintains no significant obligations to that group. Role conflict for a woman is thus partially circumvented. A woman's transfer from her natal group to another descent group justifies her group's rights to bride-wealth compensation. Her willingness to remain

married also strengthens their demands and allows them to collect. Their assertiveness about these rights are expressed at initiation where they press claims for respect and hospitality from the wife-takers. In Mbeere the aggressiveness of wife-givers also occurs during marriage ceremonies and bridewealth exchange; a woman's natal group demonstrates mock-fighting and jocular abuse against the group she has joined through marriage.

The defensive role played by a man and his clan, or local descent group, vis a vis the clan of his wife at these ceremonials and, to a lesser degree, in secular behavior results from his long-standing obligations to those who gave him a wife, and is evidence of their asymmetric relationship. I do not here imply a marriage system based on indirect exchange and a one-way movement of women in each generation from one descent group to another. That situation does not obtain in Mbeere. Rather, asymmetry refers in this context to the Mbeere view of an essentially unequal relationship conferring on wife-givers the right to make many demands on a wife-taker for hospitality and bride-wealth (including labor). Above all, if they are

dissatisfied with payments received or with the frequency of payment, wife-givers threaten to betroth their woman to another man. A husband and his kinsmen are considered at a disadvantage in their relationship to the group giving the wife. An informant explained that serious insults to wife-takers emanating from wife-givers are expected at marriage celebrations and initiations where the asymmetry is exaggerated, ceremonially; these attacks must be endured, with wife-takers unable to return any abuse to wife-givers.

The unequal relationship is not, however, reflected in terms of address between a man and the parents and older brothers of his wife. Marriage, and the process of establishing it, is called ũtheni; the root word here, as in some other Bantu languages, is shyness or shame (nthoni). Ego calls the parents of his wife and her elder brothers, mũthonua, my affine, or literally my shy person. The term is reciprocal, although a man avoids addressing or even interacting with his mother-in-law. In other contexts, some reciprocal terms of address imply equality, sanctioned joking, and other wise informal relationships (e.g., between ego and

mother's brother, ego and grandparents, and ego and grandchildren). But the affinal relationship, despite reciprocal terms of address, normally demands formality and respect, and wife-givers hold a distinct social advantage.

At the circumcision, the wife-givers demonstrate their asymmetrical relationship by demanding beer, in particular, which represents the payment of obligations and respect. During my fieldwork, an Mbeere elder adopted my wife, de facto, as his daughter in order to put me in the role of wife-taker, so that he could make demands for beer from me; he might have "adopted" me as his son, but, by so doing, could not claim his "payments" for a daughter. The circumcision ceremony delineates clearly this asymmetry in the relationship between in-laws and sanctions the expression of superior status of the wife-giving group as the source of a man's wife and, indirectly, his children.

Bridewealth often amounts to a great deal of property and money (in recent times) -- enough to require the extension of payment over many years. Occasionally, in Mbeere, one finds a man completing the payment for his mother to her clan, long after

both his parents have died. If a girl has a primary school education, the amount of bridewealth in Mbeere is usually 800/= (\$114.00), fifty to seventy goats, quantities of sugar and honey, and possibly assorted gifts for her parents. If a girl has more education, her father requires more cash, although ability to pay is of some consideration. If the girl lacks any education, the basic bridewealth sought for a girl is seventy goats -- what informants state is the standard bridewealth in Mbeere traditionally. A father may nonetheless also seek cash, even for an uneducated daughter. Payment may be made in an equivalent number of cattle, utilizing generally accepted rates of conversion. For example, one cow is equal to ten goats, one bull to five goats. When bridewealth negotiation or payment occurs, a man or his representative must also present beer to his wife's father.

The extension of payment over a long period of time is guaranteed among some people by a belief that the completion of bridewealth while the wife is still young will threaten her childbearing capacities; thus the payments should be completed only after the wife has stopped bearing children.

Other, more practical reasons, encourage the delay or extension of bridewealth payments. One informant, for example, explained that in receiving a payment for his sister, he sought a cash installment from her husband and did not wish to be paid any livestock at the time; cattle in his Sublocation had been stricken by disease which killed some of his own animals and he did not want to acquire more cattle when the disease was rampant.

The addition of a monetary requirement for bridewealth increases the actual amount sought for bridewealth. The cash requirement is considered compensation to the father for the cost of his daughter's upbringing and, possibly, school fees. A man who is employed then clearly has an advantage in seeking a wife and meeting the cash requirement. Cultivators, on the other hand, have more difficulty raising cash, and 800/= represents a large sum. A cultivator raising cash crops such as cotton or tobacco can gross 438/= per acre of cotton or from 300/= to 1300/= per acre of tobacco, depending on its variety (Eastern Province Planning Team). But only a minority of men are growing cash crops. One indication of the rural income level is the rate of

day labor -- two shillings per day in 1970.

Similarly, seventy goats or their equivalent in cattle represents a large number of stock in relationship to average holdings. The Kenya National Census of 1969 lists the number of male adults in three Mbeere Locations (Evurore, Nthawa, and Mavuria) as 9560. A stock census from July, 1969 reports 21,500 cattle in those three Locations and 32,000 sheep and goats from the same areas plus Mbeti Location; this averages out to 24,000 sheep and goats in Evurore, Nthawa, and Mavuria (Eastern Province Planning Team). The average stock holding in those Locations is then 2.2 cattle and 2.5 sheep and goats per adult male. Admittedly, these are rather gross figures, but indicative, I think, of what appears to be large bridewealth in relationship to resources at any one period.

Throughout the period that bridewealth payments remain outstanding, a man's rights in his wife as childbearer are not absolute. Before the circumcision of his children, particularly his first born, he is required to seek the permission of his wife's father and brothers for the operation; their permission will be forthcoming if he makes the

necessary gift of beer and a goat, and if his bridewealth payments have been regularly paid.

Another example of matrilateral rights in children may be seen in a case where a child is born out of wedlock. A child born out of wedlock is not affiliated with the genitor until the latter makes a special payment to the father of the woman who has borne the child. Should the woman marry another man, her father will ask payment for the child if the husband wishes to affiliate his wife's child in his own clan. Payment for the child will be in addition to bridewealth payments for the woman.

As another example of the expression of matrilateral rights in children, a child conceived or born before any payment of bridewealth is named after one of his maternal grandparents instead of after a paternal grandparent, as is customarily required for a first-born child. I also recorded a case in which a woman was betrothed as a child by her mother's brother because her father had not met his bridewealth obligations. Bridewealth for her, as a woman, then belonged to her mother's brother.

The payment of bridewealth over several years presents numerous opportunities for litigious

conflict to arise over the amounts due and when installments should be paid. During the entire period of the payment, a woman's descent group, particularly her father and brothers, do not relinquish their rights in her. If the payment is not complete by the time her own daughter marries, her descent group can demand some share in the bridewealth payments for that girl. Such conflicts over bridewealth can result in litigation. If the woman's clan believes that her husband has been delinquent in his bridewealth payments for her, they can be very obstinate in granting their permission for circumcision, particularly of the first-born. This issue by itself does not appear to occasion litigation, although the wife-givers may use this issue to press bridewealth claims and to delay the initiation. For example, to gain their prior permission for circumcision, the father of the child must be very conciliatory to his wife's family and very generous in his presentations of a goat and/or beer. One informant said that such permission is never withheld since a father must give what his wife's family is due, for he does not want his child's initiation ruined. Certainly, I

did not hear of any moots convened about conflicts over permission to circumcise; in addition no civil case records concern that issue.

The age organization

The Mbeere organize themselves into age-sets and age-moieties with component generation-sets -- institutions also found among related peoples of the Northeastern Bantu cluster. Traditionally, important social, ritual, political, and military functions were served by these sets. Age-sets and generation-sets were important aspects of traditional social organization. Here I consider only those extant features of the age organization relevant to the problem at hand -- the resolution of litigious conflict; the age-sets figure prominently in traditional dispute settlement. Generation-sets, which I do not consider in this study, are no longer viable social groups. Traditionally, a generation-set of each age-moiety was important primarily in the conducting of ritual sacrifice. Approximately every thirty years, the generation-set (in each age-moiety) responsible for ritual sacrifice retired and turned over ceremonial authority to the

succeeding set.

Elderhood in Mbeere is recognized when a man and woman are about to circumcise their first-born child, either a male or female. This advancement was traditionally marked by an important rite de passage (kuuma kiama), requiring a man to give a goat to those in his neighborhood who had already attained elder status. All informants agree that this ceremony has virtually disappeared in Mbeere, and now one may become an elder, de facto, when his first child is circumcised. As an elder with a circumcised child, a man is eligible to hear legal cases in a council of elders (kiama).

It is important here to clarify terms. Elderhood confers the right to hear legal cases on a council. These councils are assembled on an ad hoc basis within the parish or neighborhood; they are not standing bodies. It is therefore necessary to differentiate a specific council of elders hearing a case from all elders eligible to sit on such a council. The Mbeere use the same term, kiama, council, to refer to both the specific body and the class of men who may serve on it. Henceforth, I shall refer to a specific assembly as a moot; the

class of men eligible to form a moot I term council.

Within Mbeere, two kinds of councils exist. Having been initiated into elderhood, all men with circumcised children are de facto members of the lower council, known as the kĩama kĩa mũcingara in Evurore Location and as the kĩama kĩa mũthuanjira in Mavuria Location. I could find no significance in these names. Despite the different Locational appellations, the council is recognized by Mbeere as having the same composition. Out of the large available pool of elders on this lower council, only a few with recognized skills of mediation and rhetoric are regularly called by litigants to act as members of a moot.

After hearing many cases, an elder may acquire a reputation, beyond his own neighborhood and throughout Mbeere, as an adept councillor (mũciri). Members of second and higher council might then invite such a skilled elder to join their ranks. The second council is called kĩama kĩa rĩrũ or kĩama kĩa ngome -- both names recognized throughout Mbeere. Kĩama kĩa rĩrũ, literally "the black council" is so named, according to some informants, because it possesses many esoteric, that is dark and hard to see, secrets. Its

alternate title, "the council of the ring", unambiguously refers to a goatskin ring given to each new member. Traditionally, men of this council were especially important in cases of homicide; they arranged payment by the culprit's descent group of compensatory livestock to the descent group of the murdered person. Men of the second council, owing to their experience and the power of their curse, are considered especially effective in administering ritual oaths. To join the second council, a man provides members with a bull, just as he earlier had to offer a goat to members of the lower council to join their ranks, prior to the circumcision of his first child.

Thus within the elder grade, two statuses exist for males. One status, member of the lower council, includes all elders. Those who distinguish themselves in moots are then eligible for the higher council. Members of both councils include men of several age-sets. However, in much of Mbeere recruitment to the second council has ceased today, as men content themselves with de facto elder status following circumcision of their first-born children. Yet surviving members of the second council still

enjoy social recognition for their councillor skills and are identified as members of the second council.

As in the past, litigants select men, on the basis of ability, from among the elders of the first or second council to convene a moot for dispute settlement in a local area. In dispute settlement, each litigant chooses as many as five elders to hear the case, administer a ritual oath if necessary, and render a decision. Not only do the litigants choose elders to hear their dispute, but so does the local subchief -- in cases held before him -- also appoint elders for a case. A subchief frequently relies on the same group of men to assist him, and in that way, the moots are more fixed than in the past.

What are the sanctions available to the moot? Moot proceedings, with the exceptions of deliberations following a case, are open to the public; public airing of grievances and identification of wrong-doers thus mobilizes public opinion behind the decisions of the moot and encourages informal public sanctions such as ridicule (in Mbeere ridicule of this sort is often expressed through the formal medium of song). The moot, too, itself utilizes ridicule and proverbs as informal sanctions,

yet it also turns to supernatural sanctions, oaths and ordeals, to elicit truthful testimony, to punish falsehood, and to effect conciliation of litigants.

I shall discuss these important oaths in Chapter IV.

The flexibility of the age organization together with the imposed government institutions offers people a wide choice of personnel and strategies in the settlement of grievances. Litigants can not only determine which council they wish to hear their cases, but both plaintiffs and defendants also select particular members of those councils to constitute a moot. Moreover, the administrative system of the Division expands a litigant's options; he may take a case beyond a parish or neighborhood moot to the Locational Chief (assisted by elders) or to the Divisional Court. A plaintiff then utilizes the locus of dispute settlement that he considers most likely to render a favorable decision. And the arrival of the defendant in the selected locus of settlement implies his own desire for settlement. Mbeere generally look to higher levels of authority for the settlement of difficult cases; thus it is commonly explained that a moot unable to settle a

case will enlist the subchief, who in turn goes to the chief for assistance, finally reaching the court, if all other means prove ineffective. Yet in the actual choice of means of settlement, a plaintiff carefully weighs all factors of influence (e.g., kinship relationship) which he or his opponent can bring to bear on those who can hear the case.

Between local moots and the Divisional Court exists an important legal continuity, for in civil cases, the court magistrate largely makes decisions in reference to customary law. Prior to 1967, local Kenya courts (known as African Courts) were administered by a court president assisted by local elders; these individuals were familiar with customary law and based their decisions on it. After 1967 the African Courts were reorganized throughout Kenya; the reorganization vested authority in a single magistrate, who was not necessarily from the local area; the customary law of the particular ethnic area continued to be applied. Customary law of the various peoples of Kenya concerning marriage, divorce, and inheritance has been recorded by Cotran in two volumes (1968a, 1968b) serving as a guideline to courts.

If a local moot is unable to reach a settlement or if a litigant wishes to appeal its decision, he may resort to the subchief's moot, chief's moot, or court. But litigation within moots differs in significant ways from litigation before the subchief, chief, or court. Both the subchief and chief have powers of arrest, assisted by police; similarly the court magistrate can effect incarceration. Moots, on the other hand, may neither arrest, formally prosecute, nor incarcerate individuals. Thus the crucial differences between moots and the judicial institutions of government lie in the nature of their authority and legitimate sanctions.

Lacking formal political authority, elders rely on their powers of persuasion, argumentation, and personal influence to effect dispute settlement. As I have said, each litigant calls elders to hear his case on the basis of their demonstrated abilities to settle disputes; but a litigant also seeks elders sympathetic to his case. These elders may also be bound to the litigant by ties of kinship or common residence. The sets of elders called by the two litigants, since they have particularistic ties to

the litigants and lack strong powers of enforcement, must effectively utilize those qualities of rhetoric and mediation for which they have gained recognition, if a settlement is to be reached. It is only through negotiation, persuasion, and compromise that such cases are resolved; although a decision is rendered by elders after private consultation (ndundu), their decision is more a negotiated settlement than an imposed judicial determination by a superordinate authority.

In summary, then, Mbeere was traditionally an acephalous society, finding only tenuous political integration beyond the parish or neighborhood level. Within the parish and neighborhood, order and authority were and still are maintained by moots composed of resident elders of the senior age-sets. The constituent unit of the parish, the homestead, is composed of a senior male with his wives, his sons and their wives, unmarried daughters, and children. The colonial impact did not significantly alter homestead organization and settlement patterns but greatly affected parish political organization by integrating it into a centralized administration.

Beyond the primary homestead group, one

looks to members of the minimal lineage, maximal lineage, and finally further extensions of the clan for support and assistance. Rights and obligations in the context of lineage segments and clans are based on strong bonds of agnatic kinship, underscored in lineage segments by corporate rights in land. Although informants speak frequently of clans and interactions within clans, their reference to clans has a highly circumscribed meaning; it is only rarely synonymous with an entire clan, throughout Mbeere; rather Mbeere usually apply their term clan to clanmates of the neighborhood, i.e., people of the minimal and maximal lineage, and other clanmates of the neighborhood.

The organization of Mbeere clans into moieties provides an additional source, beyond the clan, for alliances. Yet people of different moieties do not oppose each other on every issue; alliances within moieties are situational and shifting, although beyond their own clan, clan members usually look for support only from clans within their moiety. But moiety unity is tenuous -- challenged not only by intra-moiety disputes, but also by individuals crossing moiety lines to support a clan

in the opposite group. Although moieties thus assume importance in political maneuvering, they are not significant in the regulation of marriage.

The organization of Mbeere into universalistic age-sets and generation-sets is an important countervailing influence to the exclusiveness of clan and moiety affiliation, based purely on descent. The age system cuts across moiety, clan, and even parish affiliation. Moreover within an age-set an egalitarian brotherhood mitigates the hierarchy of authority based on age found both in the homestead and in local descent groups. In his age-set, a man joins a group of coevals; yet in his homestead and descent groups, he submits to the authority of his father or other senior male agnates. To the extent that age-sets and generation-sets no longer maintain their formal organization and operation, their countervailing influence has diminished. People thus find themselves with fewer cross-cutting allegiances than in the past. Loyalty to, and formal organization of descent groups persists, however. In this situation today, various conflicts do not mobilize diverse allegiances and thus do not exert latent, integrative functions, as they may have done

at one time. Polarization and the failure of conciliation of competing descent groups and their allies in land disputes (see Chapter IV) is one index of this change.

CHAPTER III

CIRCUMCISION CEREMONIAL

The ceremonial complex of circumcision in Mbeere involves much more than the physical operation on the young boy or girl; it brings together people of the neighborhood as well as the parental descent groups of the initiate, the most important participants. This chapter concentrates on the nature of agonistic behavior expressed in initiations and the functions of the ceremonial in coping with structural conflict. This analysis focuses on the process of Mbeere circumcision as it persists today. Emphasis is placed on the circumcision celebration as a ceremony whose participants collectively express affinal conflict and, through that consensus, establish social unity. Agonistic behavior between affines is partially submerged as both groups cooperate in the initiate's circumcision. At initiation, wife-givers and wife-takers collectively agree on their mutual responsibilities despite the ever-present threat of strife between the two groups in the secular world. Because each group of wife-givers is also a group of wife-takers (and vice versa)

and can be united with, as well as opposed to the same people in different initiations, principles of affinal responsibility are further supported.

The physical operation in its historical setting

In this section, I will briefly place circumcision in an ethnographic and historical setting to clarify its precise physical nature and its consequences. Colonial and mission responses to circumcision in Mbeere and related groups, which I will consider here, were important sources of change in the Mbeere operation and ideology about it.

It is first necessary to clarify possibly confusing terminology. In much of the literature on female initiation, especially concerning the Kikuyu (e.g. Kenyatta 1938, Lambert 1956), female initiation may be spoken of as circumcision. Alternatively, and more commonly, it is spoken of as clitoridectomy, a more precise medical description of the procedure. Although the term female circumcision may seem self-contradictory and inappropriate, the standard dictionary term, circumcision, denotes an operation, male or female,

involving excision of part of the genitalia. I shall therefore use both terms, circumcision and clitoridectomy, to designate the Mbeere surgical practice on women; yet it should be kept in mind that at times the operation removes more than the clitoris. In Kimbeere (and Kikuyu) both the male and female operations are termed irua, circumcision. Similarly, there is no linguistic distinction between the sexes in the term kuruithia, to circumcise.

Male circumcision operations in Mbeere do not vary greatly from the same operations in the West. The circumciser completely excises the prepuce of the boy, thus exposing the glans penis. Variations in the operation occur among other East African peoples and those variations are perceived by Mbeere males as markers of ethnic identity.

During the colonial period, the practice of clitoridectomy among the Northeastern Bantu became a highly explosive issue involving the mission churches (particularly Protestant), the colonial government, and Africans unwilling to forego what for them was the sine qua non of womanhood. The storm centered in Kikuyuland in the 1920's and pitted mission churches against African Christians unwilling to abandon the

practice, yet still committed to Christianity. In Kikuyuland, the discord over female circumcision culminated in the formation of African independent churches and schools -- institutions permitting clitoridectomy in a Christian context. The literature concerning this controversy (e.g., Kenyatta 1938, Welbourne 1961, Rosberg and Nottingham 1966) is detailed and need not be considered further here. During the 1920's in Mbeere, mission influence was minimal and, although the Protestants opposed clitoridectomy, their influence was not sufficiently great to provoke the kind of reaction which occurred in Kikuyuland. By the 1940's and 1950's, however, their influence in Mbeere increased and affected the incidence of, and ideas about female circumcision.

Protestant missionaries (e.g. Anglicans of the Church Missionary Society and Presbyterians of the Church of Scotland Mission) consistently opposed female circumcision throughout the colonial period, but the colonial government was equivocal on the issue. At one time the government urged only a policy of "education" about ill effects of the operation, then required the licensing of female

circumcisers, outlawed the operation in the 1950's, and finally repealed that law to return to a policy of change through education.

Government and church opposition to female circumcision based on medical and religious objections induced many (but by no means all) Christians in Mbeere to abandon female circumcision; yet the persistence of the operation among a majority of Mbeere people indicates the great importance Mbeere attach to the procedure.

The ideology of circumcision

Beliefs concerning male and female circumcision are central to the Mbeere value system. That the operation is essential in producing adults -- physically, morally, and socially -- is implicit in the thinking of all Mbeere unaffected by Christian dogma. Among young educated Christians, one finds the greatest, but by no means unanimous, challenge to traditional belief and practice.

Data for this section derive from discussions my wife and I had respectively with female and male informants; such matters are rarely discussed openly between the sexes. Further information comes from

eighty-six of 126 essays on the subject, "What I Believe About the Circumcision of Men and Women", written by students in the three Mbeere secondary schools -- Kanyuambora, in Evurore Location, Siakago in Nthawa Location, and Nyangwa in Mavuria Location. Forty of the essays did not lend themselves to analysis. The essays were written for a contest I sponsored in each school; students wishing to participate were asked to write an essay on one of five suggested subjects, and the circumcision topic was a favorite choice. I awarded cash prizes for the best essays in each form (class) at the three schools. A total of 357 essays were written for the contest. Students writing essays were almost all male and most were associated with Catholic and Protestant denominations. Many of these young men came from the neighboring Embu people, who share Mbeere ideology underlying circumcision. Much of their information derives from traditional stories heard at home and from discussions with parents and grandparents. None of the essays considered here were written by young women. All of the young men defended and justified male circumcision whether conducted ceremonially at home or in

the hospital. Opinion on clitoridectomy, however, was divided, and I shall consider the important question of ideological change regarding clitoridectomy at the end of this section.

According to the old men I spoke with, Mbeere always performed circumcision and clitoridectomy throughout their history, i.e. during the time of every age-set within living memory, recounted through oral history. But in legend, etiological traditions explain the origin of male circumcision, thus implying a time when it did not occur. I did not find either oral history or folklore legends elaborating the origin of clitoridectomy. Men stated that after male circumcision began, women adopted a circumcision procedure for themselves, in emulation of males. Nor could women provide another historical justification for their operation. Yet from the various testimonies about the origin of male circumcision in oral histories and in folklore, one can infer values Mbeere hold about circumcision generally.

One commonly heard legend tells that very long ago a group of men the same age one day went to the river to bathe. Each noticed his foreskin

was very unclean and could not be adequately cleansed, by bathing. One man suggested that the only way to remedy the problem would be to remove the foreskin. He tried to remove his foreskin by applying the juice of the ithurĩ tree¹ to it. At first, the juice made the skin swell, but then the foreskin later contracted and still did not fall off. In utter desperation, the same man asked another to cut it off, with a knife. The man, as requested, performed the operation, although he himself was uncircumcised, like everyone else. Then the other men had their foreskins removed in the same way. The same man continued to act as circumciser, while remaining uncircumcised. Finally he was caught by the others, and circumcised as they had* been. And now the Mbeere say, as a proverb, "Mũruithia wa arũme ndaari mũruu," the circumciser of men was uncircumcised." One informant said that this proverb signifies that a person's secret acts have been discovered, and he may no longer carry them out undetected.

Another story alleges a time when Mbeere warriors were being defeated by the Masai. The Mbeere leaders determined that the Masai were

militarily successful because they circumcised their warriors, and the Mbeere decided that operation must have conferred strength on them. This was how the Mbeere began male circumcision.

The oldest man I interviewed in Mbeere was approximately one hundred years old, and he denied that there was ever a time when Mbeere did not circumcise, although the stories implied such a time. But Masai influence on Mbeere practice is nevertheless evident in much of his testimony and in a song he sang, which was sung at his own circumcision: "Nĩ Ūkabi wamonire kūrūa rūkīrī", it is the Masai who taught me how to be circumcised in the morning. Here he emphasized that the Masai taught circumcision in the morning, not circumcision. This song was discontinued in Mbeere only in the 1950's..

These texts briefly encapsulate the essence of Mbeere beliefs concerning the circumcision of men. Circumcision has both a physical and moral dimension, and the content and import of the legends manifest a similar dichotomy. Mbeere see the operation as the prelude to manhood; they think it must be carried out if a young man is to attain

complete physical strength, likened in the story to the power of the Masai warriors. Just as the circumcised young person attains physical maturity, so too does he become a moral person, according to the Mbeere. The meaning of the proverb about the uncircumcised circumciser is that he is deceitful and somehow underhanded, just as he is uncircumcised. In addition, both legends depict a conscious choice of Mbeere to circumcise men in order to attain desirable ends. The origin of the practice is thus not accidental, as are many origins of natural phenomena in other East African etiological tales. The rational value of male circumcision is enhanced by its presentation as a conscious choice in the stories.

Nowadays the operation as a prerequisite to physical manhood is less evident than in earlier days when the operation was carried out on young men who could be twenty years of age or older. Today the operation normally occurs before complete physical maturity, when boys are approximately fifteen years of age. The decline of warrior status correlates with a similar decline in the age of male circumcision. Circumcision as a necessary

condition for moral living, however, is still very much central to Mbeere values, as they have persisted.

Circumcision is the prerequisite of male adult status. A circumcised young man, it is said, respects elders and peers, and he no longer engages in petty games and jokes with uncircumcised boys, now contemptible because of their physical state. As one student remarked, the circumcision of males "brings forth brave and decent people". He continued: "The uncircumcised fellows are usually cowardly and indecent. . . the initiated students show skill and capability both in class and in games, while the rest are idle and incapable." To be uncircumcised is dirty and base, for one cannot be regarded as fully adult, despite physical size or learning. Circumcised youth do not drink together from the same vessel with the uncircumcised youth, although parents share drinking vessels with their very young children. Brokensha also reports that uncircumcised boys suffer contempt and beating from circumcised students at Siakago Secondary School.

Before his circumcision, the young boy's role is not clearly defined as male or female, I

suggest. He may hunt with bow and arrow, a quintessential male activity, yet he may also grind grains such as millet, on a grinding stone. The latter activity is a major female pursuit, and taboo for adult males. The young boy before his circumcision participates extensively in his mother's activities around the homestead, especially when he is very young and not yet ready to operate on his own away from the homestead. One informant explained that after his mother's death he ground grain and cooked for his younger sister (a small child) until his circumcision, since no woman was available for those duties. On several occasions I saw young uncircumcised boys walking on the path with their bows and arrows in hand while each carried a basket over his head with a tump line -- a style of carrying baskets associated almost exclusively with women. Furthermore, an uncircumcised boy may carry an infant tied on his back with a large cloth, in a manner identical to a woman's style of transporting children. Boys were frequently seen carrying children in this manner, but for a grown man to do so would be unthinkable. Thus the uncircumcised boy's role is not purely

male, for it encompasses certain female activities which he no longer carries out after his circumcision.

The sexual division of labor is clearly delineated among circumcised men and women and is observed rather closely. Circumcised males, on occasion, do perform duties normally delegated to the opposite sex. Brokensha reports he knows one educated, circumcised young man who carried firewood and water (normally female activities) when his mother required assistance and he complained at length about it (personal communication). A teacher at Kanyuambora Secondary School informed me that his male students (all circumcised) adamantly opposed a European teacher's request that they carry water to clean the classroom, although they did not resist the work of cleaning. They insisted that carrying water is women's work, and they capitulated only under duress. Abrogations of the ideal division of labor by sex among circumcised adults appear to be uncommon and are considered exceptional behavior.

Circumcision as the prerequisite to adult responsibility for both males and females is revealed in Mbeere conceptions of taboo. For

example, various acts or states, culturally defined as unnatural, are collectively labelled taboo.

These include such phenomena as a child cutting its upper teeth first, the deliberate breaking of a pot, incest, and several other acts. Incest, as a taboo act, includes sexual relations between people of the same clan, which is a strictly exogamous social unit in Mbeere. To overcome the heinousness of the act, a goat must be slaughtered and consumed by clan members, and the guilty couple may be criticised and severely beaten. Yet if an uncircumcised boy is the male partner in such an act with an uncircumcised girl, the participants would be strongly reprimanded, but usually not beaten. The sexual act between two uninitiated people is not defined as taboo, requiring the sacrifice and consumption of a goat "to wash the taboo" because the partners were not initiated and therefore not completely subject to the full force of cultural norms. Similarly if two clanmates, one of whom is a circumcised girl and the other an uncircumcised boy, have sexual relations, the girl would receive the most moral opprobrium, for she is regarded as an adult and expected to adhere to the norms of

the adult community.

Mbeere notions of the attainment of full adult status for males and females at initiation are further reflected linguistically in the most common terms for the various age grades, both male and female. Kimbeere, like other Bantu languages, is characterized by a series of noun classes, one of which includes most nouns referring to persons, e.g. mũndũ, person; mũrata, friend; mũrutani, teacher, etc. The characteristic feature of this class is the mũ- prefix and the formation of the plural by the substitution of the a- prefix, as in andũ, arata, and arutani, respectively. A very young child of either sex, however, is referred to as kaana, pl. twana, a noun of the diminutive class, which can incorporate nouns of all other classes in a diminutive sense. A young boy is kavĩcĩ, pl. tũvĩcĩ, and a young girl karĩgũ, pl. tũrĩgũ, again both in the diminutive class. The next stage is the grade of big uncircumcised person, kivĩcĩ, pl. ivĩcĩ (male) and kĩrĩgũ, pl. irĩgũ (female), and these terms again fall outside of the mũndũ class. With the attainment of circumcision and after the healing process, the male and female initiates are

normally called mwanake, pl. aanake, and mwiritu, pl. aritu, respectively. Mwanake may be translated as gentleman or young man (formerly warrior), and mwiritu as young woman. Thus designations of age for males and females beginning after circumcision belong to the "person" class of nouns; designations for earlier stages belong to other noun classes, which include inanimate and non-human forms. The point, then, is that the recognition of adult statuses beginning after circumcision normally finds expression in linguistic form and usage.

Mbeere believe both boys and girls should withstand the pain of circumcision without visible fear or suffering. At the male operations I witnessed and in the female operations my wife witnessed, the youths did not flinch, grimace, or show other outward signs of pain. Just as a young man must endure bravely the operation in the manner of a warrior, a girl must be brave and fearless at her circumcision as she is expected to be when she bears a child. Thus, like her male counterpart, the initiated girl is believed to have attained adult status in social and moral terms. Having left childhood through circumcision, she should

sever her social ties with uninitiated girls who are considered childish. It was believed that uncircumcised girls would never marry, as no one would choose such an unformed person as his wife, and that they would never reproduce; in short, they could not enjoy the prerogatives of adult women.

Clitoridectomy for Mbeere is justified, like male circumcision, on both physical and moral grounds. In Mbeere folk anatomy, notions concerning the clitoris are more extensive than those about the foreskin. Each set of ideas justifies circumcision. Yet Mbeere say little more than that the foreskin is unclean, and therefore must be removed. They believe that the clitoris (kigura) is not only unclean but also must be removed for a woman to become pregnant and to bear children. One older informant further stated that the clitoris must be removed because it may interfere with the sexual act as it could be pushed into the vagina, thus causing pain and injury to the woman. This idea is based on the belief that an uncircumcised woman can develop an elongated clitoris. Moreover, another older man claimed that if an uncircumcised woman is about to give birth, some Mbeere women will

be afraid to help deliver the baby for fear the clitoris will interfere with the process. Ironically, this latter Mbeere belief contrasts diametrically with European medical recommendations that female circumcision be curtailed as it may harm the sexual organs and endanger childbirth (Rosberg and Nottingham 1966:112,114). Of course, beliefs rationalizing female circumcision have been eroded in recent years as Protestants have undermined the practice of clitoridectomy, so that people recognize that uncircumcised girls marry, become pregnant, and bear children.

5 The difference in a girl's activities prior to and after circumcision are not as striking as in the case of a boy, who is socialized outside as well as inside the homestead. A young girl is even more influenced by her mother, and she continues to act largely in the sphere of the homestead and cultivated field. Exclusively male activities such as hunting and all aspects of honey-gathering and bee-keeping find their locus outside the homestead and cultivated fields, and neither the young girl nor a circumcised woman may participate. I cannot point to any purely male activities a girl enjoys

before but refrains from after circumcision.

But outside of the division of labor, her behavior does change as her role vis a vis certain categories of kinsmen becomes more formalized. As a child, she could enjoy affectionate and open contact with her father, but as a circumcised young woman she must virtually avoid her father and his real and classificatory brothers with whom the slightest intimacy is strictly prohibited. Behavioral changes by boys and girls are expected following circumcision, yet the changes may occur prior to the actual operation as the youths mature.

The moral dimension of beliefs about female circumcision is no less important than the social and physical aspects. Circumcision, it is believed, is a precondition for proper and sensible behavior in household duties and interpersonal relationships. Excepting Christians who reject female circumcision, people consider an uncircumcised woman unfit for the responsibilities of adult life. Without circumcision, informants say, ~~a~~ woman will not experience the pain believed essential for transforming a careless child into a responsible adult and will not learn moral behavior from association

with circumcised women.. Therefore, she will not respect others and will otherwise remain essentially immature.

Although clitoridectomy has many opponents among Christians, they are not unanimous in their opposition to clitoridectomy; thirty-six of the eighty-six essays from the students express some disagreement with the operation, and among Catholics the incidence of the operation is almost universal.

The essays from high school students include four types of criticism of clitoridectomy and indicate how beliefs are changing. Most frequently students object to clitoridectomy as medically unsafe. Eighteen of the thirty-six students opposing the practice argue that the operation is potentially harmful because it may complicate childbirth. Moreover, they cite the loss of blood and the possibility of death. Another line of criticism expressed in fourteen essays attacks the operation because it is opposed to Christian and "modern" values. Some Anglicans I interviewed about their uncircumcised daughters frequently cited religious and medical reasons for their rejection of clitoridectomy. Male circumcision is

defended on the grounds that Jesus himself was circumcised, while clitoridectomy is opposed because it has no Biblical foundation. Those citing Christian principles as authority say that clitoridectomy is a "primitive" custom, which should be eliminated if Kenya is to progress. Here, I found a conflation of notions about progress, education, and Christianity; it is believed that if Christianity opposes a given practice like clitoridectomy, then that practice would also be inimical to progress and education. This association of progress, education, and Christianity is doubtless common in Africa where education historically was introduced by missionaries and accompanied by the introduction of new material goods and medical care.

The last two criticisms of clitoridectomy were voiced by only six students. Four find the practice "useless", because its manifest purpose, to physically confer on a girl the ability to procreate, has been shown to be unnecessary, evidenced by numbers of uncircumcised girls who have married and borne children. Traditional ideas concerning the necessity of clitoridectomy

for child-bearing are thus regarded as incompatible with scientific knowledge. Finally, five young men oppose clitoridectomy because it deprives a woman of the capability of enjoying the sexual act. Their views on the matter were the only ones I heard concerning the function of the clitoris in coitus. I doubt if it is a commonly held idea.

The stability in ideas and practice of male circumcision is due largely to its acceptance by all religious denominations, medical authorities, and the unavailability of empirical evidence undermining beliefs in its efficacy. Female circumcision, on the other hand, is threatened primarily by opposing ideas from Christianity and Western medical practice.

Finally, one Mbeere idea interprets both male and female circumcision as a form of rebirth as important, in the life cycle, as birth itself. During the performance of each operation, the youth is supported by an adult to whom he or she bears a special relationship after the operation and throughout life. For an initiated boy, his supporter (mutirani) stands in the relationship of

father to him, although the supporter is addressed as aavai (ceremonial sponsor) rather than as father. For an initiated girl, her supporter assumes the role of mother and is so addressed. Moreover, a girl's supporter holds the girl, during the operation, in a position resembling a mother's posture at childbirth; this posture is explicitly likened by Mbeere to a woman giving birth.

Changing age at circumcision

Mwanake signifies a circumcised young man today as in the past, but it no longer denotes warrior status, and, since evidence indicates that the age at circumcision has been reduced, it also may not imply the full physical maturity it once did. The male youths I saw circumcised ceremonially were below the age of fifteen when they were circumcised, and informants agree this is now the common age for circumcision. Most young men over fifteen said they were circumcised. A few young men at Siakago Secondary School remain uncircumcised, Brokensha informs me. All older male informants agree, nonetheless, that the age of male circumcision has declined. They recall that most young men were

circumcised in their twenties, traditionally.

Elders say that in the past circumcision marked a young man's entrance into warrior service, which demanded great strength; they add that Mbeere boys today, at the age they are circumcised, have not reached maturity.

When the British established their administration in Mbeere and made government police available, cattle raids subsided; the necessity for warriors was thus removed. People explain that the government subsequently required them to lower the age of male circumcision for taxation purposes; that is, taxes were levied against adult males. In Evurore Location, one age-set, from the time of World War I, is called Gatumo, literally small spear. This name is said to commemorate a harsh government agent who forced male youths to be circumcised at an earlier age than normal. Old men agree that the early circumcision was performed to confer adulthood in order to provide additional workers and taxpayers for the government.

Some documentary evidence, moreover, confirms that the imposition of colonial rule resulted in a lower age for male circumcision. A file in

the Kenya National Archives contains some correspondence between government officials about inducing various ethnic groups to reduce the time required for the full complement of ceremonial activity before and after circumcision; moreover, the correspondence suggests that the age at male circumcision be reduced so that a better labor supply could be secured (Native Customs and Law, Circumcision File 1920:PC/CP. 7 1/2). The government apparently recognized the difficulty of labor conscription and taxation of males not recognized as adults by the Mbeere and related peoples.

In addition to these extrinsic factors affecting the age at circumcision, two rules which Mbeere employ to determine when a child should be circumcised must be considered. First, a woman's children should be circumcised in order of age, eldest to youngest. Secondly, a girl should be circumcised prior to the onset of her first menses. Abrogation of these rules is considered taboo. Thus, in the case of a boy with a younger sister, his age at circumcision is governed by the age at which his younger sister will begin to menstruate. Old women claim that the age at which menstruation

begins has declined since earlier in the century when they say the typical age was sixteen to eighteen, although it was conceivably even higher owing to nutritional and health deficiencies. A young educated woman of twenty states that girls today begin menstruating at age fourteen to sixteen. Most girls being circumcised today are twelve to thirteen. Therefore, traditionally, a boy with a younger sister might have been circumcised when he was in his early twenties so that his sister would be circumcised both after him and before her first menstrual period; today such a boy might be circumcised by age fifteen. However, if the elder of two children is a girl, the boy can remain uncircumcised for a long period of time since his circumcision age is not governed by the maturation of a younger sister. Significantly, the Mbeere have no periods longer than a season closed to initiation, due principally to the rule that a male must be circumcised before his younger sister, who must be circumcised prior to her first menses. This rule could not easily be observed if time periods in excess of a year were closed to circumcision.

The ceremonial complex of circumcision

During the course of my fieldwork, my wife and I participated in five male and three female circumcision ceremonies in Evurore and Mavuria Locations of Mbeere. Men and women freely attend the celebration prior to any circumcision, yet men and women are each excluded from viewing a circumcision operation performed on a member of the opposite sex. Female and male operations were witnessed by my wife and me respectively. This observation, participation in the preceding festivities, and extensive interviews and the secondary school essays provided much information about the ceremony.

Obscenity and insulting jocularities dominate the singing demands of the wife-givers at a circumcision. Moreover, obscene and insulting behavior, directed often at the initiate are sung by local, non-related people attending the celebration. For the mother's agnates, or any other individual or group, to sing such songs or utter such expressions, on other occasions, would constitute real abuse; I have explained that such abuse may create litigious conflict. Thus the circumcision

celebration may be considered an occasion of license and the suspension of normally accepted behavior. To a limited extent, it constitutes a rite of reversal in which women may behave as men (wearing men's hats, carrying walking sticks, using obscenity and perhaps drinking first) and challenge the superior status of male Mbeere. The ceremonial is a highly formalized activity, sanctioning the expression and display of behavior which is proscribed outside of the ceremonial setting.

In this section, I will analyze the ceremonial as it exists today and discuss the sources and direction of change which have affected it. In this analysis, I will focus on the circumcision ceremonial as a means of achieving unity despite structural conflict generated by individuals acting in terms of legitimate but contradictory values in the secular sphere. My purpose here is not to elucidate details of traditional circumcision, for many symbols, symbolic acts, songs, and dances have disappeared, and were not always recollected by the older informants who explained the process to me. Rather, I will concentrate on unity through opposition so deeply embedded in the structure of the ceremonial.

a) Opposition of the parental descent groups of the initiate: a processual view

The circumcision ceremonial is a general festival of drinking, singing, and dancing (mwangithio), which the public celebrates throughout the night before the operation, continuing until dawn, when the boy or girl is cut and the celebration ends. The most important participants in the activities are the parents of the child and their respective families and clan groups; I have indicated that they are the focus of much of the celebration's songs, dances, and activities, which dramatize a conflict between the respective agnates as well as between men and women generally.

The social opposition between a man (and his agnates) and the agnates of his wife is played out as ceremonial conflict during the circumcision festivities. The father of the child to be circumcised is politely deferential to the aggressive agnates of his wife, patiently bearing all their insults. Yet he may be deliberately slow in meeting their demands, thus increasing the drama and perhaps occasioning a mock-kidnapping of the child by the wife's group.

The highly dramatic agon between descent groups enacted at circumcision stems from basic social opposition and their legitimate rights in the woman as a child-bearer and economic producer, and, by extension, in her children. Because years are usually required to complete the payment of bridewealth, it is rarely completed when a man is ready to circumcise his first child. The wife's agnates thus do not relinquish their interest in her, or her child, since the bridewealth payments are uncompleted. At the circumcision the wife's descent group expresses their rights by asserting their recognized privilege to determine if the child may be circumcised, and threatening to withhold their blessing of him or her just before the operation. If the bridewealth has been almost fully paid, the wife's family will still assert its rights, but their demands will be greater and will be more fully met, if only a relatively small amount of the bridewealth has been received.

The husband's indebtedness to wife-givers is stressed, and most of their demands are made in the spirit of claiming credit on a debt so great that it can never be paid. That view is aptly illustrated in the following song text recorded in Mavuria Location

at a female circumcision celebration. The group
of wife-givers sang:

All: Ingīeci, ingīeci, Namu
[father of the child]
If I knew, if I knew, Namu

nī uthoni
that it is marriage

Ngebirira mwana gwa Kabiū
[legendary hero, rich in
livestock]
I would have sent the child
to Kabiū's home

Nyabūrīrwe ng'ombe magana, ii,
So that I could get hundreds
of cows, yes,

Leader: Mūongia ūyū wa Namu waumīria
ng'ombe
Namu's wife has brought in cattle

na ng'ombe ciaku itiakagia mwaki
and your cattle cannot light a
fire

na mwarī wakwa nīwakagia
but my daughter can light one

This song claims that although the wife of Namu has
left her natal home and cows have been paid for her,
the animals and the woman are not equivalent, for
animals cannot perform vital domestic duties such as
lighting a fire. The song also unfavorably compares
the wife-taker, Namu, to a more wealthy man, Kabiū,
who would have paid more for the woman. The song
illustrates how the wife-givers try to place wife-

takers in a defensive position.

The ceremonial agon at a circumcision ceremony is terminated at dawn following the actual operation and the wife's kinsmen return home. The son then moves out of his mother's house into his own dwelling; I suggest this symbolically severs the link of dependency between himself and his mother, and her people. To be sure, throughout his later life, the circumcised youth will maintain the greatest affection toward his mother and her clanmates, enjoying joking relations with her parents and her full and classificatory brothers (using a reciprocal kin term with each of these categories of kin), but his relationship to them after circumcision places him beyond their jural authority. He becomes firmly part of his father's descent group and subject to its authority while at the same time he can offset the highly formalized behavior his father and classificatory fathers must manifest before their affines.

Girls do not necessarily move out of their mothers houses after circumcision. Theirs is a special status. They do not become as solidly members of the father's group as do their brothers, for they

will leave home with marriage and they do not inherit from their father's estate. If a girl remains at home for a long time before marriage, or returns home having divorced, she is not assessed by her father's group (these assessments are made for meeting court fees or school fees for clanmates) as is her mother; the latter can be assessed even if her husband has not completed payment for her.

After a first circumcision, the possibility of divorce is small, for a woman is loathe to leave her circumcised children. If she abandons her children then, she effectively relinquishes her hopes for security in old age, for the likelihood of second marriage is minimal for a woman of that age. In leaving a son, she parts with a person who can provide a residence for her if she is not on best terms with her husband; a son may also help provide for a widowed mother. And in leaving a circumcised daughter, a woman cuts herself out of a share of the bridewealth for that girl. In censuses in four parishes I found no instances of divorce among women with at least one circumcised child. Divorce does, however, occur at earlier stages of a marriage.

Gluckman convincingly argues that in societies

resembling the Zulu, with its house-property complex and the levirate, divorce is less frequent than in societies without those features (1950: 166-206). And certainly among the Mbeere the house-property complex obtains, and marriage, on the whole, is more stable than among the matrilineal peoples of Central Africa. Yet divorce occurs in Mbeere but is more probable at only certain periods. Thus if we consider marriage as process, rather than as a synchronic structure of social relationships, then we can designate points in time when the marriage relationship is relatively fragile.

The period of fragility in Mbeere marriage occurs prior to the circumcision of the first born child; the most tenuous period is before any or much bridewealth is paid or any children have been born. As bridewealth payments mount, the probability of divorce is further diminished, for a woman's father and brothers are reluctant to return the property, instead encouraging the woman to remain with her husband. If a woman's father and brothers considered her marriage unstable owing to her returning home frequently, they might be reluctant to accept further bridewealth payment in order to

avoid the strain of returning it should a divorce occur. Once children are born, a man would not easily let his wife take them away, although she might succeed in doing so if they are not circumcised; this stage then further diminishes the probability of divorce.

The circumcision of the firstborn child acts as a kind of seal to the marriage, validating the transfer of rights to the woman as childbearer from her descent group to her husband's. The circumcised youth is visible proof of her having created an individual of impending adult status who has loyalties beyond her natal clan. At her husband's death, for example, her circumcised son can act as guardian of his younger siblings and his father's estate, although that fact does not preclude the possibility that his mother, if not beyond childbearing, could be inherited by her husband's younger brother. The estate is normally divided in toto when all the sons have married.

The importance of a firstborn child is reflected in the tendency for his or her circumcision to be the largest celebration; and the second largest is that of the last born. People explain that the

circumcisions of a woman's children are parts of a single whole. The first circumcision is very significant, for it "opens the celebration" (kuvingura mambura) while the last circumcision "closes the celebration" (kuvinga mambura). Yet there is an important continuity in all the ceremonies for one woman's offspring. Throughout the circumcisions of all a woman's children, when they are performed at home, the basic pattern of ceremonial conflict and temporary stabilization is recapitulated at each ceremony, although celebrations are smaller for children not first-or last-born. The circumcisions must then be considered as a process, unified for all the children of a mother, not for all the children of a father. A man will go through as many circumcision processes as he has wives; the circumcision of each wife's firstborn will be the first circumcision in a process for each wife. Each celebration serves as a period of license and release of tensions.

The unlikelihood of a firstborn being circumcised away from home indicates the importance of the circumcision of such a child. Subsequent children may be circumcised away from home, the

first one having represented them. One man in a neighborhood may sponsor a circumcision, and other men can arrange for their children to be circumcised at the home of the man initiating the proceedings. The host brews beer, having obtained permission from the chief for both the event and the brewing. Only the host's wife's family plays a major role the night of the celebration. A man does not, then, arrange to circumcise his child away from home if the child is a firstborn boy or girl. To do so is known as "stealing the celebration". A father "stealing the celebration" risks the great anger of his wife's clan, who would believe themselves cheated out of the large outlays of beer they expect at the circumcision of their woman's firstborn.

Traditionally, if one of the circumcisions of a woman's children was not carried out according to custom all the circumcisions were considered incomplete and imperfectly performed -- because each circumcision was considered part of a group and seen as a unity. Thus circumcision is part of a processual set of events enacting the opposition and exchanges in the secular sphere. A more or less complete secular and ceremonial conciliation between the affines

is attained by the last circumcision and the completion of the bridewealth. The wife's agnates can make no more demands socially recognized as legitimate after that point, and divorce will be virtually impossible.

b) Secular sources of conflict expressed in the circumcision ceremonial

To this point, I have argued that the circumcision ceremonial formally dramatizes the conflict within the affinal relationship. The conflict centers in a competition for resources in the form of bridewealth making it difficult for wife-takers to fulfill agnatic responsibilities at the same time that they must meet their affinal responsibilities. The relatively large bridewealth demanded in Mbeere compared to limited resources at any moment presents wife-takers with the difficult challenge of balancing this complex of demands; when resources are minimal, the ensuing conflict is structural, for individuals are torn between two sets of demands. Although breaches of affinal responsibility occurring through neglect or refusal to pay bridewealth can give rise to litigation and oath-taking, the essential principles underlying

bridewealth and responsibility to affines can never be the subject of a legal proceeding; rather it is for ceremonial action to celebrate those principles at the same time that it emphasizes the conflicts which they create. To illustrate with concrete material the genesis of real conflicts between affines, I offer the following case material against which the dramatic agonistic enactment at initiation should be considered.

Case 1 Andrew and Mary had been married about a year and a half. Both were educated; he had reached Form II, and she had completed Standard VII.

The bridewealth agreed upon by Andrew's classificatory father (his father was dead) and Mary's brother (their father was dead) was 800/=, a bicycle, one large honey container filled with honey, three heifers, one bull, five goats, two blankets, and one bushel of sugar. Andrew's classificatory father initially balked at the inclusion of the bicycle and claimed that Andrew could not afford the bicycle along with everything else. Mary's brother said that he might forego the bicycle if Andrew would agree to the remainder and begin making payment, so the bargain was struck.

By April of 1970, Andrew had paid his affines part of the money, two heifers, sugar, and blankets. But he was under increasing pressure for two reasons. First, he had a cash income for work as my research assistant, and his affines wanted to take advantage of that situation.

Second, he was paying school fees for his classificatory brothers and was employing someone to look after his gardens during the time that he was working away from home. He said that he was very pressed to meet his various obligations; he went so far at times as to avoid Mary's brother when he was seeking bridewealth.

A near-confrontation occurred in Embu Town between Andrew and Mary's brother. Andrew and Mary had gone to town to sign up for the national examinations to qualify for further education. Mary's brother was also in Embu looking for Andrew. For a good part of the day, Andrew hid from his brother-in-law, because he knew that demands would be made which he could not fulfill. Mary was in a somewhat ambivalent position between her husband and her brother; she offered the latter no assistance in finding Andrew, but neither did she deny the legitimacy of her brother's claim to further payment. The confrontation was avoided when Andrew boarded a bus heading out of Embu.

In another context, Andrew was in the position of wife-giver and placed a young man in the same role that he was playing vis a vis Mary's brother. Andrew was seeking 800/= and livestock (forty goats or the equivalent) for his full sister educated through Standard VI. Through his intermediary (his classificatory father), Andrew had received 200/= for his sister, but he refused to permit her to join her suitor. Andrew believed that he should receive more money, which he needed for his own bridewealth, before he would allow the marriage. The young man was willing to make additional payments of livestock,

but Andrew wanted cash instead. Andrew's local area had recently experienced an outbreak of disease among cattle and goats, so he wished to delay receipt of any livestock until the disease passed.

Case 2 Jonah asked seventy goats and 1000/= for his daughter who was educated through Standard 5. But for the five years of his daughter's marriage, he received very little of the bridewealth. Jonah said that because his daughter was pleased with her husband he made little effort to press his claims at length. Recently, the young woman returned to his home, complaining that her husband had mistreated her and had not provided her with clothing. Jonah wished her to remain at home because he considered her husband, David, an irresponsible person. After his wife's return to Joshua's home, David injured his hand in what Joshua described as a vehicle accident. David claimed that Joshua's son had beaten him because of the marital dispute and Joshua's son was arrested. He was later released when David did not come to court on the day appointed for the hearing.

In recounting the marital history of his daughter, Joshua defended the principle of bridewealth. He noted that it was instrumental in educating his children. His misfortune in not receiving regular payment from David lay in the latter's poor character, according to Joshua. David had initially eloped with Joshua's daughter. When he eventually came to see Joshua about bridewealth, David was sent away with instructions to send his father after Joshua had discussed the matter with his agnates. But David's father would not enter the negotiations. David came to see

Joshua but was informed that he must return with his father. Again the latter refused. After persisting, David was permitted to discuss the bridewealth. Joshua said that David's father did not enter the negotiation because he was not on good terms with his son who was disobedient and insolent. David's father was thus punishing him by withholding assistance.

Case 3 Robert frequently quarreled with his wife, for he suspected her of committing adultery. When their arguments became intolerable, he sent her home to her father. She returned there along with their young child. Robert's mother told him that he had been foolish, for he would be losing not only a wife but a child. When he went to the home of his father-in-law to see about getting back his wife, Robert was told that he would have to pay thirty goats to rejoin his wife, although he had already paid twenty goats toward his bridewealth. Refusing to compromise, Robert returned home; but he was again chastised by his mother who advised him to pay the extra goats in order to get back his wife and child. Robert decided that life with the woman would be intolerable, so he returned to his father-in-law to request his original twenty-goat payment. His father-in-law agreed, but he required that Robert swear an oath that he would never poison his former wife or otherwise bring her harm through sorcery. But Robert refused, claiming that his Christian beliefs prevented him from swearing the traditional oath with goat's blood. Eventually they agreed that Robert would take only fifteen goats and leave five with the affines in lieu of the oath.

Case 4

Jonathan set out for the home of the young woman he wished to marry; he was accompanied by his father and a woman of their clan. His prospective affines resided near the Divisional Headquarters and the Catholic Church where Jonathan wished to be married. On previous visits with his father, they had been informed of the bride-wealth, but Jonathan had paid nothing to date. On this occasion, he brought along gifts of blankets for the girl's parents, although he did not present his gifts immediately on arrival.

Jonathan and his kinsmen arrived at night and were met by a very angry father -- angry because he had not received bridewealth and people were coming for his daughter. Refusing to permit them in the house, the girl's father summoned his agnates for support. Throughout the night, discussions took place; the father of the girl became very insulting, accusing the visitors of pride, especially after they refused to eat the sorghum porridge that was offered. The father of the girl said they were too proud to eat, yet they had come without bridewealth to fetch his daughter for a wedding. The young man and his father tried to negotiate for the young woman, but her father remained adamant until morning when he was presented with the blankets; the young man also broke into tears. The father of the girl agreed that she could leave for the wedding with the agreement that bridewealth would be paid. But later in the Church, when the priest asked if anyone objected to the wedding, the bride's father stood up and said he objected. He explained that he had received no part of the bridewealth and the whole wedding stopped. The principals went outside and, with the aid

of the priest, the conflict subsided and the ceremony resumed. After the marriage ceremony, the girl's father and his agnates hurled insults and demanded that the young man rent a vehicle so they could be driven home. He met this request with money borrowed from friends in attendance. His affines also complained bitterly about the quality of the food the groom's kinsmen had brought to the Church.

The preceding cases illustrate the points of potential schism in the affinal relationship as controversies over bridewealth develop. A man may be unable to balance agnatic responsibilities and personal aspirations on the one hand, against affinal responsibility on the other, as in Case 1. Yet the complex of affinal obligations finds social support because each man is at once a member of wife-giving and wife-taking groups. As Andrew was coping with his own bridewealth obligations as a wife-taker, he was making demands befitting a wife-giver during his sister's betrothal.

Other conflicts, with a slightly different focus, are revealed in Cases 2-4. A father may be torn between his strong desire for bridewealth and an equally strong wish that his daughter not be mistreated by her husband. He may urge the termi-

nation of the marriage as Joshua did in Case 2, simultaneously incurring for himself the obligation to repay the bridewealth. Otherwise he may try to keep the marriage intact and collect additional bridewealth. This latter ploy was taken in Case 3, as Robert's father-in-law tried unsuccessfully to use his daughter's return home as a pretext for getting bridewealth payment. Robert refused and the marriage was dissolved. In Case 4, the young man was torn between his desire to marry and his lack of resources, even for a modest initial payment of bridewealth; only through cajoling and promises could he and his kinsmen succeed in carrying out the marriage ceremony.

c) One Mbeere circumcision: an illustration

I shall now describe a male circumcision I attended, to demonstrate a number of points made in preceding sections.² The child to be circumcised, Robert, was twelve years old and the second child and first son of Richard, of Munyi clan, and his wife Janet, of Mbiti clan. Janet was born in the same Location (Mavuria) as Richard, but in a different neighborhood some six miles away.

Richard, although an Anglican, chose to have his son circumcised in a home celebration rather than in the hospital, in order not to offend his wife's group. Had he not held a celebration, he would have incurred additions (one male and one female goat) to his bridewealth, in lieu of a celebration. At the time of his celebration, Richard owed his wife's descent group two cows in bride-wealth out of a total obligation of 800/=, seven cows, and seven bulls. Previous to the celebration, Richard presented beer to his wife's descent group to secure permission for the celebration and operation. These obligations illustrate how circumcision celebrations are, with bridewealth, part of a general process of exchange between affinal groups.

At about ten in the evening, people of Janet's clan, Mbiti, began assembling at Richard's homestead. The people included Janet's real and classificatory brothers and their wives, as well as the leader of the group, James, Janet's classificatory father. Her real father, David, although he (with his sons) accepts bridewealth for Janet, refused to attend the circumcision.

celebration, professing Christianity (C. M. S. Anglican) and opposition to beer-drinking. James is not a Christian, and some other members of Mbiti clan in attendance are only nominal Christians. Once in the homestead area, Janet's clanmates began singing and dancing, demanding hospitality in the form of beer. They sang that the boy was being held prisoner and that the clan of his mother was going to free him. They took the boy into the center of their group and sang of their power to prevent the circumcision and to keep the boy if they were not satisfied. Song leaders were usually women.

Shortly after their capture of his son, Richard led his wife's kinsmen to a small hut where they seated themselves on logs, stools, or directly on the dirt floor. Prior to their arrival, they had been drinking beer, although they demanded beer from the host. Men seated themselves on the right, separate from their wives and sisters on the left. Richard then asked people not of Mbiti clan (or guests of Mbiti such as the anthropologist and his wife) to leave the hut. According to Mbiti people in the hut, a member of

Mbiti stood outside the hut making sure that uninvited people did not enter the hut to obtain free beer. At all circumcision celebrations I attended, the host's major initial concern was delineating a physical space for his wife's group. His efforts to provide them great hospitality could then be more easily accomplished. Uninvited outsiders attempting to join the wife-givers are troublesome to both the host and the wife-giving group, but no notion of ritual pollution is expressed. The physical exclusion of outsiders from the space assigned to wife-givers seems to function simply as a way of defining social boundaries.

While seated in the hut, the people of Mbiti clan kept the initiate, Robert, in their custody. Richard later came to the hut and deferentially asked for his son's return, promising the desired beer if the boy were released. Robert was then handed over to his father, only with repeated promises that beer would be forthcoming.

For the next hour, the people of Mbiti clan awaited the beer they had demanded, spending

the time singing various songs of insult directed at Munyi clan. The following text, for example, shows how they recognize ambivalence in the dual affiliation of Janet to Mbiti, where she is portrayed as worthy of greetings, and to Munyi, where she threatens Mbiti people with the meat of an infected cow.

Leader: ūūūī, mūka wa Njeru,
ngeithi mīrongo īna
Oh, woman of Njeru clan,
forty greetings

ngiica kwambīrīria.
Narekia kwa Njeru
before I begin.
I convey to Njeru clan

ngeithi mīrongo īna.
forty greetings.

All: īī, īno ya mūka wa
Njue iranūmirie
Yes, this woman of Njue
clan gave me meat from

ng'ombe ya thita itarī
nthime
a cow with anthrax which
did not have an examination

Nīgīrīrūe Nyaga aūke athime.
Let me send for Nyaga so
that he can come and examine
it.

In Mbeere songs are highly metaphorical formal devices for praise or criticism; identities or traits are often referred to indirectly to buffer

the impact of criticism or to generalize meanings as do proverbs (nthimo); the Mbeere identify metaphors in songs with proverbs. Thus in Mbeere most clans are known by an alternate, infrequently-used name called njau, calf; Mbiti has Njeru, and Munyi has Njue, as their njaũ.

Metaphors, ellipsis, and indirect reference are used in many songs, not only at circumcision, since blatant nonformal criticism results in the subject bringing charges of abuse against the critic; these charges may initiate a moot proceeding which would require the critic to take a ritual oath negating past and future physical abuse and sorcery. Actual cases about verbal abuse are not uncommon in court records. Songs, however, permit criticism in varying degrees of intensity; and, at a circumcision, even abuse and obscenity may be presented because of license on that occasion.

In another song verse, Mbiti people aggrandize themselves and threaten the wife-takers by likening themselves to a lion which has lost its cub and become ferocious.

Leader: Andũ a kwa mũcii wa Njue,
mũkwiġua
People at this home of Njue
clan, have you heard

All: Kwamata, kwamata mwana wa
ngatunyi
You have caught the child
of a lion

Leader: Twaca tũkũrumwa
We come and we are insulted

All: Kwamata, kwamata mwana wa
ngatunyi
You have caught the child
of a lion

Leader: Twaca kũona ũnene, mũkuona
We come to see big things,
have you seen

All: Kwamata, kwamata mwana wa
ngatunyi
You have caught the child
of a lion

Leader: Twaca kwa andũ a Njue,
mũkuona
We come to the people of
Njue clan, have you seen

All: Kwamata, kwamata mwana wa
ngatunyi
You have caught the child
of a lion

Leader: Kwaria tĩ ġũteta, mũkuona
To speak is not to complain,
have you seen

All: Kwamata, kwamata mwana wa
ngatunyi
You have caught the child
of a lion

The Mbiti people in this song also claim that they

were insulted, a typical ploy I observed at other celebrations where the wife-givers try to force the wife-takers into a defensive role. I was unable to get an interpretation for the last line, but it may be a means of mitigating any possible serious offense Munyi clan people might take to the song.

Another song sung before Richard presented beer to the Mbiti clan boasts about the amount of beer Mbiti people will drink, and threatens to seize the girl of Mbiti (Janet) if the beer is not forthcoming.

Leader: Mūciĩ kwa andũ a Njue,
nĩnyua mbũva weyo'nene
At the home of Njue people,
I'll drink a very big gourd
of beer

All: Nyunyaga na kĩaama
I drink with magic

Leader: Mbarie nginya kira, nĩnyua
mbũva weyo nene
I'll speak until I stop,
I'll drink a very big
gourd of beer

All: Nyunyaga na kĩaama
I drink with magic

Leader: Nayatura nĩnthiĩ na Cianjeru
If I fail to get the big
gourd, I'll go with Cianjeru
(the girl of Njeru clan)

All: Thica irũme rienyu
Have sexual relations with

your husband

Leader: Mbititwe kigura ninyua
mbuva weyo nene
I have been called clitoris,
and I'll drink the biggest
gourd of beer

All: Nyunyaga na kiama
I drink with magic

Leader: Nimanthiria nthoni ninyua
mbuva weyo nene
They have ended my shyness,
and I'll drink the biggest
gourd of beer

All: Nyunyaga na kiama
I drink with magic

Leader: Na yatura ninthii na Cianjeru
And if it fails, I'll go with
Cianjeru

All: Thica irume rienyu
Have sexual relations with
your husband

Besides containing threats to seize Cianjeru if the demand for the largest gourd is not heeded, Mbiti people also boast of drinking with magic. Here they emphasize that they are protected against possible poisoning by virtue of their possession of magic.

The leader claims in one stanza of this song to have been called clitoris, which is a very grave insult toward a man or a woman. I am sure no such insult was made toward Mbiti people, but

the claim presents a further basis for demanding compensation. Uttering words like "clitoris", or saying "have sexual relations", is considered obscene. One never hears such explicit sexual references in ordinary speech between men and women. To "order" someone to have sexual relations, is considered very abusive in ordinary discourse, yet is accepted as part of the circumcision celebration. The general licentiousness permitted at such celebrations in Mbeere stands in direct opposition to the expected behavior outside of the ceremonial setting. In this song, the leader says that shyness (nthoni), or customary affinal reserve, has been ended, and indeed it is suspended at the celebration.

In another bold song, the singers of Mbiti clan, mainly women, sing of the two clans, characterizing each clan in terms of male and female sexual functions; in this case the female reference stands for the wife-givers, the male for the husband and his group.

Leader: ĩũũũ, nyumite Embu kwa
Rũnyenje
Oh, I come from Runyenjes in
Embu

All: Repetition

Leader: Gūkū kwa andū a Njue nĩ
Here at the home of Njue
people is

All: Gwītūrūra ūtoko gwītūrūra
Semen pouring forth

Leader: Nakuo kwa andū a Njeru nĩ
And at the home of Njeru
people there is

All: Kwaragania mbĩnĩ kwaragania
A vagina spread out

Also notable in this song, beyond its sexual references, is another strategy for seeking beer. The singers claim they have travelled there from Runyenjes, a distance far beyond where they did, in fact, set out from; this fictitious journey is presented in order to emphasize their need for hospitality.

The Mbiti people then stopped their songs temporarily to begin drinking millet beer from a small gourd which had been brought in by a representative of Richard. For a long time, they refused to drink from such a small gourd, demanding a larger one. Once a larger one was known to be on its way, they began drinking from the smaller gourd. But the men immediately complained that the beer had been diluted, and angrily spilled

some of it out on the dirt floor. A man of Munyi clan heard the complaints that the gourd was too small and ~~that~~ the contents had been diluted. Richard came in and the Mbiti people complained bitterly to him, directly, not in song. As "punishment" for serving them such beer, they forced him to drink some. Since I did not observe such behavior at other initiations, I am unable to say definitively if complaining outside of the context of songs is typical. But it is significant that on this occasion Richard's interaction concerning the beer was solely with men of Mbiti. The women of Mbiti did not issue verbal complaints about the beer nor did they enter negotiations with Richard for another large calabash of good beer.

This example confirms two arguments made in this study. First, real interpersonal conflict lies just below the ceremonial facade and little effort is made to conceal it. Second, women's opposition to men (in this last case to Richard and his clanmates) occurs only through highly structured formalized media such as songs, dances, and ceremonial action.

Following another rather long period of

singing, a large gourd of beer was brought in the hut for the Mbiti people. Still unsatisfied, the people almost immediately demanded a "brother" for the large calabash on the floor before them. This request was unanswered for a considerable time, so after several minutes of singing, they reconciled themselves to drinking from the large gourd. First men were served, then women. The men spit out their portions vehemently and again angrily declared it had been diluted. Several other people made an effort to drink some of the beer but could not continue. At this time, I was uncertain if what I was seeing was part of the drama or if the beer had in fact been diluted. Later, several young men of Mbiti did insist that the beer was really dilute. Richard himself, some days later, pleaded ignorance, having purchased the beer at a local bar rather than brewing it himself.

No complaints were made concerning the source of the beer, although at other circumcisions I saw beer brewed at home, and the proceeding was supervised by the father of the child. I saw beer brewed by both men and women (jointly and independently), in Mbeere, and Kenyatta reports that

brewing in Kikuyu is a joint male/female activity (1938:54). Lindblom states that among the Kamba, women are ~~not~~ permitted to make beer (1920:519).

Richard was again called into the hut to answer complaints about the beer in the large calabash and was again "punished" by being made to drink a full half-calabash (about five cups) of beer. To the great amusement and gratification of the assembled people, Richard was unable to drink the beer. They then demanded another calabash which had not been diluted and apparently Richard was able to satisfy them at this time.

By about three in the morning, much of the singing and dancing had ended and people were leaving to go to sleep, or lying down on the ground to rest.

Just at dawn, the singing and dancing resumed as the Mbiti people reassembled. A newly presented calabash of beer was given to the people of that clan by Richard; the beer was for blessing the initiate, although I did not see the blessing take place.

The assembled people then began singing that dawn had broken and that it was time for the

father to bless the child:

Leader: Baba, iiuuu
Father, oh,

All: iiuuu
Oh

Leader: gugukia
Dawn has broken

All: Tharima mwana arue
Bless the child so that
he may be circumcised

This song continued at length as various people were called to bless the child. They included, besides the father: mother (nyanya), mother's brother(s) (mama), grandfather (umau), and grandmother (cucu). The grandparents, both matrilineal and patrilineal, can bless the child; but in this instance Richard's father was not present, so it was Janet's classificatory father and his wife who were referred to.

As the previous song was being sung, I went to see the youth; he had already been taken from his sleeping quarters and was lying nude on the ground with limbs extended. Two young men periodically doused him with cold water from a half-calabash, applying the water with a sorghum bundle which functioned as a brush. Mbeere say

the procedure makes the boy as cold as possible in order to numb the pain. The early morning chill in the cold season of August combined with the dousing causes a youth to shiver noticeably. Girls may be taken to a river to bathe in cold water, but are usually not chilled as much as are boys, by prolonged dousing.

To taunt the boy and portray the circumcision as an ordeal, the following song was sung at this circumcision. I heard it sung at all the male circumcisions and some female circumcisions I attended:

Leader: Nyamũ ngarĩ
The animal, the leopard

All: nĩ njũru ma
is very bad

Leader: Ngarĩ, ngarĩ
The leopard, the leopard

All: nĩ njũru ma.
is very bad.

Leader: Nĩkunya mwana
He scratches the child

All: na rũkunyũ ĩgacoka kuthiĩ
na njira.
with his claw and then will
go along the path.

Leader: Korũa nĩ nĩ ngũkarua
ngatũa mũtĩ ngakurura
If I were to be circumcised,

I would climb a tree and
scream.

All: Ngari, ngari ni njuru ma.
The leopard is very bad.

The song continued, repeated many times. The leopard is the metaphor for the circumciser, and it is believed that by trying to frighten the child, the singers will enhance his courage. The song is sung not only by the mother's group but also by people from the child's own clan and from the neighborhood.

While the boy shivered from the cold water and early morning chill, his father and agnates, as well as men of his mother's clan, began to assemble around him after dawn. Shortly after they surrounded the boy, the circumciser entered the homestead, running toward the assembled men. He had just completed an operation at a neighboring homestead. As the circumciser entered the circle, the boy was raised to a sitting position, and the circle grew tighter around him. Although women and uncircumcised boys are strictly forbidden from observing a male circumcision, several women ran around the circle trying to see what was transpiring. The men were very annoyed

and, to prevent the women from observing, held a blanket around the periphery of the circle. Nonetheless, as the operation proceeded, the women continued to run around the circle screaming, waving branches, and banging on metal pots to taunt the boy. As the operation proceeded, the men present, including those not Christians, repeatedly sang in Swahili a very solemn song; informants explain this song was introduced in Mbeere from Kikuyuland some time in the 1930's:

Moyo wangu, moyo wangu
My soul, my soul,

Nataka tahiri kama Jesu.
I want to be circumcised
like Jesus.

Moyo wangu, moyo wangu
My soul, my soul.

This song is regularly sung at male circumcision operations but no similar song is sung at female operations. As the boy stood up smiling, he was led away, covered with a blanket, to a hut where he would be secluded during the healing period. After a girl is circumcised, women cheer her bravery and give her gifts after she enters the hut. Neither of these latter activities occurred

at male circumcisions I attended. Soon after the boy went into seclusion, the celebration ended as everyone began to disperse toward their homes.

The various initiation songs, playing as they do on themes of ambivalence, alleged abuse and need for recompense, affinal responsibility, mock threat, and sexuality, formally emphasize collective values and attitudes concerning those themes. That an agon intrudes itself in no way diminishes the fact that key social relationships, defined by both fissive and integrative features, are thus part of a larger unity. Even songs whose tenor is not conciliatory stress values on which the community agrees. Lomax makes a similar point in a cross-cultural analysis of folk songs:

We know that both dance and song occur most frequently in ritual situations -- during religious ceremonies and community festivals of birth, maturation, courtship, marriage, harvest, death, and the like. In song one tends to find cultural features upon which there is maximal community consensus, since these are the utterances which everyone present is willing to voice or heed collectively (1968:224).

d) Men vs. women

The particular circumcision celebration I described was typical of those I attended. Other celebrations, where the child to be circumcised was the firstborn, were larger, but they produced the same kinds of behavior between the descent groups of the mother and father of the initiate. Not only division by clan, but also division by sex occurs. This latter division is most marked at the time of circumcision itself, when women chase men away from their circle if the initiate is a girl, and vice versa as in the male ceremony. Such efforts by men and women are part of the ceremonial agon. Although efforts are made by men and women to view the operation by pressing into the circle, women appear to make a greater more aggressive effort at male circumcisions than do men at female operations. In both male and female circumcisions, men and women insult each other in the songs, and the women sing insulting songs about the initiate. Throughout the night, the use of normally proscribed words is common.

Women take a leading role in the singing and dancing. Such assertiveness on the part of

women in the presence of men is uncommon in other contexts, except in a setting of formal interaction between wife-givers and wife-takers.

Similarly, the singing includes the use of words not normally considered in good taste and the dancing includes explicit movement of the hips, symbolic of the sexual act. To call some of these words and actions obscene perhaps risks an accusation of ethnocentric bias. In Kimbeere, there is no separate lexicon of "dirty" words as opposed to clinical or euphemistic terms, a division which we find in English. Rather, social context determines the appropriateness of all those words referring to sex. I never heard them used, in daily life, in the presence of both men and women, or, especially before children; to do so would be to utter obscenity or breach the boundaries of proper behavior. Yet such words are permitted at circumcisions in the presence of not only men and women, but also young and old.

I suggest that the important role assumed by women in this sanctioned licentiousness provides for them a psychological release. Their status in Mbeere, as in other parts of East Africa, is very

low. Women move from control by their brothers and fathers to that of their husbands; the rules of social organization, which I have discussed, give them little jural authority. The routine of life demands from them nearly unremitting hard work, which some men can escape. At the circumcision celebration, female aggressiveness, sexual flaunting, and verbal abuse is sanctioned, and their frustrations are doubtless provided an outlet.

The opposition of male and female principles is expressed in diverse ways at the circumcision. In many songs, for some of which I have here given texts, women brag about their sexual organs. Frequently they speak of the vagina and penis as synecdoches for the mother and father of the initiate, and in many the vagina is glorified. Seating arrangements similarly express the separation and opposition of males and females, for distinct groups based on sex nearly always emerge. The culmination of this separation occurs at the operation, when one side aggressively excludes the other.

Much time at the celebrations is spent

in dancing, which also reveals sexual opposition and unity. The dances take place outside, within or near the household compound of the host. Two types of dancing, one traditional and the other a recent innovation, are most commonly performed. Both married and single men and women participate; moreover a married couple does not dance together. Popular notions that adultery occurs at a circumcision underscores the interpretation of this event as a period of license; adultery, although not a grave offense, is punishable by a fine of livestock against the male offender. I am uncertain whether adultery committed at a circumcision ceremonial is punishable.

One of the older dances, the Imware dance, has been performed at circumcisions for as long as my eldest informants in Evurore and Mavuria can remember. This dance begins when a circle is formed by men and women. A group of men cluster at one point in the circle, beating sticks in a special rhythm. To this beat, a few men enter the open circle formed by the onlookers. With various thrusts of his pelvis, moving quickly about with a sort of running-hop, a man tries to attract a

woman from the periphery. A woman so attracted will enter the circle to dance with the man she chooses. The couple, without holding each other, move rapidly together around the inside of the circle in the Imware step. While they dance, the man attempts to get in front of the woman and face her, to thrust his pelvis at her. This confrontation ends the sequence. The woman, for her part, has made repeated attempts to keep her back or side to the man, and avoid facing him. She may or may not yield to him before returning to her place, at the edge of the circle. This sequence of actions seems symbolic of courtship or sexual relations; at the least, the dance is a fairly explicit representation of opposition and conciliation between men and women.

In another dance, Ngongore, which I observed only in Mavuria (it was said to have originated in Ukambani and to have entered Mbeere only recently) a similar encounter between a male and female partner occurs. Again, starting from a large circle, several men enter the circle and begin rapidly shaking their pelvises. The rhythm for this dance is faster, and provided by

men shaking cans filled with pebbles. The men in the circle are joined by women, as partners, if they attract them. Like the men and women who dance Imware, the participants in Ngongore may be married or unmarried. The women perform the same movement as the men, when they join a partner; but they dance with their backs or sides to their partners, trying to avoid facing them directly. For Ngongore, women tie shawls around their hips to accentuate the movement. The dance sequence concludes for a pair when the man succeeds in facing the woman, either through her yielding voluntarily, or through her exhaustion.

Young men and women dance in another way, reflecting their experiences in Nairobi, school, or from listening to popular music. Yet the format of their dancing is not entirely dissimilar from the traditional dances. To the accompaniment of guitars, the young men form a big circle and move around very slowly, in a kind of shuffle. The guitar music is that of Kikuyu or Swahili songs heard on the radio or in towns. Occasionally, someone may bring a portable battery-powered phonograph to provide the music. Young women on

the outside of the circle may join the men of their choice. The partners dance in a European fashion. When the song is completed, the girl retires and the young man remains within the circle of men, ready for the next song. The men continue dancing in a circle, each one hoping to attract a partner, in a manner not unlike the opening of Imware and Ngongore.

In all of these dances the men and women segregate themselves by sex; they join together if a man attracts a woman as a dancing partner. In all three dances the men try to attract women and maintain the continuity of the action, while the women dance with them only periodically. Imware and Ngongore involve the added element of explicit hip movement, a sexual allusion not lost on anyone. These two dances are also structured in a relationship of sexual opposition yielding to a conciliation. The latter dances are performed only at circumcisions, and are, like many of the songs, part of the general air of release; both forms focus on relations between sexes.

Summary and conclusions

Institutional sources of social and cultural change include schools, churches, and employment opportunities in towns; all have profoundly affected the circumcision process in Mbeere. Female circumcision is declining, and increasingly male circumcisions are performed in the hospital rather than at home. In some circumcisions performed at home, attendance is becoming smaller, and the celebration may be very abbreviated. Female circumcision was one of the first targets of the early Protestant missionaries. I have mentioned their campaign in Kikuyuland, which spurred much of the early Kikuyu political activity. Of course missionary influence was much less, and came later in Mbeere, but the Anglicans of the Church Missionary Society condemned the practice completely. Some Africans of that denomination gradually came to the same viewpoint, and female circumcision has declined among Anglicans in Mbeere, since the 1950's. The Catholic missionaries, on the other hand, who may personally deplore female circumcision, have been very tolerant of this practice in their role

as churchmen. Thus most Catholics in Mbeere still practice female circumcision. Male circumcision is countenanced by the various Christian denominations. Since the Anglicans, unlike the Catholics, decry the drinking of beer, this effectively inhibits many traditional celebrations and ceremonies among them, including male circumcisions performed in the traditional setting. Of course licentious songs and suggestive dances characteristic of circumcision ceremonies are also unacceptable to the Church. As a result, many families, particularly Anglicans, have abbreviated home ceremonies, eliminating the all-night celebration, performing only the operation, to which the wife's family is invited; or they send sons to the hospital in increasing numbers. Catholics, in contrast, tend to continue to circumcise both boys and girls at home with a celebration including drinking, singing, and dancing. Both Catholics and Protestants distinguish themselves from each other not only in their differing attitudes and practices regarding female circumcision but also in the more liberal secular and ceremonial use of beer by Catholics.

The element of bridewealth, an important

factor in the circumcision complex, is still of great importance in Mbeere. Christians and non-Christians alike defend the institution because, as they see it, it materially, rather than only symbolically, compensates a father for the expense of feeding, clothing, and sometimes educating a daughter. Certainly, an educated girl, because more has been invested in her, will bring a larger bridewealth. Moreover, the amount asked for bride-wealth is now greater than in the past. Its extended payment over years can result in many possibilities for disagreement and litigation between affines just as it can solidify the affinal relationship when consensus about payment is reached. Both conflict and unity thus characterize the affinal relationship. The celebration of the complementary nature of affinity provides much of the focus of the initiation activity and requires consensus for a proper performance. Affines thus agree through song, dance, and ceremonial action that their mutual relationship is defined both ceremonially and secularly, by opposition and unity. Yet the sources of opposition (e.g., conflict between agnatic and affinal responsibility) are too

well known to the participants to enable them
totally to submerge it and relieve tensions at the
same time that their actions bless the social order.
Conflict, like rapprochement, is so near the surface
of social life that the ceremonial at best can
only emphasize it and, by so doing, confirm the
moral obligations attendant to affinity.

Footnotes

¹David Brokensha informs me that this tree is euphorbia, a traditional source of medicine to counteract coughing.

²Here I use pseudonyms for both named participants and clans. The use of Christian pseudonyms is for the reader's convenience but should not be taken as evidence that everyone is a Christian.

CHAPTER IV

THE OATH IN LITIGIOUS CONFLICT:
AN APPEAL TO SUPERNATURAL SANCTIONS

The Mbeere utilize oaths to help resolve social conflicts of a litigious character.

Litigious conflict involves breaches of customary law or disputes between contending groups or individuals which are aired before moots (or court); these bodies attempt to resolve social tensions by mediation or rendering a decision. Toward this end, the moot or court then may employ the ritual oath as an instrument.

Roberts, in a cross-cultural study of oaths and ordeals, found that these phenomena tend to "perform important functions in the maintenance of law and order in the presence of weak authority and power deficits" (1965:209). In earlier chapters, I discussed traditional political authority in Mbeere, pointing to its highly acephalous character and the ad hoc, situational nature of local moot assemblies. Roberts' statement is apt for Mbeere; in invoking supernatural sanctions through oaths and ordeals, Mbeere moots augment their essentially

weak, secular authority. The declining frequency of the ritual oath, moreover, parallels the development of centralized authority and strong secular sanctions from government agencies.

Although Roberts discusses the political predisposition of societies in which oaths and ordeals occur, he does not investigate decisions to use oaths in specific contexts. Mbeere informants stated that before the colonial period virtually all disputes were settled by oaths and ordeals, yet these invocations of supernatural sanctions are not used in all disputes today. I suspect that in the past, as today, resort to supernatural sanction is not taken if a moot can reach a satisfactory negotiated settlement or decision relying purely on secular aspects of legal procedure. Certainly, the court renders judgment without wholesale reliance on the oath, and moots are capable of compromise and settlement without its use. Yet if a decision cannot be reached because testimony is ambiguous or if a litigant (particularly the plaintiff) calls for an oath, it is employed. The moot thus faces two major problems in litigation. First, it must establish the facts in the case and

it must insure that litigants will carry out the instructions of the moot after a decision has been reached. The threat of the oath may serve to insure both the elicitation of truthful testimony as well as the proper observance of the moot's instructions. I have no evidence that the oath is taken by litigants swearing explicitly to carry out the moot's decisions.

Here I wish to make a clear distinction between ritual oaths sworn in legal proceedings and other ritual oaths, such as the one I discussed earlier, which express moiety unity. Moreover, I further distinguish oaths in litigious conflict from oaths (e.g., ruoga) requiring many people in the community publicly to renounce sorcery; the latter oaths typically are sworn when mortality rates are believed to be excessive and are not attributable to other causes.

Depending on the kind of dispute, the oath employed by a moot ideally may serve a combination of three possible functions, as informants see and use such oaths. First, Mbeere believe that an oath functions punitively, fatally affecting any oath-taker who swears falsely. Because people fear the

destructive power of the oath, it may function secondly as a diagnostic device, enabling the moot to distinguish truthful from false testimony, depending on the behavior of the oath-taker.

Determining what is truthful testimony is particularly important in disputes between people about property, such as land or the amount of bridewealth that has been paid prior to a divorce proceeding. Finally, oaths ideally re-establish social equilibrium between litigants who swear that they will bear no ill will or otherwise harm each other after the conclusion of the case. These three functions of Mbeere oaths are well-recognized and articulated by informants.

A legal oath (kaurugo) requires the slaughter of a male goat (nthenge) to obtain the blood (nthakame) vital to the oath. This goat's blood is ritually cursed by elders, then each litigant consumes it and swears on pain of death that his testimony is true. Under normal circumstances consumption of goat's blood is not considered unnatural and men, especially, consume it raw or cooked after slaughter. Neither female goats nor cattle are used for oaths, for they are

considered more valuable than male goats. A different contrast between goats and sheep concerning ritual and magic, however, is noted by Mbeere. A sheep (ng'ondu) is never used for an oath, because its blood and body are believed to possess certain mitigating qualities (mborovia) which "cool" states of magical or ritual danger. Sheep's blood is thus unamenable to transmutation into a substance capable of inducing illness or death. Beliefs concerning the "cooling" properties of sheep are linked to the use of sheep's fat to reduce swellings on the skin. Moreover, a class of plants known collectively as ng'ondu is utilized, especially by medicine men, to "cool" or remove magical or ritual danger induced by sorcery, the commission of a taboo act, or curses. A goat, on the other hand, is regarded ambivalently by the Mbeere; one part of the goat known as gitathira (an organ near the stomach) has "cooling" properties, although those mitigating features are not as intense as those of a sheep. Yet goat's blood is very susceptible to ritual transformation into a dangerous substance and is thus the medium established for the oath.

Oath-taking in Mbeere is spoken of as "drinking the oath" (kūnyua kaurugo) or "eating truth" (kūrīa mā) or other variations of these phrases. These metaphors refer to the consumption of cursed blood -- the substantive medium of the cursing. That is, the words of the curse are given material form in blood, the operation of which is explained by Mbeere ideas of contagion. By consuming part of the cursed blood after each invocation, "may this oath kill me", the oath-taker places his body in contact with the "oath".

Conflicts over particular issues require certain variations in the basic oath. I will here present the two most important and frequently-discussed variations in oaths. In oaths over land disputes, which I shall examine in the next chapter, soil from the disputed territory is added to goat's blood, increasing its relevance to the issue. Moreover, since the consumption of soil is an unnatural act, adding it to the substances to be cursed highlights the seriousness and uniqueness of these ritual acts, which are thus set off from both routine behavior and other kinds of oaths.

Another variation in the oath occurs in

what is considered to be the most severe oath in Mbeere. The pancreas (rūengū) of a goat (or possibly a bull, thus serving as a fine), which then also supplies another source of blood, is added to the goat's blood and both are cursed for the oath. This oath is administered to a suspected sorcerer whose actions have been linked to death(s) in the community. Although the pancreas is normally eaten, it assumes an unnatural quality in this oath both through the curse of the elders and through the unusual manner in which it is consumed; the suspect is required to swear denials as he or she consumes the pancreas, bit by bit, after it has been in physical contact with his or her genitals -- the latter a taboo act. People believe that taking this oath is highly punitive, for it requires the deliberate commission of a taboo act, making survival difficult, and is not primarily utilized as a test of truth.

The precise operations of the supernatural sanctions invoked by the oath are not highly elaborated by the Mbeere. In cursing the blood to be consumed in the oath, elders make no appeal to either God or the ancestral shades to punish oath-

takers who lie. Rather, it is believed that the collective curse of the assembled elders ritually transforms a hitherto benign substance into a ritually dangerous substance capable of destroying those who swear falsely. Their collective authority is symbolized in the staff wielded by the oath-leader. Men of the first council gain the right to carry staffs after they undergo initiation into elderhood; the staff is then a sign of elderhood, but a symbol of political and ritual powers. In moving the stick over the blood during the cursing process, the oath-leader manipulates a symbol of both ritual and political influence. If the oath-leader is a member of the second council, he utilizes in cursing an additional symbol of his position -- a goat's skin ring; a man of the second council taps his ring against his stick as he leads the cursing. The use of the elder's staff mobilizes participants in the oath-taking ritual around a major symbol and focuses attention on the collective ability of elders to transform, ritually, the benign into the pernicious.

The curse of the moral community of elders parallels the Nyakyusa concept of "the breath of

men", which Wilson explicitly compares to curses among the Meru, Embu, and Kikuyu; she hypothesizes that the "exercise of mystical power by contemporaries or seniors to punish non-relatives" is closely correlated to the presence of an age organization (1951:168).

Various ordeals (whose names vary with the material employed) allegedly have been available for moots to assess truthful testimony. I witnessed no ordeals in Mbeere; informants believe that ordeals are only rarely performed due to government opposition. The most frequently described ordeal requires each litigant to lick a red-hot knife, ritually treated, as an affirmation of his statements; it is believed that only a liar will be burned by such a knife. Other ordeals mentioned also function as rapid diagnostic devices. Informants distinguish the diagnostic function of the ordeal from that of the oath in terms of its speed. Final judgment is rendered immediately with an ordeal. Final proof of the oath's effect is not certain until the end of seven months. Thus, although both oaths and ordeals may produce faltering, or fearful

testimony, enabling moot members to accuse such litigants of prevarication, only ordeals provide immediate and definitive demonstration -- injury by virtue of the ordeal -- of falsehood. The intended consequences of ordeals are less serious than those of oaths just as their functions are less complex.

Each oath, despite the ostensible reconciling purpose of the moot or the nature of the dispute, requires that the oath-taker renounce the use of sorcery against his opponent during the oath. In rejecting the use of sorcery as a means of self-help, the oath-taker underscores the seriousness of the dispute and expands the scope of its resolution by affirming that he will not seek revenge by committing sorcery. Renunciation is often phrased as a denial of the use of sorcery against "any Mbeere" or "any child of a Mbeere". A sorcerer is the enemy of all people, for anyone may be his victim, according to Mbeere beliefs; thus, since Mbeere regard sorcery as the most despicable crime, oath-takers renounce its use generally, not just with respect to their opponent. Informants state that the oath should

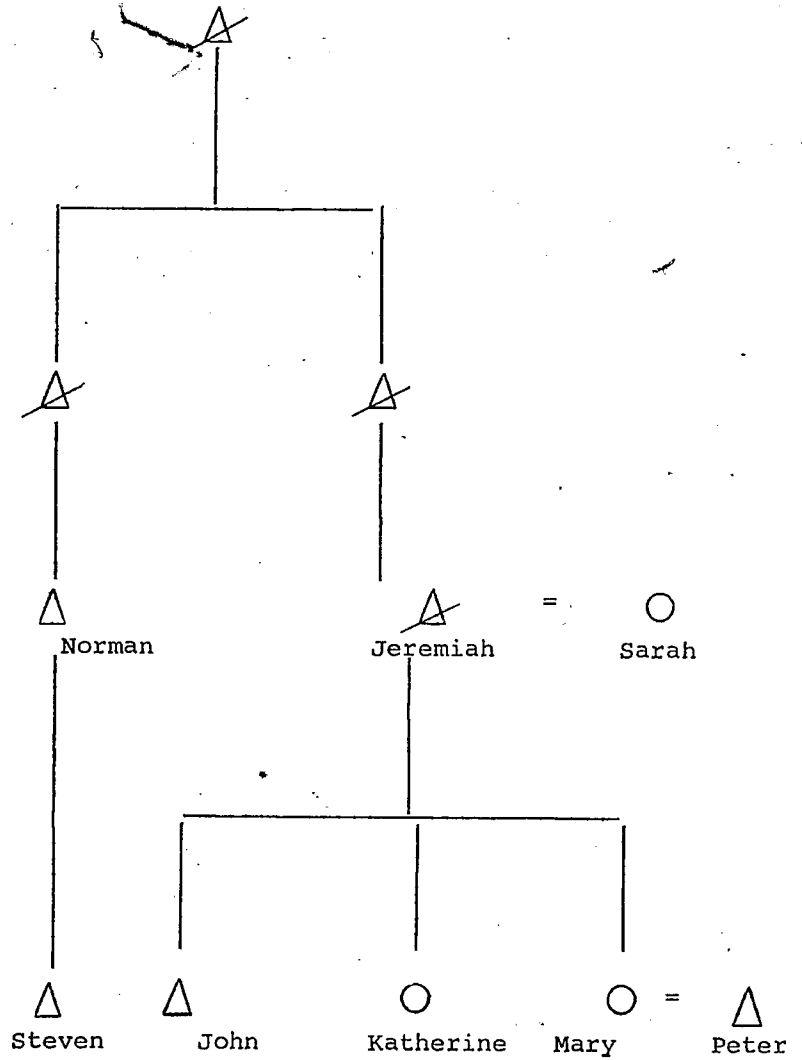
not only settle the dispute per se but also inhibit future expression of interpersonal antagonism between disputants.

An oath-taking procedure: litigation and ritual

To illustrate, with a specific example, some of the general points already noted, I present the following text of a case involving an oath. The case was originally recorded on tape and subsequently translated by my research assistant and myself. I then proceed to analyze the meaning and function of the ritual oath.

Pseudonyms have been assigned to the participants in this case, heard in Evurore Location.

In the case, Sarah, the widow of Jeremiah, is pitted against Norman of Mūgwe clan. Sarah's late husband was in Norman's minimal lineage; they both descended from the same grandfather. The following diagram shows the relationship between the antagonists and their kinsmen mentioned in the case:



Sarah accused Norman on two bases: 1) cursing her and 2) using sorcery against her. First she had sought redress by convening members of the clan, but when that failed, she took the case to the subchief, who arranged a moot so that Norman would swear on oath that he would not harm her. In the course of the case before that moot, it became clear that Sarah was using the occasion to air a variety of grievances against not only Norman but also his son. A major issue was Sarah's belief that Norman had tried to take the bride-wealth for her elder daughter, Mary, part of which Sarah sought as school fees for Katherine, her younger daughter. The moot consisted of eight men, two of whom were chosen by both litigants; each litigant also chose three others. Of these eight men, three were Mũgwe clan members (the clan of Norman and Sarah's dead husband); two others were of Ngũgĩ and Cĩna clans. These three clans of Irumbi moiety form a phratry, thus maintaining close interrelationships and sharing common traditions; a rule of exogamy is also observed between members of these three clans. The last three elders selected as councillors were chosen

by Sarah, perhaps reflecting a desire that people outside the close circle of these three clans hear the case, making her grievance more public. She chose no elders of her own natal clan of Thagana moiety, but she did choose one man from a clan of that moiety. (The text will indicate that she used the occasion more to express her grievances than to appeal to the moot for a judgment advantageous to her.) The subchief, health inspector, and assorted other men attended the case, held both inside and outside a small shelter built in a clearing in the bush near the home of the subchief.

Sarah vs. Norman

Subchief: Sarah has accused Norman.
Is Norman here?

Norman: I am here.

Subchief: Sarah, who will listen to your case?

[Sarah
names her
councillors.]

Subchief: Norman, choose your people.

[Norman
names his
councillors.]

Subchief: The members of the moot
(kiama) should sit together here.

Others should not sit with the moot. Sarah, explain to the members of the moot you have chosen and to those chosen by Norman why you have accused him.

Sarah:

Norman's bull came to my home. I told my children to return it because it might kill our calves. Norman came and asked why the bull was being beaten and I told him about the calves. He asked me if I ruled the home. I asked him if he wanted the calves dead. He started insulting me, saying that my thighs would not prevent a child from being warmed by a fire [implying she is very thin]. He said that I would die if I joked with him. We insulted each other and the bull was taken back.

Three days later we went to work in a neighbor's garden, and Norman's son, Steven, was there. We started drinking beer. When the third gourd was brought, I saw that it was sugarcane beer and I didn't want to drink it because that kind of beer makes me ill. When I was given my cup, I gave it to Steven jokingly saying, "You are my son and I will 'marry' your daughter [fictive marriage of women]. He drank the beer, got drunk, then went to sleep in the bush.

Soon another person went to the place where he was sleeping and yelled, "Come and see Steven lying in excrement." Steven awoke and said, "It is Sarah who is saying I am lying in excrement. May she sleep with her father and have sexual

relations. She is a clitoris."

Then I asked him, "Do you want to insult me as your father does, and you are my child? Are you abusing me, and your father did it too?"

He said, "You will perish like that soil, together with your daughters of whom you are so proud." [The efficacy of such curses is very feared and requires retraction if the curse is not to be realized.]

When we returned home, I said to Steven, "You said that my children and I will perish like the soil; so pick up the soil and say I won't perish, and since I told you that you will perish, I will also take it back." He bought snuff for me when he was told by some women that he had abused his mother [classificatory], but he refused to pick up the soil and take back his curse.

The next morning, I went to look for him and his father. I asked his mother if Steven had told her anything. She said she knew nothing because she had been drunk. I told her that Steven cursed me with soil, but she said she knew nothing about it. The next day I sent word to Norman that his son had cursed me with soil the day before and if three days passed without picking up that soil [for retraction], then a goat would have to be slaughtered [meaning aid of a medicine man would be required for the retraction, using the gitathira of the goat].

I went home, but they didn't come to take back the curse. I went to the son of Njoka [clanmate of Norman's] and told him the story. He called three men. When they came, we talked and when Norman was told about it, he said that the matter was simple and that I wanted him to kill a goat for nothing. He said he would prepare to have the curse taken back. When the men heard that, they went away. He said he would call me in the morning. He didn't call me; then I went to my garden and then I saw a vehicle coming so I went for a vaccination. After that I went to ask Norman why he hadn't called me in the morning. Then I went directly to the subchief to accuse Norman.

Norman:

I am accused, yet I do good things for her. I told her that there is a curse left by our father [classificatory] not to insult people in the home, so don't insult me over the bull. Why didn't you report me to Nthiga of our clan? Why didn't you tell them? Isn't that sorcery you are accusing me of? I mean the curse. You are blaming me for sorcery, but I don't do it. Know that I am hated for doing good things. When Jeremiah died, you and I did the "washing" [ritual sex act to cleanse the home after death of a member]. If I am committing sorcery, tell these

people the good things I've done.

First
Elder:

She told you first about the Bull, then you said you would use sorcery against her. You didn't tell us about that. After that your son ---

Norman:

Don't tell me about my son. Talk about me. My son will speak for himself. He is here. I went for this woman four times -- this woman who called the clan which asked me to produce a goat.

First
Elder:

Did you speak with this woman after the clan departed?

Norman:

Yes, on the same day, and I said I would bring a goat. That was the day she was making beer for the clan; I went for her twice. I didn't come here for a case. All I want is to take the oath. I want people to direct me while I take the oath.

Second
Elder:

You should kill the goats now. Bring the beer. I know all about this case. Say what Norman has done to you. I believe that he is your husband.

Norman:

I am not the husband of this woman.

Sarah:

I am annoyed with him for telling Peter [pays bridewealth for her daughter] not to give me school fees for my child. One term concluded while she

was unable to go to school. The next term he also prevented me from getting school fees.

Norman: Can you take the oath and say that?

Sarah: May God see me [loosely, may I be killed by the oath if I lie]. I told Peter to sell one goat and buy clothes for the child. Why do you tell him not to give me the money? If that child becomes a teacher, won't she help you because she will get a salary ?

Third Elder: He says when he went to Peter's the money was counted in the presence of others. Will you say anything if he swears that he didn't tell Peter not to give you the money?

Sarah: When we take the oath, he should say that he won't steal anything from me and he won't tell Peter not to give me what I ask. It will be all right if he takes the oath like that.

Third Elder: Do you think he can steal from you?

Sarah: Why did he prevent my child from attending school? There are many widows here in Mbeere and are they treated in this way?

Subchief: Sarah, I heard you saying

that Norman should swear that he will never steal from you. Didn't you also talk about a curse?

Sarah: Yes.

Subchief: How he had abused you?

Sarah: Even if he abuses me I am not angry. [I am his wife through widow inheritancel. I only mentioned the curse from his son Steven. If Norman abuses me in the worst way I wouldn't mind since he is my husband. I can abuse him in return.

Subchief: So you want Norman to swear that he won't take your property?

Sarah: I want him to take the oath that he won't use sorcery against me and that he won't take anything that belongs to me. But you should know about the soil Steven cursed me with.

Subchief: You said that Steven won't take the oath.

Sarah: Steven won't take the oath. I said that the curse with the soil should be taken back. I won't oppose what these elders say.

Third Elder: So you have a goat for the oath or for the retraction of the curse?

Sarah: I have only one goat for the oath.

Subchief:

The woman says she doesn't hate Norman because he is her husband. She said that if Norman abuses her, she too can abuse him. But she does fear that he might use sorcery against her or her children or else that he might steal something like the bridewealth paid for her daughter. [Bridewealth for a girl should be used to pay the bridewealth for her full brother. Bridewealth is primarily the affair of a man, his wife, and her sons. Someone in Norman's position has no rights in the bridewealth Peter pays for Sarah's daughter. At most Norman can act as guardian.] She wants Norman to swear that he won't use sorcery against her or her child nor will he steal anything from her.

Sarah:

I want that.

Norman:

She insults me whenever she drinks beer brought for her daughter [as bridewealth]. Have I ever taken that beer? I received the money but have I spent even ten cents? Tell her what I have done. She has used sorcery against me; she insults me and says I have reproduced like a rat. [In this hearing Norman has been equating curses and sorcery.] Have I insulted her about her children? I am subject to a curse in my home against such abuse. Do you think that I can cooperate with her when her husband could not? You drink beer all night but I don't insult the man you are with. You also drink beer alone. But I am the

father [classificatory] of your girl and I circumcised her [provided the celebration]. Have you ever heard of that in Mbeere? You only gave birth to that child, but I circumcised her.¹ To shorten the case, I can't steal anything from your child and I can't poison you or your child. Beer is coming for the elders. I am glad the elders are here. This is not a case because we are not demanding anything from each other. I have nothing which can kill the woman or her children or anyone else in Mbeere. May the oath kill me if I have. Even if I see a snake or a bad thing, may the oath kill me if I let it reach her.

Sarah: I'll direct you in the taking of the oath.

Norman: You won't direct me. I won't let you control me. You are foolish.

Sarah: My daughter is ill and I think he is using sorcery against her.

Norman: [Sarcastically] All right. I am the one who is poisoning her with sorcery.

Elder of the Clan: Let me tell you before you take the oath that people of the clan are present and we heard what you have said. We will direct both of you.

Subchief: This is a case of Norman and his wife. I want you to

settle the question about the
curse and the soil.

Elders: We shall take care of that.

Subchief: We don't have a lot of
goats in Mbeere to kill here
and there.

At this point, the moot elders began drinking beer provided by the litigants. A short distance away, other elders, assisted by young men, slaughtered the two goats, provided by Norman and Sarah, respectively. One elder killed the goats by puncturing their throats; blood from Norman's goat was collected in a half-calabash and then set aside.

From testimony and my observation of three cases in which a ritual oath was employed, it is clear that blood from only the defendant's goat is used for the oath. I found no articulated explanation for this rule; it may persist for the following reasons. People believe that the harmful power of an oath can be undercut by resort to magical counteraction prior to or immediately after the oath-taking. Using blood from one goat for both litigants can thus diminish the possible advantage one person might gain from prior magical antidotal treatment of his goat. And if the

plaintiff, who first plans his strategy, demands an oath as in the procedures I witnessed, then the defendant would have little time to have his goat treated magically; thus using only the latter's goat might further check the temptation to guarantee a safe oath.

Just prior to roasting the goat meat, the government health inspector examined the organs of each goat to insure that the animals were not diseased. A fire was built and portions of meat from each goat were roasted and eaten by elders of the moot. Raw meat from Sarah's goat was distributed to the subchief and to moot elders to take home. The subchief refused to eat meat from the goat whose blood would be used for the oath; he said that as a Christian he was forbidden to eat meat from such an animal; other Christians present agreed Christians should not eat such meat.

When the elders of the moot had finished eating, the oath procedure began. Norman was told to remove his rubber sandals, for it is believed that magical counteractions to oaths or other magical powers can be concealed in footwear. Sarah was already barefoot. One of the moot

elders, a member of Norman's clan, took the half-calabash of goat's blood which had congealed.

Assisted by an aide to the subchief, he placed a clot of blood on each of four leaves and then put two leaves before each disputant.

The elder preparing the blood for the oath also assumed the role of oath-leader. Responsibility for that role historically fell to an elder of the second council who was also a member of a generation-set empowered with ceremonial authority; in his absence, any elder could act as oath-leader. Today, in each neighborhood, the same two or three elders (regardless of council or generation-set affiliation) emerge time after time as primary oath-leaders because they stand out for their abilities to chant and to utter effective curses; the "professional" oath-leaders know all of the "proverbs (formulae) of the oath" (nthimo cia kaurugo). In the case at hand, the oath-leader as a clanmate of Norman's had an added interest in the case. Other oaths I witnessed were very similar, but other, better known oath-leaders issued lengthier curses.

As other elders of the moot and the two disputants remained seated on the ground in a

semicircle, the elder who had placed the blood on the leaves took his staff and began a rhythmic chant, cursing the blood placed before Norman. Other elders of the moot clapped their hands slowly in rhythm with the oath-leader's chant:

This is the oath for Norman who is said to have used sorcery against the wife of Jeremiah and the children. The oath will seize your head and buttocks if you have eaten [taken] a bad [false] oath. If you use sorcery in your home against the wife of Jeremiah, or use other sorcery so that you can have sexual relations with her, then the oath will enter your stomach and make it swell like a bag full of green grams. If you are using sorcery in order to get bride-wealth in this home, then any medicine [antidote] you use after taking the oath will seize your kidneys, then your shoulders, then it will drop to your intestines. When you speak you will become sick. You'll have an erection like a donkey's. The oath will make you sick. If you haven't done these things, the oath will be like gruel from sorghum [nourishing and benign].

Accompanied by the clapping moot elders, the oath-leader then brandished his staff as he cursed the blood designated for Sarah's oath:

This is the oath for Sarah who says, "I am the victim of Norman's sorcery because he wants the bride-wealth from my daughter. He prevents my child from getting school fees." If you went to Tharaka

[neighboring Meru group Mbeere consider to possess strong medicines] to get medicine for sorcery against Norman, then this oath will make you sick, regardless of whether you hold it with either your right or left hand. The oath will begin in your head, making your brain boil. When you go to men, you will tell them to use your vagina. Your stomach will begin to swell and your back will swell. Your vagina will protrude. The oath will eat [destroy] you. If you are blaming Norman for something that he has not done, you will be destroyed by the oath. When you meet children, you will tell them to use your vagina.

An
Elder:

Yours [your vaginal]
will be like a half-calabash.

Oath-
leader:

If you haven't done
these things, the oath will
be like gruel from sorghum.

Following this cursing (kūruma kaurugo),

Norman was instructed to* take the oath first.

Defendants normally swear first in ritual oaths.

Norman then placed in his left hand one leaf containing a clot of goat's blood and he began to swear his denials. At the conclusion of each phrase, "May the oath kill me", he ate a small portion of the blood, using his right hand to place part of the clot in his mouth. People invariably eat with their right hands because in Mbeere the

left hand is associated with the commission of sorcery, dirty acts, social inferiority, and physical weakness. The oath does not occasion a reversal of the normal patterns of consumption.

First Oath-taking

Norman: We have killed goats
 for nothing in this oath.
 I have never used bad
 medicine nor do I know
 where to get it in order to
 use sorcery against the child
 of a Mbeere. May the oath
 kill me if I know.

Elders: It kills the one who
 lies.

Norman: May the oath kill me.
 Oh, it's slipping. [Blood
 began to fall off of the
 leaf.]

Elders: If it falls off, we
 shall say you threw the oath
 away. [That is, you have
 refused the oath thus proving
 your guilt.]

Norman: May this oath eat [kill]
 me. In this home there are
 no bad things. I have a
 curse left by Jeremiah not to
 mistreat his son, John. I
 could do nothing to him. May
 this oath kill me if I do
 something bad to him.

Sarah: Say that you will not use
 the kind of sorcery against me
 which makes people forgetful
 [implying that he can make her
 forget about the bridewealth

she seeks].

Norman:

Although you hear her saying that I use sorcery against her, you should know that there is a curse in my home from long ago that I cannot abuse people. If I lie and if I abused her using any kind of harmful medicine, may the oath kill me. If I see something harmful approaching her home like fire, unless I lack strength, I will not let it reach the home. If it does, may this oath kill me. I don't know where I can get bad medicine to kill a Mbeere, or the people of Jeremiah, or the sons of my fathers [classificatory] or anyone else in Mbeere. May the oath kill me if I lie.

An
Elder:

Swear that "Sarah is mine and her young son is treated equally with my son. May the oath kill me if it is untrue."

Norman:

If I hear Sarah crying because she is being beaten by someone ---

An
Elder:

Maybe you won't be able to fight the man beating her.

Norman:

If I use sorcery against Sarah or against any other person of Mbeere, may the oath kill me.

An
Elder:

Take the oath for the kind

of sorcery she mentioned.

Norman: I don't know about that and I will not send someone to do that to her. May the oath kill me, if I think of that.

Elders: Take the oath slowly and don't consume all of the blood. This woman will direct you now. Tell him what you want him to swear.

Norman: I will not curse the children of Jeremiah and if I hear someone curse them I will be very disturbed. May the oath kill me if I lie. Tell her to direct me now.

Sarah: I want him to say that he is not using sorcery against me as a result of having a dispute; since this dispute began, I have become ill.

An Elder: No, he has already sworn about that.

Norman: I only told her that this case is costing me a goat and she too is losing one. I will not try to give her any kind of bad medicine. I won't look for it. May the oath kill me if I attempt these things.

Elders: He has finished swearing.

An Elder: This woman mentioned earlier that he told the man who married her daughter not to give her bridewealth.

Norman: That girl is not mine. I

circumcised her. I complained because I paid for the beer. This child troubled me very much. Who has ever taken that trouble in Mbeere? I do not steal anything paid for that girl. I have not stolen or hidden the bridewealth. I can only say that Sarah should be given something. May the oath kill me if I hid anything of hers.

An
Elder: Swear that you have taken the oath honestly.

Norman: May this oath kill me if I have done anything to counteract this oath or if I will take anything to remove this oath. [It is believed that some medicine men have material to make an oath-taker "vomit" the oath, thus permitting him to swear falsely with impunity.]

An
Elder: Now throw that leaf backwards over your shoulder and step into the other clot of blood on the other leaf. Give that woman her oath.

* Sarah then held a clot of blood on the leaf just as Norman had done; she then began to swear.

~~Second Oath-taking~~

Sarah: I know of no medicine which can kill the child of a Mbeere, my child, or my husband. May the oath kill me.

An
Elder: It kills the liar.

Sarah: May this oath kill me if I know of medicine which can kill a person. May this oath kill me if I lie. If I know anything which can kill a Mbeere, may this oath kill me.

An Elder: Don't go quickly. Say that you won't curse Norman or his children and that they are like your own.

Sarah: May this oath kill me if I don't use sorcery against a person who can use it against me. I will not curse him for nothing.

Elders: Swear about Norman's children.

Sarah: May this oath kill me if someone trying to poison [with sorcery] me or my child does not follow me when I die. Unless the child of Norman tries to poison me or mistreat me, I will not curse him. May the oath kill me.

An Elder: There is a kind of poison which is available within a woman's body. [Refers to menstrual blood.]

Sarah: May the oath kill me if ~~I try to use the sorcery of~~ women against the child of a Mbeere or against my co-wife. If I know about sorcery against Norman, may this oath kill me.

Norman: This woman will swear that she cursed me. She said that

I have a lot of children like a rat; she shouldn't say that again.

An Elder: She will swear about that if she said it.

Sarah: May the oath kill me if I didn't see that I was hated. If someone mistreats me, I'll curse him.

An Elder: No, don't threaten that. There is just speaking, and then there is cursing.

Norman: Tell her to say that she won't curse me again.

Sarah: May this oath kill me if I curse Norman without his having tried to use sorcery against me or my children.

Here ensued a brief discussion by the moot concerning curses and insults. It was agreed that simple insults are not as dangerous as curses. One elder equated a curse with sorcery (kīrumi nī ūrogi). Throughout the case, disputants and elders acted in terms of that equation, since it is believed that a curse invoking death can be as harmful as actual sorcery which also aims to injure.

Sarah then finished her oath:

Sarah: May this oath kill me if I wasn't cursing Norman when he was bothering me. May this oath

kill me if I do that again.

An

Elder:

Swear that you will not
insult Norman's children.

Sarah:

I will do it if they do
it to me. I have made Norman's
children equal to my children.
They are one thing. May this
oath kill me if I lie.

An

Elder:

Throw that leaf backwards
and then step on the other clot.

These acts completed the oath-taking ritual.

The termination of oaths in Mbeere is variously marked. In this oath, each litigant threw over his shoulder the first leaf, from which he had eaten blood for the oath; he then stepped on the clot of blood contained in the second leaf. Informants state that throwing the first leaf over the shoulder is tantamount to saying, "May I be lost like this leaf, if I have lied." I found no immediate explanation for the second action -- stepping on the second clot of blood -- at the conclusion of the oath. It appears to intensify the potential destructiveness of the oath, according to Mbeere notions of contagion, by bringing the oath-taker into further physical contact with the dangerous substance. Magic and ritual rely strongly on imitative

(analogical) acts as well as materials coming in contact with the object being affected by the supernatural act.

The case of Sarah vs. Norman illustrates important features about the process of Mbeere dispute settlement; one of these features concerns the availability of local government sanctions. Sarah had first tried convening members of her husband's clan to resolve her dispute with Norman. Although Norman stated that he would settle the dispute as the clan elders agreed (he said he sought the woman several times in one day to settle the case), Sarah believed that he had reneged on his agreement with the elders. Prior to the imposition of government authority, her efforts at redress would not have gone much further than the clan; she could have repetitively sought help from the clan or resorted to self-help through sorcery. But in this case, she utilized an additional alternative, the assistance of the subchief. On a previous occasion, he had arrested Norman for drunkenness; the power of his sanctions was thus clear. Indeed, the subchief helped to arrange this moot, requiring Norman to produce a

goat for the oath.

The availability of a government administration has aided women's efforts to initiate legal proceedings. Court records, for example, show women acting as plaintiffs in divorce actions; in contrast, a divorce proceeding before a traditional moot is the concern mainly of men, who are the individuals normally paying and receiving bridewealth.² Informants agree that the presence of government officers and court provides women important legal leverage they previously lacked. The control men exercise over their wives and daughters is thus weakened.

As is typical in disputes involving sorcery accusations, the elders of the moot made no attempt to assess guilt in order to render a decision; they questioned the litigants only slightly. The function of the oath as a diagnostic device for determining truth does not operate strongly in cases of this sort, as it does in disputes over property. Rather, the emphasis here is on the punitive function of the oath, which will serve to destroy any parties guilty of misconduct. The third possible function of an oath -- the

reconciliation of antagonists -- also is demonstrated in the oath sworn by Norman and Sarah; each denied previous sorcery and renounced its future use against the other.

Although the oath-takers made conciliatory gestures toward each other in their oaths, Sarah also used the oath to utter a thinly veiled threat that she would retaliate in kind if sorcery or cursing were ever used against her or her children by Norman or anyone else. Her threat was given particular force through its affirmation by the oath.

The oath in this case was then a highly expressive act, permitting a public disclosure of tensions within a family. It gave Sarah the opportunity to seek relief from her pressing fear that sorcery and curses had been used against her and her children; it also offered partial security against such acts in the future. But significantly, the oath afforded her a public forum and ritual context in which she could safely threaten sorcery and retaliation for aggression directed against her. Her actions in the oath thus emphasize the very conflicts which the oath ideally dispels.

Using the oath complementarily to express both conflict and conciliation is not unique in this case, and it figures prominently in land disputes, as I shall discuss in the next chapter.

Content of curses appears to be consistent from moot to moot. I heard only slight variation of the same curses in three different oath-taking rituals administered by three specialists. As seen in this case, an oath-leader not only invites the destruction of the internal organs of the oath-taker who lies; he also introduces an explicit sexual threat emphasizing either exaggeration or inversion of normal sexuality. In the dispute I have discussed, the curse calls down exaggerated sexuality -- an erection like a donkey's and a vagina like a half-calabash; the curse also asks for inversions of sexual norms such as the woman indiscriminately offering her vagina to men or even children. Sexual references in the oath grossly distort physical and moral norms; such images are wholly anti-cultural. Their use, however, dramatizes the gravity of any offense requiring an oath for settlement. The rules governing sex in Mbeere are among the most explicit

and ordered in the society; by transforming blood into a substance capable of exaggerating or inverting the unambiguous sexual norm, the oath-leader and supporting elders create a highly potent and pernicious oath. Sexual references occur in all oaths because, I suggest, these inversions underscore what is regarded as proper behavior, as does structural reversal in rituals of rebellion.

Conclusion

Skepticism about the efficacy of the oath threatens its use and effectiveness. In land disputes, for example, people refused to accept judgments rendered on the basis of the oath and informants confess that the oath does not effectively deter false testimony. Sources of skepticism must not be attributed solely to external and recent influences such as Christianity and Western education. Very significant indigenous beliefs create dubiety about the efficacy of the oath; those beliefs are demonstrated in the case I examined. Norman was enjoined to deny any use of magical counteractions to the effect of the

oath. Data about magic and sorcery indicate that antidotes to the oath always existed. I think it is reasonable to conclude that at no time has the effect of the oath been considered absolute and that belief in counteractions has always threatened its full effectiveness.

More recently, just as individual government officials have attacked the principle of the oath, so too have Christians generally denigrated the oath. Christians, involved in disputes either before moots or the court, insist on swearing on a Bible, refusing to take the traditional oath. Non-Christians, on the other hand, argue that a book never killed an oath-taker, and they refuse to believe in the efficacy of the Christian oath. But some non-Christians also have become cynical about the traditional oath, citing instances of men who have successfully stolen land, because their lies were not detected or punished through the oath. Belief in the power of the oath as a diagnostic and punitive measure has thus been further weakened. Among even those people who give lip service to the power of the oath, I detect a general disillusionment, for they say

people have learned to lie with impunity; cases and facts can skillfully be misrepresented, they add, and if one has enough money many magical counteractions to the destructive effect of the oath are available.

Although the oath may prove effective in the short-term settlement of disputes, the availability of appeal procedures also severely undercuts its power. As I shall point out in the next chapter, the oath in land disputes briefly stabilized conflict and helped the court in Mbeere to render decisions, yet those decisions were overturned by higher judicial bodies. Both the ideological challenge of Christianity and the existence of widespread choice and appeal procedures in dispute settlement have then seriously undermined the conciliatory functions of the oath. Oaths are certainly no longer vital to dispute settlement, as conflicts can be settled without the oath by higher secular authority. In recent years, then, the oath has become highly expressive of social conflict as its instrumental functions have been undercut.

As an expressive phenomenon, the oath is

cathartic; it is a public declaration and temporary purgation of mutual hostility, clearly delineating issues and making them available to public assessment. Yet through recriminations and denials of wrongdoing, the oath-taking procedure publicly establishes and reinforces general principles of proper behavior. The oath is a release of hostilities for not only the litigants but also moot elders. The oath procedure is considered serious but not solemn, and people in attendance may laugh when they listen and contribute to the threatening curses, demonstrating the emotional release these curses offer them. Moot elders also sometimes argue heatedly about the manner and content of the oath, providing for themselves an approved public occasion for the expression of disagreement. These latent functions of the oath are as significant as its ostensible purposes.

Footnotes

¹Norman's emphasis on his role in circumcising Sarah's daughter not only underscores his own good intentions but also illustrates the basic belief about circumcision I discussed in the last chapter. Circumcision (a kind of rebirth) is regarded as equally important as actual birth.

²A widow with no adult sons may assume a major role in the receipt of bridewealth for her married daughter. If the latter gets divorced, her mother will be responsible for the refund of the bridewealth. Should disagreement develop over the amount of refundable bridewealth, the mother may swear a ritual oath concerning the bridewealth before a moot. She is not required to seek a man of her deceased husband's clan to represent her in the moot proceeding.

CHAPTER V

LAND AND LITIGATION

This chapter focuses on changing land tenure in Mbeere. The discussion of traditional and changing tenure should be considered against a background of land consolidation and registration -- two major facets of a coordinated government program to alter fundamentally the traditional pattern of land holding. During the course of my research, this program was in process. It required a survey of all land in the consolidation area in order to determine the total acreage held by each lineage; then each lineage would assign to every man of the group a consolidated parcel of land equivalent to the amount of land he previously cultivated in dispersed patches. During the course of the program, individual cultivators who had been assigned consolidated land would receive a title deed for the newly registered territory. Acutely aware of the land reform plan, lineage groups have attempted to claim sizeable pieces of land in order to maximize their holdings when registration and consolidation are finally

effected. Changing land tenure has thus spurred a series of land disputes between lineages and has conditioned present attitudes toward land.

Rules of land tenure

The principles of land tenure are complex in any society and are usually understandable only in terms of other social principles. In Mbeere land tenure must be considered in the context of patrilineal kinship, emphasizing seniority based on age, and the organization of clans and descent groups (maximal lineages and minimal lineages with their constituent agnatic cores localized in homesteads).

Near each homestead are located gardens (mĩgũnda sing. mũgũnda) cultivated by individual members of the homestead to whom those gardens have been allocated by the senior male. Uncircumcised youth do not cultivate separate gardens, but rather may assist parents in cultivation of their own plots. The senior member of the homestead normally cultivates his own garden, allocating other gardens to each of his wives and to his married sons. Commonly, people also have gardens

beyond the homestead area in other parts of the parish or possibly in other parishes. The fragmentation of individual holdings within Mbeere is thus a common pattern, reinforced and exacerbated in every generation by a system of inheritance in which a man divides his own and his wives' gardens among his sons.

The following tables indicate the extent of fragmentation of holdings. The first set of statistics is drawn from a report on rural development in Kenya (Heyer, Ireri, and Moris 1969:38), but it is not clear if the figures apply exclusively to respondents from Embu Division, or to respondents from both Embu and Mbeere Divisions. The figures are nonetheless indicative of the pattern of land fragmentation in parts of Embu District prior to land consolidation. In a recent report, Brokensha (1971:3-4) found a similar pattern of fragmentation of gardens in Mbeere; the majority of his sample possesses two gardens. He reports distances between gardens ranging from less than a mile to more than five miles. From a sample of 72 respondents drawn from Nguthi, Kithunthiri, and Kirima Sub-

TABLE 3

Multiple Garden Holdings

No. of Gardens	no data	1	2	3	4	5	6-10	11-25	Total
Respondents	3	16	35	11	7	2	4	0	78

Heyer, Ireri, and Moris

No. of Gardens	1	2	3	4+	Total
Respondents	3	17	8	5	33

Brokensha

No. of Gardens	1	2	3	4	5	6+	Total
Respondents	26	27	6	3	3	7	72

Glazier

locations,* I found that distances between gardens ranged from less than a mile, especially when people maintained gardens within the same parish as their residence, to more than five miles; in the latter case some individuals hold land beyond their neighborhood of normal residence. Lacking precise survey information on distances between points within and between Mbeere parishes, I estimate that distances between gardens held by single individuals average two to three miles and that most gardens range in area from one half to two acres.

Individuals claiming more than four gardens do not cultivate these lands simultaneously. They may permit some of their gardens to revert to fallow; or, in some cases,* the respondent was the elder of his homestead and considered all gardens he allocated to his wives and sons (and their wives) to be his own. But the pattern of fragmentation of land holding in Mbeere is nonetheless clear.

Cultivated gardens exist as parts of larger parcels of land (ithaka, sing. kithaka). Kithaka may refer to unclaimed and uncultivated

wilderness, uncultivated but claimed wilderness, and lineage-claimed land containing gardens as well as uncultivated bush. I shall refer to ithaka as land parcels. All men tracing descent to the original claimant of a land parcel are entitled to gardens within that land; the descent group claiming a land parcel is either a maximal or minimal lineage. The particular land parcel claimed by a lineage segment is referred to as found land (runo or rũtego) if the lineage founder is recognized as having brought the land into initial cultivation; it is referred to as purchased land (ngũro) if the lineage founder exchanged livestock for cultivation rights to the land.

The size of a lineage and the availability of good land determine if that descent group will be localized within a single parish. Frequently the lineage is not localized. Lineages may control several non-contiguous land parcels resulting in dispersed gardens and residences of kinsmen.

Normally one man within the lineage is responsible for a particular land parcel. He represents the lineage in disputes concerning that land and allocates gardens to members of the

lineage; he may also grant permission for land use to prospective tenants. An individual with this responsibility is known as either the leader of the land parcel (mūtongoria wa kithaka) or owner of the land parcel (mwene wa kithaka) and is selected by the descent group on the basis of leadership ability and seniority.

A maximal or minimal lineage does not interfere with a member working his gardens; he is entitled to the harvest from his gardens and has complete control over the storage and sale of the produce. Moreover, without interference from his lineage, he can allocate any of his gardens to his wives and to his sons; those people in turn utilize the produce from their gardens.

In the allocation of gardens, a polygynist provides a garden for each of his wives. They work independently, maintaining separate granaries for their respective harvests. This does not, of course, preclude mutual assistance among co-wives. Yet each wife cooks only for herself, her children, and her husband, when he cohabits with her. A woman also has a right to keep money from the sale of her garden produce; if she has been assisted

in cultivation or harvesting by her husband, he is also entitled to a share of the money.

Just as in inheritance each woman and her children stand as a unit distinct from her co-wives and their children, so too does this operation of the house-property complex occur in gardening and rights to food. To illustrate, one informant allocates one garden to each of his three wives; the first and third wives cultivate gardens near the homestead area. The informant and his second wife maintain separate, but contiguous, gardens about one half mile away. He requires that all the sugarcane growing in his land can be found only in his garden, so that any of his children can cut it freely. If it grew in the garden of any wife, only the children of that wife would be entitled to cut it. Thus, he says he keeps the sugarcane in his own garden to circumvent jealousy among the co-wives about their children's rights.

Although the lineage does not interfere with members' land use, lineage control of land parcels assumes special importance in questions of disposal rights. A man wishing to sell his garden

or part of the lineage land parcel cannot act independently. To relinquish his garden through sale, a man must convene the members of his land-holding lineage to inform them that he wishes to sell some land. They in turn elicit his reasons for wanting cash (formerly livestock). Members of the lineage then attempt to provide their kinsman with his requirements -- money for specified purposes only, livestock, etc. -- to avert loss of land. Those providing the man with his requirements then assume the right to use the garden in question. If, however, members of the lineage are unable to provide the needed amount, they cannot legitimately block sale of the land, although they next turn to other lineages of their clan for assistance. Mbeere think it preferable to relinquish land to a clanmate rather than to a non-kinsman. Rules of land disposal are sanctioned by customary law and supernatural authority may also buttress those secular laws. Some lineage leaders, particularly, refer to curses issued by ancestors against any lineage member permitting the relinquishment of lineage land outside the descent group; to violate the injunction of the

course risks affliction by the ancestral shade.

But not all lineages have been so cursed.

The sale of gardens or portions of land parcels outside the lineage, until recent years, was not an absolute transfer; rather it was a redeemable sale. Upon repayment of the original purchase price, the seller, assisted by his lineage, would regain control of the land. Furthermore, if a person buying land wished to sell it, he was enjoined initially to inform the original owner, who had first claim. If the original owner could not redeem the land, it could then be sold to any buyer. Brokensha presents evidence from the Embu District Council Minutes of 1951 that redemption of land was not officially recognized (personal communication). But now, irredeemable land sale is firmly established and this principle will continue in effect when land consolidation and registration are completed. The evidence concerning the origin of irredeemable land sale is scanty. From a survey of the Embu Native Council Records, Brokensha reports that for the former government, all land transfers were considered final at least

as early as 1944, unless an explicit tenancy agreement had been reached (personal communication).

During the consolidation and registration process, competition for good land has increased; people wish to obtain what will be irredeemable claims to good land for agricultural purposes, for conversion into cash, or for support of lineage members. This recent possibility, selling land for cash, then intensifies older values on land-holding. In fertile areas in Nguthi Sublocation, land may now be sold for 250/= to 300/= per acre, according to informants, although the estimation of the exact size of land remains speculative in the absence of a land survey; all expect land values to increase following consolidation.

In selling land or otherwise transferring rights in the land (as to a tenant), separate consideration is given to the ownership of trees. Particularly useful trees such as mukau (melia volkensii), used for making beehives or honey containers, can be sold or retained independently of the land itself. A land buyer must explicitly provide for the transfer of tree rights, usually at extra cost; transferred rights in trees will

not otherwise accompany transferred rights in cultivation. The distinction between rights in land and rights in trees is a logical concomitant of the earlier system of redeemable land transfer; an individual temporarily relinquishing his land would not wish to find it denuded of trees upon redemption, unless he had been compensated.

The distinction between control of trees and control of land confuses the issue of land ownership. In most land cases, litigants cite, as proof of land ownership, their repeated cutting of trees on the land without interference or protest from anyone including most importantly, the person (and lineage) with whom they are disputing. But such claims may or may not prove land ownership. Just as elders state that livestock can graze freely on any claimed or unclaimed bush land, so too do they agree that trees are freely cut in bush areas. But owing to present attempts to control large bush areas in anticipation of land consolidation and registration, free grazing and cutting privileges in wilderness areas are now challenged by competing groups. Such challenges are now tantamount to assertions of ownership of

these bush portions of the land.

By virtue of membership in a land-holding lineage, every male ideally is entitled to a garden plot in the land parcels claimed by that lineage. Some men of the lineage nevertheless assume greater importance than others in land affairs owing to leadership skills, knowledge of the history of the land claimed, the advantage of being a first-born of a senior wife, which confers the right to succeed to the father's position of authority in the homestead (such a man can thus represent the homestead in lineage affairs). Mbeere inheritance rules, which I have discussed earlier, provide that a man's gardens and livestock be allocated to his wives and through them to his sons; daughters may not inherit land, although they may receive a few goats from the natal home when they marry. But the eldest son of the senior wife has the added benefit of succeeding to his father's authority and assuming responsibility for allocating gardens and livestock among his brothers. Frequently, then, the eldest sons of lineage elders become recognized leaders of the lineage on their fathers' deaths. The authority of eldest sons in

the homestead then also receives lineage recognition and support; but the lineage may intercede between brothers if the eldest abuses his authority in the allocation of land or bride-wealth cattle to his brothers.

Nonetheless the eldest son of a senior wife does not have an absolute right to succeed to his father's authority and control his brother's access to gardens. Ideally a man makes provision for the disposition of his property prior to his death, preferably before witnesses of the clan. If his eldest son has been disobedient or has otherwise displeased him, a father may punish him by designating another son as future leader of the homestead. Any son, including the eldest, may also be deprived of property, if the father so decides. If the father is still alive, a son deprived of an inheritance can appeal to clanmates to influence his father, and negotiations may ensue.

A male child gains control over gardens cultivated by his mother, when the latter dies. Thus, by virtue of her marriage, a woman cultivates land and controls its harvest -- maintaining the

right to store that food or sell part of it -- although she may have to share any money realized with her husband. Of course, since she is responsible for feeding her children, a woman sells only surplus harvest. A woman, however, enjoys no ultimate control of land; she will not attend lineage meetings concerning the land nor will she ever be called on to testify in a land dispute or to take an oath in such a dispute. A woman, then, plays no role in legal affairs concerning land.

Although a man, in most instances, cultivates land ultimately controlled by his lineage, Mbeere also recognize an individual's rights of ownership to a particular land which he has either purchased unassisted or brought from unclaimed bush into cultivation. He can relinquish such land without consulting his lineage, since he does not utilize the land by virtue of membership in the lineage. If he continues to hold the land, it is inherited by his male descendants -- a process leading to eventual control over it by the lineage founded by him, as initial cultivator.

Although a lineage, of varying depth, is the most significant social unit holding land,

local elders, chiefs, magistrates, and other government officials speak of land ownership in terms of the clan. On close questioning, I found only one informant who said that clan land (kithaka kia mūviriga) actually exists; he said it

occurs when particular members of different constituent lineages of a clan together found land. Then the land is inherited by only their male descendants. Thus, even such "clan land" is not held in common by all clan members. My informant said that he knew of only one instance of "clan land"; in that instance, not all constituent lineages of the clan were represented. As in most other Mbeere usages of the word "clan", my informant's reference was highly restricted, referring to lineages of a clan within one neighborhood -- not to the entire clan. All other informants said that, strictly speaking, "clan land" does not exist; yet that usage persists.

People speak of land ownership in terms of clans for several reasons. Constituent land-holding lineages of a single clan normally unite for mutual support and aid in their land disputes. This aid may take the form of financial assistance for

court fees or mutual assistance in cutting land boundaries for lineage claims, in preparation for land demarcation. Also, only one lineage of a clan may be represented in a neighborhood; that lineage will then refer to itself by its clan name and thus describe its territorial holding as clan land. Moreover, informants explain that they speak of clan ownership of land because a clan is much larger than a lineage; reference, then, to one's clan presents a stronger case of ownership, for people thereby allude to many allies beyond their own lineages.¹ Clanmates beyond the lineage are enlisted as witnesses in land cases, for example. But, of course, the members of a single land-holding lineage maintain the greatest personal interest in the disposition of a dispute over their land. Currently, as boundaries are being dug and planted with sisal, men from all constituent lineages of a clan in a neighborhood join together to perform that task for all the lineages of the clan. If a man refuses to provide his labor for this important task, he jeopardizes his chances of securing good land after consolidation; the neighborhood branch of

the clan -- through the lineage deciding which members will secure title to particular pieces of land -- thus wields a sanction for enlisting the cooperation of its members.

Land rights of a limited scope are allocated to individuals on bases other than natal membership in a land-holding lineage. A man can secure cultivation rights from his wife's lineage, just as a woman (more frequently than a man) can enjoy similar rights in affinal land. The land which he cultivates under this arrangement is not heritable by his sons, although they can formally secure permission from their mother's lineage to continue cultivation after their father's death.

A man cannot transfer, through sale, or otherwise reallocate rights to cultivation gained through an affinal relationship; to do so risks a major dispute. Cultivation of affinal land by a man is not common, although it is well-recognized as a possible means of temporarily securing garden plots.

A variation of land tenure, based on lineage membership, occurs when a relationship of

fictive brotherhood is created through a ritual called "being born together" (gūciarana). Unlike marriage ceremonies incorporating a woman into her husband's clan, this ritual requires the slaughter of a goat and an oath of mutual allegiance between the stranger and members of the host clan. He thereby secures cultivation rights to land belonging to the lineage he joins. Fields allocated to him can then be inherited by his sons. Through this ritual incorporation into a new clan, he gains prerogatives of natal membership in the clan. The rule of clan exogamy, moreover, extends to him and to his children. I found several instances of the incorporation of Kamba people into Mbeere clans. Many Kamba migrated to Mbeere in the late 1940's to escape a severe food shortage in Ukambani. They most often joined Mbeere clans sharing common ancestral traditions with their natal Kamba clans.

Another form of land tenure, based on tenancy, is more common than land rights deriving from either affinity or fictive brotherhood. A tenant (mūvoi, pl. avoi) seeking a garden must present beer to members of a lineage whose land he

wishes to cultivate. Rental in cash, or stock, or portions of subsequent harvests is not required. Like cultivation rights based on affinity, a tenant may not transfer his cultivation rights nor bequeath them to his sons. The rights are, however, renewable by his heirs. Some informants emphasize the possibility of land disputes arising between long-standing tenants and the host lineage. Recognizing this potential for conflict, the host lineage can restrict tenants to the growing of only seasonal crops (irio cia mbura imwe, literally "foods of one rain"), such as maize or millet. Trees such as banana, mango, and miraa (the leaves of the latter are highly valued as a stimulant and appetite depressant), on the other hand, should not be grown by a tenant; since these trees require years to mature, they may be used as evidence of long-term occupation and ownership of the land, if disputes arise. Preventing tenants from growing long-term crops thus undermines their ability to wrest control from the host group and permits the latter to ask tenants to leave at the end of a growing season, although eviction is uncommon.

An individual seeking a garden from

members of a different lineage of his clan is not required to present beer to lineage elders.

Because of mutual support normally obtaining among the constituent lineages of a clan, a person can gain cultivation rights to land controlled by clanmates without much difficulty. Of course he is not permitted to sell the land nor otherwise to alienate it outside the lineage.

Land consolidation in central Kenya and its delayed extension to Mbeere

Prior to the colonial government's declaration of the Emergency in 1952, as a response to Mau Mau activity, land consolidation had been discussed only as a means of improving farming and agrarian reform. Sorrenson (1967) suggests that the colonial government, prior to the period of Mau Mau, remained equivocal about land consolidation, in part because it feared the opposition of Kikuyu political leaders, who often criticised government policy. Also, he explains, the British were apprehensive about the possibility of creating landed and landless classes. The Emergency brought about the detention of many African political leaders, thus providing the

government the opportunity to push land consolidation in Kikuyuland without opposition. Moreover, land consolidation was then carried out as a political measure. It became a way of rewarding loyalists with larger, choicer pieces of land. Land consolidation was facilitated by the policy of villagization during the Emergency; the colonial government coerced settlement of Kikuyu and related peoples into nucleated villages, away from their traditional dispersed settlement patterns. Nucleated villages, it was officially believed, would enable the government to exercise greater control over the populace and to curb Mau Mau influence among them (Sorrenson 1967:32, 107, 111, 113).

During the Emergency (1952-1960), Mbeere, unlike most of the Bantu groups of Central Kenya, did not experience forced resettlement into nucleated villages. The concomitant of villagization in Kikuyuland (and neighboring Embu), land consolidation, thus did not proceed in Mbeere during the last years of the colonial period. Mau Mau had not successfully penetrated Mbeere; although some Mbeere men did take the Mau Mau

oath of unity, they did so in Kikuyuland or in Nairobi and other towns where they were labor migrants.

As early as 1932, Lambert, the District Commissioner of Embu, reported that Mbeere was the area of the District (then Embu was much larger) least affected by politics, and there was no branch of "the Association" in Mbeere (Embu District Annual Report 1932:DC/EBU/1/2); here Lambert was doubtless referring to the Kikuyu Central Association, an early political union proscribed by the government in 1940. The assessment of the Mbeere as essentially indifferent to political as well as missionary activity was a popular view during the colonial period.

Through the 1950's, Embu District Reports reiterate Lambert's theme and also emphasize Mbeere loyalty to the government and the repeated failure of Mau Mau to make inroads into Mbeere. A report from 1953, for example, by a District Commissioner of Embu states:

These difficulties, in building up an effective campaign against the terrorists, were experienced in all Divisions except Mbere [sic], where intense hostility to the Mau Mau

was evident. Their feelings were exacerbated by terrorists' atrocities, which produced no intimidating effect on these tribesmen (Embu District Annual Report 1953:DC/EBU/1/2).

A year later the District Commissioner of Embu attributed, without further explanation, Mbeere rejection of Mau Mau to "the influential position maintained by Chief Kombo who has been in government service since before the First World War" (Embu District Annual Report 1954:DC/EBU/1/13).

A later report also stated that "the government's policy was one of supporting and rewarding the tribe", which was "impervious to Mau Mau indoctrination" (Embu District Annual Report 1955:DC/EBU/1/14). Kombo became particularly wealthy and had many wives and children, as well as much land and cattle. He explained that Mau Mau killed innocent women and children and therefore he adamantly opposed it, with the aid of his police. Observing his prosperity one also supposes he had personal reasons for supporting the colonial government. Kombo's loyalty to the government is certainly attested to by his long period of service, from 1912 until 1959. In the first month of my field-

work, he prevailed on me to photograph him wearing several medals bearing likenesses of British sovereigns, which he had been awarded during his service. The importance of government "reward" is also reflected in another former chief's remarks about Mau Mau; he said that the Mbeere supported the government because they were thus able to get many positions as police during the Emergency (Brokensha, personal communication).

Other reasons more significant than personal aggrandizement or reward explain general Mbeere acceptance of the colonial government, even during the Emergency. Historically, the colonial government was not greatly concerned with Mbeere, beyond administration. Little was invested materially for the improvement of the land or living conditions of the people. The indifference of government was matched by indifference of other European interlopers -- missionaries and settlers. The Mbeere, unlike the Kikuyu for example, thus suffered no alienation of their land to Europeans, who, from an early period, had dispossessed many Kikuyu farmers. Kikuyuland is very temperate, receives good rainfall, and is very fertile, thus

making it highly attractive to farming and settlement. In Mbeere, on the other hand, vast stony and waterless areas support few people and were never attractive to European settlement or development, thus sparing the Mbeere the trauma of land alienation. Thus the Mbeere never developed intense grievances, particularly concerning land, against an administration more concerned with the development and control of other areas.

On the contrary, the colonial government had aided Mbeere with forms of famine relief periodically, when rains failed seriously (Embu District Annual Reports 1940, 1943, 1944). Also government officers encouraged Mbeere to expand rather than decrease their territory, through migration. Some officials recommended relocation from the eroded lower, drier elevations of Evurore and Nthawa Locations to higher, more productive, sections of the District. One area recommended was in Evurore, bordering Embu Division. This latter area (Nguthi Sublocation) had been, until then, only sparsely inhabited because it lay on border points between Chuka, Embu, and Mbeere and was the scene of warrior skirmishes. Early

recommendations for these migrations into the uplands were not heeded by the Mbeere; reports suggest that the Mbeere preferred the lower elevations where their livestock could more easily flourish. But by the 1930's that migration began, spurred on by a rinderpest epidemic decimating livestock (Emberre sic Record Book 1915-18:EBU/45A; Embu District Annual Reports 1933, 1934:DC/EBU/1/2; Colin Maher 1938).

Sorrenson argues that the distinction between Mau Mau adherents and those people loyal to the colonial government tended to coincide with a division between those with land and those without. For example, Sorrenson interprets the Lari massacre -- in which a loyalist chief, members of his family, and other loyalists were slain by Mau Mau adherents -- as the culmination of a schism between landed loyalists and dispossessed revolutionaries (1967:100-101).

This argument is instructive about the division, during Mau Mau, between the Mbeere and the closely related Embu. The latter, unlike the Mbeere, suffered villagization as a result of allegedly heavy Mau Mau activity within Embu

Division. Other government attempts to suppress Mau Mau in Embu included aerial bombing of the Mt. Kenya forests to eliminate guerillas using those forests as a base. Skirmishes between Mau Mau from Embu and Mbeere people occurred on at least two occasions in 1954; these encounters resulted in several deaths in the vicinity of the Embu/Mbeere border, where Kyeni Location of Embu joins Evurore Location of Mbeere. It was to this relatively fertile area that the government encouraged and supported Mbeere migration from the lowlands of Evurore Location. This part of Nguthi Sublocation had been the scene of numerous land disputes, not only among Mbeere but also between Mbeere and Embu. During one of the armed encounters between Embu and Mbeere people, the Kanyuambora market and school in Nguthi were burned. The District Commissioner's report of one engagement hints that tensions over land between Mbeere and Embu played some role in the Mau Mau/Mbeere antagonism:

It is cheering to relate that in February some Embu attempted to oath the Wa-Mbere [sic] and this led to a civil commotion and the routing of the administrators.

The Wa-Mbere remained staunchly on Government's side, and are to be most sincerely congratulated on their loyalty.

The report continues, with this sentence partially deleted from it:

The Wa-Mbere apart from a long standing animosity regarding their boundary with Embu Division, considered the inhabitants of the latter to be Mau Mau (Embu District Annual Report 1954:DC/EBU/1/13).

Informants also point to jealousies over land as contributory to the armed encounters. Repeated land disputes between Embu and Mbeere in border areas, the relatively greater success of the latter in pressing their claims, and early government support of Mbeere expansion into border areas suggest that the land question was an important factor in the division between Embu and Mbeere over Mau Mau.

Yet, within Embu District, the Embu people benefited more than did Mbeere from the efforts of agricultural officials during the colonial period and for some time after Independence. Mbeere people, in comparison, received less sustained technical agricultural assistance; efforts at development in Mbeere were less successful

than in Embu Division. Because the Mbeere re-
jected Mau Mau, they did not experience the
indirect advantage of participation in that move-
ment, namely, the reorganization of land-holding
and agricultural techniques which were part of
the concomitant land consolidation program.
Mbeere did not come under plans for land con-
solidation until the late 1960's, and they
continue to cultivate dispersed land segments
which cannot be as efficiently worked as the
consolidated parcels among the Embu. Only in
1969 did the initial phase of land consolidation
begin in Mbeere.

The anticipation of land consolidation, increasing
land disputes, and the failure of the oath

a) The process of land consolidation in
Mbeere

The traditional pattern of land tenure in
Mbeere is in the process of radical alteration.
The government wishes to consolidate the dispersed
holdings of each cultivator into a single land
parcel, which he may then own. It is hoped that
consolidation will make agriculture more
efficient and individual tenure more secure than

in the past. The reorganization of land tenure is an extremely complicated program, for it requires aerial surveys and coordination between land consolidation officers of the government and lineage elders. A picture of the order of events is provided by Brokensha (1971). Briefly, I will summarize the plans. In preparation for the aerial survey, each lineage, in cooperation with other lineages of the clan, must demarcate the boundaries of its land parcels and gardens by planting sisal. After the aerial survey, the numerous land disputes over large land parcels are supposed to be settled by an adjudication committee in each Sublocation, composed of at least one representative from each local clan, an executive officer (and recording secretary), a demarcation officer, and a survey officer. Use of attorneys by litigants and employment of the oath will not be permitted in the settlement of disputes by these committees. When the adjudication committee has reconciled all the land claims in its area, the survey officer will prepare a map and set the boundaries for the clans (Brokensha 1971:9-10). People plan that

then lineage elders, on the basis of a computation of the total acreage held by their group, will allocate land to all the male members of their group. Certain areas of high agricultural potential, such as Nguthi Sublocation, have been assigned first priority in the consolidation process. Drier, pastoral areas supporting fewer people may be organized into ranching schemes with group land ownership; consolidation for these areas has a lower priority on the timetable. In some areas, Brokensha predicts mixed group and individual ownership, depending on ecology (1971:12).

b) The anticipation of land consolidation and changing land disputes

Land consolidation, attended by frequent and intense land disputes, exemplifies significant changes which have impinged on Mbeere. All informants agree that land disputes in the past were easily settled. In earlier periods, they explain, litigation over land most often concerned only boundaries between garden plots. Everyone could secure land without difficulty, they recall, for there were fewer people and lineages were not

claiming such large land parcels as presently. Indeed, court records show that the number of land disputes has dramatically increased since 1960 and that disputes frequently involve large tracts of land.

Since at least 1964 lineages have concentrated on acquiring large land parcels as they become aware of two possibilities: 1) such land after consolidation (which, even by 1961, some Mbeere suspected would reach them eventually) could be sold for relatively large sums of money, if ownership could be demonstrated; and 2) a lineage might maximize its total claim in order to secure enough land, at consolidation, for future generations. Increased population, especially in areas of high agricultural potential, also exerts new pressures on land. The introduction of cash crop opportunities similarly has increased demands for productive land in sufficient acreage to yield profits. As a result, the focus of land disputes in the decade of the sixties turned from garden boundaries to the ownership of large land parcels by lineages in the areas of greater agricultural potential.

Land disputes in the late 1960's (particularly those which reached court) emphasize the ownership of large land parcels, not simply gardens or their precise boundaries; thus land disputes at court during the 1960's involve lineage pitted against lineage, not just individual against individual, as was common in earlier, smaller-scale local litigation over land. Formerly, an individual who lost his land dispute, heard by a moot, would need to alter his boundaries or give up a garden plot. Lineages in areas settled in the last few decades have established many gardens and have promulgated claims to the large land parcels in which those gardens lie. Disputes between lineages then affect not only the ownership of gardens of lineage members but also the corporate claims of a lineage to a large parcel. Thus, as lineages contend over large areas of land, people stand to lose present and future gardens; the lineage may forfeit, or fail to establish legal claim to an entire land parcel out of which many gardens have been or are to be cut.

From the late 1950's, then, litigation over land in Mbeere greatly increased. Informants'

testimony that chronic land disputes were not common in the past can be verified from records at the Mbeere Divisional Court. Land disputes held before local moots are not, however, recorded.

Prior to 1959, the Mbeere Divisional Court recorded land disputes in the general civil registry, which also included such civil disputes as suits over debt, divorce and adultery. Land cases reaching the court numbered only four or five per year. From 1959 until August, 1970 (the terminal date of my research), however, land disputes in Mbeere proliferated and were entered into a separate land registry, distinct from the general civil registry. The table on the following page presents the number of land cases which reached the court from January, 1959 until August, 1970.

The decline in the number of land cases registered at the Divisional Court in 1967 probably reflects the re-organization of Kenya courts in that year. The Mbeere African Court, composed of a board of three elders, was supplanted by the Mbeere Divisional Court, chaired by a single magistrate. The number of

TABLE 4

Number of Registered Land Cases
Mbeere Divisional Court,
January 1959 to August 1970

<u>Year</u>	<u>Number of Cases</u>
1959	6
1960	10
1961	10
1962	11
1963	17
1964	32
1965	21
1966	30
1967	12
1968	50
1969	18
1970 (January- August)	47

land cases again declined in 1969. During part of that year, the court was officially closed to the introduction of new land cases so that local moots might settle land disputes and head off an inundation of land cases at the court during the consolidation period. That goal was not achieved, however; the land cases were not effectively settled, locally, for when the court again admitted land cases in 1970, it was greeted with a flood of land disputes, many over the same land parcels disputed in earlier cases.

Mbeere attribute their increasing litigiousness over land not only to the factors already mentioned (increased population, possibility of cash-cropping, anticipated land consolidation, sale of land for cash) but also to the "cleverness" (ũũgi) of individuals adept at manipulating the litigation process to their own advantage. Sanctions of the traditional oath can be averted, it is believed, by swearing circuitously. But also the court itself may be manipulated, according to informants who have lost cases there. For example, in the early 1960's two court elders were members of one clan segment located in Nguthi

Sublocation. One of those two people was the son of a man who was chief during part of that period. That same clan segment was involved in more land disputes in the 1960's than any other clan in the Location, and it won every case it entered. Losers attributed that rate of success to the favoritism of the court and political situation.

"Cleverness" is also believed to be a product of education; each lineage, if it hopes to compete successfully for land at court, must have at least some educated members to draft letters to the court, collect and record contributions from kinsmen for the costs of litigation, and to help plan court strategies. Leadership of lineages includes educated men, even if young, to act as secretary-treasurers for the lineage organization. Clans with greater numbers of educated men are believed to hold an advantage in ongoing litigation.

Ex-chief Kombo, an influential figure, opposed land consolidation in Mbeere, suggesting that very few people would benefit. Citing the large areas of Mbeere that have severe water problems and sandy or rocky soil, he believed

that individuals assigned such pieces of land would suffer. Presently more and less fertile lands are not the monopoly of single groups or individuals since the system of multiple, small holdings means that many individuals may cultivate plots in more than one ecological setting. Other Mbeere also express fears that the consolidation process may cut off individual cultivators from water sources they now have access to through the present system of multiple holdings. Thus, Mbeere understanding of ecological factors in land-holding also contributes to attempts to establish claims to certain lands in order to retain or gain them permanently after registration.

c) The use of the oath in settling land disputes

Current tensions over land have been on-going resulting in a chronic instability between some corporate land-holding groups and alliances between others in contention. Chronic tension derives from a legal failure of dispute settlement and conciliation between land-holding groups who enter into initial conflicts. That failure in

settlement is, in part, a result of the ineffectiveness of traditional legal procedures relying on a ritual oath.

During the period of increasing land litigation, the traditional oath has been used in cases before local moots and was also required in many of the land cases which went to court. The decision of the court to employ the oath depends first on the expressed desire of litigants to take the oath and second on agreement to the oath by the court. During the course of my fieldwork, I found no official policy against the oath, although it was clear from the current magistrate that he personally opposed it as well as other "nasty things" in relation to traditional custom. Moreover, a 1970 official ruling now prohibits use of the oath by land adjudication committees in the consolidation process (Brokensha 1971:10). Although the oath has been controversial and not wholly effective, it has been an important moot and court procedure.

The court or moot hearing a land dispute always visits the land under litigation, at one point in the legal procedure. After that visit,

an oath is administered, usually in the local market. Events in a legal proceeding concerning land may take place over a matter of weeks depending on the availability of witnesses, the schedule of the court, and the like. The order of these events is as follows. Each disputant and his witnesses testify about facts concerning ownership of the land and state the boundaries being claimed. Following the testimony of each disputant and his witnesses, cross-examination ensues; each litigant and his witnesses are questioned by the moot elders or court and the other litigant. Following testimony and cross-examination, a visit to the disputed territory is made and the litigants point out the boundaries they claim. Witnesses holding adjacent territory corroborate the testimony of the litigant whom they support. The oath is then sworn by each litigant and his witnesses after the boundaries are pointed out.

Testimony in a land case may include a variety of evidence considered germane to proof of ownership. The litigants recite the generations of their lineages which they allege have occupied

and claimed the land. They also give accounts of building on the land, cultivation within it, assignment of tenancy rights, and other activities of clan or lineage members on the land. The litigants particularly describe boundaries and specific boundary markers, which include stones, trees, and the like. Results of past cases bearing on present claims are cited. The latter evidence often proceeds from decisions of local moots held years before. In the absence of written records of local moot proceedings, confusion and disagreement often ensues.

The land oath requires the summary of the salient points of the oath-taker's testimony and an invocation of death if the words are false. As in other oaths described, the substance consumed is first cursed ritually by elders. They make substantive in that material the words of the curse. As the litigant, or witnesses taking the oath, consume this substance, uttering their claims at the same time, their words also come in contact, so to speak, with the cursed material, so that their words can be made dangerous. The land oath varies from other oaths by requiring

the addition of soil (from the disputed territory) to goat's blood; both are mixed together, cursed, and then consumed by litigants. The addition of soil to the blood gives the oath further potency; the soil acts as an additional medium carrying the words of the curse into the oath-taker's body; it represents the precise focus of the dispute and the testimony being sworn to.

As each disputant or witness swears his oath, the court or elders of the moot carefully note the manner and content of the utterance. If a man falters, appears fearful, or is inconsistent with previous testimony, the case may immediately be judged against him and his allies. It is assumed that only a liar, fearing the oath's consequences, will falter. Refusing to take the oath, by either a litigant or his witnesses, or behavior (such as dropping the cursed material, as I discussed in the previous chapter) which can be interpreted as indicating one is refusing the oath, is also taken to mean that one has lied. Inconsistency is interpreted as a way of equivocating earlier, false claims so that the oath will not be harmful.

All such behavior can be taken as indicating prevarication or can be held against one's claims, without waiting for the oath to take effect; the curse is believed to take effect within seven months. I never found an adequate explanation, either provided by Mbeere themselves or inferrable from their behavior, for this time period of seven months; seven, is, however a common Mbeere magical number associated with danger. When immediate decisions are made by the moot or court, on the basis of how the oath is taken or who takes the oath (if a witness, for example, fails to take an oath confirming his testimony or that of the man he supports, that is taken to mean he is reneging), the oath is employed not only to deter falsehood but also to test for truthful testimony, as a diagnostic device. If judgment cannot be made on the basis of testimony or the way the oath is taken, no immediate decision is made by the moot, awaiting the outcome of the curse.

A man may be judged the winner of a case after the oath is taken, but if he then dies within the seven-month period or if a member of his lineage becomes seriously ill or dies in that

period, then the loser in the case may use this fact to initiate an appeal and reopen the case. That is, the loser can assert that such disasters resulted from the oath's effect, proving his opponent lied about his own or his group's land. In this basis for an appeal is the perception of a kinship group as a unity in relationship to a piece of land. Moreover, the consequences of the oath itself are appealable. Death may be attributable to disease or sorcery; or continued life may be attributable to magic counteraction, on the other hand. All these possibilities suggest that the results of the oath do not confirm final agreements and that the oath is not self-correcting; success and failure of the oath's effects, like magic generally, can be infinitely rationalized or explained away.

As in other disputes utilizing an oath, each disputant in a land case swears not to harm his opponent through sorcery. This characteristic of the oath is designed to re-establish some degree of harmony between disputants or, at least, to avoid further interpersonal conflict between them. This result is highly desired, although

✓

not always achieved, in land disputes.

In those land cases heard before the court, the oath was considered necessary for many decisions. The impartiality of the oath as a means of determining claims is thus cited as an ideal. Some litigants requested the oath, claiming that the court was partial, during one period. They demanded that the oath be taken, explicitly charging that the court was biased against them and that only such a supernatural, impartial measure could determine truth. Yet, according to available case records, the court (both the Mbeere African Court and its successor, the Mbeere Divisional Court) often cited rational arguments and testimony, rather than the manner of the oath, as the basis for its decision. Thus in a court decision the oath has actually often proven more an expressive release or the basis for a later appeal, than a primary instrument in dispute settlement.

The oath for land disputes is seasonal, for it should be taken only during the long dry season from late January to March. It is believed that taking the oath during the rainy seasons can

harm the crops to the point of endangering the harvest. The land oath requires removing soil from the disputed territory, but people are loathe to do this when crops are in the ground, for fear of committing a taboo act. A proscription against removing soil from the land during the rainy season applies not only to soil for the oath, but also to the clay-like soil for making pottery -- an activity similarly restricted to the dry seasons. Mudding of houses, perhaps because it was not a common traditional practice, is not restricted. Moreover, Mbeere consider mudding houses during the rains as highly practical, since the arduous task of carrying great quantities of water from streams can be avoided.

The land oath may be permitted when crops are planted or growing, but the oath-taker is then required to sacrifice a sheep to mitigate, or "to cool" (kūvorovia) the effect of soil removal. Informants say this infrequently occurs simply because such an oath is too expensive. The sacrificial sheep must be added to the other costs of a case -- a goat necessary for the oath itself, and beer or other food given to the elders,

or court costs and transportation fees, if the court is used.

Land cases require a great deal of lineage organization, as well as money and time. Thus litigation and planning strategies is more convenient during the dry season, when harvests make materials for beer-manufacture as plentiful and when there is freedom from cultivation. Land litigation during the dry season is also reinforced by the supernatural sanctions against taking the oath during the rainy season and planting period. During the latter times, people are fully occupied with cultivating, weeding, and protecting their gardens against the ravages of birds and monkeys.

d) Analysis of recent land disputes and the ineffectiveness of the oath

A large land dispute between two parties representing their lineages is not a unit, sui generis, but just one incident in a larger process of events between many individuals and lineage groups. Despite the desired function of the oath in such conflicts, it does not seem to work more than temporarily, since these disputes are

chronically unsettled. The land issue and the serious land disputes must be analyzed in view of their ongoing nature, which is due, in part, to the changing status of the oath. I have discussed in the previous chapter some of the factors affecting the effectiveness of the oath, and in this chapter I have introduced factors other than the operation of the oath which affect land litigation.

Here I want to explore more closely how land cases become interdependent and how the oath contributes to that problem. Many land cases are closely inter-related, for witnesses in any one case bring to bear evidence from past cases, held either in court or before a moot. The same groups of people can be found again and again as witnesses and litigants in cases involving the same or different disputants. Often the same segment of land or parts of it are disputed in case after case, with different groups laying claims to the same territory. As there is necessarily reference to prior cases and events, a premium is placed on consistency in testimony from litigants and witnesses. If a man is

inconsistent, as litigant or witness, from one case to another, his credibility is seriously impaired, and this fact is considered. The outcome of one case can immediately initiate another, for so many lineages and boundaries are involved that any one decision upsets other claims. Any case may become part of a general conflict over land ownership in the area. The oath at the conclusion of a single case has not resolved the dispute but has at most stabilized it temporarily. Litigation does nonetheless socially define the contending groups as legitimate claimants to the land and thereby serves to exclude other potentially serious interlopers. Successful land litigation thus functions as a kind of interim title of record during the difficult transition from traditional tenure to tenure legitimized by registration.

A strong case requires witnesses from bordering lineages willing to testify and take the oath, because of the traditional nature of land tenure -- in which land is controlled by corporate groups -- and because of the complex network of these corporate claims. One function of the moieties is to provide alliances between

clans who can be counted on for needed support in oath-taking. The oath stimulates and reinforces clan alliances and oppositions along moiety lines. Lineages within each moiety may have land cases with each other, but informants felt that the most serious cases over the largest parcels of land and the cases which were least settled and which generated the most bitterness were those between people of different moieties. Certainly court records corroborate that the most serious cases tend to occur between groups from opposing moieties. In those cases, the groups of witnesses assembling behind litigants also tend to assemble on the basis of moiety affiliation. In eleven land disputes reaching court from Nguthi Sublocation in the period 1959-70, seven occurred between groups from different moieties. Information on the moiety affiliation of witnesses is available for five of those cases indicating that three out of a total of forty-six witnesses crossed moiety lines to support, through testimony and the oath-taking ritual, groups of the opposite moiety. Although a definitive pattern for all inter-moiety disputes cannot be inferred from this small sample,

a tendency for witnesses to be of the same moiety as the man they support emerges. Moiety affiliation has served as a basis for alliance formation.

In those serious land cases which have remained unsettled for several years, it appears that the oath-taking ritual may do more to strengthen alliances between lineages whose members take the oath together than to resolve the conflict between the two litigating groups. By taking the oath with participants on each side from more than one clan, the traditional opposition of clans into moieties is given purpose. Yet in isolated cases of perceived self-advantage, an individual may switch sides to support a group of the opposite moiety. A few individuals have felt that their side lacked a strong case and then supported the other side for a promise of land if they win. Nonetheless, in general use and because of the constitution of groups of witnesses, the oath becomes largely expressive of conflict between moiety groups and instrumental in uniting segments of one moiety against segments of the other, rather than instrumental in resolving tensions between groups from different moieties.

During the period 1959-69, the anticipation of land consolidation has spurred casing, intensified its bitterness, and resulted in refusals to accept judgments, as individuals and their kinsmen came to depend on the future external agency of the land demarcation officer to settle these conflicts. Moreover, when the area was formally declared a land adjudication district, the higher court nullified several old decisions, opening them to appeal because of imminent land consolidation. Thus cases which were seemingly settled became explicitly unsettled. Now local elders have been instructed to settle, without the oath, the outstanding land disputes that they and their main instrument, the oath, have been unable to settle in the recent past.

The instability in the land issue and the nature of the oath as a ritual means of dispute settlement must be considered in light of important changes in Mbeere. At an earlier period, in the pre-colonial era, the Mbeere were driven to their present area by cattle raiding and the search for good pasturage. Then they numbered less and were primarily pastoralists. Land was not the

scarce resource it is today in the potentially most productive agricultural areas of Mbeere, capable of supporting a relatively dense population and amenable to cash crops like tobacco and cotton and where pasturage is less important. In former days, people only cultivated small garden plots and did not concern themselves with the control of large bush areas which could later be cleared for gardens. Today all land in the most productive areas, like upper Nguthi, has been claimed by lineages. Disputes in that area are often over large tracts of land -- a valuable resource anywhere in Mbeere and an extremely valuable possession in upper Nguthi, as in similar areas. The losing group in a land dispute cannot simply relocate and claim new land.

In addition, the introduction of courts with their appeal systems and tendency to use rational testimony, sometimes to the exclusion of the oath, has eliminated the oath as the sole means of settlement. Some Mbeere say the oath no longer works, in the sense that men who take it and lie no longer necessarily fall ill because belief in the oath has waned. I have discussed

the importance of the credibility of the oath in the previous chapter. Thus today the system no longer works effectively to settle disputes because in part, the status of the oath as an instrumental means of dispute settlement in land cases is highly unstable.

At the same time alternative agencies for instrumentally resolving disputes have been added, and these also often prove ineffectual in settling serious disputes. The High Court in Nyeri has invalidated old case results in Mbeere and permitted those who lost cases at the court in Mbeere to make appeals. Appeals first enter the Nyeri Resident Magistrate's Court from the Mbeere court. The standard response from the Nyeri Resident Magistrate concerning an appeal of a land case relating to unregistered land refers to a decision in the Nyeri High Court concerning Civil Appeal Case Number 1 of 1967; in that case the High Court cited the provisions of Section 30 (1) of the Land Adjudication Act No. 35 of 1965:

Except with the consent in writing of the Adjudication Officer no person shall institute and no court shall entertain any civil proceedings concerning an interest

in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29 (3) of this Act.

The basis of appeals is, then, that the land disputed in Mbeere is unregistered and in an adjudication area. Thus, the appeal decisions, nullifying earlier decisions, have thrown many old land disputes back into question, to be settled by the adjudication committees, whose members have conflicting interests.

Some people fear that they may lose all their land through consolidation. The extent of enmity between individuals and between lineages who have standing disputes has grown worse. Informants agree that whatever lineages emerge victorious in controlling certain land parcels, the current program, computing the total holdings of each lineage and then assigning individual land sections to lineage members as individuals, will inevitably result in loss of land for one class of people -- tenants. Another fear is that a few powerful groups will gain most of the land, to distribute only to their members, excluding people from other clans. Everyone agrees that

each person should receive at least as much land as he is now cultivating, even if his current land rights are on the basis of tenancy or if his garden belongs to a land parcel of his lineage, which competes with other lineages for control of the land parcel.

A former chief of Evurore Location, renowned and feared as a medicine man, now cultivates land in Nguthi near the Embu/Mbeere border; he claims that land as his. At the same time, men of two other contending lineages argue with each other and with him that each gave him permission to cultivate and that he is their tenant. The former chief boldly declares that if his gardens are taken from him, the new owner will not survive more than three days after taking the land. This situation illustrates how current claims give rise to threats of future revenge and sorcery, creating an atmosphere of fear and insecurity about secular agencies. Those losing land in the consolidation process may, indeed, take recourse to personal forms of revenge, having given up on secular agencies and the supernatural oath. Another medicine man in Nguthi alleges

that many people in Kikuyuland, for example, who lost their land after consolidation buy poisons for revenge. These statements indicate the bitterness and recriminations attendant to insecurity over land.

The government prefers that people settle ongoing disputes so that land consolidation can proceed. But the people have been unable to accomplish settlement in the expected manner because of the many changes which have taken place. The oath has become almost impotent in its primary role as a ritual means of dispute settlement in land cases and instead operates to justify and strengthen divisive alliances; at the same time secular agencies cannot be fully effective or relied on. In analyzing the character of land disputes we have seen how the oath has expressed social conflict between clans and moieties and has functioned to enforce group unity in particular cases, while it fails to resolve the legal dispute.

e) Recent land disputes: a case study from Nguthi

As the most populous (and second most

densely populated) Sublocation of the three oldest Mbeere Locations, Nguthi is the scene of many land disputes. After examining the historical and ecological setting briefly, I will present, in detail, one land dispute in Nguthi; this dispute illustrates, in concrete details, many of the issues I have discussed in this chapter.

The relatively high population (4124) and population density (192 per sq. mile) in Nguthi is traceable to the ecology; Nguthi offers residents some of the most fertile, well-watered land in Mbeere. The more productive areas of the Sublocation support not only tobacco and cotton but also bananas and mangoes, the latter valued both as foods and saleable commodities in markets. Because Nguthi is not uniformly fertile or productive, however, land disputes do not pervade the entire area. Rather, the locus of the land disputes center in the upper region; the higher areas, about 3700 feet in elevation, border Embu Division and are bisected by the lower Embu/Meru road. The central landmark of this region is Kanyuambora Hill, and the highly disputed territory surrounds the Kanyuambora market, school,

and church.

Nguthi as a whole was originally constituted of six parishes; the lower parishes have been occupied continuously from a very early period, since the time of early Mbeere migrations into Evurore, according to many informants. The upper parishes of Nguthi, however, were only sparsely settled until approximately forty years ago. Because the latter parishes of the Sub-location were contiguous to lands of the Embu and Chuka people and were the scene of intergroup raids, the land was regarded as insecure for habitation. According to informants, a few Mbeere, nonetheless, always maintained gardens in the Kanyuambora area; in the pre-colonial era, cultivators, after working their gardens, retired to their homes a few miles away in the lower areas, more secure for residency. Others state categorically that their ancestors, for many generations, cultivated and lived on the land -- a claim pressed in a land dispute but not always accepted by opponents as true. All agree that residential population and agricultural pressures on this land have increased in the last forty

years as people migrated to the higher elevations.

The migration was encouraged by colonial government suggestions (as I discussed earlier), the termination of cattle raiding, the establishment of schools and a church in the upper areas, and the immediate cause -- the rinderpest epidemic of the early thirties which decimated livestock in the lower elevations. The upper areas offered the possibility of reliable rainfall in greater amounts, contributing to the new emphasis on agriculture following the loss of livestock; the new areas, at that point, offered hope for a more stable and secure economic life. The wave of migrants to the upper areas led to the formation of eight new parishes in Nguthi Sublocation. The land disputes now center and remain prolonged in these new parishes. Because of their history, one finds no old boundary marks for these land parcels, and little consensus exists concerning land parcel ownership.

The contrasts between the upper and lower areas of Nguthi are striking. By walking only a few miles from the higher, new parishes to the lower, older ones, important ecological variations

are obvious and population density decreases. In addition to the steady decline in altitude, stones and boulders markedly increase in size and frequency. Cactus plants and occasionally a baobab tree also appear as the altitude diminishes. Informants frequently complained that the lower areas are very difficult to cultivate owing to stony soil. Low rainfall also precludes the growing of bananas and does not favor the type of maize commonly grown. Those living in the driest parts of the old parishes subsist on mainly bulrush millet and sorghum, in addition to green grams, as well as any livestock they keep.

The migrants to the relatively fertile upper area began to cut gardens from the bush and to claim large land parcels. The traditional basis for land claims, as I have noted, is proof of early occupation of the land by one's agnatic forebears. Yet in a setting like the one I am discussing, where much of the land was unsettled until recent decades, individuals may falsely claim that seven or more generations have occupied these lands, using long genealogies (which may themselves be accurate). As one informant summed

up the current state of land cases: "Everyone lies in land cases because everyone wants land and as much as he can get."

The following case typifies the strategies utilized in land disputes; one also sees that neither the traditional oath nor the courts have succeeded in settling this chronic dispute. The actual individuals and clans in the dispute are assigned pseudonyms. The case itself appears in the records of land cases in 1966 at the Mbeere Divisional Court. Supplementary data derives from interviews with participants and other case records. Court records are kept in English by the magistrate; formerly, during the period of the Mbeere African Court before which this case was heard, a court secretary made case transcriptions. Here I summarize the case and appeals and analyze the events in terms of the Mbeere rules of land tenure, the social relationships between clans and disputants, other cases involving individuals in this case, and the methods of conciliation utilized.

The litigants in the case, together with their witnesses are listed as follows:

Plaintiff

Joseph Mũgo clan Irumbi moiety

Plaintiff's witnesses

Michael	Mũgo clan	Irumbi moiety
Jonathan	Mũgo clan	Irumbi moiety
Lucas	Cimba clan	Irumbi moiety
	(lineage A)	
Andrew	Cimba clan	Irumbi moiety
	(lineage A)	
Robert	Gaconi clan	Irumbi moiety
Jason	Njoka clan	Irumbi moiety

Defendant

Abel Nyaga clan Thagana moiety

Defendant's witnesses

David	Nyaga clan	Thagana moiety
William	Nyaga clan	Thagana moiety
Mark	Nyaga clan	Thagana moiety
Elijah	Nyaga clan	Thagana moiety
Joshua	Nyaga clan	Thagana moiety
Jacob	Cimba clan	Irumbi moiety
	(lineage B)	
Matthew	Cimba clan	Irumbi moiety
	(lineage B)	

Joseph, representing his "clan", initiated the case, claiming the entire land parcel called Ngoro; that sizeable land parcel -- extending from the Embu/Mbeere border beyond the Kanyuambora market, and from the Rueria stream to an area south of the Embu/Meru road -- is at least two square miles in area. (The precise acreage of the land claimed is not included in the case record or available from

present surveys; I estimate the size from my own walks through the area.) The land itself is among the most fertile in Mbeere, and it is certainly the best land in Evurore Location. Any group controlling this land after demarcation will possess a valuable, secure resource.

The defendant, Abel, representing Nyaga clan, won the case under consideration. If his group continues to hold the disputed land after land consolidation, its gain will be particularly significant because its three constituent maximal lineages in Nguthi contain a total of only one hundred eighty males including children. (The latter category is included in the planned assignment of holdings for land consolidation.) These three lineages have joined their respective land claims together and the division of this disputed land among relatively few males would provide each man with a sizeable holding.

Two of the plaintiff's witnesses are affiliated to his clan, although they belong to a different lineage. Joseph and all of his witnesses belong to clans of the Irumbi moiety.

The defendant, Abel, called upon seven

witnesses to support the claim of Nyaga clan.

Five of these witnesses -- including David, a former chief of Evurore Location -- are men of Nyaga clan. David, the former chief, resided in Nguthi and cultivated within the disputed territory. Also, one of the two members of the Mbeere African Court which heard this case, is a member of Nyaga clan, for Nguthi. This court member is a classificatory brother of the defendant and at that time his son served as secretary for the clan; clan officers function primarily in planning and executing litigation over land. Moreover, during some of that period, another Nyaga clan member also served as a court member, although probably not for the same case. This second court member from Nyaga clan is the son of David, one of the witnesses for this case. David was chief prior to this case.

Nyaga clansmen filled the highest offices during part of the period of greatest land litigation, 1960-1970. From January, 1960 to August, 1970 Nyaga clan, represented by Abel, was involved in nine land disputes (more disputes than any other single clan engaged in) and won all of them; five

of those nine disputes were with groups from Embu. Commonly presumed advantages of Nyaga clan at court were not ignored by any of its opponents. Prior to the hearings for this particular case, Joseph tried unsuccessfully, through petition to the court president, to prevent his opponent's classificatory brother or classificatory son from hearing the case. Joseph requested that his case be heard by the president of the court, unassisted by clansmen of his opponent; otherwise, he asked that the court obtain an elder from Embu Division. The case was eventually heard before the court president with one Nyaga clansman present.

In addition to Abel's six clanmates acting as witnesses, he was also supported by Matthew and Jacob, two members of Cimba clan. Abel's Cimba witnesses and the Cimba people who supported Joseph belong to different maximal lineages. The presence of Cimba clan people supporting both litigants introduced an element of confusion into the case, and points up the problem of discussing land claims in terms of clans rather than in terms of lineages -- the more significant groups in land tenure issues. This case thus pits a clan of Irumbi

moiety supported by three other clans of Irumbi moiety against a clan of Thagana moiety supported by witnesses from that same clan as well as two witnesses from a clan (Cimba) of Irumbi.

In my initial research, I hypothesized that the most serious land cases -- those going to court -- would reflect cleavage between clan groups of different moieties, since informants were quick to point out their antagonisms, in land disputes, against groups from the opposite moiety. A strong tendency for cleavages between clan groups of different moieties is demonstrated in the land cases reaching court from Nguthi from January 1959 to August 1970, involving clans within Mbeere. But the division by moiety in all land disputes is not borne out by the case records. Groups within a single moiety do carry on land disputes against each other, although the frequency of such disputes is less than for disputes between groups of different moieties. Cleavages between groups of different moieties also occur in disputes between Mbeere and Embu people -- the latter organized into the same two moieties as Mbeere. Significantly, the court records point to intra-

moiety disputes within only one of the moieties. The following table numerically summarizes these points:

TABLE 5

Land Disputes in Nguthi Between Groups
Within a Moiety and Between
Groups From Different Moieties

	<u>Thagana Group Vs. Thagana Group</u>	<u>Irumbi Group Vs. Irumbi Group</u>	<u>Thagana Group Vs. Irumbi Group</u>	<u>No Data</u>	<u>Total</u>
Exclu- sively Mbeere	4	0	7	0	11
Between Mbeere and Embu	2	0	6	2	<u>10</u>
					21

In intra-Thagana moiety disputes within Mbeere, the same clan group appears in all cases. That clan (Nyaga) initiated and won two major disputes with other Thagana clans. Subsequently they won disputes, in the role of defendant, against Thagana clans responding to their initial victories. Joseph aptly remarked that Nyaga clan was unpopular not only with Irumbi moiety but even with clans of its

own Thagana moiety. Thus, with the exception of the activities of a single clan that has been charged with taking advantage of a favorable political position at the expense of clans of both moieties, a clear pattern of division between groups representing different moieties in land disputes at court emerges.

In the case under consideration, the two witnesses who crossed moiety lines are both of the same maximal lineage of Cimba clan. In another case involving Abel of Nyaga clan, one of these two Cimba men, Matthew, again crossed moiety lines and witnessed ~~the case~~. It was rumored, at least by people in Irumba moiety, that Matthew, Jacob, and some of their lineage-mates had been promised land by Abel and the Nyaga clan in the event of a legal victory (which appeared likely in view of that clan's repeated successes at court). Moiety unity is threatened by individuals perceiving their maximum self-advantage outside its context.

Joseph, even today, is particularly bitter about his lack of support from Matthew and Jacob in view of the fact that they are of his moiety.

Cimba, is one of the largest clans in Nguthi and in that Sublocation has five maximal lineages. Support from that numerically strong grouping is, then, highly valued, but its size has militated against internal unity.

Joseph argued that Abel and his clan, in effect, stole rights to the land of his group when Abel, representing the Nyaga clan, won a dispute with Ezekiel of Njuki clan (Thagana moiety) over the same parcel of land. Joseph had earlier lost a case with Ezekiel, over parts of the same land parcel.

In support of his claims to the land parcel, Joseph cited eleven generations of his lineage; he claimed that they all had occupied the land. Joseph further stated that he had conducted two previous cases over this land parcel; those cases had been heard by local elders in moots rather than by the court. Joseph stated that he, on behalf of his lineage, won both cases. In addition, Joseph tried to substantiate his claim by stating that he used trees in the area and drove out those people who cultivated there without seeking his permission.

Finally, to demonstrate his rights in the land, he said that he, along with Abel, received one-half of the financial compensation for gravel-like rock dug out of land (apparently bought by the government when it built the Embu/Meru road). Joseph argued that he had a right to all the income from the rock, but that since the man who was then chief of the Location was from Nyaga clan, he had insisted that Joseph share the income with Abel. Joseph maintained that they then agreed that the dispute over the rock exposed a disagreement about land ownership and that they would have a case about it -- the present case about their lands.

Joseph was supported by witnesses from four different Irumbi clans; they testified that their lands bordered with those of the plaintiff's clan; his other claims were similarly corroborated by witnesses.

To counter Joseph's claim to the land, the defendant, Abel, began with a basic challenge concerning the name of the land. He said that the land is called Kianderi, not Ngoro, as Joseph had said. Abel also asserted that the land and its products had been used for many years by the

L

people of his clan. Abel traced his group's occupation to an agnatic ancestor seven generations back. He argued that the Nyaga clan had granted permission to many people to cultivate the land and drove out others who cultivated without permission. In many of its details, Abel's case was supported by five Nyaga clansmen as well as by Matthew and Jacob of Cimba clan.

In his judgment of the case, the president of the court referred to Joseph's case against Ezekiel over the same land; that case had been heard three years earlier, in 1963. The court official pointed out that Joseph lost that earlier case to Ezekiel; he showed that Abel subsequently, in 1964, filed and won a case over the same land against Ezekiel. Thus, the court president reasoned, Joseph was again trying to gain rights to the land, in a case against Abel. But Joseph had filed an appeal, about the case with Ezekiel which he had lost, at a higher court; therefore, the court president stated, since that appeal was still pending, the Mbeere court was bound to consider the land case of Joseph vs. Abel as if Joseph had not been defeated over the same land by

Ezekiel. The court president did, however, cite other evidence against Joseph's claim. One of Joseph's witnesses, when the court members visited the land in dispute, pointed out boundaries between his group's land and that of Joseph's clan, Mũgo; those alleged boundaries did not coincide with the boundaries cited in Joseph's testimony on that very crucial point. The court president also implied that some collusion had occurred between Joseph and a witness, in an attempt to seize land from Abel. The court president found a record showing that Joseph had once testified on behalf of one of his witnesses when that witness had a case with Abel and his clan over some of the same land disputed in the case at hand.

Since each litigant claimed that his clan had worked the land and used it extensively, the court commented on those claims by noting that it observed, on the visit to the land, more members of Nyaga clan occupying and cultivating the land. Also the court considered as very significant the fact that Nyaga clan received 1666/= compensation (from the British-American

Tobacco Company) for land to use as a tobacco nursery; this, according to the court president, "is a remarkable deed and no land owner could let it pass to someone else". Moreover, former Chief David of Nyaga clan received an agricultural loan, by putting up part of the land as security -- another deed that would not be permitted had another clan group owned the land, the court argued. Although Joseph claimed that he had sold part of the land, the court cited his failure to enlist the buyer as a witness. The court president argued that the alleged buyer was present when the ritual oath was taken and that he did not take an oath to support Joseph.

The court concluded that despite the lack of support Abel received from other clans over the boundaries, his clan had carried on more activities on the land than had Joseph's clan. That greater activity was cited as the basis for judging the case for Abel and Nyaga clan, against Joseph and Mũgo clan.

Although Joseph was able to produce more witnesses from other clans to support his boundary claims, the court did not accept their testimony.

The Cimba clan, for example, supported both litigants in the dispute. The court interpreted this fact as indicating the clan, as a whole, did not support either side, and disqualified both witnesses. Here the court made a crucial error. I have explained that one cannot consider the clan as a unit as the significant authority in land tenure. Two different Cimba lineages emerged in this case, one supporting each of the litigants and their clans. The Cimba people made clear to the court their different lineage affiliation, and one stated that his lineage had conducted a case over land against the other lineage of Cimba; however, another Cimba person claimed there was no such case. Yet it is significant that a case over land between two lineages of single clan is possible. That denies that a clan is a single unit, owning the land parcel. In considering the clan as a monolithic, single social unit holding a piece of land, the court president interpreted Cimba testimony for both plaintiff and defendant as internally inconsistent.

Moreover, Jason, of Njoka clan, another of Joseph's boundary witnesses, was at the time (and

even in 1970) embroiled in a land dispute with a lineage of Njuki clan (the clan which had disputed with both Abel and Joseph over the land). The court stated that until that case was definitely settled, Jason's testimony was inadmissible since the rightful owner of the land he himself claimed was at the time unknown.

The court also dismissed Joseph's claims that he had won land cases over the disputed territory in litigation before local moots since sufficient proof of that claim (it is not stated what such proofs might have been) was not rendered. Other land cases reaching court have included references by litigants to cases held years before in front of local elders, and disagreement about the outcome of those cases proved difficult to resolve because of the lack of written records for these moot proceedings.

The basis of the court's decision in this case (as well as others) and the testimony of the litigants presents serious discrepancies between what disputants and court consider germane to proof of ownership. Although common ground exists, the court has introduced new criteria for proof

of ownership while not accepting others; disputants continue to utilize traditional canons of proof and techniques of ~~disputation~~, which may be irrelevant in the eyes of the court. Such matters as sacrifice, genealogies, and remote historical fact are insignificant compared to recent observable activity such as building, extensive cultivation, and use of land as collateral for loans. Boundaries remain important for both the arguments of disputants and what the court considers relevant testimony. Yet the current instability of land claims and the fact that many cases remain in abeyance has disqualified the testimony of witnesses whose own cases are unsettled; the abundance of contested land claims and the overlap of claims further complicates the issue for litigants, since the court utilizes other cases (settled and unsettled) at court as a basis for its decisions. A single court victory is of significant advantage in pressing and defending subsequent claims, although that advantage may be undercut by the invalidation of case results through appeals. On the other hand, those who rely on results of land disputes held

before local moots are at a disadvantage at court, for they must rely on witnesses' testimony rather than the unambiguous concrete court records.

Although Abel and his group won this extremely important land case against Joseph and Mũgo clan, his victory has been little more than nominal because of the nature of land claims and disputes in Mbeere. Joseph and his kinsmen continue to occupy the part of the land in dispute which they did before and to utilize its trees for timber, despite their defeat at court. In retaliation, Abel sent a letter to the court requesting that Joseph and his group be enjoined to stop using the land, in 1968. Abel accused Joseph of bringing new areas into cultivation and planting banana trees.

When summoned to court, Joseph stated that he had cut timber for building huts, but denied planting banana trees or cultivating new areas. The reference by Abel to banana trees and his concern about them is not explained in the court record. Informants told me, that planting such trees can be the basis of a dispute because such crops may be cited as evidence of long-term

occupation of the land, and thus a basis for a land claim. This tactic was used when Joseph defeated Abel's appeal because his miraa trees established his long-term occupancy of the land, according to the court magistrate's decision for him and against Abel. These events occurred after the reorganization of the court system; the magistrate, who visited the land in order to make a formal decision on Abel's motion, was not the court president who visited the land as part of the original suit. When the court magistrate visited the land, he found that Joseph's activity on the land was confined to the area he had occupied preceding his case with Abel. Furthermore, the court official found that since miraa trees planted by his father were growing around Joseph's gardens and that since Joseph's home lay within the land while Abel's home was a half mile away, Joseph had a right to remain on the land. Finally, the magistrate cited Joseph's establishment of a home on the land years before the suit began. He thus decided that Joseph was using the land in the same manner as he did prior to the suit, and since Joseph had appealed the results of

the case to the higher court (and that appeal was pending), he should be permitted to continue using the land in the same manner. The court president further warned Abel not to interfere with Joseph and his occupation of the land.

Joseph's appeal, about the case he lost, was filed in 1968 and was accepted by the Nyeri High Court, just as were many other Mbeere land cases. Because the appeal related to unregistered land, according to the section of the Land Adjudication Act quoted earlier, the appeal was allowed.

Currently, then, the case results (with many others) remain in abeyance. Abel won the case, yet he cannot claim the land to the exclusion of Joseph and his kinsmen, who have appealed the case and won a right to occupy the land despite Abel's attempt to evict them using the court. Joseph continues to insist publicly that the land belongs to Mũgo clan, and he points to occupants from other clans to whom he gave permission to cultivate; these people, he proclaims, are his tenants.

References in this case to other cases

held before the court or moots, as well as the diversity of witnesses supporting each litigant, testify to the complexity of the issues and to inter-relationships between cases. Moreover, portions of the land in dispute are claimed by other groups; we learn, in the case record, of earlier efforts by Ezekiel of Njuki clan to gain some of the land. Other case records show that at one point in 1964 Ezekiel was sued by Lucas of Cimba clan (one of Joseph's witnesses) over part of this same land-parcel, including Kanyuambora market (which is also part of Joseph's claim, in the case examined). In that case between Lucas and Ezekiel, Ezekiel pleaded no contest, for he had already lost a case over that land to Abel. At the conclusion of my fieldwork, Lucas was in the process of filing a land case against Abel. Lucas and his lineage of Cimba clan expected support in their case from Joseph, just as they had supported him and his group against Abel. Again, one should recall that Lucas and Joseph are affiliated with clans of the same moiety, different from Abel's.

Interestingly, in this case, Joseph and

his clan are related by affinity to the Nyaga clan. Joseph's sister is married to Abel's classificatory brother -- the Nyaga clansman who served on the court. But the marriage did not mediate the dispute; Joseph's sister gave complete support to her husband and his clan and they all expected nothing else. Mbeere believe a woman should simply support her husband's clan from an early period in the marriage relationship. Moreover, Joseph did not use his relationship to press bridewealth claims for he explained that "bridewealth was of minor import compared to the land issue. Since bride-wealth does not involve transfers of land rights, pressing bridewealth claims and other obligations cannot affect demands concerning unmoveable wealth such as land.

Insecurity over land has continued for years, contributing to an underlying tension which I saw emerge on numerous occasions. I offer from my field notes the following edited description of one such incident, which occurred in Kanyuambora market early in May, 1970:

Passing through the market today, I saw an old man asleep on the grass next to the tannery.

No one paid any special attention to him. A few minutes later, however, returning to the market after having gone home, I found the subchief and the son of Joseph, the latter in handcuffs; both were standing beside the old man, still unconscious. The old man is the father-in-law of Joseph's son.

The subchief accused the handcuffed man, Joseph's son, of having beaten the old man, but Joseph's son denied it all. At one point, he said that it was shameful to be seen in handcuffs before everyone in the market. He was apparently very embarrassed while also being very angry about the charge. The subchief tried to keep him quiet and at one point attempted to close his mouth physically. Joseph's son protested his innocence, saying that he had been drinking with the old man but had not beaten him.

From half-way across the market, Joseph began shouting angrily. As he came near the subchief, the latter told Joseph to come closer. Joseph refused, and then the subchief grabbed his shirt at the shoulder and then held him by the collar. But Joseph squirmed away. The subchief and his assistant went behind some market buildings with their prisoner.

Joseph then began to claim publicly that the subchief's lineage was stealing land from Joseph's lineage; the subchief is from the lineage of Jacob and Matthew, who testified against Joseph when he disputed with Abel. That, he argued, was the reason the subchief was arresting his son, who he claimed

was innocent of the charge. Joseph maintained the innocence of his son to me later, claiming that the charge against him was unreasonable because he insisted that no one in Mbeere could think of assaulting anyone from the group providing him a wife.

At that point, Joseph entered a shouting argument with Matthew. Matthew had seated himself outside the tannery, and, as the two men exchanged epithets, the entire market was attentive to their argument. Matthew called Joseph a dog and criticized him for never cultivating and for always drinking beer. Joseph argued that he did cultivate and that the beer he drank came from people who gave it to him out of great respect. Joseph responded on a number of occasions by saying that Matthew was a fool, "Like your mother", (ta njūkwe). Joseph said he had chased members of Matthew's lineage away from the land in question, and that he forced them to remove their beehives from trees on that land; he also charged that in a case with that Cimba lineage, over the land, one of their number had died as a result of falsely swearing the oath. Joseph continued that only the clans of Mugo and Nyaga have an interest in the land and this lineage of Cimba had no just claim to the land.

Joseph was obviously very disturbed during the whole proceeding, both with the subchief and with Matthew. Joseph walked around in front of the shops reiterating his claims about the land and his son's innocence. Toward the end of the confrontation, a popular shop owner, and a member

of Matthew's lineage, approached Joseph and told him that he had said enough. Joseph did not appear hostile to the shop owner and began to walk off. At the conclusion of his shouting, Joseph summed up his feelings with a proverb: "When the buffalo cannot be killed, the calf is killed instead" (Mbogo ciarema kūrāgawa njāū). By this he tried to make the significance of the incident confirm his claims and status, for by the proverb he meant that the subchief's fight was with him, but fearing to arrest him (the buffalo), the subchief instead took his son (the calf).

This scene in the market demonstrates how people often interpret incidents in terms of the ongoing land issue, exacerbating lower level conflicts, expanding their scope to greater numbers of people as well as issues. Motives and actions are frequently viewed in the context of land disputes. Joseph thus interpreted a hostile action (arrest of his son) by a member of a lineage which had opposed him over land as an action calculated to harm him because of the land dispute. Refusing to accept the subchief in his official role, Joseph instead saw him only as a member of an antagonistic lineage. Joseph then engaged in public argument with another member of that lineage who was uninvolved in the initial incident.

Because Abel and Joseph are both clan leaders, they will form part of the committee of local clan leaders who will adjudicate, with demarcation and survey officers, the conflicting claims on the land. It seems impossible that either Abel or Joseph, together with their supporters, will easily relinquish his claims to the vast land over which they have disputed. Yet the makeup of the committee as a whole may finally benefit one more than the other, since Irumbi clans (like Joseph's) outnumber, in population and representatives, those of Thagana and because Abel's in-fighting with some people in Thagana may cost him support from those and other Thagana groups. But the disputes are not limited to only two groups, those of Abel and Joseph; many groups have made claims to these land parcels and many other individuals maintain gardens there, so that considering these lands as large land parcels and then awarding them to single groups will dispossess many people, resulting in bitterness and future instability. The nature of land disputes in recent years will make the work of the committee very difficult, particularly because of

the personnel and stakes involved.

What has occurred then, as a result of the integration of Mbeere into a larger politico-legal unit is a differential success at court. The differential access of individuals to what government considers critical factors in establishing a claim (loans, collateral, rental, sales) is important in presenting a case to best advantage. But none of these activities are really supposed to have occurred on land unowned by individuals and unregistered. Also, in view of the confusion of rules and standards (structural conflict) the Mbeere greatly value education as a means of gaining access to the legal culture of the court as well as participating effectively in it; these are new skills, added to the old value placed on rhetorical powers.

The evidence from Nguthi points to a failure of traditional institutions to effect dispute settlement and long-term resolution of conflict over large land parcels. This shortcoming may indeed be general for all first-priority land consolidation areas in Mbeere, although the situation is particularly severe in more fertile

areas of only recent occupation such as upper Nguthi. The oath has not worked effectively to resolve land disputes, and will not be used in adjudication for consolidation. Imposed institutional forms such as the court have similarly failed to achieve a balance between land claims. With the elimination of the oath, the nullification of old case results, and the creation of channels of appeal, land disputes remain unsettled. To be sure, a final resolution of land disputes is virtually impossible -- everyone will not get what he desires -- but to date, the level of conflict has not been significantly reduced. When consolidation is effected, all disputes will then be settled in term of the superordinate, unambiguous authority of title deeds and legal sanctions, with the probable disappearance of the oath in all land cases. Thus the land-holding functions of unilineal descent groups and the needs of on-going alliances between groups will alter. But until that time, a period of litigation and compromise will be necessary.

Footnotes

¹Mbeere discussion of land control in terms of the clan appears to be part of a more general tendency to label individual entities under more encompassing rubrics. Thus any segment of a clan can be termed "clan". In circumcision, the initiations of all of a woman's children are considered together as a single celebration; if one is improperly performed, the entire celebration is a failure. Classificatory relationship terms similarly express this unitary perception of singular factors.

CHAPTER VI

CONCLUSION

The two types of conflict I have discussed -- structural and litigious -- occur in secular life yet provide the motive force in initiation ceremonial and oath-taking rituals, respectively. The dramatization of conflict at initiation brings together yet opposes the respective descent groups of the initiate's parents. The agon formally expressed at circumcision ceremonials reflects fundamental conflicts between self-interest and morality and between moral principles themselves. In the secular world, agnatic responsibility may conflict with affinal responsibility, but both principles underlie the moral order: Two agnatic groups allied through marriage but adhering to different social principles can thus be led into real conflict. The initiate -- who is becoming an adult man or woman, sexually and morally -- activates oppositions between men and women and between the two descent groups of his or her parents. As the initiate prepares to take his place in his father's group as an adult member or,

in the case of a girl, to marry and bring in bridewealth, the youth becomes a focus of the value of his or her mother's reproductive capacities and the conflicts attendant to the jural transfer of those capacities to her affines. Her agnatic group assumes credit for her fertility, asserting their rights as wife-givers, at the initiation. A man's failure to observe his moral responsibility toward his affines because he cannot at the same time meet equally morally compelling duties to his agnates creates structural conflict which in turn stimulates much of the dramatic agon at initiation. Because affinal groups may appeal to legitimate but mutually incompatible social values, the conflicts thus generated cannot be the subject of litigation.

Conflicts expressed at oath-taking rituals which are part of legal procedures are of a different type. Litigious conflicts are not an inevitable result of structural strain between legitimate social principles. Rather, they arise when groups or individuals, from time to time, dispute over scarce resources or violate the norms of interpersonal relationships and cannot settle

their differences without the aid of a moot. People swearing ritual oaths appeal to the same set of values which enable the judicial/mediating body (the moot or court) to assess evidence or testimony to determine wrong-doing. The ritual oath in litigious conflict has developed as a major instrument of ad hoc moots of elders and, at one time, the court for the resolution of legal conflict in a society where traditional authority is weak and decentralized. Litigants and elders employ the oath to test truthful testimony, deter falsehood, punish perjurers, and alleviate antagonism between disputants. The oath was also adopted toward the same ends by the imposed court, which also maintains alternative and stronger means of settlement, appeal, and enforcement. The oath latently occasions release and expression of hostility, and when groups in conflict take the oath over land, underscores alliances and oppositions.

Oath-taking procedures as well as other supernatural invocations supplement secular authority. The Mbeere traditionally, and in a more circumscribed manner today, rely on moots of elders from the senior age-sets to settle local

disputes. The moots are situational and of variable composition, although particularly capable elders are conspicuously present at many legal disputes as mediators. Political authority is thus highly localized and variable; traditional secular sanctions include ridicule in songs, public censure by moots and clanmates, and refusal to lend economic assistance. Mbeere political authority and its secular sanctions are highly diffuse and flexible. Through the use of the oath in litigation, sanctions of a different order, the supernatural, bolster more diffuse secular sanctions and reinforce an essentially weak political authority. Oaths as mystical agents are thus closely related to ordeals, curses, and the fear of sorcery, in encouraging proper behavior. The curse of a father threatens any son not carrying out his father's wishes, and strengthens a man's secular powers as household head. To disobey a father invites his curse and subsequent affliction by his shade, requiring the remedies of a diviner and medicine man. Likewise the threat of sorcery, which similarly depends on magical treatment for counteraction by a medicine man, induces a fear

of supernatural sanction against selfishness, threats, or other qualities condemned in Mbeere. Thus, throughout Mbeere, we see supernatural sanctions set in operation by social action which oversteps the boundary of acceptable behavior. But unlike the initiation ceremonial whose component groups are led into conflict in the secular order because of adherence to contradictory values, the litigious oath-taking ritual arises from conflicts stemming from disagreement about a single value or principle. The sanctioned cursing in oath-taking and the use of normally proscribed language in both oath-taking and initiation dramatize the importance of those events and channel human emotion in a socially acceptable manner.

A further significant point of comparison between oath-taking and initiation is that the result, or end, is open to question in the former. In initiation, on the other hand, the events are predictable within a narrow range of possibilities and the outcome -- the circumcision at dawn -- although dramatically contested, is always expected. An initiation is very much like a play with set

roles and actions which highlight social tensions and provide a catharsis for the participants. But as a ceremonial rather than a purely ritual act, initiation cannot be used as a formal means of significantly reducing tensions. Litigious oath-taking, although it has formal dramatic regularity (e.g., formulaic curses and ways of swearing), is not played out according to a pre-conceived plan. The ending is unknown (as the ritual is supposed to be instrumental in discovering or effecting the end), the stakes are high, and the issue is seriously threatening as the fear of sorcery retaliation always lurks in the background. Although the dispute per se is said to be judged on the basis of how the oath is taken, the oath as a means of reconciling disputants and reducing the level of conflict is only temporarily efficacious as social tensions re-emerge following the oath, especially over land. Each litigious conflict ideally evokes a ritual oath with its promise of compelling litigants once again to act in terms of the abrogated moral rule. Perhaps when land consolidation is effected, it will provide an alternative instrumental means,

the superordinate authority of records and title deeds backed by government sanction, to the oath. This superordinate authority will be the equivalent of the oath's function as a means of dispute settlement.

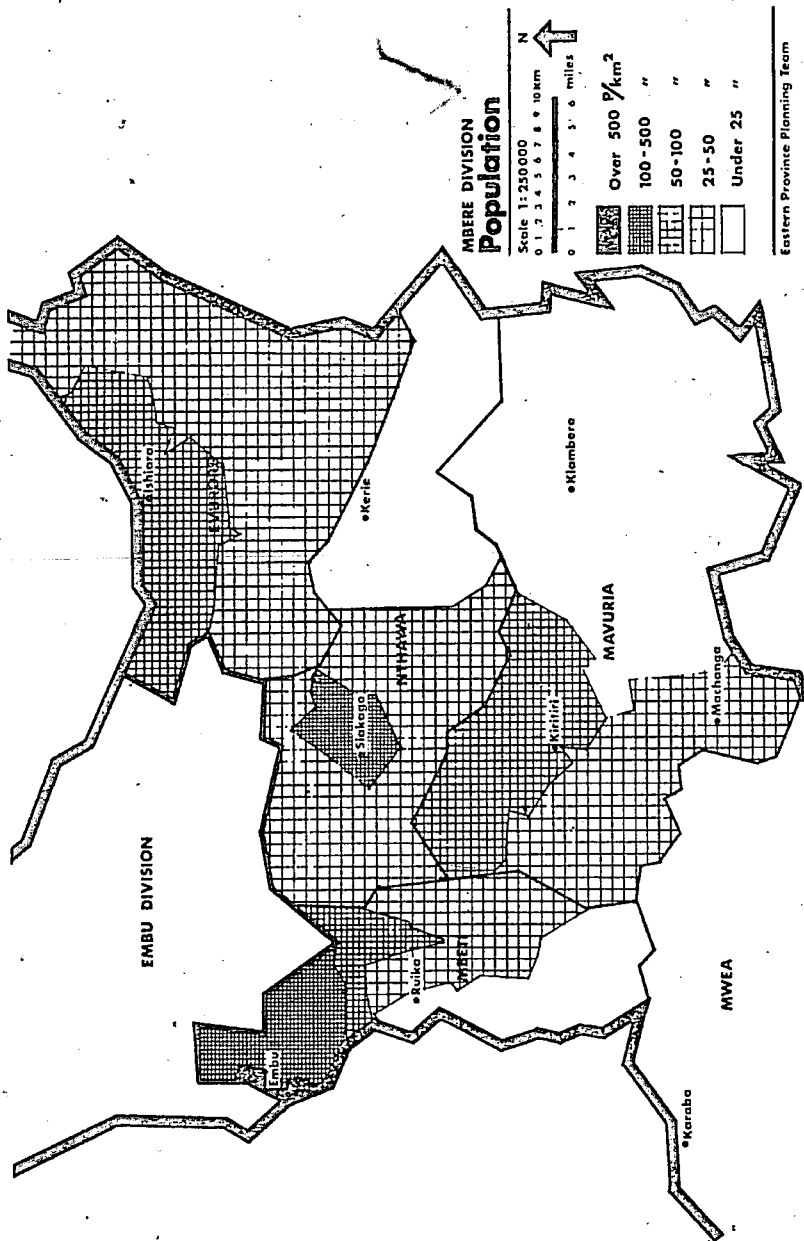
The focal themes of the ritual oath and the ceremonial initiation are played out for different reasons. Oaths are sworn because of the inevitable failure of human behavior always to conform to ideal rules. Initiation, on the other hand, reflects the inability of human action to satisfy differing and situationally incompatible moral rules. In the first instance, a breach of a single rule or value brings about litigation and the formalized re-creation of the original conflict; successful litigation and the reaffirmation of the abrogated rules are sought through the ritual oath. In the second instance, personal aspiration or morally sanctioned obligations to agnates may interfere with moral obligation to affines; the initiation ceremonial provides one means for upholding the affinal relationship paradoxically by emphasizing the very conflicts which both threaten and define the relationship.

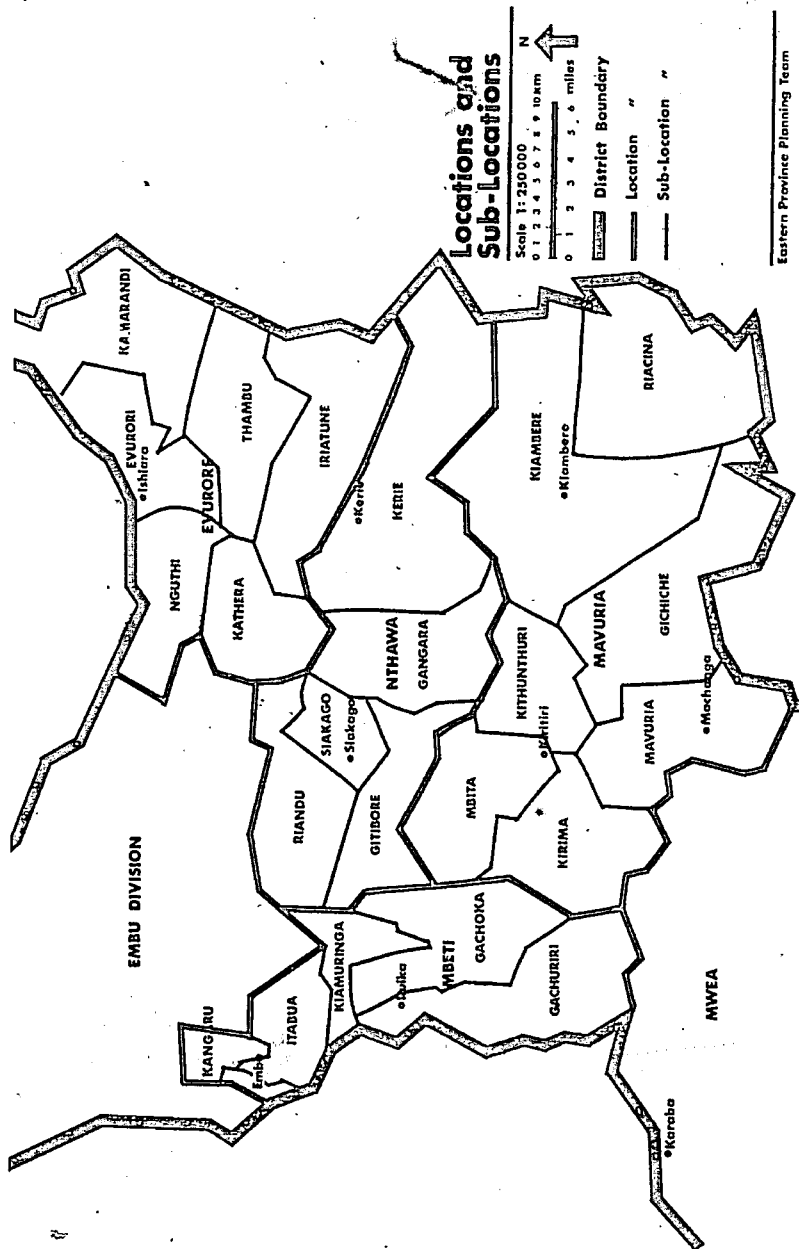
In agreeing to disagree, that is to mime the conflict, affines formally emphasize the ties binding them together in secular life. And in the culmination of the ceremonial, the circumcision operation of the youth, affinal differences are momentarily forgotten as both groups cooperate to bring forth a new adult.

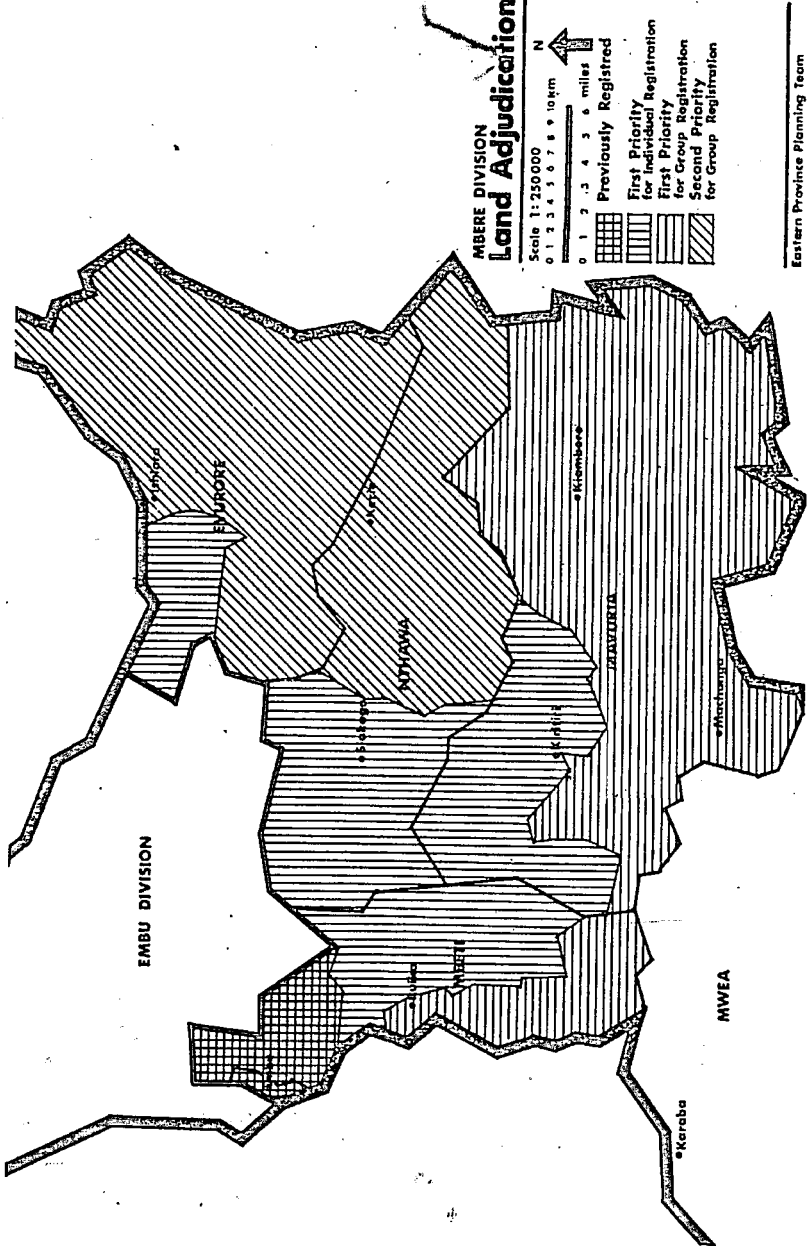
The highly formal and specific activity in ritual and ceremonial unifies human action and ideas about action; both ritual and ceremonial attempt to harmonize what people think they ought to do with what they actually do. That unity of thought and action will always be disturbed with each secular legal conflict requiring the ritual oath or with each initiation stimulated by structural conflicts. Social life is thus made possible by reconciling idea and action (morality and behavior) in ritual and ceremonial; without these formal actions, the ideational rationale of social life would not survive the real conflicts and disjunctions which characterize human existence. The dramatization of ritual and ceremonial recreates with each performance the necessary fiction that social life and the underlying moral principles

ideally governing its course are congruent.

APPENDIX







Eastern Province Planning Team

Bibliography

Benson, T. G.

- 1964 Kikuyu-English Dictionary. Oxford, The Clarendon Press.

Bernardi, B.

- 1959 The Mugwe, a Failing Prophet. London, Oxford University Press.

Brokensha, David

- 1971 Mbere [sic] Clans and Land Adjudication. Unpublished Ms.

Colson, Elizabeth

- 1962 The Plateau Tonga of Northern Rhodesia. Manchester, Manchester University Press.

Cotran, Eugene

- 1968a Restatement of African Law: The Law of Marriage and Divorce. London, Street and Maxwell.

- 1968b Restatement of African Law: The Law of Succession. London, Street and Maxwell.

- 1969 Tribal Factors in the Establishment of the East African Legal Systems. In Tradition and Transition in East Africa. P. H. Gulliver, ed. Berkeley and

Los Angeles, University of California
Press.

Eastern Province Planning Team

1969 Mbere [sic] Special Rural Development
Programme. Unpublished Report.

Embu District Reports, Kenya National Archives

1907-
46 Embu District Record Book.

1909-
20 Native Tribes and Their Customs.

1920 Native Customs and Law, Circumcision
File.

1914-
40 Embu Political Records.

1915-
18 Emberre [sic] Record Book.

1916-
47 Embu District Record Book.

1918-
38 Embu District File on Female Circumcision.

1925-
27 Native Affairs, General Policy.

1932-
60 Embu District Annual Reports and Handing-
over Reports.

Evans-Pritchard, E. E.

1948 The Divine Kingship of the Shilluk of
the Anglo-Egyptian Sudan. Cambridge,

Cambridge University Press.

- 1965 Some Collective Expressions of
Obscenity in Africa. In The Position of
Women in Primitive Societies and Other
Essays in Social Anthropology. London,
Faber and Faber Ltd. First published
1929.

Fortes, Meyer, and E. E. Evans-Pritchard, eds.

- 1940 African Political Systems. London,
Oxford University Press.

Gluckman, Max

- 1949 The Role of the Sexes in Wiko Circum-
cision Ceremonies. In Social Structure,
Studies Presented to A. R. Radcliffe-
Brown. Meyer Fortes, ed. London,
Oxford University Press.

- 1950 Kinship and Marriage Among the Lozi of
Northern Rhodesia and the Zulu of Natal:
In African Systems of Kinship and
Marriage. A. R. Radcliffe-Brown and
Daryll Forde, eds. London, Oxford
University Press.

- 1955 Custom and Conflict in Africa. Glencoe,
Free Press.

1962 Essays on the Ritual of Social
Relations. Manchester, Manchester
University Press.

1965 Politics, Law, and Ritual in Tribal
Society. Chicago, Aldine.

Gulliver, P. H.

1955 The Family Herds. London, Routledge
and Kegan Paul Ltd.

1963 Social Control in an African Society.
Boston, Boston University Press.

1969 Tradition and Transition in East Africa.
Berkeley and Los Angeles, University of
California Press.

Heyer, Judith, Dunstan Ireri, and Jon Moris

1969 Rural Development in Kenya. A Report by
the University College, Nairobi, for the
Special Rural Development Program of the
Government of Kenya.

Kenyatta, Jomo

1938 Facing Mt. Kenya. London, Secker and
Warburg.

Lambert, H. E.

1947 Land Tenure Among the Akamba. African
Studies 6:131-147.

1950 The Systems of Land Tenure in the Kikuyu Land Unit. Communication from the School of African Studies, University of Cape Town. New Series No. 22.

1956 Kikuyu Social and Political Institutions. London, Oxford University Press.

Lévi-Strauss, Claude

1967 Structural Anthropology. Garden City, Anchor Books. First published 1963.

Lindblom, Gerhard

1920 The Akamba in British East Africa. Archive d'études orientales. Vol. 17, Uppsala.

Lomax, Alan, et al

1968 Folk Song Style and Culture. American Association for the Advancement of Science, Publication No. 88. Washington, D. C.

Maher, Colin

1938 Soil Erosion and Land Utilization in Embu. Nairobi, Ministry of Agriculture.

Michuki, D. N.

1962. Būrūri wa Embu. Nairobi, East African Literature Bureau.

Middleton, John, and Greet Kershaw

1965 The Kikuyu and Kamba of Kenya. London,
International African Institute.

Oliver, Symmes C.

1965 Individuality, Freedom of Choice, and
Cultural Flexibility of the Kamba.
American Anthropologist 67:421-428.

Orde-Brown, G. St. J.

1925 The Vanishing Tribes of Kenya. London,
Seeley Service and Co.

Roberts, John M.

1965 Oaths, Autonomic Ordeals, and Power.
American Anthropologist 67:186-212.

Rosberg, Carl G., and John Nottingham

1966 The Myth of Mau Mau. New York,
Frederick Praeger.

Routledge, W. Scoresby, and Katherine Routledge

1910 With a Prehistoric People. London,
Edward Arnold.

Saberwal, Satish

1967 Social Control and Cultural Flexibility
Among the Embu of Kenya, ca. 1900.
Ann Arbor, University Microfilms.

Sorenson, M. P. K.

- 1967 Land Reform in Kikuyu Country: A Study
in Government Policy. Nairobi, Oxford
University Press.

Turner, Victor W.

- 1957 Schism and Continuity in an African
Society. Manchester, Manchester
University Press.
- 1967 The Forest of Symbols. Ithaca, Cornell
University Press.
- 1968 The Drums of Affliction. Oxford, The
Clarendon Press.
- 1969a The Ritual Process. Chicago, Aldine.
- 1969b Symbolization and Patterning in the
Circumcision Rites of Two Bantu-speaking
Societies. In Man in Africa. Mary
Douglas and Phyllis Kaberry, eds.
London, Tavistock Publications.

Van Gennep, Arnold

- 1960 The Rites of Passage. Chicago,
University of Chicago Press. First
published 1909.

Watts, E. R.

- 1969 Agricultural Extension in Embu District

of Kenya. East African Journal of
Rural Development 2:63-81.

Welbourne, F. B.

1961 East African Rebels, A Study of Some
Independent Churches. London, S. C. M.
Press.

Wilson, Monica

1951 Good Company. London, Oxford University
Press.

1957 Rituals of Kinship Among the Nyakyusa.
London, Oxford University Press.

1959 Communal Rituals of the Nyakyusa.
London, Oxford University Press.

73

96

MICROFILMED - 1972