

14 A PHILOSOPHICAL ANALYSIS OF DETERRENT PUNISHMENT WITH  
SPECIAL REFERENCE TO CURSES AMONG THE INDIGENOUS  
ABAGUSII COMMUNITY OF WESTERN KENYA "

BY

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## ABSTRACT

This thesis addresses itself to deterrence as an aspect of utilitarian punishment. It attempts to critically evaluate the role of deterrence as a goal of utilitarian punishment in curbing crime in society. To show this, the study has selected a specific community in Kenya, the Abagusii, who in their traditional practice of punishment utilised the cultural belief of the case to curtail criminal behaviour in the community.

This research adopted the following as its specific hypothesis:

**Curses among the traditional Abagusii community were an effective form of deterrent punishment.**

To test this hypothesis, library research was conducted with the following objectives:

- a) An examination of the practice of curses among the traditional Abagusii community;
- b) A critical examination of the role of curses in regulating the socio-political and economic lives of the traditional Abagusii.

The study has shown that the fear of the curses among the traditional Abagusii was very strong and was instilled through the socio-cultural and traditional religious practices of the Abagusii. It was because of their strong belief in religion that they believed curses were occurrences controlled by the supernatural forces who could unleash the curses on social deviants. Because of this, curses among the indigenous Abagusii played an effective deterrent role as a form of punishment. The hypothesis, therefore, is affirmed.

The recommendation arising from this study is that if the belief in curses is enforced in modern societies through a vigorous system of socialisation, the rate of crime in society may be reduced. This socialisation could be carried out through such institutions as the family, the school, the church, etc.

In summary, the layout of the thesis is such that Chapter One begins with the ethnographic background of the Abagusii community. The problem and objectives of the study are also treated in this Chapter, as are the justification of the study, the theoretical framework, hypothesis and methodology.

Chapter Two comprises the literature review. It is also in this Chapter that the definitions of

punishment and curses are given. Among the issues dealt with here include the theories of punishment and arguments that have been advanced for and against punishment. Deterrence as a form of utilitarian punishment, curses as tools of social control and examples of curses practised among the traditional Abagusii are also examined here.

Chapter three explores some of the important Gusii socialisation processes. It is shown how each of the socialisation process discussed contributes in inculcating the belief in curses among the Gusii people.

Chapter Four critically examines the role of curses in the administration of punishment, the possible philosophical foundations of curses and the role of punishment in ensuring social conformity of the traditional Abagusii.

In conclusion, Chapter Five looks at the future of punishment in the light of the controversy surrounding the practice. This Chapter also looks at the concept of oath-taking in modern society and the attitudes of people towards it. It then ends by giving recommendations on possible ways of salvaging the credibility of deterrent punishment.

## INTRODUCTION

The Institution of Punishment is a phenomenon that attract various views in moral philosophy, and in other disciplines such as sociology, psychology and law.

Generally in Philosophy, the institution and practice of punishment is looked at from a moral point of view. There are those who hold the view that punishment is invaluable in maintaining law and order in society. It is thought that without punishment, society will degenerate into chaos. Punishment, therefore, in whatever form, is believed to help in establishing peace and harmony in society.

In traditional Africa, punishment in most cases was intended, among other things, to deter the criminal from repeating the crime. For instance, among the traditional Abagusii, the curse was used as a form of deterrent punishment - to prevent further crimes from occurring. In this community, a curse was generally regarded as the severest of punishment. No one ever wanted to be cursed and people often made sure that their relatives were not visited with a curse, since the effect of the curse went beyond the criminal himself and encompassed even his relatives. The study of curses and their role as a form of deterrent punishment is, therefore, important. The



present study is concerned with exactly that. It has selected the Abagusii community for that purpose. Consequently, there is need to examine the ethnographic background of this community, to which the following section now turns.

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## CHAPTER ONE

### Introduction

#### 1.1 Ethnographic Background of the Abagusii Community

The Abagusii are a Bantu speaking people living in the two districts of Kisii and Nyamira <sup>1</sup>.

The total area covered by the district is estimated to be around 2196 Sq. Km. Kisii district borders Kericho district to the East and North, Nyanza district to the West and Narok district to the South.

Kisii district is largely above 1500 m. above sea level except for the highlands and plateaus rising upto 1800 M. above sea level at Keroka and Manga.

The average rainfall per annum is 1000 mm. while the annual - maximum temperatures range from 26 - 28 degrees Centigrade.

From the 1979 national census figures, the district's population was estimated at 900,000 persons.

Traditionally, the Gusii people combined farming and animal husbandry. Cattle herding was highly regarded as being important due to the social significance of livestock in the Gusii cultural practices such as paying bridewealth - livestock comprised the unit of account for this purpose.

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<sup>1</sup>Nyamira district was recently heaved off from the hitherto larger Kisii district. For the purpose of clarity, however, 'Kisii District' in this work refers to both Kisii and Nyamira districts.

The introduction of cash economy has seen agricultural products from the farm taking the lead. Among the most important crops grown in Gusiland nowadays are coffee, tea, pyrethrum, bananas, sugar cane and an assortment of other horticultural crops such as onions, tomatoes and pineapples.

The Gusii traditions say that long time ago, they were the same people as the Kuria, the Luhya, Kikuyu, the Meru, Kamba and all the other Bantu groups living in Kenya today. Writing in B. A. Ogot (1976), William Ochieng says that

They [Gusii] further state that on their way south from a country which they call "Misri" they were together with the Ganda and the Soga. The Ganda and Soga are said to have branched off from the rest of the migrants around Mt. Elgon, in a South-Westerly direction. The Kikuyu, Meru, Embu and Kamba are said to have travelled eastwards toward what is now the Central Highlands of Kenya while the Bukusu (Kitosh) appear to have remained around Mt. Elgon. The remaining clusters - the Gusii, Kuria, Suba and Logoli - migrated southwards and following the course of River Nzoia arrived on the Eastern Shores of Lake Victoria, some fifteen to sixteen generations ago, presumably sometime around A.D. 1520 (pp. 85 - 86).

The above is briefly the historical account of the origin and migration of the Gusii people to their present settlement. The oral traditions of the Gusii people have another story altogether on how they originated.

According to one oral tradition, the Gusii people talk of a man called Mogusii as the founder of the society (they also assert that the term Gusii was coined from Mogusii). Mogusii, according to this tradition, was a member of the genealogy from which the other above named Bantu groups originated. This genealogy is traced to Kintu who led the migration from Misri.

Be it as it may, what is important to note here is that there is a conglomerate of evidence that point to the fact that there is a great interrelatedness between the Gusii and all the above named Bantu groups. In fact, there is a very close similarity between the Gusii customs and those of their brethren Bantu groups (this contention will be made clear when this writer discusses curses).

The Gusii people are comprised of six major sub-tribes viz - the Abagirango, the Abagetutu, the Abanyaribari, the Abamachoge, the Ababasi and the Abanchari. Each sub-tribe also comprises of several exogamous clans that are consanguinally related and can not intermarry.

In the indigenous<sup>2</sup> Gusii community the clan is the largest political unit while the family (i.e. husband, wife(ves) and children) is the smallest). If, however, the father is dead, the political (and social as well) responsibilities resort to the eldest surviving son. Married sons were seen as economically independent, but this did not remove them from the political suverillance of the father. In fact, before

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<sup>2</sup>The term indigenous here is used mostly to refer to the traditional Gusii society, i.e. the pre-colonial period. This is the period when the Gusii aspects of culture that will be extensively referred to herein had not been remarkably interfered with by external cultures, especially Western culture.

conducting any important social function, such functions must be ratified by the father before being conducted.

In any given community, differences are always apt to occur, even then there are rules and regulations guiding people's behaviour and how they should relate to one another. In the family unit, therefore, the father's work was to settle any arising disputes between his sons and wives. The father's decision (ruling) was unquestionable. Actually, in a well organised family, there was little, if any, interference from outside. As such, the family head (father) had to exhibit a high sense of impartiality in discharging his duties to avoid creating ill-feelings among the family members. If it was perceived that the father was partial in his ruling or if he was weak - due to one reason or another - to discharge his political duties, then the clan elders who form a larger political unit could step in to assist him.

From the above, it can be inferred that as much as the family was perceived as being a politically autonomous unit, if the homestead head was unable to bring matters in his homestead under control, then this called for outside intervention. This was necessary because if discontent in one family was left to continue, it could lead to disruption of peace in the clan. The clan could not, as such claim to be at peace when one component of it (i.e. family) was in chaos.

Although the clan elders were solely concerned with the handling of inter-family disputes, there was no constitutional requirement that limited their jurisdiction to that area only. Although he did not

put it in as many words, this is what LeVine (1966) refers to when he observes that

The traditional Gusii homestead was an internally self-governing unit. All disputes and rule violations arising within it were handled by the homestead head (backed up by ancestor spirits) unless he called in an outside authority (p. 67).

This outside authority which LeVine does not bother to reveal, is actually the clan elders' political unit.

Who then were these clan elders and how was political ruling generally imposed in the indigenous Gusii society?

LeVine (Ibid.) contends that, prior to colonisation the Gusii society was largely segmented with no central authority. This contention is actually true and has been alluded to above. But at the same time, mention has also been made to the effect that cases of conflict or rule violation involving members of more than one homestead were brought before the clan elders. These clan elders were locally known as abagaka b'egesaku. These clan elders, it can be argued, formed what one can term as a 'central authority' and LeVine has the following to say about them:

This term [abagaka b'egesaku] did not refer to a council with a definite membership but to a group of homestead heads and other elders ("men with grey hair") whose membership would depend on the nature of the cases being heard. (pp. 67 - 68).



First, Levine asserts that there was no central authority among the indigenous Gusii people. Secondly, he claims that the composition of the clan elders would depend on the nature of the case being heard. Are these contentions true?

By saying that the Gusii society had no centralised system of government, Levine had in mind the undisputed fact that before colonisation the Gusii people had no one known political leader to whom they owed their political allegiance. The clan as has already been shown was the most effective political unit. But as Ochieng, writing in B. A. Ogot (op. cit.) says

... The Gusii society should not be looked at as having been composed of a conglomeration of independent feuding or warring clans, which conducted external relations with their neighbours and persistently promoted their separate and distinct unities. Rather, the Gusii people constituted one vast society which was characterised by a number of common features. The Gusii people spoke a common language, shared a common continuous territory and had common customs and traditions - inducing beliefs in the common descent of their clans and sub-tribes from one remote tribal ancestors, Mogusii (pp. 100 - 101).

What about the second contention - composition of clan elders?

It may be true as Levine (op. cit.) puts it that membership of these elders 'would depend on the nature of the case being heard'. But what must not be lost to the reader is the fact that abagaka b'egesaku ( -

clan elders) was actually a council whose membership depended on one's age and status in the clan. It was because of their ages and social standing that they were thought to be conversant with various issues in society. These are the people who were often consulted in case of any problem that did not look ordinary. It is, therefore, not right to suggest, as Levine does, that the composition of clan elders was ad hoc, per se.

The indigenous system of the Abagusii seems to have been a theocracy. Lacking common codes of written laws, people made appeal to the supernatural forces. The supernatural was thought to be an active participant not only in ensuring social conformity, but also in punishing social deviants. One of the methods that the supernatural forces used in maintaining peace and harmony and sometimes in punishing deviants as will be shown in Chapter Two is the curse.

## 1.2 Statement of the Problem

This work is basically a study of the phenomenon of punishment. Punishment is, however, a very wide topic. In this thesis, therefore, the focus is on curses as a form of deterrent punishment with special reference to the indigenous Abagusii.

The Collins Gem English Dictionary, Major New Edition (1991), defines a curse as follows:

Profane or obscene expression, usually of anger; call to a supernatural power for harm to come to a person; affliction, misfortune. (p. 127).

The Abagusii associated curses with punishment, mostly from the supernatural, but this was thought to be more of a deterrent punishment as will be shown later on.

Punishment is a phenomenon that draws various divergent ethical views among both students and teachers of philosophy. One can broadly dichotomise these views into for and against punishment.

Be that as it may, there are various theories that have been formulated over time explaining the role of punishment in society. Although there are quite a number of these, they can be classified into two broad categories, namely, retributive and utilitarian theories.

The retributive theory of punishment refers to a form of punishment whereby one is punished for being found guilty of violating a rule, put in other words, this is the penal goal of punishment.

The utilitarian theory on its part holds that punishing an offender for the sole purpose of inflicting pain on the individual is immoral. This theory contends that punishment should involve other consequences, over and above pain. If punishment, for instance, guarantees the exclusion of evil to the greatest number of people, then such punishment is meaningful and by extension moral.

Other theories of punishment:- deterrent - punishment meted out to prevent the criminal and witnesses from committing crime; restitutive - making an offender pay compensation to the offended party; and reformative - punishing for the sake of changing

the criminal's character, all conform to utilitarianism.

If the above then are the popularly accepted theories of punishment in society, it will be safe to conclude that punishment as it was practised in various indigenous African communities, performed all the above mentioned functions.

After colonisation, the British introduced their system of laws and punishment to Kenya. The British were, however, known for their preference of 'indirect rule' system in the administration of their colonies. This meant that not all indigenous institutions and practices were discarded as useless. In fact, among some practices that were tolerated was the curse as a tool of punishment in some African communities. This was perhaps due to the realisation that in some cases, a curse as a tool of punishment was found to be more effective than the British system of punishment in deterring criminals.

The indigenous Abagusii had no specialised agencies, like the police force to carry out law enforcement in the society. Devoid of these agencies, therefore, the Abagusii relied on supernatural forces. The curse is one such supernatural force believed to be possessed by both the homestead head and the clan elders. Members of the homestead or clan abstain from committing crimes that may cause the displeasure of the cursing authority. The Abagusii believed that if an accursed person did not confess and get cleansed, death or a great misfortune would befall him and his lineage. If, however, the offender confessed, then it was possible for him to be forgiven and thus escape danger.

It would appear that among the indigenous Abagusii, curses played a largely utilitarian role. This claim is supported by Levine's contention when he writes that the omotembe (Erythrina Abyssinnica) trees - used in taking oaths (conditional curses) - were planted outside each courthouse during the colonial period for the purpose of oath-taking (op. cit., p. 69). Levine makes this contention more clear when he says that

... the actual uttering of a curse by the lineage elders was less frequent than their threatening to do so, which inspired sufficient fear in the offender to make him comply (Ibid.; p. 68).

After Kenya gained her independence from Britain, the phenomenon of the curse was never given much recognition by the independent Kenya government. This is despite its being recognised in some cases, like, for instance the alleged Gatundu oathing, a move that supposedly was aimed at confining the country's presidency within Kiambu district of Central Province.

Despite the above, curses, in their various forms (as will be shown later on) are still seen as having some relevance in social control in some Kenyan communities. This is definitely true of the Abagusii community. The only exception is, may be, among those members of the Abagusii community who have been born and brought up away from their native areas.

The aim of this research, therefore, is to undertake a critical analysis of curses among the indigenous Abagusii community, in an attempt to show that curses are an effective form of deterrent punishment.

### 1.3 Research Objectives

This research has two main objectives. These are:

- (i) An examination of the practice of curses in the indigenous Gusii community;
- (ii) A critical examination of the role of curses in regulating the socio-political and economic lives of the indigenous Abagusii.

### 1.4 Justification of the Study

This research is important because it is evident from the available literature that in Africa, indigenous punishment has attracted little attention from philosophers.

The various theories of punishment mentioned above tend to view the role of punishment as it was practised in the centralised past societies and in the present modernised ones. It is the aim of this research to show that a phenomenon such as the curse can fall under the category of what scholars call deterrence or better still utilitarianism. This is a contribution that will add to existing literature.

This research is also being undertaken on the understanding that in the modern Kenyan society, regarded by many as civilised, the curse, an aspect

associated with superstition and thus primitivity, is still a living reality. The aim of this researcher is, therefore, to try and reach the philosophical meaning and implications of the curse, the knowledge that may explain as to why curses were and still are revered in the Gusii society. This is generally the gap the research attempts to fill in the available literature.

The research is also important because it may enable legislators to re-evaluate the existing judicial system and identify where their predecessors went wrong. By abandoning the indigenous legislative or political systems in their entirety, a mistake may have been committed. Incorporating curses to modern punishment as is suggested in this work, may make punishment play a more effective deterrent role than it is the case presently.

### 1.5 Theoretical Framework

As has already been seen above, there are quite a number of theories of punishment. These theories derive their names from the functions punishment plays in the society.

The theory which this writer feels is pertinent to this study is utilitarianism. Taken on its definition, deterrence as a function of punishment falls under utilitarianism. The logic here is that, in as far as deterrent punishment is intended to prevent active and potential criminals in society, it has a utilitarian function. This claim accrues from the fact that utilitarians hold the view that it is immoral and evil to punish a person for the sake of inflicting pain on that person. Utilitarians argue that if the institution of punishment is to be of any

meaning, it must have noble goals as it's aims over and above the infliction of pain. Since, therefore, deterrence is not paramountly projected mainly towards the infliction of pain (although it may do so albeit by the way), it is utilitarian in its role.

Utilitarianism, as used in moral philosophy refers to the view that the sole ultimate standard of right, wrong, and obligation is the 'principle of utility', which says that the moral end to be sought in all people do is "the greatest possible balance of good over evil" (or the least possible balance of evil over good) in the world as a whole. Good and evil referring to non-moral good and evil. Among the philosophers associated with this theory include Epicurus (341-270 B.C.), Jeremy Bentham (1748 - 1832), John Stuart Mill (1806-1873), and George Edward Moore 1852-1933, to mention but a few.

Since preventing criminal tendencies in society would lead to happiness to many people, deterrence as a goal of punishment has a utilitarian value.

### 1.5 Hypothesis

This research proceeds only on one premise. This is the premise that, in as far as they are intended to deter active and potential criminals, curses have a utilitarian aim.

From the above observation, this research adopts the following as its specific hypothesis:

- Curses among the indigenous Abagusii community were an effective form of deterrent punishment.



## 1.6 METHODOLOGY

This study was mainly based on library research. Reference was made to those works that have been written on punishment in general.

Because, however, the main focus of the study was on curses in reference to the Gusii community, there was a bias to referring those works that had information on the life of the indigenous Gusii community. This work was, therefore, mainly written with the help of secondary information obtained from the library.

Much of the literature obtained had been written by scholars who did not have interpretation of certain indigenous practices as their area of specialisation, i.e. Anthropologists sociologists and historians. As a result of this, there were some practices that proved too technical for this writer to give sound interpretation. To enable him to do this, the writer was compelled to conduct informal discussions with some old people from the Gusii community. The aim was to obtain the underlying philosophy on which these practices were based and this enabled the writer to infer his own interpretations on some conflicting information.

Thus, all the above sources proved immensely indispensable in the realisation of this thesis.

## CHAPTER TWO

### Literature Review

#### 2.1 Definition of Punishment

The Oxford English Dictionary (1961) defines the Verb to punish as follows:

To cause (an offender) to suffer an offense; to subject to judicial chastisement as a retributive or requital or else caution against further transgression; to inflict a penalty on; to require or visit (an offence, etc. with a penalty inflicted on the offender; to inflict a penalty (for something) (p. 1603).

As can be inferred, the greater part of the above definitions describe the retributive role of punishment. But retributive is by no means the only role of punishment in society, as will be shown shortly.

Punishment has also been defined in psychological terms by some social scientists, Julius Gould and William Kolb (1964), for instance define punishment as follows:

A punishment in Psychology denotes any aversive stimulus which has the immediate but temporary effect of reducing in strengths (or in probability of occurrence) the response upon which it was contingent. It is painful stimulation received by the organism for doing something, the punishment being an incentive to stop or suppress that response. (P. 565).

Skinner, B.F. (1953) echoes the sentiments of the above scholars - Skinner, - a psychologists - argues that the aim of punishment is to reduce tendencies to behave in

certain ways. He, however, cautions that punishment has always been found to lead to unfortunate by-products. This is because a punished person, may immediately desist from doing the action for which he was punished, but this does not imply that that state has been permanently established.

Punishment, according to Skinner, leads to conditioned behaviour. This refers to the situation whereby when a person behaves in a certain manner, he remembers a past instance when he behaved in that particular manner and what the response (in this case punishment) was and withdraws or changes the behaviour. Skinner argues that behaviour which has consistently been punished becomes the source of conditioned stimuli which evoke incompatible behaviour. He concludes by saying that discontinuation of punishment leads to the emergence of earlier behaviour in full strength (pp. 210 - 215).

Skinner's views seems to suggest that punishment can only be effective in the short-run, for in the long-run it plays an insignificant role in eliminating deviant behaviour.

Emile Durkheim (trans. by Simpson 1964) talking about punishment in primitive societies says that primitive people punish for the sake of punishing. Their (primitive people) aim is to make the culpable suffer particularly for making him suffer and without seeking any advantage for themselves from the suffering they impose (pp. 85 - 86).

Durkheim, therefore, seems to hold the view that primitive societies punish only for the sake of vengeance, which to him is wrong. This is as opposed to the practice of punishment in modern societies who punish for the sake of defence. In modern societies, Durkheim contends, the pain which society inflicts on the individual is in its

hands no longer anything but methodical means of protection. It punishes not because "chastisement offers any satisfaction for itself but so that the fear of punishment may paralyse those who contemplate evil." (Ibid., p. 36).

Durkheim's observation seems to suggest that punishment in modern societies has a utilitarian role-detering potential criminals. Before expounding on these views by looking at some of the traditional theories of punishment, it is important at this stage to define a curse.

## 2.2 Operational Definition of Curses

In general terms, a curse is understood to be a ritual utterance that is intended to result in some catastrophe. But a curse as understood among the indigenous Abagusii does not only arise from ritual utterances. Some curses are thought to arise out of various acts of omission or commission, this will be made clear later on.

Modupe Oduyoye, writing in Adegbola Ade (1983), says there is a connection between cursing and swearing. One pronounces a curse on oneself in swearing, while taking an oath is conditional on one's guilt. He goes on to say that the effectiveness of a curse is dependent on the guilt of the person cursed (p. 219).

Okot P'Bitek (1971) says that among the Central Luo, "the curse consisted of certain words spoken and acts performed which the Central Luo believed affected human beings and the cause of events" (p.145).

Besides the foregoing, there is a number of other curses which the indigenous Abagusii recognised, a brief clarification of these is important here.

As Modupe observes above, there are a category of curses that involve swearing. Among the indigenous Abagusii, this is a type of self-inflicted curse, locally known as emuma - oath.

There is also another curse that involves two parties, the cursing and the one being cursed. Parents cursing their children - for instance, a father, stripping naked and holding his penis towards his son or singing funeral songs and pretending to mourn a living son; a mother removing her clothes and pointing a finger to her vagina in the presence of his son, and lineage elders cursing an errant member of society, all fall under this category.

The indigenous Abagusii also believe there are those curses that result automatically due to the acts of omission or commission on the part of the victim. In this category of course there need not have been any rituals or words uttered by a third party. These curses are meted directly by the supernatural forces as a result of being annoyed by one's behaviour, unless of course propitiatory measures are taken. This is what happens for instance if the ritual fire of the initiate goes out before the end of the seclusion period.

It is in the above context that curses among the indigenous Abagusii must be understood. And it is on the above understanding that curses are dealt with in this work. Before looking at the role of curses in social control, it is important first to look at some debates on punishment. This is because curses are being looked at here as a form of punishment - deterrent, and it is necessary to say what deterrence is first.

### 2.3 Traditional Theories of Punishment and their Role in Society

Punishment is a topic that has been given much attention by scholars in various disciplines such as criminology, law, penology, anthropology, philosophy and others. This may be explained perhaps by the fact that the issue of punishment is at the core of society.

Be that as it may, in the study of punishment various theories have been formulated and they take their names from the roles punishment plays in society. These as was seen earlier are the retributive theory; the restitutive theory, the reformative theory; the deterrent theory and the utilitarian theory.

As a function of punishment retributive theory is seen as a form of revenge. According to this theory, an offender is punished for violating a moral rule. Violating an established rule is the only justification for punishment in this case.

In deterrence, punishing an offender is aimed at preventing the witness and the offender from committing more crimes. Acton Burrows (1969), says the following about deterrence:

When wrong actions are condemned in proportion to the degree of wrongness, the wrong-doer and others are being educated in morality. They are being deterred by fear of receiving the emphatic condemnation that punishment consists of and they are being educated in so far as they come to recognise the wrongness of sorts of action they are being deterred from doing. (p. 14).

Restitutive theory asserts that if a person has committed an offence to some party, then the offender should be made to pay compensation to the offended party.

Another theory of punishment is reformation. The reformatory theory asserts that people are punished for the purpose of changing their criminal characters. A criminal is punished for the sake of making him a decent citizen as well as to free other people from the evils he may inflict on them as a criminal.

Finally, there is the theory of utilitarianism. Various renowned philosophers, such as Epicurus, Jeremy Bentham and John Stuart Mill among others have extensively dealt with the theory of utilitarianism.

Generally, in moral philosophy, 'utility' or the "greatest happiness principle" holds that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain. That aside, as applied to punishment, the utilitarian theory views punishment in itself as evil. However, if it (punishment) promises to exclude a greater evil, then it should be inflicted and in this case it is ethically justified. Antony M. Quinton, writing in Acton Burrows (Ibid.) says the following about utilitarianism:

The view that punishment is justified by the value of its consequences is compatible with any ethical theory which allows meaning to be attached to moral judgements. It holds merely that the infliction of suffering is of no value or of negative value and that it must, therefore, be justified by further considerations. These will be such things as prevention of and deterrence from wrong doing;

compensation of victims, reformation of offenders and satisfaction of vindictive impulses. (p. 61).

The foregoing are generally termed as traditional theories of punishment. From the above quotation, however, one can clearly see that reformation, deterrence and restitution (or compensation) all fall under utilitarianism. In short, therefore, there are two broad theories of punishment - retributive and utilitarian.

It is on the basis of the above theories that views have been advanced for and against punishment and it is important to examine some of them at this stage.

#### 2.4 Arguments Against Punishment

Skinner (op., cit.) is among those people who argue against the institution of punishment. Using psychological explanations, he contends that while punishment in the long run does not eradicate criminal behaviour, it is also found to have side effects. If it does not eliminate deviant behaviour, then punishment does not have meaning. Instead of punishment, Skinner advocates for tolerance towards criminals. Allowing time to pass would weaken conditioned behaviour. This is evidently the case if the criminal is a child, because this criminal behaviour may be due to age. As the child grows he may out-grow this criminal behaviour (p. 217).

While it may sound convincing to the opponents of punishment, Skinner's view nevertheless has some inherent shortcomings. He, for instance, fails to suggest what should be done if the criminals are adults and time fails to 'heal' their behaviour. By using the phrase "may out grow", Skinner too seems not to be sure of the efficacy of time in eradicating criminal behaviour. In fact, taken to its logical conclusion, the opposite of what Skinner



expects can be inferred: This is the possibility that as the child grows, his criminal behaviour may be reinforced. Thus, Skinner's premise does not warrant him to draw the conclusion he does. Skinner, therefore, does not give a rational alternative to punishment.

Odera Oruka (1976), is among the modern scholars who are totally opposed to any form of punishment. Odera argues that punishment has for long been justified on the ground that people are held responsible for their actions. People are often held responsible for their crimes on the understanding that they are free to choose. According to Odera, this assumption is wrong because most people are, in fact, never responsible for their actions. Using the above premise, Odera concludes by contending that punishment is evil, for to blame someone for doing something which he did not intend or which he could not avoid, is wrong. Touching on the relevance of the concept of free will to punishment, Odera proposes for its reformation, and his thesis is thus:

[A] person is criminally [or should be so assumed] responsible for a crime if in committing or allowing the crime, his action was intentional and avoidable (p. 11).

Odera also feels that punishment should be abolished because in most cases some innocent people are punished.

Instead of punishing criminals, according to Odera, authorities should dig deep and unearth the real reasons why people commit crimes. If these reasons are discovered and controlled, then crimes in society, according to him, will end.

Like that one of Skinner, Odera's position may be challenged on various grounds. To begin with, Odera fails to propose what can replace punishment in case 'causes' for

crime are not discovered and controlled. Society is a dynamic institution. Controlling reasons which make people commit crimes at one stage in society, assuming it is possible, would not mean that crimes will not occur in future. As society undergoes various stages of development, reasons as to why people behave the way they do are likely to change. It may not be possible to find a permanent solution to societal problems, crimes included. Punishment is, therefore, likely to remain the only feasible tool of social control.

Rudolph J. Gerber and Patrick D. Mcanamy in Burrows (op. cit.) expound on what they call Sartre's view of punishment. The two say Sartre decries punishment which he sees as a tool by those in authority to maintain their status quo. Punishment ensures that the deprived do not liberate themselves from their state of exploitation. Punishment, according to Sartre, the two say, is something that deprives man of his humanity. Man should be left to do what he wants to do, because it makes no meaning to talk of the distinction between good and evil. (p. 70).

It is important to note that Sarte belonged to the existential tradition that emphasised the importance of man to anything else. That is why he perhaps holds that view. But to let everyone do what he wants to do in society will be dragging society into a state of anarchy. This is because there is likely to arise a conflict of interests and may be war. If society is to be orderly, there must be, at least a generally accepted code of behaviour.

Michael Keeling (1970) arguing against punishment feels that a criminal offender is often someone who needs help instead of punishment. He contends that criminals do not do wrong after a rational consideration. As such, instead of pronouncing someone as guilty on what he had done, the 'why' aspect should also be taken into

consideration. He also takes issue with the question of breaking the law as a justification for punishment. He says that a question may be asked as to when a law is supposed to intervene and whose interest the law is trying to protect. He feels that the relation of the law to morals is complex and ambiguous. This is because one may come across a situation where the law supports morals and in another where it does not. The law supports and is supported by morals because what it forbids is derived from what the moral code forbids (pp. 50 - 54).

Keeling goes on to say that in the western world, for instance, laws from earlier times have been derived from morals either christianity or from what is usually referred to as natural law:

Men have understood that what makes things right or wrong is not that the law says so, but that the universe has a moral structure which the law attempts to reflect. (p. 55).

Keeling further contends that, sometimes it is possible that law makers make unjust laws. This raises the problem of punishing people who may have broken what he would call unjust laws. On the foregoing point, Keeling's views agree with those of Odera (op. cit.) who feels authorities may misuse the law to punish the innocent.

But unlike Odera, Keeling does not seem to be totally against punishment despite the numerous moral questions that he raises regarding it. It would appear that to Keeling, so long as laws are just, then he will recommend punishment to those who violate such laws. But establishing which laws are just and unjust is itself a debatable issue.

## 2.5 Arguments for Punishment

Although he criticises punishment as seen above, Durkheim (op. cit.) nonetheless feels it is indispensable. He argues that punishment is important as a means of containing the demoralising consequences of the crimes that could not be prevented. He contends that even the most upright moral people could be demoralised in the absence of punishment. Thus if an offender goes unpunished those who conform to the law would be hurt. Punishment, therefore, acts as a form of remedy on conformists and thus comforts them. The role of punishment in society, Durkheim says, is to promote the solidarity of conformists. To use his own words:

The social significance of the offender is that deviance is thereby defined as unsuccessful in the eyes of conformists, thus making the inhibition or repression of their own deviant impulses seem worthwhile. (p. 365).

Durkheim seems to put much emphasis on the effect punishment will have on the conformists, and less on the offender. Although his view seems to lean towards deterrence, Durkheim neglects one of the most important aspects of it (deterrence) - the effect of punishment on the offender's future behaviour.

Bradley, H. F. (1927), also feels punishment is important in society. He says that people should be punished because they are responsible for their actions, and responsibility implies a moral agent. Those to be punished, it should be assumed, know the moral quality of their actions. Young children and people of unsound minds, Bradley argues, have no moral will and as such should not be punished. According to Bradley, therefore, people should be punished only if they deserve it, and this if

they have done wrong. Punishing a person for reasons other than the above is immoral.

Bradley goes on to argue that punishment, if it is to be justified has to go hand in hand with guilt, and when someone has done wrong, that is the negation of right, punishment is deserved. (pp. 20 - 26).

Using the above arguments, Bradley gives what he feels to be the right definition of punishment as follows:

Punishment is the denial of wrong by the assertion of right, and the wrong exists in the self, or will of the criminal; his self is a wrongful self, and is realised in his person and possession; he has asserted in them his wrongful will, the incarnate denial of right; and in denying that assertion and annihilating whatever wholly or partially, that incarnation by time or imprisonment or even by death, we annihilate the wrong and manifest the right; and since this .... [is] an end in itself, so punishment is also an end in itself. (pp. 27 - 28).

From the foregoing, it can be inferred that for Bradley, it is wrong to punish people unless they know the moral quality of their actions. This is why he maintains that children and madmen should not be punished, as was seen earlier. Besides, madmen, it may be important that children are punished for their action. The reward - punishment theory can be very important in determining the future character of children, and hence reprimanding children for their deviant behaviour and praising them for good behaviour is necessary towards this goal.

Writing in Burrows (op. cit.) Antony M. Quinton also argues strongly against punishing the innocent. Doing so he says would be tantamount to giving punishment a

different and unnatural meaning. Only the guilty should be punished.

In the same book, Burrows (*ibid.*), John Rawls sees the justification of punishment in retributive terms. He argues that whoever has done wrong must be punished in proportion to his wrong doing. Guilty people deserve to be punished and this punishment should be in accordance to the depravity of their acts. He says doing this is morally better than letting one go scott-free.

Some scholars have accused the utilitarians of advocating for the punishing even of the innocent, so long as this will have the end result of deterring potential criminals. But not all utilitarians hold this view.

Be that as it may, the general consensus among the utilitarians is that in meting out punishment, the past should be forgotten and focus be put on the future. According to this view, punishment is justifiable in reference to the probable consequences of maintaining it as one of the devices of social order. If punishment can be shown to promote effectively the interest of society, then it is justifiable, otherwise, it is not.

It is on the above basis that deterrence here is viewed as a form of utilitarian punishment. At this stage, it is, imperative to say briefly what deterrence is.

## **2.6 Deterrence as a form of Utilitarian Punishment**

Deterrence is a form of punishment that is aimed at preventing active and potential criminals in society. Deterrent punishment is as such not aimed only at the criminal being punished but also at those members of society witnessing that punishment and who may be potential criminals. In contemplating to commit a crime, a potential

criminal would ponder of the consequences that may follow his action in the light of what he has witnessed happening to a criminal.

Durkheim (op. cit.) argues that it is important to punish criminals in order to deter others from committing more crimes. He advocates for capital punishment, if necessary, as a deterrent measure arguing that murder is not the greatest of evils. If, therefore, a person has murdered another, then there is nothing wrong in murdering him also. He argues that the loss of one more individual (offender) from society is of no consequence.

Durkheim's argument, although it seems to fall under utilitarianism would face opposition from reformationists. Reformationists argue that the fact that certain factors drove a person into committing a crime, is enough reason to conclude that that person's criminal character can be changed by other factors also.

The reformationists' position seem plausible in Penal law. It is believed that there are people who commit murders without intending to do so - unpremeditated murders. This is why people who are accused of murders may end up being judged with manslaughter. Efforts are made to ascertain all the possible circumstances that may have led to a murder. It, therefore, means that even murderers can reform. It is necessary, therefore, that they are given a chance to do so and this can only be done if they are given any other form of punishment apart from execution.

Das Sulka (1977) says that in ancient India, punishment was largely seen in terms of deterrence. In ancient India, violation of laws and codes prescribed by the state was very frequent and, therefore, penalties and punishments naturally became imperative deterrent tools. (p. 55).

Keeling (op. cit.) decries the use of retribution as the basis for punishment. He laments over the fact that some sentences are passed for the sake of the vindication of the law and not for the deterrent effect. This, he feels, is tantamount to returning evil for evil. This will be inflicting harm on the offender commensurate with the harm he himself has done. "Such a retributive or vindicative idea of the law raises a practical objection and a moral objection" (p. 59). Like the other preceding writers, Keeling feels that punishment is, in fact, useless in society unless it abates crimes.

Norman (op. cit.) echoes Keeling's opinion by saying that deterrence as a goal of punishment is present in all criminal codes. But because of ignorance it's full utilisation has not been achieved, he argues. According to Norman, most legislators and lawyers base their decisions on common sense since little research has been conducted to show the effectiveness of deterrence. Due to the absence of this knowledge, it is not known to what degree and under what conditions it is possible to direct the behaviour of citizens by the threat of punishment (p. 420).

Norman's evaluation of deterrence seems very objective. This is because it is sometimes difficult to say when punishment leads either to deterrence or retribution regardless of the intended aim. In fact, one form of punishment may have multiple functions.

Norman says there are philosophers who question the rationale of the value sought in punishing some to deter others. These philosophers, Norman says, argue that the social goals to be achieved do not in themselves justify the imposition of a penalty no matter how successful punishment is in decriminalising others. It is also felt that deterrence is rendered unsuccessful due to the fact



that in a community, draconian enforcement of law may be insisted upon.

Norman's analysis of punishment is indeed very practical in dictatorial and unpopular political systems. Dictators may find it necessary to severely punish their opponents with the hope that this would send warning signals to other potential opponents in society. This is what Oruka (op. cit.) refers to when he talks of 'Punishment and Terrorism in Africa'. In his book bearing the same title, Odera argues that most African leaders being unsure of their positions are used to bundling their opponents to prisons at the slightest excuse.

In most cases there 'opponents' are detained for being a 'threat to the security of the State'. Detention in this case is seen as being for the public interest. In reality, however, this interest may be that of the political leaders.

Norman (op. cit.) continues to explain that those philosophers opposed to utilitarianism take issue with those entrusted with the responsibility of administering punishment. These people, he argues, may abuse punishment using deterrence as an excuse. To such people punishing the innocent can very well serve the purpose of preventing potential crimes as easily as punishing the guilty. This, he says is immoral. This then renders deterrence unnecessary because it is not successful enough (p. 450).

The above contention seems to be in conformity with the way in which the institution of punishment is seemingly misused in modern society.

Reading newspapers, one often come across lamentations from people arraigned in courts of law about what they

claim are false charges brought against them. Some of these accused persons allege they are accused of 'trumped up' charges created by the authorities with whom they do not agree on principle.

The above phenomenon is common in Kenya's law courts when it involves cases of sedition. Given that there are always such claims, the above sentiments of philosophers opposed to utilitarian punishment cannot be underrated.

With all the foregoing views about deterrence as a goal of utilitarian punishment, it is now appropriate to look at curses and see how they played a deterrent role among the indigenous Abagusii.

## 2.7 Curses as Tools of Social Control

Curses among the indigenous Abagusii act as sanctions of social control. LeVine (1958) says that if a sanction is to be effective, it must stimulate in the individual motives which tend to counter-act his drives to violate the rules. It is assumed that the individual who is tempted to act in violation of the rules, anticipates the pain or discomfort of the sanction and as such inhibits his acts in order to avoid being sanctioned. (p. 4).

According to LeVine, religious and supernatural sanctions are important in what he calls primitive societies. This is the case among the indigenous Abagusii, as LeVine found out.

Among the indigenous Abagusii people, a curse is such a serious phenomenon such that where close relatives are involved oathing between them must be avoided at all circumstances. This is because, it is believed, that a curse accruing from such an oath will spread to the family of the party who is in the wrong. And if the two are

relatives, then the curse will end up affecting both families. Besides this, there are curses that are believed to affect the whole clan or even community. An offence of an individual can cause wanton catastrophe to the whole community, unless propitiatory measures are taken.

Before the Europeans came to Africa, the world-view of an African was limited to their immediate environment. It is from this environment that they evolved their philosophy.

In the absence of more advanced technology with which to exploit the physical environment for their survival, the Africans used their now branded 'crude technology.' This means that the environment was relatively harsh to them. In view of this then, the African needed maximum cooperation and less social disunity from his fellow men for his survival. This is what for instance Joseph Nyasani, writing in Heinz Kimmerle (1989), says:

One of the most distinctive features of African philosophy is the element of sociality, which in many cases has given rise to such concepts as African personality - African Identity, African Solidarity and many other virtues that attest to the humanistic character of man and his fellow men. (p. 13).

In fact, in African ontology, although an individual is viewed as being autonomous, individuality is meaningless if it is regarded in isolation with other members in society. An individual's actions are supposed to be in accordance with the generally accepted norms. Above all, one's actions must be geared towards contributing to the general welfare of every member of society. This can be described as a utilitarian principle of action.

Nyasani says the above situation obtains because in the mythical world of the African, people never die. This can be explained by the concept of spirits.

Africans do speak of ancestor spirits, which though not physical, do live and in fact, hover around the daily lives of the living members in society. It would be abominable, therefore, for an individual to behave in a way contrary to the traditions established by the living-dead. What an individual does in society intimately affects other members of the society. And according to Nyasani, once an individual is born into society, he has to belong to that society because

... each member of the community is born, so to speak, into a pre-ordained moral regime to which he is supposed to have indirectly subscribed either through parental or ancestral participation in what we might call the communal ontological good - the being at peace (in perpetual reconciliation) with nature, the perpetuation of the social conditions of harmony and the maintenance of the vital ontological union with the non-living (ibid., p. 19).

What can be inferred from the above quotation is that in pre-colonial Africa, peace and harmony were important social requirements. Without these conditions the existence and perpetuation of the community was at stake. This may be the reason why the supernatural powers established and jealously guarded these requirements. This they did by use of mythical powers.

It was because of this that among the indigenous Abagusii anyone who threatens this peace and harmony established and nurtured by the supernatural powers is liable to be punished by these same powers. It is also necessary that if it is not beyond their powers, members of

the society have an obligation to prevent crime from one of them, otherwise the community as a whole would not escape the wrath of the supernatural forces.

The above contention leads to a paradoxical situation on the destiny of the individual in society. Although society is supposed to act as guardian to its members, it does not imply that once he commits a crime, an individual is not held responsible for his misdeeds. What it means, Nyasani says, is that an individual's misdeeds "undermine the social edifice of tranquillity, harmony and order and as such hinder the attainment of the community's social and ontological ideals." (ibid., p. 23).

An individual's responsibility for wrong actions is not divorced from the broader framework of society. Philosophy of sociality, according to Nyasani, explains why there has been a successful state of cohesion in many African generations.

The above contention conforms to one of the arguments given as a justification of this study. This is the contention that, looking at the present Abagusii community, one sees a glaring lack of social cohesion reminiscent of the past generations.

It was due to the above characteristics prevailing among the indigenous Abagusii that peace and harmony was guaranteed for most of the times. And in fact, it was because of this intricate intertwining of society between, on one hand, the living and on the other hand the living-dead, that curses were believed to be relevant in society.

That being the case then, it is important to look at some of the most outstanding curses among the indigenous

Abagusii and how they were<sup>3</sup> conducted as well as their roles and implications.

## 2.8 Some of the Most Important (Prominent) Curses Among the Indigenous Gusii People

So far, the picture that the reader may have developed is that the indigenous Gusii people were a very peaceful group of people with no internal conflicts amongst themselves. Actually, this is not the kind of picture this writer wants the reader to formulate. Even in the so called civilised societies, people commit crimes. Once a person has violated certain established rules in the society, one must undergo punishment. Why?

Actually, Nyasani's contention (loco. cit.) can be used to explain this. In modern societies -- (modern societies here is used to refer to African societies that have recently adopted centralised political authority) laws governing the people are made by Parliaments. People elect their representatives to Parliament who take part in making these laws. This is what is referred to as 'representative democracy'. Because the people are represented in Parliament, they have, therefore, given their elected leaders the mandate to speak on their behalf. They have, therefore, indirectly subscribed to these laws. If one violates any of these rules, he must be held responsible for it. And there are established agencies which carry out punishment, such as the courts of law and the police.

Most indigenous African communities lacked these specialised agencies of carrying out punishment, but all

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<sup>3</sup>Reference is made to the past because the practising of these curses is now virtually dead. Even when they may be practised, they are not officially sanctioned by the government. To this writer, therefore, curses are treated in their past context.

the same criminals were identified and punished. Among the Gusii people conflict was avoided as much as possible. Actually, no member (unless one's enemy) of the community enjoyed seeing another person suffer. The society was highly close-knit, with almost all members being related to one another in one way or the other. The indigenous Gusii people knew that punishing may not always reform the criminal's character, as such much emphasis was put on deterrence. This may explain why such forms of punishment as ostracism, banishment and curses were rarely used, and even when used, it was only in cases considered as very serious. They were as such used as tools that would deter other members of the society from committing crimes.

LeVine (1966) observes that magico-religious sanctions were commonly applied among the indigenous Gusii people, in cases of social deviance, for instance, theft. In religious sanctions, curses were the major method. For example, when a thief was unknown, the use of a curse would make the thief give up himself. Actually, in most cases of such type, a thief would not wait until a curse has been uttered to confess, but rather, the threat of the curse, was by itself, enough to make him confess. There were very few people, if any, among the indigenous Gusii community who actually doubted the effect of a curse. A curse, it has been observed, was believed to be real and it not only affected the victim alone, but the immediate family members also. No guilty person would willingly want to see his family suffer for his mistake. This was regarded as a stupid selfishness and it was actually uncommon amongst the indigenous Gusii community.

LeVine (Ibid.) says that among the indigenous Gusii people, there were various types of curses. The type of curse used at any one incident varied according to the nature and seriousness of the offense. This writer has been talking about curses to this far all along from

Chapter One. The reader may be wondering as to how the phenomena of cursing looked like. It is only fair, therefore, that some of these curses are examined to give the reader an insight into the whole phenomenon and prepare him for the subsequent sections. This is because in the next section a lot of reference will be made to some of these curses.

(i) Curse of the Drinking Tubes

Among the indigenous Gusii community, traditional liquor (Busaa) was an important drink. Busaa was not only taken for enjoyment purposes in the same way that people partake of beer these days. The drinking of Busaa in the indigenous Gusii community had important social-political and economic ramifications. It was actually during the drinking of busaa that old men had the chance of discussing important society issues. Little wonder then that, young men and women were not allowed into beer parties, unless it was an occasion for a ceremony.

In the drinking of busaa, the Gusii used special drinking straws (chinkore) made from certain reeds. Most old men possessed bamboo walking sticks (chimoti, Sing. emoti) with hollows for carrying their drinking tubes. Although every man was supposed to carry his own drinking tubes to a beer party, these tubes were actually shared among people seated together in a drinking session. Why? Before answering this question, one thing is worth mentioning here.

The Gusii people usually put their beer in one big pot (ensiongo) and then people sit around it. The drinking tubes are dipped into this pot and they can go round among all the members seated there drinking.



The sharing of drinking tubes had very important practical and cultural values to the indigenous Gusii people. For one, this practice demonstrated the love the community members had for one another. Selfishness, as already pointed out was highly detested in the community. The art of manufacturing drinking tubes was in most cases an individual affair. This meant that since people's skills differ, all the drinking tubes could not be of the same quality. It could be probable that one member in the group could be possessing a tube of low quality (i.e. one incapable of passing enough beer through it). It was, therefore, important that all the straws be tested by passing them round and those that were found to be defective be discarded. It is important, perhaps, to add here that by sharing these drinking tubes, the members were in effect sharing their saliva. This cemented the unity and understanding they had among themselves.

The drinking straws (chinkore) were, therefore, highly mystified. Since there is no rational explanation the indigenous Gusii people give for this, it may be said that this accrued from the fact that the tubes were arduous to manufacture. Their nature required a high degree of artistry.

Chinkore then, were one of the devices used in cursing. The drinking tube curse (oqutureka chinkore) was used for a variety of cases, one of these being theft. For instance, if a person lost property and he did not know the thief, one would call the lineage elders (abagaka b'egesaku) to curse this unknown thief. What happened was that beer was brewed and the elders were invited to drink. But unlike in the normal beer drinking sessions, where a curse was involved, drinking was not enjoyed to the end. After drinking half way, the elders would block the end of drinking tube with their fingers, while beseeching the supernatural to wreak havoc on the unknown thief. Blocking

the drinking tubes with the finger was a sign of strangling (choking). What the elders were doing in this case was calling on the supernatural to bring death unto this unknown thief who is causing displeasure to the community. Abandoning drinking the beer mid-way was actually a sign of displeasure demonstrated by the elders. The supernatural would surely, therefore, do his part in appeasing the elders by causing harm to the unknown thief.

Another version given by Monyenye (op. cit.) is that the chinkore were put into the pot upside down - thus the phrase ogotureka chinkore. This seems to be a more sound description. But of importance here is the fact that chinkore were used in cursing.

If the thief feared that calamity would definitely befall him after this curse, or if calamity did actually visit his home, a cleansing (propitiatory) ceremony would be carried out. The victim brewed beer in his home, slaughtered a bull and invited the elders to drink and eat. While drinking, the elders spat beer on the victim retracting their earlier curses, and once again, calling on the ancestor spirits to protect the confessee.<sup>4</sup> The next day, the victim had to sacrifice a goat to the spirits and wear a goat skin bracelet (omootoro). He also had to return the stolen property to the owner who would then agree to forgive him.

What then can one learn from the above? The process of retracting the curse was more expensive than the one of cursing. This was a deliberate move meant to be a lesson

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<sup>4</sup>During cursing, the ancestral spirits removed their protection on the victim and thus exposing him to evil spirits to unleash calamity on him. Alternatively, the ancestral spirits could appeal to higher forces (supernatural) to punish the culprit. But after confessing, the ancestral spirits once again restored the protection they had withdrawn.

to the other potential criminals. On the other hand, unlike in cursing, in the cleansing ceremony, the elders take the brewed beer to their fill. This is because, unlike in cursing, this time they are not annoyed with anybody.

Then there is the aspect of the goat skin bracelet (omootoro), worn around the wrist. It has already been pointed out that a curse was supposed to be implemented by the spirits. The elders may retract the curse, but this does not mean that the spirits would immediately or rather automatically refrain from carrying out their duty of implementing the curse. Apart from addressing himself to the elders, the victim had also to seek peace with the spirits. The goat that was slaughtered the day after the cleansing ceremony was for the spirits. The goat skin bracelet worn on the hand was supposed to be an identification of the victim, towards the spirits, of his purification and, therefore, a feeling of remorse.

Goat skin bracelet was a sign that the severed relationship between the victim and the ancestral spirits had been restored. The evil spirits can not, therefore, do any harm to such a person. One may wonder whether it was not possible for the victim to cheat on the spirits by putting on a bracelet without conducting the necessary rituals. This was not possible. Doing so was tantamount to perjury which in itself was a serious offense. In any case such an act would not have any effect and the victim would still incur calamity.

(ii) Curses for Sexual Offenses

Among the indigenous Gusii community, sexual offenses such as rape and incest were not tolerated. Rape cases, especially against married women were taken very seriously. Married women (though not all) put on ankle bracelets

(ebitinge Sing. egetinge) for reason why this was the case, see Section on sex and marriage. These ebitinge indicated that a woman was legally married and all the necessary bride-wealth and marriage rites and ceremonies had been done. One can say that these ankle bracelets were like the present day wedding rings. No man was, therefore, expected to seduce a married woman. A married woman, was the property of the legal husband and any other man seducing her would be seen as infringing on someone's (the woman's husband) property. If a husband discovered another man having a sexual relationship with his wife, he could kill him (that is if he found them in the act), or seek redress through the council of elders, if he was only suspicious.

What usually happened was that if a man suspected his wife of having sexual relations with another man, he would question her in an effort to ascertain the reality. However, such women would usually plead guilty, but claim to have been raped. The alleged rapist would then be arraigned before the elders to defend himself. The question of rape, however, did not arise on the part of the man. It was either he had sex with the said woman or not. This was because it was generally immoral (and everybody knew it) for a man to sleep with someone's wife (except where the husband is dead) whether with or without her consent. If, however, the man denied, then the elders could order an oath to be taken. The woman (victim) would stand naked astride a trench, and the defendant (who had to be naked also) would pass through the trench between her legs carrying a spear and shield. If his denial of guilt was false, he would, as usual be killed by the supernatural. If, however, he refused to take the oath, this was seen as an indication of his guilt as a rapist. The immediate punishment here involved slashing of his cows dead.

There are various inferences or philosophical implications that can be made from the above scenario. It is a fact that sexual relationships are very intimate. Competition for one sexual partner, especially for a woman, may lead to intense rivalry. Given the environment in which the Gusii people lived, they could not entertain this rivalry which could definitely lead to disunity in the community. What about the actual process of oath taking?

The act of stripping naked in public (and before one's parents and children) was indeed an abomination among many pre-colonial African societies (this will become clearer later on). This was tantamount to cursing one's lineage. Anybody who was guilty could not afford to strip naked, which was shameful, and at the same time incur the wrath of the supernatural forces. Carrying a spear and shield during oathing was an indication that one was declaring himself as an enemy of the community, if he was guilty. Spears and shields were used when the Gusii people were fighting with their enemies. Carrying them amongst one's own people was a bad omen. In fact, the supernatural had an obligation to remove such a man from that community, for he was an enemy of the community - thus cause him death.

The slashing of the victim's cows in the event of being found guilty was also very symbolic. In marriage, bride-wealth was paid in terms of cattle. It has been seen that, defiling someone's wife is tantamount to infringing on one's property. The victim's cows had to be annihilated to appease the plaintiff. This would make the victim feel the pain of losing his property, which was actually perceived to be the same pain experienced by the husband of the "raped" woman.

(iii) The Curse of the 'Omotembe' Tree

The omotembe (Erythrina Abyssinica) curse is an example of a curse that results from oathing. This is a type of curse that many traditional Gusii people greatly fear even upto the present.

LeVine (op. cit.) says that this type of oath is used where there is, for instance, a dispute over the ownership of some property. This property at dispute can be either livestock or land. If two people are claiming ownership of say, one cow, the elders try to establish who the really owner is through listening to the contenders' evidence. Witnesses may also be called to help in solving such disputes. If the elders fail to solve the dispute through the above process, they may resort to the use of oaths. This is where the omotembe tree is one such case.

What happens in such a case is that the plaintiff will seize the omotembe tree, swear his testimony and challenge the defendant to do the same. If the latter refuses to take the oath, this is the same as confessing and he has to give up the contentious property to the former. But if the defendant went ahead and took the oath also, then there is no decision that is immediately made. People will only wait to see in whose homestead calamity will strike first. If calamity occurs in one homestead shortly thereafter, this is a sign of guilt of the person concerned. That person has to pay the debt to avoid further destruction of his homestead by the supernatural forces.

Actually, there is also another angle associated with the omotembe oath. The process of taking this oath involves stripping naked and then seizing the tree. Once someone seizes the tree, he behaves as if he is having coitus with it. This tree is perceived to be a woman (the wife of whoever is taking the oath). Leaving his real wife

and pretending to be having coitus with a tree has very serious implications. Such a man is in effect casting his lineage to the forest and into the ground too. He will either stop getting children or members of his lineage will always be dying. Because of the above, the taking of such an oath is regarded as a very serious undertaking. For clarification, it is necessary to show the socio-cultural significance of the omotembe tree to the indigenous Gusii people.

### 2.9 Socio-Cultural Significance of the 'Omotembe' Tree to Indigenous Gusii Community

The Omotembe (erythrina abyssinica) tree has various mystical powers associated with it in the Gusii Community.

From its botanical name the tree seems to have been an indigenous of Erythrea and Abyssinia in the horn of Africa. Both of these areas are semi-arid. The tree is a flowering plant that flowers during the rainy season and shed it's foliage during the dry season. But the tree itself does not dry up. It is as such a perennial tree.

The Gusii people also believe that the tree extend its roots to great depths and breadths as compared to other trees. This could actually be the reason why it could not dry up during the dry season. To the Gusii people, therefore, the tree could not be totally uprooted. Several erythrina abysinnica trees growing kilometres apart from each other could be off shoots of one major tree.

The omotembe tree is also believed to have medicinal powers. It is used as a treatment for mumps. How it is used for this purpose is a very interesting case to relate. The tree was actually used more for protective purposes than curative. During his childhood, this writer can vividly remember how this was done. A group of children

would collect pieces of firewood from the forest and head towards the tree (omotembe) with the firewood. Once near the tree, they would walk with their backs towards the tree. From a safe distance the group would throw their bundles of firewood towards the tree while beseeching it to protect them from mumps. This writer participated in several of such episodes.

LeVine (ibid.) has described vividly how oathing using the omotembe tree was done. Although this process has been described briefly above, the following quotation will make it more vivid. LeVine says:

If someone accused of an offence or involved in debt disputes were certain of being in the right, he could offer to swear an oath which will kill him if his testimony was false. When the litigation concerned whether a cattle debt had been contracted and was really owed, both parties might remove their clothes near .... omotembe (erythrina abysinnica) [sic]. The plaintiff would seize the tree and challenge the defendant, swearing his own claim to be correct. When the turn of the accused came, he might demur, fearing death for a false oath. If he also seized [the tree] and swore he was telling the truth, then there was nothing more to be done except wait and see which one died or had death in his homestead. The first on to be visited by disaster might as well settle the debt to prevent the total destruction of his family by the ancestors. (p. 69).

There are various implications that accrue from this curse - oath.

The act of stripping naked was a very shameful act indeed not only among the Gusii people but also among many indigenous African communities. In normal circumstances,



it was abominable for a member of the Gusii community to be seen naked. Stripping naked was seen as the height of insanity. One had, therefore, to have a genuine reason to strip naked. In oath-taking, when a person stripped naked, he must be very sure of his position. It has to be noted that such oath-taking sessions were attended by people of various ages and relations - classificatory parents, real parents, one's children et cetera.

There are various reasons that may explain why this type of curse is greatly feared. For one, there is no doubt that the indigenous Gusii people believe that curses are actually effective. It has also been pointed out that the effect of a curse can be averted. But, the process of averting the effect of the omotembe curse is very awesome. If one of the people who took this omotembe tree oath is guilty and wants to be forgiven, this can be done. This is because as already pointed out before, the effects of a curse do not occur immediately. Once one person has confessed, a cleansing ceremony can be carried out.

The cleansing ceremony involved going round the omotembe tree several times, say seven, beseeching the spirits to forgive one for lying to them - taking a false oath. This was followed by the uprooting of the tree that was used in oath-taking. One had to make sure that every single root of that tree has been uprooted, otherwise, his confession would not have any impact on the ancestors. Given what has been said above about the roots of the omotembe tree, uprooting them seemed an arduous task. One could never be at peace after accepting to take this oath if he was actually guilty. The indigenous Gusii people believed that even a small part of the omotembe root would lead to the growth of another tree. What this meant, therefore, was that the life of the guilty person and those of his lineage were still open to the effect of the curse.

This seems to explain why people highly feared the omotembe curse.

The above are by no means all the curses that existed among the Gusii people. There are many more, but for the purpose of this work, the above ones suffice. It will be a futile exercise to go for more than these curses. Whereas more reference will be made to the above curses, it may be found necessary to refer to other curses. But the above form the core of reference.

## 2.10 Conclusion

The subject of punishment is wide and has attracted attention from various scholars besides philosophers. It is, therefore, not feasible to give it an objective definition that can be ascribed to by all those who have an interest in it. On the other hand, it would have been a futile exercise to plunge into discussing punishment without looking at what others have said about it.

In the foregoing Chapter, therefore, an attempt was made at synthesising views of various scholars on punishment. Because the topic is wide, the writer narrowed this down to one aspect of punishment namely deterrence.

In the traditional study of punishment deterrence also takes various forms. It is the contention of this writer that in the indigenous African societies, curses were used as a form of deterrent punishment. A brief analysis of what curses are and some of these curses among the indigenous Gusii community has been given.

Indeed some readers may have varying opinions on punishment from the ones given in this Chapter. But note should be taken here that this writer considers the above purely as operational definition of punishment for the purpose of this thesis.

### CHAPTER THREE

#### The Gusii Socialisation Processes:

##### 3:1 Introduction

By socialisation processes here is meant the various stages that a person undergoes from childhood to adulthood. These are the processes that give one identity and a sense of belonging to a certain social group. The Gusii indigenous community has a system of elaborate beliefs and systems that they have evolved over the ages. These customs, beliefs and values give the Abagusii their identity, besides the name Abagusii itself.

Socialisation processes can be looked at as a system of education in as much as they are aimed at enabling an individual live a civil life. A greater part of this socialisation among the indigenous Gusii people, has been taken over by modern formal schools. Before the introduction of modern formal education, socialisation processes among the Gusii people comprised the whole spectrum of their every day-to-day lives.

For the purpose of this thesis, only those aspects in the indigenous Gusii socialisation process that are vital to this work will be examined, i.e. the institution of punishment among the indigenous Gusii community. Of much relevance are the aspects that emphasize the importance of belief systems. This is important because the use of curses as a form of deterrent punishment derives its importance from the belief systems of the Gusii people. This section is, therefore, a description and analysis of such aspects of life of the Gusii people as: pregnancy and childbirth; religion; initiation; marriage and sex. At all these socialisation processes, the meaning of curses is highly stressed. A description of each one of these

processes and their overall contribution to social control and harmony is, therefore, imperative.

### 3:2 RELIGION

Among the indigenous Gusii people, religion permeates their entire lives. To the indigenous Africa person, all human activities are tied to religion, in one way or the other. Every lived single minute is shrouded in some form of religious belief. In most cases religion and magic are highly intertwined. Magic is, however, regarded as one form of religious practices among the Gusii people.

If the above is the case, it is safe to conclude that the early missionaries' view of Africa as a pagan continent was a misconception. It is, however, important to clarify as to what is meant by religion here by looking at what some writers have said about it.

Monyenye, (op. cit.) has referred to religion as a wilful submission to, or acceptance of obligations towards powers higher than man. On the other hand, says Monyenye, religion can be used to refer to a relationship between man and some divine thing, with organised systems and beliefs and worship expressing this relationship (p. 25). This divine thing is seen as a Supreme Being who controls the universe. In the cosmic world, man is just but one element alongside others. This logically implies that man's destiny is controlled by this Supreme Being. From the foregoing definition of religion, it may be argued that, an object, be it living or non-living that is worshipped must be perceived to possess mysterious and supernatural powers higher than those of man, otherwise, it cannot be an object of wonder and therefore reverence. There could be more meanings of religion, but for this work, the above suffices.

The above being one of the meanings of religion, it then follows from it that the African was a very religious person. But the westerners always had a negative mentality about the non-white races. To them whoever practised a religion not akin to theirs or actually not theirs was a pagan. No wonder then that great philosophers like Hegel believed the African was not capable of intellectual reasoning and could not, therefore, have a philosophy. But as modern studies have shown, these and other views were racially founded. They never had any scientific foundation/rationale.

The indigenous Gusii people believed in a Supreme Being [Engoro] who according to them had all the qualities attributed to the Christian God. These qualities are omniscience - all knowing; omnipresence - all present or everywhere; and omnipotence - almighty or all powerful. Above all, the Gusii God was seen as being moral. This implied that He was capable of being pleased or displeased with the behaviour of man.

Engoro - God - is generous and good. He is capable of rewarding for good behaviour and punishing for bad behaviour, unless remedial measures are instituted to propitiate him when an evil has been committed. People feared doing wrong even when no human being was seeing them. This is because God is omnipresent and is actually present where one is committing a sin. As Monyenye observes, among the Gusii people, there was always this

... fear of doing morally evil things in case someone Supernatural is watching from some corner and might inflict punishment on him later (ibid, p. 33).

Actually this Supernatural someone is none other than Engoro Himself.

The Gusii people had a set of standards that enabled them live together in peace and harmony. Hobbes, portrays man as being by nature selfish. The Gusii inhabited a relatively harsh physical environment - socially, they were surrounded by various ethnic groups, i.e. Maasai and Luo, with whom they often went to war. This meant that they could not afford to live in the hobbesian state of nature where every man will do that which assures him of his self - preservation, leading to a war of man against every man. The Gusii people, therefore, relied so much on religion for their peaceful co-existence. This contention will be made clearer later on in the thesis. At this stage, however, there is need only to say something on how the Gusii people practised their religion.

The Supreme Being - Engoro - is believed to act through ancestral spirits (chisokoro) who are His agents. Ancestral spirits are ancestors of the living members of one's lineage. They are senior members of the lineage excluding those who died with bad reputation. Having been living members and now living in the spirit world in form of wind, ancestral spirits are believed to be near to God on one side and to the living, on the other. Having been senior members of the community who were involved in the exercise of important decision making, they are believed to have a special interest in the affairs of the living in their after life form.

As Engoro's agents they do not cause misfortune to the society. They are involved in enforcing moral laws on God's behalf. Actually, ancestral spirits would always want to see members of their lineages happy. They were, therefore, benevolent. But once annoyed, they could 'cause' calamity to the victim. It is, therefore, important to explain how the indigenous Gusii people perceived punishment and the role of ancestral spirits in this.

The work of ancestral spirits was to offer protection to their lineage members against the evil machinations of their enemies - either living or dead. Mention has been made that not every senior member in the community joined the world of ancestral spirits after death. There was another class of spirits who were perceived to be evil -- ebirecha. These evil spirits are believed to be those living dead members of the society who led a disrespectful life on earth. They could have been witches, witch doctors or unmarried elders. Having been despised, they are always looking for opportunities to avenge themselves.

When a member in the society commits a sin and does not repent, the ancestral spirits withdraw their protection from such a person. The evil spirits on their part seize this opportunity to unleash calamity on such a defenceless individual. Punishment to deviants in society is as such not directly meted out by ancestral spirits. Causing misfortune and calamity is the work of evil spirits. But so long as one has not been disowned by ancestral spirits, one is protected and cannot easily be reached by evil spirits.

At the same time, the ancestral spirits being agents of Engoro can appeal to him when an evil has been committed and the victim has refused to repent. It is because of the above that one will find most writers attributing punishment to ancestral spirits. In a way they do punish but not directly as such.

Once someone had committed a crime, he was seen to have offended society and the ancestral spirits, thus upsetting the harmony existing therein. Unless proper sacrifices are made to propitiate Engoro (God) then such calamities as death, diseases, plagues, droughts, floods, lightning and others would result.

Be that as it may, ancestral spirits whether annoyed or happy would always make their presence felt in society. However, once afflicted, they sent a warning in the form of omens to the living before withdrawing their protection to the victim(s) (see above). If, in the light of these omens propitiatory measures are instituted by the party concerned, calamity can be avoided for the existing protection is maintained. If, however, these omens are ignored, the ancestors withdraw their protection leaving the victim(s) open to evil spirits' attack.

There are various omens that ancestral spirits use to warn of their impending withdrawal of protection. Levine (op. cit.) says that

An aardvark, python, or hyena seen in the daytime is considered a bad omen; the sight of a crane standing with its young, a peculiar sound emanating from a civet cat, jackal or owl, the striking of one's granary by lightning, a hawk defecating on one's head - all these indicate that an ancestor has been offended. Some omens are linked to a specific type of punishment which follows if the omen is ignored. For example, if a man sees a snake mating and does not take the proper action [i.e. sacrificing], he will be made impotent. (p. 55).

To an alien observer, the above events are purely natural phenomena that should not adversely affect one. One may argue that what about the number of people who usually frequent animal parks and snake sanctuaries to see some of these animals mentioned above. How come they are never affected? As for lightning, this is an occurrence that can be explained by science and not mysticism. But to understand why the above is the case, it is necessary to understand first how a people evolve their philosophy.



It has been mentioned elsewhere that the Gusii people lived in a relatively harsh environment. The area is found within the tropical highlands. Before the Europeans introduced their technology, there were huge forests infested by various wild animals. Although the Gusii people used some of these animals as their food, some of the animals, nevertheless, posed great threats to their lives. For instance an hyena aardvark and python are very 'dangerous' creatures. One's chances of survival on meeting them were very minimal. One was, therefore, supposed to run away on seeing them. But telling people to merely run away from such creatures was not enough to instil fear to some people. To instil the expected fear, some myths had to be associated with such animals. One was, therefore, as good as dead if he encountered these animals, and if he survived, offering a sacrifice was necessary to thank the spirits from delivering one safely from danger and averting any after effects.

It is now a well known fact that not all snakes are poisonous. But most snakes in the tropics are known to be poisonous. For instance, there are other communities - mostly from the orient - who have a very good relationship with the snakes. The fear the Gusii people had of snakes may, therefore, be explained historically.

In Chapter One, mention has been made that the Gusii people believe that they came from 'Misri' - believed to be the present day Egypt by historians. In the Judeo - Christian teachings, the snake is believed to have led the first people on earth -- Adam and Eve -- to sin. A snake was, therefore, seen as an enemy by these teachings. It is possible that there could have been some early contacts between the Abagusii -- before they migrated -- and the peoples of the Middle East. This may suggest why the Abagusii developed a negative and nemesis attitude towards the snake.

Devoid of scientific explanations for phenomena, the Gusii people resorted to mysticism to explain natural occurrences. The fact that one's food store (granary) and not that of his neighbour has been struck by lightning, and the fact that a hawk "decides" to defecate on one's head and not that of any other person, does not happen by chance. An occurrence of the above events was either a warning from the ancestral spirits of an impending danger or an indication that some living enemy is manipulating these natural phenomena to cause suffering to one.

For instance, it was a generally held belief that the lightning that struck one's granary was aimed at one's own house (if it was the work of a living enemy) and missed its target, ostensibly because the intended victim is still protected by the ancestral spirits, it could, alternatively, be a warning from the ancestral spirits that unless one offers a sacrifice, the spirits would withdraw their protection and the next lightning will strike right on the victim's house. Whatever the interpretation, one had to offer a sacrifice either to appease the spirits or to beseech the same spirits to protect one against the evil machinations of one's real or imagined enemy.

As for the civet cat, jackal and owl, from experience, the Gusii people came to learn that whenever one of these creatures was seen, or whenever their sounds were heard, a misfortune would occur nearby. This could be coincidental, but to the Gusii people this was a fact. Unless sacrifices were offered, a misfortune would follow from any of the above occurrences. This is what actually philosophers refer to as the induction method in logic. This is the method of arriving at general or universal propositions from the particular facts of experience.

What the Gusii people were doing (although unaware of this) is using what COPI (1990) calls induction by simple enumeration:

Simple enumeration is often used in establishing causal connection. Where a number of instances of a phenomenon are invariably accompanied by a certain type of circumstance, it is only natural to infer the existence of a causal relationship between them. (p. 381).

Thus there was always a causal connection between the sighting of an owl and someone dying nearby, thereafter. The cause of death in this case could be said to have been the presence of the owl or any other of the above named creatures, and as Copi (*ibid*) once again says

Every use of the word "cause" whether in everyday life or science, involves or presupposes the doctrine that cause and effect are uniformly connected. We admit that a particular circumstance caused a particular effect only if we agree that any other circumstance of that type will -- if the attendant circumstances are sufficiently similar -- cause another effect of the same kind as the first. (p. 380).

The indigenous Gusii people, instead of waiting for the effect to occur evolved ways of arresting such an effect in the light of any signs, by taking necessary remedial measures.

These remedial measures involve first finding the cause, -- and there are special people endowed with the ability to diagnose and prescribe the necessary measures to avert calamity. These are the diviners, to whom attention should now be turned.

### THE DIVINERS

The diviners (abaraqori - sing. omoraqori) are thought to have the ability of transcending natural phenomena and thereby interpreting them. These people are believed to act as interpreters of what the ancestors (chisokoro) need from the living. The abaraqori interpret the various warning signs to the victim as Monyenye (op. cit.) quoting LeVine observes

When a man suspects that he has incurred the displeasure of the ancestor spirits or when he or his family are visited by misfortune, his only recourse is to visit a diviner (omoraqori). An intermediary between man and spirits, the diviner diagnoses the cause of the omen or misfortune and prescribes the type of propitiation needed (p. 64).

In most cases, if these propitiatory measures are properly conducted the impending misfortune can be averted.

Who then are the diviners and how do they practise their art of divination? Among the Gusii people, diviners are those males and females who either get their skill from the inspiration of the ancestral spirits or who inherit it from members of their lineage -- grand father, grand mother, father, mother or even uncles.

Diviners apply a variety of means in reaching a diagnosis to any problem presented to them. They are believed to consult special oracles who reveal to them secrets about their clients and the cause of their problems. They may use a means akin to psychiatric process - question and answer method. They may also use cowrie shells locally known as chinche. These cowrie shells are thrown on to the ground and from the configurations they

make, the diviners are able to read spirit messages<sup>5</sup>

Using a psycho-therapy sort of method, the diviners dig into the history of the client. This enables them to unearth the client's fears which the diviner may give as the cause of his problems and thereafter prescribe a remedy. Actually, in most cases, the diviner may be someone from nearby who may be aware of problems being experienced in the client's family. Where this happens to be the case, the work of the diviner becomes even more. He would only need to ask the client probing questions geared towards a known end. From the answers the client gives, the diviner gets collaborating information which he works with.

There are, however, instances where a diviner from a far is used but still, there is reason to believe that he may have some slight knowledge about his client. Very often, people go to consult particular diviners on recommendations of friends. There is a possibility that these "friends" leak some information about the client to the diviner long before the client reaches the diviner.

While this second possibility may raise some objections, the same may not be the case with the first one. Perhaps, a real example may explain this.

About six years ago, an uncle to this writer was experiencing one calamity after another in his family. He lost his wife and son at very short intervals. Generally, the two died under explicable circumstances. The wife died from leukaemia while the son was killed by unknown people at night in Nairobi on his way back home from a bar. But according to this writer's uncle, the causes of these

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<sup>5</sup>For a more detailed description on how this is done, readers can consult the works of Monyenye (op.cit.) and Levine (Ibid).

deaths were sorcery, and the perpetrator of all these was his younger brother with whom he was not on good terms. According to the Gusii burial customs, there are certain rites that are performed on the dead. But being a christian (Christians generally abhor these rites) the said uncle refused to carry out these rites. Efforts by several people -- including a diviner from a nearby area -- to convince him to sacrifice and warning him of the dire consequences that may result later on failed to make him change his mind. A certain incident which happened several months later after the above one made this writer's uncle realise the 'reality' of the consequences he was warned of.

One day, in the fields grazing, his son together with other boys were applying some fluid from some poisonous herb on their uncircumcised penis. There is this belief among the Gusii young people that doing this will make the penis appear circumcised and grow big in size. While the other boys applied relatively little amounts of this fluid on their penis, this writer's cousin 'overdosed' himself. His penis as such became so swollen and extremely painful. Finding the pain unbearable, the boy started crying and asking for help. But instead of telling his father what exactly had transpired in the fields resulting to the condition he was in, the boy said he just found himself in such a condition and he could not explain why. Unable to establish the cause, the father decided to consult a diviner.

What the diviner told him was very interesting indeed, "Your son is being haunted by ancestor spirits because they are annoyed with your refusal to perform the necessary sacrifices when your wife died," said the diviner. The prescription he gave; To appease the ancestors immediately, a white cock was to be sacrificed, to be followed by a major sacrifice later on. He did as he was told and by the following day, the size of the son's penis had started

becoming normal and the pain had considerably slackened. Actually since the father never came to know what had caused his son's condition, he believed what the diviner told him as being the truth. But this diviner was among the people who were trying to talk to this writer's uncle to perform burial sacrifices.

It seems that when the son was struck by this "mysterious disease" the father travelled down memory lane and it immediately occurred to him that this was a sign from the ancestors of their displeasure with him. But he needed to make sure that his fears were founded, and to do this, he had to consult a diviner. It may not be clear why he decided to consult this particular diviner who was present at his wife's burial and who had so much knowledge of his (this writer's uncle's) family. Could it be because he already knew the cause and all he wanted was mere collaboration from the diviner? Is it possible that he had already forgotten that the said diviner was among the people who were pleading with him to observe the necessary customary burial rites, and warning him to expect dire consequences if this was not done? This writer would have loved to get the real explanation for this, but unfortunately, he (the uncle) has since died. But it is possible that the reason for this lies in the urgency of the matter. The incident needed immediate attention and the said diviner is the nearest from the writer's home; and it was only convenient that he was consulted.

What emerges from the above description is that even among those people who may not openly confess to be superstitious, their belief in the ancestor spirit is very profound. In fact, whenever something that appears mysterious happens to an indigenous Gusii person, regardless of whether one is aware of having afflicted the ancestors or not, it is always feared the ancestors are annoyed and an explanation must be sought.

For instance, while conducting this research, this writer talked to one lecturer at the University of Nairobi who hails from the Abagusii community. This lecturer, actually, happens to have had a long and keen interest in the Gusii indigenous institutions and has written a lot about the community. The lecturer narrated to the writer a very interesting case that the writer feels it is appropriate to narrate here because it is about mysticism.

The incident happened when the informant was a young boy. One day, it was raining and he was seated at the fireplace in his grandmother's hut, together with the grandmother. This was a traditional hut and most of these huts have overhead lofts -- amarongo sing. rirongo -- that are at times used as food stores. The grandmother had stored grains of eleusine -- finger millet -- in a large traditional basket (omonvoncho) on the overhead loft. All of a sudden, the grains started dropping onto the ground. The lecturer did not think there was anything unusual with this until he heard the grandmother imploring ancestral spirits. She was beseeching the spirits to spare her grain and promised to make arrangements and sacrifice for them the soonest possible. She even went to the extent of asking them (the spirits) what she would use in brewing beer for them if they destroyed all the millet.

According to the informant, this whole phenomenon could be explained scientifically. The process of expansion and contraction due to temperature variations leads to positional displacement and this made the grains to overspill and eventually fall to the ground.

The informant also contends that the hut was infested by rats. There is a possibility that these rats had made holes on the baskets from which these grains were dropping. Alternatively, the grains could be falling when the rats were transporting them from the basket to their hide-outs.



But lacking all these facts (or possibilities rather) the old lady had to seek an explanation of this "mysterious" happening and the answer could only be found by resorting to mysticism.

A human mind is very inquisitive and anxious whenever faced with a problem. The mind can never be at ease if there is a vacuum as concerns certain phenomena. Always, an acceptable answer has to be sought for any problem, to enable man to be at peace with himself and the surrounding environment. Actually this was the basis for the origin and growth of speculative philosophy.

In the above case, therefore, the old lady saw the phenomenon in terms of omens from ancestral spirits to her for the sin of either commission or omission. The remedy to this is a sacrifice. As stated earlier on, omens can sometimes be understood without consulting a diviner. The old lady knew she was required to make a sacrifice. But all the same, she had to go to a diviner for necessary details. This is analogous to the case when one knows he is sick, but still consults a doctor for confirmation of the nature of the illness and a prescription of the remedy, so that one does not take the wrong medicine or an overdose.

Diviners are also believed to foresee and predict the future. The Gusii people believe that with this ability, the diviners can, to some extent, assist one to chart out his future. It is believed that they can, for instance, foresee the problems one may encounter in future and prescribe the measures to be taken to avert such problems.

For instance, this writer remembers cases during his high school days when his football team would consult omoragori - diviner - whenever the players had a major football competition. The aim was to know from the diviner

whether the writer's team was going to win or lose. If there was a likelihood of losing, then the writer's team would ask the diviner 'to reverse' this in favour of the writer's team. This was actually a psychological preparation that gave the players additional confidence and in most cases, they would win. If they lost, then this was attributed to the other team having used a stronger charm.

Be it as it may, it is vital to mention here that diviners had an important role to play towards deterrence. People who committed crimes secretly stood no chance of remaining undiscovered. Whenever a crime was committed, diviners were consulted and with their powers, they identified criminals who were then punished. Even when they were not able to discover deviants, they would threaten to ask the Supernatural to curse the unknown thief while pretending to be knowing the culprit. This would make the culprit give up himself in fear. The presence of diviners, therefore, helped in curbing crime rate in society. It can also be argued that being some sort of prophets, diviners would warn people of the consequences a waiting them if they behaved deviantly. For instance, if people are warned of incurring curses if they sinned, it would make them conform to social norms and standards. Apart from other roles, therefore, it can be argued that the work of diviners deterred criminals. Actually there is one group of people who are believed to use their mysterious powers to harm. These people (-witches- abarogi - to whom attention is to be turned now committed their acts clandestinely and it was through the diviners' services that their activities were discovered.

#### WITCHES

Witches (abarogi - sing. omorogi) are a group of people who use mysterious powers for evil intentions. Awolalu Omosade (1979) says that according to the

Encyclopedia, Britannica, witchcraft is defined as the art or craft of the wise, as the word "witch" is allied with "wit" (to know). This was revised to the believed use of Supernatural means for harmful evil end." (p. 80). Various myths abound in the Gusii country about witches. Some scholars who have studied this phenomenon believe witches are both men and women. Witchcraft has also been known to be practised by children. The following observation by Monyenye (op cit) about witchcraft and its effect on marriage attests to the contention that witches are both men and women according to the Gusii people, says Monyenye

... the easiest way for a girl to succeed in divorcing her husband is to run home to her parents and accuse either her husband or his parents of trying to teach her witchcraft. (p. 73).

Monyenye's observation seems to suggest that men are also witches. As can be inferred from Monyenye's observation, witchcraft is a highly detested practice among the Abagusii. This may be due to the fact that unlike the diviners, for instance, whose role is to assist one to overcome problems, witches are involved in destroying life.

There are various macabre tales that are told about witches. For instance, they are believed to walk in the night stark naked. At the same time, witches are believed to devour human flesh obtained from exhumed corpses. The latter seems to suggest why the Abagusii keep night long vigils on the graves for several days after burying the dead. Sometimes, cement is used to reinforce the graves after which again a strong low fence is erected around the grave. All these are aimed at protecting the dead from the witches.

There is a strong belief, not only among the Gusii people, but also in many indigenous African communities, on

how witches can kill someone from several miles a way. To do this, witches only need to gain access to any item that has had bodily contact with the victim. Items that are known to have been used for this purpose include pieces of hair, a rag from one's cloth, one's faeces and so on. This writer remembers a case narrated to his under-graduate class by one informant on this topic. The informant was giving a lecture on African philosophy and was giving an example on how he became a victim of this strong belief in witchcraft.

One day, he was in his house together with his sister who was plaiting his fiancée's hair. He happened to pick up pieces of hair that were dropping from his fiancée's head and started playing with them in his hand. Feeling an urge to answer to the call of nature, he started walking out of the house, with the pieces of hair still in his hands. Before he completely stepped out of the house, the girlfriend frantically jumped up, grabbed him by the waist, and snatched the pieces of hair from his hands. Momentarily, he felt flabbergasted thinking this was some kind of joke or play that lovers are fond of playing at one another. He gave her a moment's smile and made to resume his 'journey.' But he was in for a big surprise.

The lady stopped him and asked him to explain why he was sneaking out with pieces of her hair and what he had in mind. Thinking this was some kind of an extended joke, the lecturer told the lady to sit and let his sister continue plaiting her, but this was not to be the case. The lady became angry and started raving, saying the lecturer was a witch and he actually intended to use her pieces of hair to bewitch her. He tried to plead his innocence, but the lady could not give him time as she stormed out of the house and told him never to make any attempt of seeing her again. According to the lecturer, this unfortunate incident marked the end of their relationship. This again brings in the

problem of causal connection.

To the empiricists, the claim that a piece of one's hair can be used to cause that person death when there is no close causal connection, is a piece of superstition that holds no water.

The concept of cause as was said earlier on, envisages the notion of time. The principle of cause has to be understood not only in terms of cause and effect, but also in terms of events. This then means that one will be talking about causality, i.e. the necessary connection of events in the time series. This notion of causality assumes a universal law. This is the assumption that given any event e1 there is an event e2 such that whenever e1 occurs e2 occurs later. But there must be some time interval, between event e1 and event e2 because cause and effect are not contiguous in time. This is where the major problem comes in. If there is a time interval between e1 and e2, how can one be sure that e2 has been caused by e1? Couldn't there have been other intervening variables between the cause and effect in the short span of time that may have caused e2? And how long should the time interval endure for e1 to be said to be the cause of e2? Actually, even the empiricists face a dilemma here <sup>6\*</sup>

Be it was it may, the belief that witches can and do kill through the above means is very strong among the Africans. This has been one of the points of divergence between western scholars and some African scholars as Awolalu (op. cit.) clearly puts it

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<sup>6\*</sup> For more on causality, readers can read books by Joseph Nyasani "Treatise on General Metaphysics Medgar Evers College of the City of New York (n.d) and Bertrand Russel: Mysticism, logic and other Essays Penguin, 1963.

Foreign investigators of other people's religion tend to dismiss [mysticism] as superstitious; others class them as "jumbo mumbo" and the like. But we should realise that one man's superstition is another man's belief. (p. 69).

Awolalu would not have put it better. Further still, quoting Middleton and Winter about witchcraft itself, Awolalu (*ibid*) again say that

The fact that most Europeans no longer hold these ideas [ideas about witchcraft] and the fact that they regard them as superstitions products of ignorance and error, often hampers communication between Europeans and Africans ... These beliefs are social, not psychological phenomena and must be analyzed (pp 83 - 84).

Indeed, analysis of these beliefs is partly the purpose of this Chapter. It is imperative that the reader understands and appreciates the context of these beliefs. This will make it easier for the reader, perhaps, to understand why curses as a form of deterrent punishment were effective in controlling social deviance among the Gusii people. At this stage, it is perhaps necessary to attempt a philosophical interpretation of witchcraft.

In most cases, witchcraft among the indigenous Gusii people is suspected among people close to one another. It is not uncommon for someone who suspects of being bewitched to be told that one of his neighbours is behind this, on visiting a diviner. As has already been mentioned, diviners in most cases exploit their knowledge of the client's past history to reach their conclusion on whatever problem the client has. People who are neighbours always have a lot of reasons to quarrel. There are cases of cattle invading a field of someone's finger millet and so

on. If one is sick and on visiting a diviner he is told that his neighbour is bewitching him, then he has every reason to believe this, especially if there has been a recent quarrel between them. One can also argue that being close to one another, neighbours can easily poison each other. In fact poisoning is given as the most common medium through which people kill each other. Interestingly, among the Abagusii, anyone who poisons another is seen as a witch.

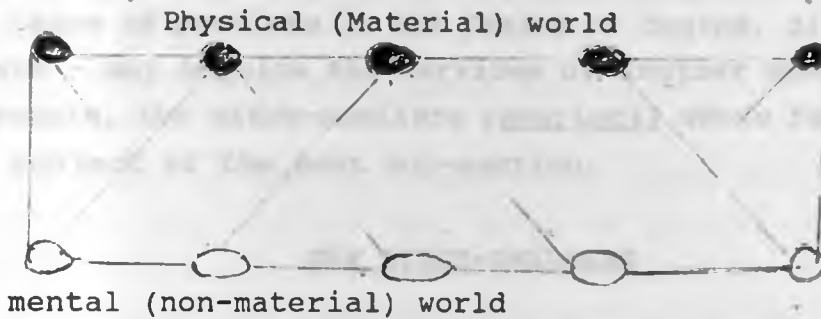
Among the most detested magical practices among the Abagusii, witchcraft is one of them. Witchcraft is attributed to most deaths among the Gusii people even up to the present. Besides it being a cause of death, witchcraft is also believed to be responsible for a slow process of economic development among the Gusii people. Witches are believed to be a jealous group who designate the prosperous people as their target. This makes most people fear to openly exhibit their prosperity, especially in the rural areas.

Among the indigenous Gusii people, it is sometimes difficult to determine who is and who is not a witch. The reason for this is that neighbours who are not on good terms will always accuse each other of being witches. Given that at least every family has an enemy in the neighbourhood, it may logically seem to follow that every family is suspected as being witches by at least one other family.

Be that as it may, one can ask; besides poisoning which actually causes death if appropriate measures are not taken, how does abstract witchcraft cause death? The theory of interactionism in the body-mind relationship in the philosophy of mind may partly explain this. Generally the theory of interactionism asserts that in the two worlds of mental and material phenomena, mental events affect

physical events and vice versa. The following diagram illustrates this relationship.

Diagram illustrating the body-mind relationship (interactionism theory)



In the case of witchcraft, what perhaps happens can be explained by the above theory. Once someone has been told that he has been bewitched, he gets to believe it and this gets entrenched in his mind. Psychologically, he will be affected making recovery a bit difficult. Because the mind is affected, his physical body would also be affected exhibiting physical outward deterioration. The situation may become chronic resulting in eventual death. Everyone else would have, therefore, believed that the deceased died from witchcraft. But this is not denying the fact that witchcraft among the indigenous Gusii people is believed to exist, albeit in various facets.

The most important thing to note here is that witchcraft falls under what scholars call occult sciences or arts. These sciences are seen to be inexact, hidden or secret. As one writer, (Mutuku Nzioki: Daily Nation, January 3, 1993), says "occultism has to be studied and understood before it becomes an exact science. But he says that those who dismiss witchcraft which fall under occultism reminds him of childhood stories which declared whoever denied witchcraft to be a child of a witch instructed to defend it



and ensures its survival by keeping it secret. If it does not exist it is not real. It all depends on the concepts of existence and reality", concludes Nzioki.

Be that as it may, among the indigenous Abagusii, a person who has been told by the diviner that witchcraft is the cause of problems in his family -- deaths, diseases, et cetera - may acquire the services of another special group of people, the witch-smellers (abariori) whose functions is the subject of the next sub-section.

### THE WITCH-SMELLERS

Witch-smellers (or abariori - sing. omoriori), as the name suggests are involved in "smelling" witchcraft paraphernalia. They conduct their affairs in public and like the diviners, they are involved in saving life, and are thus highly respected in society.

It has been pointed out that in the event of a mysterious phenomenon in his homestead, a victim would consult a diviner - omoraqori. The diviner may discover that his client is being troubled by a witch who may have planted some witchcraft paraphernalia, either, in the client's house or somewhere in the compound. In order to avert danger, these witchcraft paraphernalia have to be dug out. This is where the witch-smeller omoriori comes in.

Once the omoriori - witch-smeller has been contacted, he smells the exact where-abouts of these witchcraft paraphernalia and then digs them out. Special rites (ogosiara amanvansia) are performed on the paraphernalia to inactivate them. After this has been done the client's life and those of his relatives are deemed to be out of danger.

Witch-smellers are believed to have the ability to know whoever planted such witchcraft paraphernalia. They are however, hesitant to reveal this to the general public. But to deter the "real" witch and others from continuing with their malevolent activities, the abariori may threaten to reveal the witches to the general public in case they failed to desist. Witches may fear being lynched by the public and desist from their activities.

There is one important thing about diviners, witch-smellers and witches that deserves special mention here. Diviners and witch-smellers are involved in restoring life and as such, are regarded as agents of ancestral spirits. The witches on their part, destroy life and are seen as agents of evil spirits. It is actually believed that after they die, witches become evil spirits.

Furthermore, the belief in witchcraft has an important bearing in societal behaviour. People who are uncompromising to the views of the majority in the society are branded as witches. The effect of this is that they are stigmatised and isolated by other members of the society. This will also apply to their entire families because being branded as a witch was a very bad thing. This meant that people were deterred from behaving in such a manner that would make many people refer to them as witches. Witchcraft, in away, was a tool of social control.

Another group of people worth mentioning before this discussion on religion is concluded are the sorcerers (abanyamosira Sing. omonvamosira).

#### SORCERERS:

Sorcerers, or abanyamosira, as they are known in ekegusii, are people who are believed to have powers to

kill by using their magic known as omosira.

Unlike witchcraft which in most cases is only suspected on some people, sorcerers are known individuals in the society. They were so much feared that in the past days, they would grab their neighbours property with minimum resistance. Some people used sorcery as a spring board to being rich and to acquiring whatever one wanted. For instance, nobody would dare compete with a sorcerer for a bride when it came to marriage. A part from a few exception, if one wants to know who is a sorcerer in the community, one needs only to look at someone's land acreage and the family size, i.e. number of wives and children. Among the exemptions to the above is perhaps, where one was the only son in a homestead and is likely to have inherited enormous property. But this can always be verified by asking the neighbours, if one is in doubt.

Abanvamosira perform tasks akin to those of abariori - witch-smellers - among other functions. However, besides removing the witchcraft - oboroqi directed against his client, a sorcerer - if directed by the former - may plant omosira - sorcery magic - to kill the suspected witch. Sometimes, omosira may be used for malicious intentions on innocent people by an enemy. In such a case, however, one has to be careful, instead of affecting the intended victim, such omosira may end up actually affecting the client and his family. This sometimes deters people from using omosira in an unwarranted manner. The reason why this is so, perhaps, is that ancestor spirits are always ready to protect he innocent from their enemies and that they may hit on the enemy, as a lesson to the other (reader can see earlier section where the role of ancestral spirits in punishment is explained).

Apart from the fact that most people dislike the sorcerers due to their acquisitiveness, they are also hated

because some of them are cunning. There are some who are known to hold their clients to ransom. Once one has engaged them, they may go on increasing their fee at will. In most cases, the client fears complaining, let alone dismissing the sorcerer because the latter can turn the omosira against him. The most greedy ones have no scruples against turning in their clients to the latter's enemy. Sorcerers may be handling two rival clients at the same time, each of which is the target of the other.

The Gusii people therefore hold the abanyamosira in low esteem due to their activities which are at times very disrespectful and shameful. In fact, despite the amount of wealth one had, he could never be respected in society if he was known to be a sorcerer. Most of these sorcerers were detested because they acquired their wealth fraudulently and ruthlessly. This, therefore, acted as a deterrence to other members in the society from acquiring wealth through ruthless means lest they be mistaken for being sorcerers. This would lead to one being isolated, a phenomenon which was itself seen as a curse. But on the brighter side, in as far as they dealt with people's enemies, sorcerers were useful in social control.

The forgoing being the aspects of Gusii religious beliefs and practices, what then, can one conclude about the Gusii religion? One thing which is evident about Gusii religion is that, it comprises all mysteries that the people are unable to comprehend. Because of these inexplicable phenomena, people resort to religion to find suitable and acceptable explanations that make life meaningful and tolerable. This enables man to live in harmony with the otherwise sometimes hostile environment. The Gusii belief in the supernatural encompassed their socio-political and economic lives. They practised religion in all aspects of their daily lives, such as; the cure and prevention of diseases (i.e. medicine) ensuring

agricultural success through the control of weather, and the prevention and control of crime within kinship units and the society. One method used in this prevention of crimes is by using curses as there was no state machinery to prevent crimes by use of force. Curses could not have been of much meaning if the Gusii people did not believe in them. Although religion in general played an important role towards this goal, there are major customs that reinforced these beliefs. Some of these customs are the subject of the next section.

### 3.3 MAJOR CUSTOMS

There are a number of customs among the indigenous Gusii people. But it is not possible to discuss all of the in this work. Readers who may, however, need to know more about these customs can obtain the information from the abundant anthropological literature. The customs that are examined here are those that have a strong influence on social conformity.

It has been argued elsewhere in this work that every aspect of the Gusii peoples' lives was religious. One may then wonder why some customs are treated separately from religion. The reason is that these customs were actually institutionalised and they had important role to play in shaping the moral character of the Gusii people as well as determining their destiny in the life after death. Deviating from the established norms led to very dire consequences, because it was believed that every one in the society knew the meaning and importance of these customs.

The customs examined in this section, therefore, are those associated with:

- i. Sex and marriage
- ii. Pregnancy and childbirth

iii. Initiation (circumcision) and

iv. Diseases and death

i. Sex and Marriage

This sub-section has been deliberately designated as sex and marriage because, strictly speaking, among the indigenous Gusii community, sex was not sanctioned unless it was practised inside marriage.

Some writers have argued that sex outside marriage was condoned in some instances. Monyenye (op cit), for instance says that after initiation, girls organised a ceremony known as esubo night where they sing sexually provocative words to their male counterparts who may be watching from an hideout. In such cases, 'industrious' boys may succeed in having sex with some of these girls.

LeVine (1966), also gives an example of where pre-marital sex was practised in what he calls "taking by stealthy." This is whereby a group of young men would organise and 'invade' unmarried ladies' huts at night and occasionally, although hurriedly achieve "having sex". But in most cases, most girls would be unwilling and would scream sending the men scurrying away.

Be that as it may, however, the contention made here is that, in as much as there was no free atmosphere and mutual consensus for the full enjoyment of sex in such occasions such sex was not sanctioned. And more so, one cannot say that 'sex' took place, because 'having sex' connotes that there is agreement between the two people playing sex. Sexual satisfaction could only be achieved in marriage which was a socially sanctioned partnership. Outside marriage, sexual abstinence was highly stressed and this was reinforced with the help of various sexual taboos.

Violation of certain sexual taboos led to various grave consequences, including curses to the offenders and even their families.

The marriage institution was very important to the Gusii people for it marked a transitional stage for one from childhood to adult-hood. In fact, in the eyes of the society, unmarried people were still regarded as 'children', regardless of their age. An unmarried man for instance, was a target of ridicule who would never be accepted to the adults' club, let alone participate in decision making. It was believed that people who had married acquired important outlooks towards life and had been made tougher and responsible for the task of 'managing' a wife is by no means easy. Seniority and manhood did not only come with age, but with marriage as well.

There was no logical reason that could perpetually stop one from marrying. Even lack of cattle to pay bridewealth could not be seen as a genuine reason. Mention has already been made elsewhere to the effect that the indigenous Gusii people were very altruistic indeed. An individual is seen as important according to how he relates to the whole community. An individual's problem was in away an issue that concerned the whole social group to which he belonged. The indigenous Gusii peoples' world view was centered on the principle of 'we' and not 'I'. The fate of an individual - if it was genuine and not one that is caused by one's careless conduct was shared by everyone. In this case, therefore, society was under obligation to offer material assistance to anyone who was poor and wanted to marry. There is also another important social aspect as to why the above was the case.

Among the indigenous Gusii people, children do not actually belong to the biological parents 'per se'.

Children are the property of the society. In assisting a poor person to marry, it means that society is adding to its existing property - assuming the couple would procreate. If an individual failed to be assisted by the society for this cause, then this was an indication that the society was not happy with his general conduct.

Unmarried people were, therefore, shunned and highly ridiculed by society. They were seen as useless people who were rarely welcome to anybody's home nor to any important social function.

Men who remained unmarried were thought to be impotent (amateba Sing. riteba), a condition that was believed to result from a curse. It therefore, meant that along the line either the "impotent" man, or a member of his lineage had afflicted the ancestors. This then called for the victim to consult a diviner, learn the cause of his condition and if necessary offer sacrifices to ancestors. More often than not, the condition would get rectified.

The failure of girls to get married was also a very serious matter. Girls were expected to get married soon after clitoridectomy. If a girl failed to get married, then this was either because she was infertile (riteba) or her conduct or that of her family was bad. For instance, if witchcraft is suspected on her family, a girl may fail to get married. But still, even girls from the family of witches, could at times get married to distant areas where their conduct was not known. There was a lot of anxiety on the parents of an unmarried girl. In most cases this was suspected on ancestor spirits' affliction and efforts were made to discover why. There was another reason as to why the parents of the girl would want to have her married, as Monyenye (op. cit.) quoting Iona Mayer puts it.



Every girl had to be married even if she is 'useless' deformed or crippled, or however ugly she is.' A daughter must not grow grey hair at her father's home, and if she did, the sanction was (emuma), a curse or mystic punishment causing sudden death in the family. Thus by the time a girl was aged twenty (20) (earlier in many cases) she would have been handed over to the custody of a husband and his kin, in return for bridewealth cattle paid to her father. (p. 10).

Monyenye finds this assertion intriguing and for a good reason. Among the indigenous Gusii people, it is the parents who are supposed to choose suitors for their daughters. They (girls) are, therefore, not to blame if they remain unmarried. Monyenye says that blaming them for a death that may occur in her family is wrong. But he says this can be explained psychologically in what is called 'internalising aggression.' This is a situation where reason is found to blame an insider for a misfortune instead of the outsider.

But as mentioned earlier it is important to see how a curse may be used to explain this phenomenon. The likelihood is that someone in the family of the girl's lineage may have behaved in a way that led to a curse. Failing to take propitiatory measures, the curse still holds, despite the time interval. It could be the effect of this curse that is being manifested in the poor girl.

This is true, especially when it is realised that the indigenous Gusii people believed that curses do not affect the offender only.

Another important aspect that was associated with marriage was procreation. A marriage was not considered complete if no children were born out of it. In most cases, failure to procreate could lead to the termination of a marriage contract. This again implied a girl going

back to her parents' home, growing grey hair while there and thus causing misfortune to her family. It was because of this that extreme caution was taken in choosing a marriage partner.

Choosing a bride for a man was a joint exercise of the man's parents and relatives, especially his married aunts. The family of the girl was investigated to ascertain whether that family had been involved in emuma - curse. <sup>7\*</sup>

It is believed that a curse in the girls lineage, will later on affect the new family - if the two get married.

If a marriage contract was cancelled, for whatever reason, the bride's kin had to return the bridewealth paid for her. If this is not done and the bride is again given away to another man, this would result to emuma (a curse), as Philip Mayer (1950) observers:

It has always been considered extremely reprehensible for a father to be in possession at the same time of bridewealth paid by two different men for one daughter of his; or in Gusii terms if the two lots of cattle mix their dung in his yard, it is emuma (a sin inviting magical retribution) and it will bring a curse (ogoturutumba) on the woman. (p. 55).

The fear of such a curse was, therefore, a deterrent measure against the unscrupulous use of one's daughters to a mass wealth.

According to Monyenye (op. cit. pp. 111-112) when enyangi (wedding) proper has been conducted, divorce, for whatever reason is not possible. Women who have had enyangi performed for them have ankle rings (ebitinge, sing. eqetinge) on them. These anklets at the same time

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<sup>7\*</sup> It should also be noted that the girls kin also investigated her prospective husband in this manner.

promotes such women to a higher social status. There are, however, women who do not have envanqi performed on them and, therefore, do not put on these anklets. Envanqi is performed on women who have proved their fertility, i.e. after having children. Women with ebitinge - anklets can never be remarried and are never supposed to sleep with any other man a part from their husbands. Ebitinge were in fact a sign of marital fidelity. If a woman with ebitinge indulged in extra marital sex she was calling on herself the wrath of ancestral spirits. This was tantamount to dishonouring ebitinge which were seen as sacred. Equally, a man who had sex with such a woman was pronouncing on himself emuma (a curse) that would result in either his death or that of one of his family members. As it was not always possible for a man to ensure his wife's fidelity, the ancestral spirits and supernatural sanctions played an important role to this end, as LeVine, (op. cit.) observes:

Punishment [from the supernatural due to marital infidelity] does not go into effect until the adulterous wife resumes intercourse with her husband. Thus it has the effect of inhibiting a wife's adulterous impulses unless she is willing to desert her husband and run off with a lover ... [If she does the latter and then returns later] a purification ceremony must be performed before the husband can resume sexual intercourse [with her] (p. 53).

And it seems as if this problem of married women running off with other lovers was not uncommon. This is what seems to be suggested by Monyenye's (op. cit.) illustration of a ritual that a husband can perform on an unwilling woman to make her stay at his home. This ritual

... involves slaughtering a goat removing its intestine (amara) winding it round the unwilling

wife's neck and putting some ring (omootoro) around her arm. All this is done with some ritual utterances made by elders who are performing it. She is not supposed to remove the omootoro until the elders are satisfied that she is willing to stay. The utterances made during the ritual are to the effect that if any other person takes her for a wife, the curse (emuma) will affect him and his family. Nor can she go to stay at her father's homestead as this curse forbids her to go there too. Because everyone fears the effect of this curse no other homestead welcomes her to stay except that of her husband. So she must necessarily live with her husband intolerable though the life may be for her. (p. 116).

This ritual, therefore, makes the woman an 'untouchable', to everybody else except her husband. This forces her to stick with the husband.

Magico-religious sanctions, as deterrence against extra-marital sex were not only used among the Gusii people. Tales of similar sanctions being used abound in many other indigenous African communities. One of these communities is the Yoruba of Nigeria in West Africa.

Awolalu, (op. cit.), says the Yoruba used a magical spell known as Maqun (literally meaning "do not mount another man's wife") to contain extra-marital sex. A husband who suspects her wife of marital infidelity would prepare this magic and consequently abstain from having sex with her during this 'dangerous' period. If an adulterous man has sexual intercourse with such a woman, he is automatically thrown off her, bounces three times and dies. In another variation, adds Awolalu, after enjoying the act of sex, the adulterous man becomes unable to separate from the woman. Separation can only be achieved after the woman's husband agrees to offer an antidote (ero). But

even then, the two would have been subjected to a lot of ridicule and pain. (pp. 77 - 78).

Actually, although he has not witnessed such a case, this writer has heard of a number of tales regarding Awolalu's second example. This is common among the Akamba and Luo communities in Kenya.

An attempt can be made here to explain scientifically this phenomenon. One important point to note is that there is always some degree of fear associated with extra-marital sex. The fear of being caught in this act may lead to sudden muscle contraction and stiffness and create a condition similar to what happens when dogs mate, making the penis unable to be released. This incident is similar to an ordeal the Abagusii used to detect a criminal. Some concoction known as obomera was put in a pot and suspects were made to scoop handfuls from the pot. A guilty person's hand would fail to relax and let the obomera go.

Although the episode related by Awolalu a bound in such communities as the Akamba, most tales of this nature are found among societies that do not circumcise their males. There is a possibility that the extended fore skin of the penis contributes more to this condition. Sudden fear can make the penis contract inside the vagina and if the vagina's muscles do the same, they may form something like an inextricable rope, thereby making it impossible to unravel and come out.

Writing in Adegbola (1983), Nabofu says that among the Urhobo people of West Africa, women were severely punished for infidelity by the supernatural. The reason for this, Nabofu says is because,

... the bride price that the man paid on the woman (...) makes her her husband's property. This right of

ownership is strengthened by the rituals in the ancestral shrines at both the wife's and the husband's home. Therefore, if she has sex with another man, it would be deemed stealing the man's personal property. It would, therefore, be proper for her to confess her guilt so that the husband could claim damages or seek redress from the thief. (p. 315).

In traditional African Communities, a marriage was not considered complete and respectable unless the payment of bridewealth was made to the bride's father before she moves to stay with her husband. In fact, if a girl moved to the suitor's home before bridewealth was paid, such a marriage was not sanctioned and the man could not claim complete sexual rights over the women and the children born out of that marriage. Bridewealth as such, was used as a tool to cement and strengthen a marriage.

Because he used his property to get a wife, a man considers her as part of his property. If another man had sex with her, then this was tantamount to infringing on the husband's property. Besides wronging the legitimate husband, a man who had sexual intercourse with another man's wife was also angering the ancestral spirits. This is because having sexual intercourse with somebody's wife was seen as defiling the rituals that were conducted at marriage and this amounted to a self inflicted curse.

Writing about the Nuer, Evan-Pritchard (1956), say that

... adultery (...) besides being a wrong done to the husband of his rights is a further wrong to him in that he is polluted. A husband who discovers his wife in flagrante delicto may obtain summary justice by spear or club. Otherwise he demands compensation in cattle, and

if the two men are members of the same community, he is likely to receive it. (p. 185).

What Pritchard describes above is what actually happened among the indigenous Gusii people.

Adultery among the indigenous Gusii people was an immoral act. Perhaps the reason for this lies in their zeal to maintain harmony and peace in society. Competition for sexual attention from one partner may at times create great enmity between the individuals concerned. This explains why, for instance, it was more serious when members of one lineage shared a women. This was a threat to co-operation at the lineage level and anything that threatened such co-operation was detested. On the other hand, sharing sexual partners could lead to a high incidence of sexually transmitted diseases some of which may cause either deaths or long periods of indisposition. Again it was necessary that the good health of the people was maintained as much as possible for the better livelihood of the society.

The fear of Supernatural Sanction on immoral sex was effective in reducing the occurrence of such cases. Unlike in the past, this fear in Supernatural punishment, is almost non-existent at present, as a result, extra-marital sex is common among the Gusii people.

In the indigenous Gusii Community, there were some forms of sex outside marriage that were sanctioned. These included cases of levirate and ghost marriages. A widowed woman was allowed to remarry. But this marriage was different from the normal one because the woman had to remain in her late husband's home. She would however make arrangements with a man who will have sex with her and provide for some of her needs. Any children born out of this affair belong to the dead man and not to the one who

sired them. Such a man may or may not be known to the members of the lineage - that is if he was not a member of the lineage himself. This arrangement was perfectly in order and it was allowed.

If a man died before marrying, his kinsmen could arrange and marry for him (ghost marriage). Someone would be chosen to sire children with that woman. Like in levirate marriage any children born by the woman belong to the dead man. Infertile married women could also 'marry' and acquire the services of a man (not real or classificatory husband) to have children with that woman. Any children born from this marriage belong to the infertile woman and not to the biological mother.

Besides the foregoing exemptions, any other sexual relations were forbidden. Any involvement in forbidden sex could lead to dire consequences either formal or Supernatural <sup>8</sup>

#### (ii) Pregnancy and Childbirth

It has been mentioned elsewhere that one of the functions of marriage was procreation. But not all marriages were blessed with children. The indigenous Gusii people believed that the whole process of conception was highly influenced by ancestors (chisokoro). This is what Iona Mayer as quoted by Monyenye (op. cit.) tells us

The family shades were held to influence conception [among the Gusii people]. 'They hover around the bed. A man sacrificing to his father or grand father's shade [esokoro] would at the same time invoke their

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<sup>8</sup>\* There is another aspect that act as a form of deterrence against illicit sex, among the indigenous Gusii people. This is the amasangia complex. This has been described elsewhere and readers can refer to the Section where this has been done.



blessing 'for increase of people and so that 'we may get sons to remember us as we remember you' ... just as fertility signifies the blessing of the shades, so infertility signifies their righteous anger with descendants who impiously 'forget them'. A childless wife or impotent man would consult a diviner (omoragori) to learn whether and how the family shades require placating. Return of fertility or potency would signify piety rewarded by the shades who had accepted the sacrifice or other placatory procedure prescribed by the diviner. (p. 123).

With the above being the case, failure to conceive was seen as a form of punishment for either an act of commission or omission commenting on the same issue, Mbiti S. John (1969) says that such people as the Azande, Bambuti, Nyakyusa "believe that God causes conception to occur" (p. 40). This logically means that if God is annoyed with a couple, conception will not occur.

Sometime failure to conceive could be attributed to emuma (curse). Either, the wife's or husband's family is a victim of a curse and its effects are being manifested in the childless couple. Alternatively, one of the couples in one way or another annoyed the ancestors and no appropriate propitiatory measures have been performed. A curse from one's parents, or the sacred fire that is lit at initiation going off before the seclusion period could lead to a state of childlessness. It is important to reiterate here why children were highly valued and why all efforts were made by everybody to avoid anything that could lead to one being childlessness.

Among the indigenous Gusii people, every one wanted to be remembered after their death. The only way this can be achieved is by leaving a lineage behind on one's death. The Gusii people did not believe that to be unable to have

children is sometime natural. To them, this inability is due to the fact that one has been cursed by the supernatural. Failure to be at peace with the ancestors can render one childless, as a lesson to others. But Levine (*op. cit.*) observes, for instance, that if proper propitiatory sacrifices are offered to ancestor spirits, a woman who had failed to conceive can do so.

It was strongly believed that women who had committed abortion and infanticide could not have children as they were under the spell of the Supernatural curse. One can attempt to give a logical explanation for the case of abortion.

It is now a well known medical fact that abortions that are conducted under unhygienic conditions and by use of rudimentary instruments, may interfere with a woman's reproductive system. This can lead to a state of permanent infertility in the women. Being, however, unable to explain this phenomenon scientifically, the Gusii people resorted to the Supernatural. There was need to transcend sense experience to come up with acceptable explanations of reality. It is by these means that the indigenous Gusii people built their body of practical knowledge, and as Ruch and Anyanywu (1984) put it

The practical aim of knowledge is ... a safe and prosperous life ... the practical aim of knowledge is [for] the social welfare of the group. (P. 108).

With their knowledge, therefore, the Gusii people were very much at peace with themselves and their environment.

Various complications may arise during pregnancy and childbirth if certain conditions are not observed. Where such complications occurred, the indigenous Gusii people developed certain beliefs to explain them.

Pregnant women were not supposed to be beaten by their husbands, however irritating their behaviour. Beating pregnant women, it was believed would lead to annoyance of ancestor spirits, in case for instance such a beating leads to a miscarriage. One can understand why the above prohibition was important. Apart from undergoing physiological changes during the pregnancy period, women are also known to undergo certain psychological transformations. The Gusii people believed that pregnant women can at times exhibit 'abnormal' behaviour caused by their pregnancies. Society had to bear with these new patterns of behaviour in pregnant women.

Certain complications during childbirth may at times be attributed to extra-marital love affairs. This may be due to what is known as amasangia complex, that is described elsewhere.

The process by which the amasangia kills is somehow intricate and needs some explanation. In connection with childbirth, the delivering woman would die if a woman with whom her husband is having sex crosses over her birth-blood. It is, therefore, not true to assert, as Levine seems to do, that amasangia is only caused by an adulterous woman. (op. cit. P. 100). In fact amasangia occurs if either or both of the spouses are involved in adultery.

One may ask as to why, the wife should die and not the husband or the woman who the wife's husband is having an affair with. Actually, from the whole scenario, the man's wife is an innocent victim trapped in circumstances beyond her control. But an attempt can be made to explain this.

Children and marital fidelity were important requirements in a family. If a man felt that he wanted to have another wife apart from the one he already has, then he was at liberty to do so, but through socially accepted

ways. But if he engaged himself in illegal extra-marital affairs, then he had to be very discreet and cautious, otherwise, the ancestors could so to speak, take away his legal wife and 'rest her' from this ignominious conduct of the husband. At the same time, the difficult task of raising children as a single parent would teach the adulterous husband and others who may be doing the same, a lesson on the evils of adultery.

Cases of breech deliveries - birth of baby with the feet or buttocks appearing first - were serious ones. Such deliveries were seen as an omen from the ancestor spirits of their displeasure with the family concerned or the particular woman. If successful delivery was achieved in such a case, a sacrifice had to be made to the ancestors to appease them. Medically however, it is a fact that breech births may cause death both to the mother and the child due to exhaustion as delivery in such cases sometimes takes long. Actually the indigenous Gusii people thought that breech births were intended to kill the mother due to some evil committed by either the mother or a member of the lineage. This is why a sacrifice had to be offered if the mother survived.

Cases of deformities in newly born babies are attributed either to witchcraft or a supernatural curse. In most cases, however, the family of such a baby would not want to admit that such was the case of the Supernatural forces. There is always reason to blame witches. Neighbours, may on their part however point out that the Supernatural forces were punishing the victims for one reason or the other. This was likely to be more so if the family affected was suspected of some unbecoming behaviour, like witchcraft or theft .... This may be seen as a form of punishment intended to deter others from such ant-social behaviour.

Deformities like hunchback (ekequku, Pl. ebiguku) that at times occur after birth, are thought to be punishment too from the Supernatural forces. This is thought to happen to arrogant or aggressive people.

(iii) Diseases and Death

The indigenous Gusii people believed that diseases and deaths are caused either by the Supernatural forces or by the malevolent machinations of one's enemies by use of various magical means. The wrath of Supernatural forces is also thought to affect one's properties as well. This was why serious misfortunes and anomalies like crop failure, for instance, could be explained by the same reasons that would explain human fatality, sterility and congenital deformity.

Although they detested death, the Gusii people believed in life after death. But not everybody attained the same status as another in the world here after. Some became ancestor spirits (who were always benevolent) while others became malevolent evil spirits (for reasons why this happened, see Section on religion).

The belief that most diseases and deaths were caused by the Supernatural forces abound in many other indigenous African communities. Kofi - Appiah - Kubi, writing in Adegbola (op. cit.), says that

Among the Akan, health and disease are inextricably connected with socially approved behaviour and moral conduct. This works as a stabilizing force and a deterrent insisting on social conformity .... It is also believed that the victim [of a disease], may not be the offender but must be suffering from the offence of a kinsman. This may explain the societal concern for the illness of one of their member and the role of

kin group or family in the health of an individual.  
(P. 263).

In fact, the above observation is exactly the same with what was the situation among the indigenous Gusii people. Innocent people may suffer due to the sins of another person(s). This explains why it was the responsibility of the society to ensure that none of them behaved in a manner likely to jeopardise their well-being.

There was always a strong tendency among the people to maintain the society values and norms established by the now dead ancestors. Although they were dead, ancestors had a close interest in the affairs of the society. This is the picture Tekena, writing in Adegbola, (ibid) portrays when he says the following:

The mystical link between dead and living forces both in the making and enforcement of African laws and customs before contact with the Europeans, is of crucial importance. The fear of breaking such laws and customs, involving dread punishment by unseen and allegedly powerful elements in traditional religion provided an effective preventive factor (P. 178).

Although in different words, Willie Fitzjohn writing in Adegbola (ibid) too echoes Tekena's sentiments. Fitzjohn says that among the Yoyema people of West Africa

Ancestor worship, such as the worship of the dead was quite common. They [Yoyema people] showed much reverence for the burial of their dead. They believed in the presence of the spirits of the dead with the living. This was a guiding for good and evil [conduct] (P. 234).

Among the indigenous Gusii people, the chisokoro -- ancestor spirits - did not abdicate their responsibilities in their respective lineages. In their form of spirits, they continued to take a keen interest in the affairs of their lineages just as they did when they were living. Awolalu (op. cit.) writing on this relationship says the following:

There is, ... a communion and communication going on all the time between those that have gone into the life beyond and those that are here on earth. (P. 62).

All the foregoing seems to suggest that pre-colonial African communities believed that after death, the dead do not completely disappear into the oblivion. Actually, this seems to point out as to why the dead were always offered sacrifices so that they may continue protecting the living.

The issue of the immortality of the soul features in other religions and philosophies. For instance, in Western philosophy this issue is what led to the bifurcation of man into body (matter) and soul. There was this strong belief among some philosophers that a human being is made up two elements -- thus matter and soul. Actually, this contention led to one of the most disputable and unresolved problems in philosophy - the body - mind (or soul) relationship.

The problem of body - mind (soul) relationship aside, the bifurcation of man also had important religious implications. Some philosophers and theologians - cum - philosophers used this division to postulate the immortality of the soul - thus life after death. The soul was seen as an immortal element that is trapped in the body, which is mortal. When the body dies, the soul continues to exist in eternal form - in the world of

Supersensible form, according to Plato, - or in heaven according to Theologians.

Be that as it may, what is important to note here is the belief in the life after death among indigenous Gusii people.

Apart from being caused directly by the Supernatural, diseases and death could at time be caused by witchcraft. Although witchcraft has been treated with scepticism, its efficacy is not a contentious issue here. In some Africa communities witchcraft was often used as an explanation for some diseases and deaths.

Among the indigenous Gusii people, LeVine (op. cit.) observes that

Murder by witchcraft is effected by the planting of a 'poisonous' substance in the roof or walls of the victim's house; it is thought to act at a distance to cause disease and eventually the demise of the victim. The articles planted may be hair or faeces of the victim, dead birds, bones of exhumed corpses, or actually poisonous powder to mention but a few possibilities. (P. 96).

It was also mentioned earlier on that a person may acquire the services of a sorcerer (omonyamosiria) to kill his neighbours. But what must be mentioned in both cases is that, unless a victim is at loggerheads with the ancestor (thus forcing them to withdraw their protection on him) one cannot die. The efforts of witches and sorcerers to kill such a person are futile. Sometimes the ancestors of the victim may direct their anger on these witches and sorcerers. Actually, one may say that despite their mystical powers, witches sometimes acted with restraint towards their victims.



If, however, a victim of sorcery was at loggerheads with the ancestors, then they would withdraw their protection from him and leave him to the mercy of his enemies. For instance, if one was a thief and he had indeed stolen a neighbour's property, then through sorcery magic omosira, one would die.

Theft was generally an abhorred practice. This was, however, the case only if theft was practised among close neighbours or related clans. Actually, among the indigenous Gusii people, stealing from one's enemy clan or a different community was not seen as 'theft' as such. This was even sanctioned. But if one stole from one's neighbours, then dire consequences would follow. There was an affliction known as eqokeria by which people died from eating stolen food.

Another reason why the ancestors would get annoyed with someone, and which eventually may lead to one's death, is homicide. Killing an innocent person, whether a neighbour or foreigner was highly forbidden. In such a case, the ancestors would never protect the culprit from the death man's spirits - ebirecha in the latter's quest for revenge. This sanction was very important in view of the fact that there were no formal machinery to protect the innocent and the feeble from the greedy, powerful and malicious people, who would stop at nothing, even killing, to achieve their goals.

Another practice that could annoy the ancestors and sometime lead to death was extra-marital sex. Illicit extra-marital sex could lead to death through the amasangia complex. According to Levine (Ibid)

Amasangia the supernatural sanction against the infidelity of a wife involves a somewhat special and elaborate set of beliefs. It can be incurred at

anytime, after the transfer of bridewealth to the bride's parents. Amasangia literally means 'sharing' and refers to the consequences of illicit sharing of a married woman's sexual attentions. Amasangia is caused by the adulterous behaviour of a woman, but it directly affects her husband and children rather than herself .. if a woman has sexual intercourse with a man other than her husband and continue to cohabit with her husband, then when the latter becomes ill her presence in the same room may cause his death. (P. 96).

Although there is no disputing LeVine's observation, one thing needs clarification. LeVine's description as quoted above may lead the reader to conclude that amasangia is a sanction against infidelity 'only' on married women. The above excerpt seems to suggest that married men are not 'affected' by the amasangia. The term 'affected' must be treated with caution here. If a woman is adulterous, it is the husband who will die, he is, therefore, affected in some sense. But if the husband is involved in adultery, is he not 'affected' in the sense that his wife will die? From LeVine's description, the answer seems to be 'no'. But as can be recalled, in the section on pregnancy and childbirth, it was stated that the adulterous behaviour of the husband may lead to the wife's death, just as the wife's adulterous behaviour leads to the husband's death.

The belief that the adulterous life of husband leads to the wife's death (see section on pregnancy and childbirth how this happens) is actually more pronounced than the one described by LeVine. This writer, hailing from the Gusii community, knows of a number of women who have died during or shortly after giving birth where amasangia has been given as the cause of for their deaths.

The Supernatural Sanction of amasangia against marital infidelity is not only limited to couples. The following excerpt from LeVine (Ibid) again, attests to this contention. Amasangia applies

... when two men of the same clan have had intercourse with the same married woman, regardless of whether or not she is married to either of them. It is believed that a visit by one to the sick-bed of the other will result in the death of the sick one. This is unimportant if the two men are not directly related and do not in any case visit one another, but it enters significantly into the relations of brothers, half brothers and first cousins. If one of them has an affair with a married woman, he must concern himself with whether any of the male clansmen who he often visits has also had intercourse with her. Sometimes suspicion of adultery with a wife is aroused when a man becomes ill and finds that a particular half brother or paternal cousin of his has not visited him ... ordinarily, amasangia acts as a check on male access to the wives of others (P. 101).

Although, he was describing amasangia connected with males moving with other people's wives, LeVine should have perhaps pointed out that amasangia also acts as a check on female access to the husbands of others.

LeVine says that amasangia complex is likely to affect members of the same clan who may be having intercourse with one married woman. This point deserves comment. It has been remarked elsewhere that competition for one sexual partner can cause intense rivalry among those involved. If they happen to be close relatives, it may not only lead to physical fighting (thus spilling each other's blood which is emuma - curse), but it may also cause conflict in the clan and lead to disunity, something the clan could not

entertain.

In summary, therefore, some diseases and death among the indigenous Gusii people, were believed to be caused by supernatural forces. The supernatural could not condone any social behaviour that threatened the existence of a social group. Serious diseases and sometimes deaths were used against social deviants to act as deterrents to other members of the society with evil intentions. Most people knowing this to be the case feared committing any action that could lead to a curse and eventual death.

#### (iv) Initiation

Initiation among the indigenous Gusii community is regarded as a very important rite of passage from the stage of childhood to that one of maturity. Apart from being an important rite of passage, initiation formed a vital period because it was during the seclusion period following circumcision, that certain ceremonies and rituals were performed and a variety of training given to the initiates that reinforced customs and beliefs learned earlier on. In fact, after initiation any action that a person performed was more susceptible to society sanction. One could not be excused for behaving in a deviant manner after initiation. Full responsibility for one's actions was tied to the after initiation period as Monyenye op cit observes:

Before a person passes through adolescent education he is regarded as a child and he can do certain things he should not do after adolescence. As soon as he goes through all the stages of initiation ceremonies and enters the adult world, he is regarded as a responsible adult and is held responsible for any action he performs in the society (P. 245).

Traditionally, boys were initiated at the age of twelve this being the right time when they were considered mentally fit for the exercise. Immediately after circumcision, the initiates were supposed to go into a period of seclusion (for a detailed account of circumcision ceremonies - preparations and after, the reader is advised to consult Monyenye's work referred to in this work). It was during this seclusion period that initiates were taught various traditions, customs and values of the society. Before examining what usually transpired during the seclusion period and the value of its importance to the present study, one thing is worth mentioning concerning the initiation (circumcision exercise).

Mention has already been made about the effects of illicit extra-marital sex to the offenders and their families. The indigenous Gusii people believe that this extra-marital sex is evidently exhibited during the circumcision period. If an initiate bleeds too much after being circumcised, this is suspected on the infidelity of the mother. In such a case, the mother is asked to state her case. If she accepts, a ritual is performed to cleanse her and this stops the bleeding, otherwise the initiate may die because of the sins of the mother. The indigenous Gusii people believe all this is caused by the supernatural forces due to the anger of the ancestor spirits on the practice of extra-marital sex -- which is seen as being immoral. If, however, the mother is found to be innocent, then other causes are sought. Bleeding could have been, may be, caused by the same said ancestors because the father of the boy has neglected them, by not sacrificing to them, for instance.

It is important to note that the indigenous Gusii people believed that once the causes of after circumcision bleeding were discovered, by performing necessary sacrifices, bleeding could be arrested. This is regardless

of the fact that such bleeding could be as a result of a ruptured blood vessel.

During seclusion, a fire was supposed to be lit on the start of this (seclusion) period. According to Monyenye, the ritual fire was kindled by rubbing a stick of hard wood between the palms against a grooved stick of soft wood. Well, this is what used to happen traditionally. However, in the present times a match box is used. But there is one condition to this -- the ritual fire should not be gotten from any hearth place, nor should the match box be one that had previously been used, and never should it be used elsewhere, until after the seclusion period. This fire had to be tendered with a lot of care for all the period that the initiates were secluded, as Monyenye (*Ibid*) rightly points out

[F]rom this day onwards, until the end of the seclusion period, this sacred fire will continue glowing and great care is taken to ensure that it does not go off (P. 267).

The mythical beliefs associated with this sacred fire are highly regarded as being important, it is important to illustrate them here.

The indigenous Gusii people believe that the sacred fire that is lit on the circumcision day symbolises the sexual virility of the initiate. His capability of having children in his marriage age depends very much on this fire, as Monyenye (*Ibid*) tells us:

... the act of kindling this ritual fire clearly signifies its sexual element... its kindling result from friction caused by rubbing together two stick (ebirende), one lying down horizontally on the ground and the other held between the palms and rubbed

vertically on it. The one horizontally down on the ground is soft and is known as the female stick (ekerende egekunqu). The other which is held vertically and rubbed against it is hard and is known as the male stick (ekerende eaetwoni). The two fire sticks are then conceived as symbolising a man and a woman. The act of rubbing the sticks together and the consequent friction which causes heat is conceived as coitus between the man and woman. The fire produced by the heat of friction is conceived as symbolising the birth of the child whom the man and woman have got from the joint intercourse (pp. 343 - 346).

What the above implies is that the sacred fire symbolises the fertility of the initiate and if it goes off before the seclusion period, this means the death of the initiates sexual fertility. This ritual does not concern male initiates only. It also applies to the female as well. In fact, this writer knows of two separate cases involving his two female cousins involving this. The two failed to conceive after having been married and both of them claimed their sacred fires had gone off before the right time (before the initiation period was over). What happened was that, after appropriate propitiatory sacrifices were made to the ancestors, the ladies returned to their marital homes and it did not take long before each of them conceived!

One can argue that there is a lot of psychology involved in this. What one believes can greatly influence the cause of events. In fact this is very true. Cases have often been told of women who develop false pregnancies after convincing themselves that they are indeed pregnant. This argument is very important to this work. In discussing about curses attention is being focused at the beliefs people had about them. If one really believed that a curse can kill, then one can indeed die because he

believes in that notion.

During this seclusion period, initiates are also taught the importance of nurturing the esuguta grass. This grass was planted in the seclusion hut and it was thought to signify the physical wellbeing of the novice during this period. It was generally believed that when it blossoms, it shows the good health of the initiate, while if it withers and dies, it shows the poor health of the initiate. If the shrub dies, it will also affect the initiates' later health conditions.

The esuguta shrub also signified the importance of farming among the Gusii people as this was their main economic activity. By being made to care for the esuguta, it was looked at as an orientation exercise for the young ones for the main tasks awaiting them. This was, therefore, aimed at teaching the initiate responsibility.

The important aspects of initiation that were felt necessary for this study have been enumerated in the foregoing. These were those beliefs taught to the initiates about the dire consequences awaiting them in their adult lives if certain practices were neglected. Indeed, this was important at this stage because it was during this period that a person was conceived as being mature enough to move from a youthful stage to that one of an adult. Moving from one social group or status to another was not an activity which was arbitrarily carried out. The indigenous Gusii people knew this and this was the reason why initiates underwent very rigorous exercises and lifestyles during the seclusion period.

The importance of some of the mentioned aspects of initiation lies in their intended, roles for future behaviour of initiates. They (initiates) were made to



belief, that any negligence on their part may have a negative effect on their future lives. Threats about some of the possible consequences to expect made them conform and observe these practices. In as far as they were deterred from being negligent - - a social evil itself - initiation practices, it can be said, have a contributing role in social control.

There are many more aspects of initiation that make interesting reading but mentioning all of them in this work is not possible. This is because they may not be of much significance to this work. Those interested in the topic can, however, read more in some books and article mentioned elsewhere in this work.

CHAPTER FOURCurses as a Base for Moral Conduct in Society4.1 Introduction:

Mention has already been made to the effect that indigenous African communities lacked legal codes in the form of institutionalised statutes of dealing with social deviance the way these institutions operate today. Despite the above, these societies did not lack unity and peace. Actually, whether or not a society is organised into a central political system, there are always norms that are supposed to be adhered to by all its members.

In modern societies, there are rules and norms of behaviour that people are expected to observe. The violation of these rules and norms calls for some social sanctions -- in most cases punishments of various types.

One can argue that although people are likely to be moral by nature, there are those who fear doing wrong due to the expected punishment. Besides being painful, punishment also has a negative social stigma. This could be the reason why some scholars have argued that punishment is of no use to society if it does not deter real and potential criminals from committing crimes.

The Abagusii indigenous community lacked a centralised system of authority which they could use as a weapon against crime in society. But mention has already been made of the importance of magico-religious beliefs to the Gusii entire life style. These magico-religious beliefs were, therefore, important as tools of social control. Among the most important of these was the curse.

#### 4.2 Role of Curses in the Administration of Punishment

A number of African scholars have written quite a lot on punishment. But, like in many aspects of the African life, it is not objective to generalise the African way of life, because Africa is not homogenous. Actually, on the topic of punishment, Peter Rigby (1971), says that it is not possible to reach an objective conclusion about an African view of punishment. To use his words,

it appears that African societies are as distinct from each other as they are from non-African societies, and correspondingly their concepts of punishment are as varied as everywhere else both in space and time (p. 23).

Rigby's observation is true to some extent. But an extensive study of African institutions shows some strong similarities. For instance, in regard to punishment, most (if not all) African societies have a strong belief in the participation of supernatural powers.

LeVine (1958) has argued that harmony and order are important in any social system. Social deviance is always known to lead to disruption in any social system. He points out that whereas 'primitive' communities, as compared to western communities, lacked legal codes, specialised enforcement agencies and courts of law, they, nevertheless, had rules of behaviour. Members of such communities adhered to these rules in a context of social order.

Apart from the fact that there were no legal statute books in most African communities, it is also true that there were no professional lawyers to plead for offenders. But, it was a generally held view that every adult member

of the community was familiar with the law and legal customs of his tribe. These laws were passed from one generation to another through oral tradition and practical application. This did not, however, mean that people did not deviate from societal norms. To try and deter people from deviating from social norms, the invoking of curses was of paramount importance.

It is the contention of this writer that curses, although at times used to punish offenders (examples of this will be given later) were not ultimately aimed at retribution. The major aim of curses (at least among the indigenous Gusii people) was to deter. There are some writers who have subscribed to this contention.

LeVine (*ibid*) argues that among the indigenous Gusii people, curses were a means of threat to prevent crime in society (p. 57). This is the same picture one gets when reading Philip Mayer (*op. cit.*, P. 55). Talking about customs governing marriage, Mayer says that if a marriage is dissolved, before the divorced woman can be offered to another man for marriage, the father of the girl must return the first suitor's bridewealth. Failure to do this and accepting bridewealth from the new suitor will result in a curse not only on the daughter but also on the father (or rather homestead.)

It is perhaps important to point out at this stage that curses as a form of deterrence were also applied in other African communities besides the Gusii community. Okot P'Bitek (1971), for instance, argues that the Central Luo believed that curses affected human beings and the course of events. But despite that, curses were not tools resorted to in the settling of even petty crimes or differences. The curse was instead

... the last resort that a person turned to, and it drew urgent and immediate attention to a serious social situation. When conflict and tension had reached bursting point. In fact, at the point when the curse was uttered, the social strings were cut, hence the urgency with which the matter was treated, and the ceremonies that followed operated to reintegrate the group. The curse provided an opportunity for a formal settlement of serious social problems. (pp. 145 - 146).

There are various important inferences that can be drawn from the above excerpt. One of this is that although a curse was seen as a form of deterrent punishment, it could at times be retributive. This is when all efforts to make an offender confess had failed. In such a case, the community (or the offended party) had no alternative except to resort to cursing. And according to P'Bitek "a curse was to be effective only when the person who cursed was in the right and the accursed person in the wrong" (P. 146). But such a curse could play double roles. Besides being a penalty to the offender, the curse could play the role of deterrence to the witness, if it is effective.

Another inference that can be drawn from Okot P'Bitek's observation is that the effect of a curse can be averted. This is a fact that has already been observed elsewhere in this work. Among the Abagusii, the aim of cursing was to cause fear in the victim and make them confess. If a victim confesses as a result of being cursed, it was important that such a curse be withdrawn.

The effect of a curse, it has been observed, did not end with the demise of the real offender. Punishment, could at times come in wholesome to all members in the family due to the mistakes of one member. The idea of the whole family suffering for the crime(s) of one of its

members provided strong deterrence to crime. Curses were believed to affect a family as a result of the sins of one of their ancestors. Therefore, where necessary, a victim of a curse needed to be cleansed, if he was remorseful.

Some people may question the authenticity of the phenomena of curses. Actually, this writer has already indicated that a curse will make meaning only to a believer. To a non-believer, all these may make no sense. But as John S. Mbiti (1969) observes

In a pre-scientific environment, this form of logic and mentality certainly satisfies and explains many puzzles of nature and human experience. (p. 77).

Mbiti is not alone in his defense of African beliefs. Writing in Adegbola Ade (op. cit.), Tekano expresses almost similar sentiments. Tekano carried out a field study on magico-religious practices among the various communities in Nigeria and says the following about the whole issue:

The crucial issue in the Nigerian communities which had similar practices [magico-religious practices of dealing with criminals or suspects] was neither their fairness nor accuracy. Far more important was their deterrent effect on these societies in their perennial attempts to control big crimes or offenses. (p. 189).

Actually the above quotation summaries the importance of curses among the Abagusii.

LeVine (1966) has observed that the Gusii Community exhibited a high degree of authoritarianism whereby the aged, the wealthy and the domineering exerted a controlling influence over others. LeVine goes on to explain what he means by authoritarianism:

... the concept of authoritarianism denotes a general tendency to structure relationship in terms of dominance and submission, unquestioning obedience to a strong leader, and dependence on powerful individuals for the attainment of goals, such as law enforcement and social mobility. (p. 184).

LeVine says authoritarianism among the Abagusii can be seen at various social levels;

- i) Domestic group - relationship of homestead head to his wives, sons and daughters;
- ii) Local Community - orientation of its residents to the local heads;
- iii) level of wider community - chief and the courts. (this is a feature that came into play after colonisation).

As far as levels (i) and (ii) are concerned, this was true in indigenous Gusii society. But then, in the absence of formal law enforcement agencies, this authoritarianism could not hold if people did not believe in the role of the supernatural. In fact, apart from the fact that those who exerted this authoritarianism where 'Senior' in one way or another, their statuses were, it was believed, sanctioned by the supernatural. That is why these authority figures always enlisted the help of the ancestors in their judicial exercises. According to LeVine (*ibid*) ancestor spirits are important sets of authority figures that are hard to be evaded.

Consequently, persons in judicial authority, when faced with the unusual denial of guilt by the accused, find it helpful to use ancestor enforced oaths to obtain confessions and settle cases whose fact have been obscured

by perjured testimony ... In Sum, the conformity of [the Abagusii] to their own moral ideals is contingent on the felt presence of supervision and threatened punishment by authority figures. (p. 186).

Further still on these authority figures, LeVine observes that

Each powerful person is thus called on to act as a sanctioning agent and it is essential for him to administer severe punishments to correct offenders' behaviour and deter others from committing the same offenses ... A father ... has the power to curse but this is used as a threat more than an actual practice (p. 187).

Actually, among the indigenous Abagusii, a curse from the father to his children is a very serious phenomenon. A father who curses his son for instance, is not only causing harm to the son, but to himself also. This is more so when such a curse may result to the son being unable to have children. It has already been shown that a man's lineage is perpetuated by his children. Cursing one's son not to father children, is tantamount to destroying one's lineage. In fact, even society would not take kindly to such a move. In such a case efforts were made to see that there is a reconciliation between son and father, before the latter dies.

#### 4.3 The Philosophical Foundations of Curses Among the Abagsuii

##### (i) Human Character

Various philosophers have upheld divergent views about the human character. There are those who feel that human beings are by nature selfish and would always pursue that



which advances their interests. There are others who however, hold the opposite view.

Macnabb, D. G. C. (1966) says that according to Hume, selfishness is a force that acts as an obstacle to formation and preservation of society. This arises due to the fact that:

Each man loves himself better than anyone else, next best his own family and friends only third best his "neighbours". He, therefore, tends to grab what he can for himself and his friends and to induce others to help him in supplying himself with goods, but refuse to help them in return. (p. 177).

Hume, therefore, says Macnabb, contends that it is due to the above character of man that justice was originally founded. Justice, was established due to the desire by man for the material prosperity and personal security. Man's needs - food, clothing and housing are all difficult to obtain. As an individual, man lacks the abilities to satisfy these needs and protect himself against his enemies. Society, by joining forces and dividing roles among its members, compensates for these infirmities (ibid).

Hume, Macnabb goes on, asserts that rules are important in society. These rules spell out the manners in which every individual should conduct himself. He is however, at the same time sceptical on the effectiveness of conventional rules in establishing justice in society. This, he says is because men at times are partial in their dealings. People may manipulate the outcome of a litigation in their favour. This is what usually happens where the rich and poor are involved.

Hume's observation is important in relation to the role of curses among the indigenous Abagusii. There is no denying the fact that there were selfish and powerful people who would stop at nothing to grab other people's property. It has already been mentioned that in a case of theft of some property (i.e. cow) the clan elders were called in to solve the problem. But one of the parties could influence the outcome of the decision to his favour, - if he was powerful or rich.

To guard against such behaviour, and to safe guard the interests of the weak in society the Abagusii relied on the supernatural sanction. Actually, the clan elders (abagaka b'egesaku) could, knowingly, never pass a judgement that favoured the powerful if they were in the wrong. This is because they were bound by an oath (which they had to swear before deliberation) to be impartial in their judgement. If they ever did the contrary, then that was tantamount to cursing themselves. At the same time, a person who knowingly swears an oath, when he is in the wrong (refer to the omotende - Erythrina Abyssinica - oath mentioned earlier) would be cursing himself. In effect, therefore, the fear of curses provided a strong deterrent measure which conventional rules could not.

It is important to note here that curses among the Abagusii could have been artificial inventions by the community's ancestors to force people to behave virtuously. With time, these curses became incorporated in the entire life styles of the Abagusii. This is seen for instance, in the socialisation processes where curses feature in every stage.

Mackie, J. L. (1980) says that according to Hume, rules of virtue are actually artificial creations of man. Hume, Mackie says, asserts that

... both the tendency to act in [the right approved way] and the tendency of such actions can be seen as inventions, artificial devices which have somehow been added to whatever tendencies to action men instinctively possessed and whatever instinctive moral sense they originally had. Both the behavioral tendencies which support them are indeed useful; they help human society to flourish and this fact somehow explains why they are there. (p. 5)

Hume may never have had curses in mind, but the above quotation can be used to clearly explain the presence and role of curses among the indigenous Abagusii.

When talking about the character of man, another philosopher who comes to one's mind is Thomas Hobbes, observes Mackie. Quoting him, Mackie says Hobbes believes that a human being by nature is not benevolent and unless restrained would cause chaos in society. He believed that all men are by nature selfish.

According to Hobbes then, says Mackie, since men are selfish, they may desire the same thing making them enemies, since no one would want to leave it to the other. The enmity will mean that each would want to destroy the other first. Among such men, to be thought powerful, is itself a source of power, therefore, they will fight to maintain their reputations. Hobbes concludes that there are three principal causes of human conflict viz: competition; diffidence and glory. Since men are not endowed with equal strength, none can subordinate the other. It is possible that a weak man can kill a strong one through some sort of trickery. Alternatively, weak people can gang up to kill a powerful man whom they all fear. Consequently, says, Mackie, Hobbes concludes that

the natural state of men is a war of all against all, with the result that there is no society, no security, no industry, no cultivation of the soil, no civilization, no technical progress: Men live in continual fear and danger of violent death, .. the life of man is 'solitary, poor nasty, brutish and short'. No one has any obligation to help or respect others. ... that everyone has a right to all things, but this means only that there is another that it would be wrong for him to take if he wanted: there are as yet no moral principles or constraints. (Ibid, P. 8).

According to Hobbes, says Mackie, the only solution to the above situation is for men to set up a common power to enforce their peace-keeping agreement. This common power is the political sovereign, i.e. one man or some body of men that has the primary function of punishing anyone who fails to keep the non-aggression pact. If this is achieved, then the state of nature is replaced by that of civil society.

It has already been mentioned that the indigenous Abagusii had no organised political system, akin to what Hobbes calls a political sovereign. At the same time, there were no statutory laws that stipulated how people should behave. But this is not tantamount to saying that there were no rules at all. The Abagusii had customs and norms established and passed from one generation to another. Violation of such norms could lead to the victim being punished. But punishing alone - retribution - could not wipe out crime from society. It was therefore necessary to develop ways of preventing such crimes. This may explain why the curses were evolved.

The indigenous Abagusii, it has been mentioned, inhabited a relatively harsh physical and social environment. This may explain why they were so much

concerned about the good conduct of each member in society to promote the general welfare of all.

In the *Nicomachean Ethics*, (chase, D. P 1911) Aristotle observes that good character in human beings is important because it leads to happiness. "The end of all action, individual or collective, is the greatest happiness of the greatest number" (p. ix), Aristotle says. This assertion is made important by the fact that an individual will really not achieve much alone. Human being need the assistance and co-operation of each other to progress. Indeed, it has already been observed that in the African ontology the individual's position is only important when seen from the general framework of the whole community.

The behaviour of an individual among the indigenous Gusii community was evaluated in terms of its contribution to the general welfare of the community. Any action, therefore, that was not geared towards the promotion of society welfare was highly censored. The ancestral spirits played an important role in safe guarding peace and harmony in society. Any deviant behaviour, that was likely to disrupt peace in society could lead to supernatural punishment.

It is also important that the society was not only concerned with maintenance of good character in individuals. The creation/formation of admirable human qualities which fit a man for a life in an organised system was its concern too. Once these qualities have been created, then the society was concerned on how to foster them and their opposites prevented. Indeed this may explain why the elderly people were expected to behave in a good exemplary manner. Detested social behavioral tendencies such as theft and incest were highly shunned. In fact, besides it being a curse to oneself, an act of incest could lead to ostracism and being ostracised is a

curse in itself. This was a feared eventuality and the anticipation of this deterred members of the community from meeting the same fate as the victim.

Some philosophers have argued that no normal human being who knows what is good goes for evil. Aristotle contends that human beings are rational and they are capable of doing right without being coerced by forces from without, such as curses and capital punishment. However, as Aristotle also notes

The subject - matter of human conduct is not governed by necessary and uniform laws. But this does not mean that it is subject to no laws .... moral experience, the actual possession and exercise of good character - is necessary truly to understand moral principles and profitably to apply them. The mere intellectual apprehension of them is not possible, or if possible profitless. (Ibid P. xi).

One actually can not doubt the fact that normal Gusii people knew what was right and wrong for them. But, as Aristotle points out above, this knowledge in itself would not deter some of them from behaving deviantly. It was, therefore; important that alongside this mere intellectual apprehension, ways were established to enforce morality. Devoid of modern science of legislation, curses were evolved to play this role.

Aristotle, argues that the reason why people should be virtuous is for the sake of happiness in the society. Happiness is a virtue that is sought by all normal human beings at all stages of civilization. The indigenous Gusii people, like any other community cherished happiness, but not the abstract kind of happiness that Aristotle advocated for, as will be seen below.

For the indigenous Abagusii, happiness was tied to material regard. Consequently, to be happy for the Abagusii meant to be endowed with plenty - a large herd of livestock, plenty of food in the food store, a large number of wives and children. It was through wealth that one's social status was gauged. For the Abagusii, therefore, happiness was sort of material and not abstract.

The attainment of this individual happiness did not entail an isolation of the individual's moral agent from his relation to other persons and from his context in society. This explains why those people who attained wealth through dubious means or socially unacceptable ways were detested. An example here is the unscrupulous sorcerers mentioned in Chapter Three. But even then, some of these sorcerers feared being too acquisitive lest the spirits got annoyed and curse them.

It is also important to note that the individual's 'happiness' was a blessing from the ancestors. This was an indication that one was at peace with his ancestral spirits due to his virtuous character. In fact, however, hard working one was, unless one had ancestral spirits' blessing one could never enjoy his wealth. If one was at loggerheads with the spirits, various calamities would wipe out one's property every now and again. And as Mbiti (1969) says, calamities in some societies in Africa are associated to the supernatural. He points out for instance that "mental disturbances tend to be blamed on the spirits even if human agents may also be considered responsible" (p. 44).

Mbiti goes on to say that the Chagga of Tanzania, for instance believe that God can send spirits to cause illness like small pox but a person will only die when God permits (Ibid).

The above emphasis confirms one important thing that was mentioned in Chapter Three. This is the fact that a person cannot suffer misfortune until the spirits permit. In the section on ancestral spirits, mention was made that the indigenous Abagusii recognize two sets of spirits - good or ancestral and evil. The evil spirits are constantly looking out for an opportunity to do harm to men. On the other hand, the ancestral spirits are always protective to members of society/lineage from the malevolent evil spirits and their living enemies. Therefore, so long as that protection from the ancestral spirits is maintained, the Abagusii believe no evil can befall one. An individual will only be harmed if he has angered the ancestral spirits and refused to carry out appropriate propitiatory rites. In such a case, the ancestral spirits do withdraw their protection from him enabling the evil spirits to eventually succeed in causing harm to him. It is important to note that, according to the indigenous Abagusii, even magic, sorcery and witchcraft machinations against a person can not succeed in harming such a person if the ancestral spirits do not permit. Actually, this can be said to have been the same belief in other African communities. This contention is confirmed by Awolalu Omosade (op. cit.) commenting on the relationship between the living and the ancestor among the Yoruba, he says:

It is believed that witches and sorcerers cannot harm a man and bad medicine can have no effect on him unless his ancestors are 'sleeping' or neglecting him. (p. 61).

Perhaps, at this stage, it is important to explain how the indigenous Abagusii associate natural phenomena with punishment.



#### 4.4 Natural Phenomena Viewed as Punishment

Among the indigenous Abagusii, such natural phenomena as thunder, epidemics, famine, drought and earthquakes were believed to be caused by the supernatural. The Abagusii people, like other indigenous communities in Africa, did not know that such occurrences were natural and could be explained by science.

What is interesting is that some if not all of these occurrences are linked to peoples' moral characters. These are used as punitive measures (or warnings at times) by the supernatural due to the acts of commission or omission by an individual or society.

Besides formal types of punishments, the Abagusii believed that the ancestral spirits were very much concerned with the welfare of the society. Anybody who behaved in a manner unacceptable to them would be punished. Since the spirits were detached from the living, they cannot inflict physical punishment to offenders. Although away from society - i.e. in body, says Mbiti,

They know and have interest in what is going on in the family. When they appear ... they enquire about family affairs, and may even warn of impending danger or rebuke those who have failed to follow their special instruction .... They are the guardians of family affairs, traditions, ethics and activities - offence in these matters is ultimately an offence against the forefathers who in that capacity, act as the invisible police of the families and communities (op. cit. p. 83).

Nobody, can therefore, take advantage of the absence of the police in society to perpetrate evil. In fact among the indigenous Abagusii community such occurrences as

death, infertility (of man and livestock) were seen as punishment. In the event of such, the affected family had to consult the diviners in an attempt to know how one had offended the spirits. In most cases sacrifices would follow to appease the spirits. Mbiti says that most African communities believed that death was at times caused by God due to his annoyance with the victim. It was also believed that death could occur if people invoked a curse upon an offender.

The indigenous Abagusii believed that one is cursed not only when actual cursing words are uttered, by elders, for instance. Any action that annoyed the ancestors could automatically lead to a curse. And in fact, the attack of an individual by any of the natural calamities mentioned above was a clear indication that one was cursed.

It has already been shown that cases of infertility in people is linked to beliefs in curses. To the Abagusii, infertility was not a phenomenon that occurred accidentally. Infertility could occur in both men and women. Cases of infertility were detected in people after marriage. One of the reasons why people married was for the perpetuation of the family line and thus the society. Children were, therefore, an important integral part of a marriage. Failure of a couple to have children was in fact a catastrophe not only to the couple concerned but also to the families of the couple. In fact among the indigenous Abagusii, and indeed in other African communities, a marriage was not fully consummated or recognised until the wife has given birth. A woman who is unable to have children is a very unhappy individual. Mbiti says that

The fault may not be her own, but this does not 'excuse' her in the eyes of the society. Her husband may remedy the situation by raising children with another wife; but the childless wife bears a scar

which nothing can erase. (ibid p. 110).

Among the indigenous Abagusii, the reason for such infertility can be discovered by the couple concerned consulting a diviner. It will be untrue to say that a remedy can be found to all cases of infertility. But on the other hand where infertility arises from known causes, the situation can be remedied. For instance, the indigenous Abagusii believed that infertility can occur if

1. the sacred (ritual) fire that is lit at initiation goes out before the expiry of the seclusion period;
2. One is cursed by his/her parents;
3. One sees a python, among other causes.

If any of the above is found to be the cause, then with the performance of proper sacrifices to the ancestors, one's fertility can be restored.

What the above seems to suggest is that infertility is a phenomenon that is not believed to occur just from mere natural (physiological) deformities. To the Abagusii, this occurs due to the parties concerned failing to conform to certain established norms. In such a case, the ancestors feel it necessary to allow the parties concerned to be punished. It is also believed that the parties concerned do actually know what acts of omission or commission that are likely to lead to infertility and are, therefore, supposed to act accordingly.

Physical deformities in human beings, for instance hunch back, were also believed to be as a result of curses. It has been mentioned elsewhere that human physical deformities can occur before and after birth.

The behaviour of a couple was believed to determine the condition of their children. In the section on pregnancy and childbirth, it was observed that there were certain taboos that pregnant women were supposed to observe. Failure to do this would result to various calamities. A pregnant woman was not supposed to laugh at people with deformities or those with various inabilities. If she did this, then the ancestors will be annoyed with her and curse her. This curse could result in her giving birth to a deformed child.

Even after birth a person may still become disabled depending on his/her general conduct in society. For instance, if one was disrespectful to the elders or the disabled, the ancestor may wish such a person to become disabled also. This is aimed at deterring people with similar behaviour.

Death is another calamity which was at times attributed to curses. Mention has been made on how displeasure of ancestral spirits can lead to death. For instance, sexual immorality was believed to lead to death through the affliction locally known as amasangia (refer to section on sex and marriage).

Theft could also at times lead to death. This was the case where an oath was taken in regard to guilt and the stolen item. The guilty party was unlikely to survive if he took a false oath (perjury).

Killing of innocent people was highly forbidden among the indigenous Abagusii. Spilling blood of someone, it was believed, would make the ghost of the victim to seek revenge. If this killing was justly carried out - for instance killing a known thief or adulterer - the ancestors would always offer protection to the 'killers'. But if the person killed was innocent, then the ancestral spirits will

give way to the deceased person's ghost to avenge that death.

But at the same time, it is worth noting that not all deaths were believed to result from evil. Sometimes, people who were known to be morally upright died. In such cases, African societies, says Mbiti, attribute such deaths to good intentions. Some deaths are caused by God when "he wants the death person to go to heaven" (*ibid*; p. 77). People believe that such a person has fulfilled his work on earth.

The picture that emerges from all the above is that, among the indigenous Abagusii, most calamities were attributed to the Supernatural. At the same time, people believed that the ancestral spirits or God could not unleash these catastrophes unless they were annoyed. Even when annoyed, there were established ways through which they could be appeased. But if appropriate measures were not taken the misdoings of people always resulted in punishment. This punishment was supposed to be a reminder to mankind of his misdeeds and in most cases, was aimed at making him repent. And to re-quote Mbiti once again

In a pre-scientific environment, this form of logic and mentality certainly satisfies and explains many puzzles of nature and human experience. (*Loco cit.*).

Indeed, one can safely conclude that the presence and recognition of curses among the indigenous Gusii community was an important instrument in ensuring social conformity. Perhaps it is important to reiterate here why curses were effective in deterring deviant behaviour in society.

#### 4.5 Curses and Social Conformity

Writing in Adegbola Ade (op. cit.), Tekano N. Tamuno observes that among the Nga Community of Nigeria, both human and Supernatural agencies were supposedly believed to be effectively involved in the prevention and detection of crime. He says that:

This mystical link between dead and living forces both in the making and enforcement of African laws and customs before contact with Europeans is of crucial importance. The fear of breaking such laws and customs involving dread punishment by unseen and allegedly powerful elements in traditional religion provided an effective preventive factor. (Loco cit).

Tekano seems to suggest that in pre-colonial Africa, there were certain rules and norms that people were supposed to adhere to. It has been argued elsewhere that these rules and norms were not written anywhere. They were transmitted from one generation to another and reinforced by their daily observances. This, therefore, in effect meant that every member of the community was provided with the chance and machinery of learning those rules and norms in various fora.

Tekano further goes on to explain the place of the individual in society. And there is a great similarity between the Nga and the Abagusii on this. He asserts that, among the Nga people, family members were supposed to check on the behaviour of their members. This was from the realisation that punishment could at times affect all members in the family (or community) due to the misdeeds of one person. Instead of letting the whole family (community) suffer because of one person, everything was done to check each others behaviour, where possible.

There is no doubt that among the indigenous Abagusii, curses were extremely feared. One may not have a logical explanation for this. This is a belief, that like most beliefs, some how defies logic. But it would not be illogical to speculate why this was the case.

In the first case, a curse was a phenomenon that was highly mystified. To the indigenous Abagusii, a curse was in fact not a daily occurrence. Where it was performed (through oathing) it was done as the last resort. This was when every possible means of solving an issue had been exhausted with no success. A person who underwent oathing was supposed to be aware of his real position before accepting to participate. This similar phenomenon abounded among the Gikuyu. As Kenyatta says:

Among the Gikuyu there were three important forms of oaths which were so terribly feared, morally and religiously, that no one dared take them unless he was perfectly sure and beyond any doubt that he was innocent or that his claim was genuine. (op. cit. P. 120).

Why was there all this fear then? Among the indigenous Abagusii, curses were linked to the religious beliefs of the people. Because they lacked scientific explanations to phenomena, all events were seen in terms of religion. Most, if not all indigenous Gusii people were very religious. Therefore, any thing that involved supernatural intervention, as was the curse, was highly revered.

There was also this belief that whatever God wishes it must of necessity become to be. It did not matter how long, but God's will was bound to be manifested at one time. A guilty person may stay for sometime after taking an oath without being affected, but one day, he will have

to suffer. Whoever was guilty would not want to undergo such psychological trauma of always expecting the worst. He would, therefore, prefer confessing.

Undergoing oathing while one was guilty could at times lead to complications. It has been seen that the effect of a curse can be averted by performing certain propitiatory rites. But the process of cleansing was in itself very delicate <sup>9</sup>

In order to sacrifice and thus cleanse oneself from a curse, one had to get prescriptions from a diviner. In most cases, diviners were known to give very detailed delicate and expensive prescriptions. Commenting on this Awolalu says that a purificatory rite (sacrifice),

Can be a very expensive undertaking as the prescription may involve upto two hundred each of several articles, animate or inanimate, upto a total of two hundred and one of several articles put together ... (op. cit., p. 153).

Unless these details are observed to the letter, ancestral spirits could not accept such a sacrifice. The cost and delicateness of purification rites sometimes acted as a deterrent to people from taking an oath if they were guilty. And this in effect, enhanced social conformity.

It is also important to note that a sinner had to repent and be remorseful before conducting a sacrifice to wipe out his sin. Evans Pritchard (op cit) says that sinning is not only a physical impurity, but rather a spiritual state which can only be changed by sacrifice. This sacrifice also has to carry the will and desire of the sinner (p. 191).

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<sup>9</sup>\*See the purification process involving the omotembe curse.



There could be other more factors that can explain why curses were highly feared. It is hoped that in future, researches along this line will reveal these. Before ending this Chapter, it is important to look at the concept of justice (or rather impartiality) in connection to curses.

#### 4.6 Curses and Criminal Justice

In ethics and social philosophy, the concept of justice is a debatable one. Various classical philosophers such as Plato, Aristotle and others often intellectualised a great deal on this concept. The intention here, however, is not to plunge into the academics of justice, as understood by philosophers. It is, therefore, important that the framework in which justice is used here be clarified.

Criminal justice is here used to refer to fairness in dealing with criminals. In modern courts of law, allegations have always been made of partiality on the part of judges in their verdicts. In most cases attorneys accuse the judges of being influenced by 'higher powers' or by circumstances that do not pertain to the case in passing judgement on the accused persons. What, therefore, is in question here is the independence of the judiciary. Professor Odera Oruka (op. cit.) believes that there is no justice accorded to the offenders in the practice of modern law. He argues that in most parts of Africa, authorities have resorted to the abuse of the law to wrongfully punish (perpetuate injustice) to their citizens (p. 57). In fact that is why Odera in his book concludes that what is regarded as punishment in Africa, is actually not punishment, but 'terrorism'. He therefore calls for a substitution for present punishment with a better formulated and understood notion of punishment. Odera has his reasons for saying this. But can one say that there

was injustice done to the criminal among the indigenous Abagusii in the use of curses?

One important thing to be borne in mind is that curses were supposed to be implemented by the supernatural. It has already been observed that the work of the ancestral spirits was to protect members of their lineage. It was through these lineages that their existence was perpetuated. The ancestral spirits would, therefore, not sit back and watch members of their lineages suffering, if such members were innocent. It was only when one was guilty and when one had failed to repent due to his misdeeds that he would suffer. In effect, therefore, no one would suffer from a curse unless one was guilty or there was some guiltiness in one's lineage. It is safe, therefore, to assert that in terms of fairness, there was no partiality associated with curses.

There is no ruling out the fact that due to lack of enough evidence, an innocent person could be cursed, for instance by lineage elders (sometimes suspects were cursed). But even then, if one was only suspected and he was not guilty in reality, such a curse would not have any effect. Okot P'Bitek says that among the Central Luo, the above contention was true. He says that

A curse was to be effective only when the person who cursed was in the right and the accursed person in the wrong. ... (op. cit, pp. 146 - 147).

Another important point to note is that even when one was guilty, there was always a chance of avoiding a curse. This could be done by repenting and then sacrificing to the ancestors. A sacrifice acted as a means of re-establishing the hitherto cut link between the ancestral spirits and the offender. It may be argued that those who suffered from curses actually willingly did so - due to their failure to repent.

As far as curses were concerned in their dealing with criminals in society, there seems to be no evidence to suggest that there was partiality. Talking of curses and criminals raises the question of retribution/penalty. Did curses really take place or rather were curses a reality or were they just one among the many superstitions that characterised pre-scientific pre-colonial Africa? These questions are debatable, but a brief clarification is important here.

It may be argued that, belief is an important integral part in the acquisition of knowledge of various facets. But beliefs, although at times doubtable, do not arise from the void. People actually believe in certain phenomena in consequence of what they have heard and experienced concerning that phenomena. This may have been the case among the Abagusii. This writer cannot claim to have actually witnessed the effect of a curse. But then, there are many stories that abound in the community how curses have affected people. There are some writers who have argued that curses are in fact a reality. In fact, Ruch and Anyanywu op. cit. argue that ..... A curse has a real instrumental causality and effectively achieves what it states or threatens, unless its effect is blocked by stronger magic. (p. 113).

Buxton, J. C. (1973) says that among the Mandari people, cursing is a very serious affair. People highly fear it because it is thought to lead to misfortune and worse still death. Because of this reason, curses were rarely used. In fact, he goes on to say that

A blood relative [father, mother, uncle, parents-in-law, etc.] only curse after a prolonged provocation, and there is often a feeling of moral outrage in the individual who curses (p. 233).

Evans-Prichard (op. cit.) says that any fault committed by man

bring about divine punishment. It may do so through the action of a curse or a ghostly vengeance .... a misfortune may be attributed to a curse of the living or to anger of the ghosts and hence to injuries done to them. (pp. 192 - 193).

Fitzjohn Willie writing in Adegbola Ade, (op. cit.) seems to suggest that among the Yoyema people, a curse was a reality. He uses an example whereby people were made to swear using the sword of the chief of the town where he conducted research. Anybody who wanted to swear on the sword brought a coin, a chicken, cloth or some valuable material and proceeded to curse the person who offended him and his relatives. It was believed that the sword would bring down thunder and lightning that would kill the offender. If the relatives knew who the offender was in their family, they made quick confessions. The Yoyema people believed that to die by lightning is a most ignominious death. The dead person's name is mentioned forever in shame.

When, therefore, a member of the family died from lightning;

the other members immediately sought the sword chief to ask him to take away the curse from the rest of the family for fear that the whole family too would be struck by lightning. The sin of one man visiting the third and fourth generations must be warded off by the sword chief. (My emphasis), (pp. 235 - 236).

The above quoted examples seem to suggest that the effectiveness of a curse in African ethnic groups is a reality. It is a belief that is perhaps very prevalent

among the illiterate and less so among the literate in society.

There may not be any scientific connection between the uttered words of a curse, the rituals performed and the effect of a curse. But a pre-scientific and naturalistic approach and interpretation is that since people confess to having committed evils in fear of curses and since effects have been observed in connection to the uttering of curses, curses were a reality among the indigenous Abagusii.

Further still, the Abagusii believed that curses do not only emanate from the uttering of words or performing rituals. There were other curses that occurred as a result of the conduct of an individual that may not be known to the general public but nevertheless known to the spirits since they (spirits) are invisible and ubiquitous. In fact this explains why most misfortunes among the indigenous Abagusii were attributed to a curse of one kind or the other. This being the case then, it may be hard to objectively deny the reality of curses among the indigenous Abagusii.

Be that as it may, however, there is no denying the fact that curses actually played an important role in deterring potential criminals. The anticipation of the dire consequences awaiting one in the event of behaving deviantly were too serious to brave for. In effect, therefore, most people were compelled to conform to societal norms.

CHAPTER FIVEConclusion and Recommendations5.1 The Future of Punishment

It has been shown in this work that the institution of punishment although an important one in society, is regarded by some people with apathy. One of the underlying reasons for this is that punishment does not play the expected role of eradicating crime from society.

If punishment is to be of any meaning, it should aim at changing ant-social attitudes into social. Retributive punishment has been criticised for not playing an important role towards this goal.

Johnson Norman (1970) argues that the gratuitous application of pain is wrong. He sees pain as a negative value that should be permitted only when there is some greater value to be had, just as "a medical operation is approved only when there is advantage to be gained, not for the sake of spilling blood" (p. 357).

When retributive punishment is applied on an offender, moral blame on the victim is assumed. Moral blame generally refers to an instance where one violates a generally accepted social norm - generally accepted in the sense that the censored acts have bad social consequences. The moral question of punishing depends directly on the moral question of criminal law itself. It is assumed that society is capable of making moral demands on individuals and justifying its punishment on those individuals by appeal to the code that was violated. One can thus argue that punishment is a price one chooses to pay for disobeying the law. This price will be deemed fair as long as the punishment is equally administered.

Punishment in developing countries, according to some scholars do not meet the above criterion. In fact, this may be why Oruka (op. cit.) would rather refer to punishment in Africa as 'Terrorism'. Those in authority do discriminately apply the law to their citizens. To give a local example, during the run up to the introduction of multi-party politics in Kenya, there were always allegations from opposition figures of harassment from the State for making what was often termed as alarming statements. Ironically, members of the ruling party were never questioned when they made similar remarks.

With the above in mind then, one can argue that the price is not fair because punishment is not equally administered. Further still such a discriminatory administration of punishment may help enhance anti-social attitudes instead of changing them.

There is also this conviction among some people that punishment can arbitrarily be applied. There is the possibility that the severity of punishment and detecting a crime and prosecuting one may be limited to the good sense of those applying them. It, therefore, means that punishing the innocent can serve the purposes of such a system of sanctions as easily as punishing the guilty. Does this then mean that punishment is unnecessary and should be abolished?

Norman (op. cit.) argues that the existence of punitive reactions to deviance is an obstacle to the abolition of punishment. Sometimes, Norman continues to say, social control of deviance depends on punishment and as such it may not be feasible to abolish it (p. 365).

Durkheim (1947) argues that socialisation and not law enforcement agencies such as the police seems to keep most people law abiding. He argues that the police are not able

to catch most offenders. But despite this, he appreciates the fact that there are some people who are compelled to be law abiding due to the anticipation of punishment (p. 90).

These and other views discussed in Chapter Two reflect the issues that the institution of punishment raises. This may explain why utilitarians prefer deterrence to retributive punishment.

The extent to which modern forms of deterrence are successful in eradicating crime is also questionable. For instance, utilitarians believe that the death penalty is a social necessity because it effectively deters people from committing murder. And for this death penalty to have any restraining effect, there must be adequate threat of or actual execution. But from practice death penalty has not eradicated murders from society.

The institution of punishment as it is practised these days in most parts of the world has failed in preventing crime in society. How then can the problem of punishment be solved? The argument formulated below may perhaps act as a pointer towards probable solutions.

## 5.2 Concept of Oath-Taking in Modern African Societies

It has been shown above that oath-taking was one of the various acts that would lead to a curse if not carefully handled. An oath - emuma in traditional Africa, could only be resorted to if there was no agreement reached concerning some dispute. Among the indigenous Abagusii the erythrina abyssinica (omotembe) tree and drinking tubes (chinkore) were used to swear an oath.

It has also been argued that these indigenous practices were relegated to the background first by the European colonialists and later on by independent African



governments. But oathing itself is a practice that was not only indigenous to Africa.

All over the world, various societies find need to swear oaths for one reason or the other. There are various oaths taken such as the oaths of allegiance, office, honesty and so on. But the modes by which these oaths are taken differ from what was the case in indigenous African societies. All in all, however, the aim of these oaths is to have a binding effect on those concerned.

Oathing still remains an important aspect of modern judicial systems. In the present Kenyan Courts of Law, suspects and witnesses are sworn by use of the Bible or Koran before the court proceedings start. This is what is known as giving evidence under oath. If for instance a witness is discovered to be giving false evidence, he can be committed to jail for perjury.

In both traditional and modern oathing in Africa the underlying assumption is that those involved in this exercise are believers. The importance of religion is, therefore, very relevant.

In traditional African societies, religion was an integral part of one's total life. One could not detach religion from one's day-to-day life. Generally speaking, there was no religious stratification into believers and non-believers. This is in contrast to the present scenario whereby religion is seen as a super structure. In modern society, one can also identify zealous believers, atheists or agnostics. In Africa, one can also identify those people who cling to their traditional religious beliefs.

From the above, it, therefore, implies that in the modern African Society, there is no homogeneous belief in

religion, which largely seemed to have been the case in the past. Regardless of this, people are often made to swear in courts of law by using either the Bible for christians - or the Koran, for muslims. What this implies is that some people will have no scruples telling lies even when they are under oath. This is because they have no much regard to either the Bible or the Koran and are in fact unaware of the consequences their lies can lead to, if any.

It was perhaps with the above in mind that the Europeans decided to retain some of the indigenous systems that they felt were useful to their administration. For instance, LeVine (op. cit.) says that after they colonised the Gusii people, the British used a combination of indigenous political behaviour with theirs. LeVine argues that the colonial system was grafted onto pre-existing authority patterns rather than eradicating them. (p. 66). It has been shown above how the British planted the erythrina abyssinica (omotembe) trees outside various law courts to assist the judges in their work.

Jack Glazie (1970) observes that even after independence, traditional oath - taking among the Meru is still a relevant tool of settling land disputes. He says that litigants in a case, are, under the supervision of the court officials required to take oaths (p.4) This seems to suggest that traditional oath-taking is deemed to be of additional - if not more important - value.

Nzioki (op. cit.) also takes issue with modern oathing which he says is very wanting. He argues that people do tell lies even when under oath.

In our courts of law, prosecutors and defence witnesses tell "small lies" in spite of having taken oaths over the Bible or the Koran! And 54% [sic] of the ministers installed with President Moi in 1988

quit his company before the end of their terms inspite of the Bible oaths "binding" them to serve with him to the end. If they had taken oaths based on occultism, they would have thought twice because such oaths are not a joking matter. (ibid)

although Nzioki does not say so in his own words, telling lies under traditional oath or quitting service before the expected time will lead to a curse.

### 5.3 General Conclusion

The belief in curses, although regarded by many as primitive, remains a reality to some. As recent as 1992 (The Standard newspaper, Wednesday, March 4, 1992) reports alongside pictures show women who had stripped naked in Nairobi's Uhuru Park. This was an act of cursing the authorities for confining their sons in prison and sending the police to harass them (women). At about the same time, Muslims gathered in a Mombasa mosque to curse the government over the alleged remarks of slave trade and its relationship with Islam, which they claimed were made by the President.

In late 1992, with the euphoria of multi-party elections in Kenya at its peak, some politicians from Kikuyuland were reported to have warned their kinsmen against leaving the Kenya African National Union (KANU) political party. This, it was claimed, would make the defectors to incur the curse of the late President Jomo Kenyatta, whom it was alleged warned against such a move. This was a threat meant to act as a prevention.

Among the Gusii people, there are various phenomena that are still attributed to curses from the ancestors due to certain acts of omission or commission. It has also been shown that a number of indigenous Africans had a

strong belief in curses and perhaps still do. It has been shown too, how and why curses were a strong deterrence among the indigenous African communities, especially the Abagusii.

It is the argument of this writer that effective indigenous systems in Africa should not have been interfered with, in the first place. While it is true that some of these systems were archaic, not all of them are obsolete as of now.

To the indigenous Africans, traditional oath-taking is believed to be more serious than using the Bible to swear. For instance, among the Abagusii, one may have no scruples swearing a false oath using the Bible. This is because some of them do not take modern religion seriously. But such a person will think twice before taking a traditional oath. There are far reaching implications of traditional oath-taking, for instance, by use of omotembe (erythrina abyssinica) or chinkore (drinking tubes). In the former, the litigants are supposed to strip naked before going round the omotembe tree, behaving as if they are having coitus with it. This exercise is witnessed by a cross-section of many people - including one's parents and sometimes children. Being seen naked in broad daylight is a very serious matter. One would, therefore, not want to play about with the ancestors if one was on the wrong. The ancestors can never forgive one in case one is guilty.

On the other hand, if one's lineage members suspect their relative to be guilty, they may take it upon themselves to stop him from taking an oath and agree to pay compensation to the aggrieved party. This is because if they do not do that and their relative is guilty, they will also be affected by the curse which will follow.

While the foregoing is not a gross over-glorification of the past, this writer feels the curse can be an important tool in reducing the rate of crime in the present Kenyan society. Actually, there are reports to the effect that the threat of curses is used in detecting and preventing crime in the present Kenyan society. For instance, this has been seen to be the case with the settling of land cases in Meru.

Among the Abagusii, there are claims (which this writer was not able to verify though) of litigants being advised by judge(s) to undergo traditional oathing when such judge(s) fail to reach a decision on a case by use of available evidence.

One may question how the threat of curses can be incorporated into modern judicial system in Kenya, something that this writer is advocating for. One thing worth mentioning here is that at least in all indigenous communities, the fear of curses is a reality. There is also this possibility that there are certain oaths or actions that are thought to lead to very dreaded curses. It is the contention of this writer that some of these oaths should be institutionalised and then reinforced through a vigorous system of socialisation with the aim of, if necessary, establishing a state of what psychologists call conditioned behaviour.

Actually, very few people can dispute the fact that the cost of crime in society is very high. Enough resources should, therefore, be channelled to this socialisation process to make people believe in the efficacy of curses. This is what for instance used to happen in the Gusii socialisation processes as is shown in Chapter Three.

There are many criminal activities that could be prevented if people believed in curses. For instance, in recent times, there have been numerous reported cases of killings and arson in what is referred to as inter-tribal clashes, in Kenya's multi-ethnic areas. In many indigenous African communities, arson and murder are taboos believed to lead to dire consequences to the perpetrators. But because some people no longer have regards for traditional values, they can perpetrate such evils and go scot-free. But even then, there are people who have been reported to suffer from various catastrophes due to their untoward actions. To some people, these catastrophes are interpreted in terms of curses.

This writer believes that a mistake was made somewhere in adopting what is largely penal punishment in Kenya. Penal punishment does not address itself to prevention of crime. It has been shown that curses were aimed at deterrence. This is why they were rarely applied, except on serious cases. In most cases, they were intended to act as a threat and as such barring both active and potential criminals.

Some scholars have argued that it is high time punishment was given a new meaning. Some of them argue that in logical terms, crime is an effect of some cause and that in punishing a criminal the authorities are dealing with the effect. Emphasis should instead be put on the cause - 'dig up the roots of a tree and it marks the end of it.' Talking of the causes of crime implies studying the psychology of man. But evidently, studying a human mind is very complex and one cannot come out with objective findings. The causes of crimes, whatever they are, can only be a subject of speculation. This is why more effective ways of dealing with crime should be sought and if possible prevent it or at least minimize its occurrence. This is precisely the reason why this writer feels that

traditional oathing and the invoking of a curse should be given a try.

These recommendations, salient as they may appear, they may face some challenge from sceptics. This is due to the difficulties that may be involved in implementing them.

First, the question may arise as to what institutions are best suited to carry out the socialisation processes necessary to orient people towards the belief in curses. The suggestion here is that perhaps, if the family, schools and churches are given a try, they may come in handy. It is important to note that the cost of crime is very high, therefore, everything possible should be done to alleviate crime in society and thereby save resources for other purposes.

The second difficult or issue the above recommendation elicit is that of primitivity versus civilization. To some people, a curse, is a superstitious and perhaps archaic belief which has no place in the modern civilised society. Institutionalising the curse will be turning the civilisation clock anti-clockwise, so to say. But one may argue here that no practice is archaic and primitive if the benefits accruing from its observance are good. As has already been argued, not all traditional practices in Africa should be condemned.

All in all these difficulties should not be overlooked - one may conclude by saying that if they are surmounted, then what is recommended may be given a try.

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