8. Waiting for beer to be served after the successful settlement of a dispute. The lower edge of the mountain forest is in the background.
CHAPTER EIGHT

THE MODERN LOCAL GOVERNMENT

Historical Introduction

In pre-European times the political system of the Arusha was contained within the institutional complexes relating to the parish age-groups and patrilineal descent groups. In keeping with the dominant Masai ethos, there were no specialised political or administrative roles of authority which could be described by the terms ‘chief’, ‘headman’, etc. Particular roles such as those of age-group spokesman or lineage counsellor were, as they still are, inherently ones of influence rather than authority; and although it was not altogether impossible for men in these roles to resort to coercive sanctions to achieve their public end, this was uncommon and was disapproved by the men themselves and by the members of the groups which supported them. Such infrequently-used sanctions were a final recourse in the face of utter intransigence, and were exercised only with general, explicit public approval. By conscious intent, spokesmen and counsellors were specifically selected by their fellows because of outstanding abilities. They acted as foci of discussion and action in which their fellows participated. Insofar as they were leaders, they merely guided opinion by virtue of their greater experience and aptitude in handling men and affairs. They were, however, continuously aware of opinion as it tended to emerge and crystallise in formal and informal discussion, and they were unable to act in contravention of a coherent expression of it. Intractable differences of opinion amongst members of their groups could render these leaders impotent. Thus, although their influence was marked, especially in view of their personal abilities, if it tended to develop into authority it began to lose its efficacy, because there was no established basis for the effective maintenance of authority. In discussing and attempting to decide and administer such typical issues as a bridewealth dispute, an offensive raid, the direction of new pioneering expansion, the development of irrigation works, or a

\footnote{Cf. pages 107-8.}
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ritual performance, the men of influence varied according to both the kind of issue and the groups of people involved in it. In any issue these men could not enforce decisions against the adamant opposition of their opponents, but could seek only a mutually acceptable compromise of some kind. But there was no centralisation of decision-making except in the most indirect fashion. Most deliberations and decisions were of a more or less local kind—at the parish level—or they involved a scattered selection of people, patrilineally related, amongst whom (except for the closest agnostic ties) geographical contiguity was an important feature. A cause célèbre might, in its long-drawn-out proceedings, come to involve men and particularly lineage counsellors from a wide geographical as well as patrilineal range; but these were most infrequent, and led to no permanent, large-scale centralisation of politico-jural authority or action.

Deliberations and action on a wide scale regularly occurred in only two specific connections:—concerning the major stages of the age-set cycle, and warfare. The importance to tribal integration of the age-set events has been indicated earlier in Chapter Three; and although they were, as they still are, important, nevertheless they did not produce continuous and deliberate centralisation of action, much less persisting authority roles. Ad hoc meetings of interested parties were quite adequate for that purpose. The ceremonial leader (olawuuru) acted as a focus of deliberation, and he had ritual prerogatives; but his influence in action was less than that of his leading coevals—age-group spokesmen and notables—for, unlike them, he attained his position by inheritance rather than by selection for ability.

Warfare and raiding were not carried out on a tribal basis. Raiding parties were frequently recruited and directed from a linked pair of adjacent parishes, or by two linked pairs, and were never in any sense the fighting force of the Arusha, centrally directed. In any case, the Arusha only began sustained offensive warfare in the eighteneighties. This development produced the first indigenous attempt at a larger scale administration—at least in retrospect that implication can scarcely be avoided. By that period the two sub-tribes of the Arusha had begun to emerge as significant units, based on geographical exclusiveness and a greater degree of cooperation in age-set rituals and in warfare.

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In that decade, as well as can be estimated by age-set chronology, there was selected in each sub-tribe a 'great-spokesman' (olawuuru kiwke). In each case he was one of the spokesmen of the age-set then in the formal grade of murrano. A second, but inferior, great-spokesman was also selected from that half of the sub-tribe to which the superior one did not belong. The earliest great-spokesmen to be so chosen were members of the Dalala age-set, which became the only set in the murrano grade when their immediate predecessors (Laimer set) were transferred to elderhood in about 1886. Dalala were promoted to formal senior murrano about a year later. 1

An earlier man, named Meoli, of the Nyangusi set (the patrons of Dalala) is said to have been an earlier great-spokesman, before the separation of the two sub-tribes; but, as far as can be ascertained, he was more probably an outstanding man of his era, and seems to have acquired his reputation as an elder. There is no tradition that the Laimer-set, chronologically between Nyangusi and Dalala, produced a great-spokesman.

The great-spokesmen were military leaders. Through them raids were mounted on a sub-tribal basis, probably for the first time in Arusha history. Old men in the mid-twentieth century, including a son of one of these leaders, were agreed that they had no civil authority, and that politico-jural functions were, as since then, reserved to elders' spokesmen and lineage counsellors in parish assembly and patrilineal moot respectively. The great-spokesmen led their coevals who, in the grade of senior murrano, were the experienced fighting men. The two men holding these positions at the time of the German conquest, each led his sub-tribe in pitched battle against the invaders advancing from Chagga country. After German victory in the two separately fought engagements, the great-spokesmen (who were assumed by the Germans to be chiefs) were seized and executed. In modern Arusha tradition, they have become linked with both the brief golden age of successful raiding and the armed opposition to the Europeans.

The subordinate great spokesmen in each sub-tribe were appointed as chiefs by the German administration, and were given the title of mami, the Chagga word for 'chief'. They were, of course, given non-military responsibilities, and, as the Arusha came to appreciate something of the new regime, they realised that a man of junior

1 Cf. Figure 5, p. 33.
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elder rather than senior murran status should hold the office. This accorded with German requirements, for mature men were needed. The Dalala age-set was transferred to elderhood in about 1905, and the appointed chiefs were able to continue in office to the mutual satisfaction of both conquerors and conquered. Since then it has become the general rule that a chief is in the age-grade of junior elder, and there has been indigenous pressure on an incumbent to retire when his set is promoted to senior elderhood.

The title of 'great spokesman' quickly died out of general use in favour of the alien term mungi. At some later time the Arusha word olkarsi began to be used, and by about 1940 the term mungi was used only by the older and more conservative people. Olkarsi means literally 'wealthy man' (karsi, 'wealthy'). Although it is true that chiefs have tended to become affluent because of their salaries, perquisites and doceurs, yet they have never been the only or even the most wealthy men in terms of livestock and wives and children, the traditional forms of wealth. The word has, however, come now to be applied almost exclusively to the chief.

The British took over the local administrative regime as established by the Germans. The chiefs were given formal magisterial powers thereafter, and, supported both deliberately and indirectly by the colonial government, the authority of the chiefs gradually increased. The history of local government has been primarily concerned with the status and powers of the chiefs, and with the particular men holding office. Contention in these matters has been common, and at times bitter to the point of civil strife. Conflict has arisen as Arusha showed resentment against the developing authority of the chief and his widening area of competence, which have increased at the expense of the autonomy of parish assemblies and lineage counsellors. In addition, Arusha are convinced that an incumbent of the chief's office has always favoured his own clan and his own parish in subordinate appointments, perquisites and influence. There is some reason to accept their opinion. Because of this, it has always been important to the Arusha not only what powers a chief has, but who precisely the chief is. On the other hand, chiefship has become an accepted institution, even if only a necessary evil.

A latter-day re-emphasis has arisen in respect of the traditional role of the great spokesman. This is most marked among the

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younger mature men—junior elders and senior murran—who claim that those earlier leaders were indeed chiefs, and that the Arusha have 'always' (sir) had chiefs. Their assertions would be convincing, so concerted and vocal have they become, were it not that neither the consensus of accounts of pre-European culture nor the older men support them. Men of the Dwati age-set, who formally became retired elders in 1948, had been junior murran when the German invasion occurred and they had participated in tribal raiding immediately before that, as well as in the battles against the invaders. Without significant disagreement, all those retired elders with whom the matter was discussed were certain that the powers of the great spokesmen were strictly limited to military affairs. This is what might be expected from a knowledge of Arusha social organisation and cultural heritage. But it accords with a modern ideology to make a claim to traditional chiefship, for younger men have seen the road to chauvinistic progress through chiefship. The absence of chiefs among the Masai (as compared with, for example, the Chagga) is associated with backwardness and inferiority. This has been a common presumption in post-war Tanganyika, but the rise of the nationalist political party and the development of self-government has seriously undermined it recently.

A new and formal local government constitution was introduced in 1948, when the whole Arusha country was amalgamated into a single chiefdom, and a partial separation of the executive from the judicial side of government was made. As a result of the increasingly obvious inability of the constitution to meet modern political and administrative needs, but also because of a vociferous and threatening opposition against the incumbent chief, a modified constitution was introduced in 1958-9. This was after my period of field-work, and no observation of its operation was made. In this Chapter and elsewhere in the book, therefore, the system of local government is described as it worked between 1948 and 1958, and the ethnographic present refers to that period. In many ways, particularly in judicial matters in the local government courts, but also in basic ideas concerning the chiefship and authority, there has been a

1 I.e. the Tanganyika African National Union.
2 In 1957 I sat with a committee of twelve Arusha chosen by the Tribal Council, and with the administrative officer-in-charge, to recommend changes in the constitution.
continuum from earlier decades to the post-1918 constitution. Fundamental attitudes and principles have persisted after 1958 as they began well before 1948. In any case, I am only concerned to describe and analyse a working system of social control, and my account is not invalidated merely because it no longer works in quite the same way.

The Chief
In 1948 the two independent chieftdoms, based on the sub-tribes, were combined under a single chief. The first new chief was selected by the newly formed Tribal Council, and approved and formally appointed by the Territorial Government. Tenure of office is indefinite; but clearly on both sides there is a notion that it is dependent on continued ability to undertake the responsibilities involved and to retain an ill-defined, general popularity. For the Government this primarily means an ability to maintain executive efficiency; but for the Arusha the personal popularity of the chief is equally important, and this is not altogether commensurate with his efficiency. Although not necessarily decisive, the Arusha have a notion that the chief ought to be in the age-grade of junior elder—the 'executive' grade in the indigenous system, in contrast with the more consultative and deliberative ('elder statesman') status of senior elders.

In 1952 the chief resigned: he had been chief of the old Boru sub-tribal chieftdom before 1948, and was a popular choice in that year for the new unified chieftship. The chieftship was, however, incurring a good deal of ill feeling resulting from rapidly intensifying land shortage, the dissatisfaction arising out of a rather inadequate control of land allocation in the peripheral regions, and general anti-Government attitudes amongst people who found it highly convenient to make the Government a scapegoat for its modern difficulties, especially the ineluctable necessity for radical social change.¹

The tribal Council selected the deputy chief for the vacant chieftship. This was immediately shown to be unpopular to the people at large: opposition was led by a group called the Arusha Citizens' Union, based on the small minority of educated and Christian men connected with the Lutheran Church. It was agreed, therefore, after

¹ See my 'Land Shortage, social change and social conflict in East Africa'; Gulliver 1961b, pp. 23-25.
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particular comment here because it lies on the periphery of our interests.

In the nineteen-fifties the Arusha had come to accept the chiefly ship as differing from its incumbent at any one time and in addition to expecting the chief to represent them, they look for more positive and immediate satisfactions from him. They expect him to listen to complaints and problems which it is thought have not been adequately met by other procedures—in the local courts, or in moot or parish assembly—to have them reviewed and, if injustice be shown, to reprimand whoever is responsible. They expect the chief to explain the procedures available to them under the modern governmental regime, and to find loopholes for them sometimes. They seek to obtain exemption from tax or court fee, or the agreement to overlook past defections. They seek his help and advice in their dealings with foreigners—e.g. Government officials, European and Asian employers, farmers and shopkeepers. As an ex-chief put it: 'People came to me when they had troubles, difficulties; not when all was well.' But the point is rather that they come when other procedures seem to have failed, or when they do not know what means to use at all. The offices of the local government are fairly central for the bulk of the population, and the chief is therefore easy to reach: generally a number of petitioners and complainants hover near his office seeking interviews.

Not a few people believe that the chief, perhaps with some material inducement, can be persuaded to upset a judicial decision, influence a case which is sub judice, or take some other extra-legal action on their behalf. This is, of course, an expression of Arusha evaluation of the potential power of the chief, which is thought to be, and rightly, superior to all other powers in the country, except when the community as a whole or some substantial part of it acts against him. Although he is ultimately subject to general public approval, yet he is also significantly backed by the Central Government. In addition, he is less subject to the day-to-day scrutiny by the people which influences and limits counsellors and spokesmen. Individual Arusha are inclined to think that whatever the general sanctions on the chief, yet in their particular case he is powerful enough to do as

1 By 1961, under the influence of national self-government and democratic representation, the Arusha, or a vocal majority, rejected the chieflyship in favour of an elected head of the Tribal Council.

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he and they wish. This is indeed often the case, but continuously compounded, such actions lead to a situation in which he lays himself open to popular resentment and official reprimand. On the other hand, the chief has a real responsibility to attend to the complaints which seem legitimate, and to advise people who are ignorant of their rights and obligations.

The chief obtains both moral authority and coercive powers by virtue of his approval and support of the Government. Because of this supra-authority gained from outside the tribal society, he may legitimately (from the viewpoint of the Government, that is) be able to enforce laws and rules, and to bring pressures to bear, which are nowise derived from indigenous sources. And because the people are not always sure of the precise limits of the chief's power, and of his authoritarian support by the Government, they are inclined to allow him to expand his power when doubt exists. To take a single example of great importance in the post-war era: in the matter of pioneering, land allocation and administration, and often in the settlement of the many disputes arising in the newly colonised peripheral region, the chief has been able to exercise new authority and to enforce regulations never existing before—often to the disadvantage of indigenous leaders and procedures. In this crucial matter the chief has increased his range of power tremendously; further, he has been able to intervene directly into one of the major fields of Arusha conflict and disputes, in a quasi-judicial but authoritarian way.

Before 1948, a chief was also the only magistrate in his area: he held regular court sessions for criminal and civil hearings. Such a court, and the procedures and judgements connected with it were originally a complete novelty too in Arusha country, and they have become closely associated with the chieflyship per se. In 1948 a number of separate courts were established, and an appeal court; but until 1954 the chief retained magisterial competence so that he could take appeals from the appeal court and hear the more serious cases in the first instance. Since then he has had no right to hear any case or to interfere in judicial matters; but quite clearly the earlier tradition lingers, so that both the people and the magistrates, as well as the chief, accept the possibility of his interference. Thus the chief remains in a position where he can significantly affect judicial processes

1 See p. 163ff. below.
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and decisions, even though he no longer personally appears in court. Litigants still seek his counsel and assistance, and as a minimum he advises on procedures to be followed by them. Often he considers a dispute in toto by a conclave in his office, at which plaintiff and defendant with two or three supporters appear before him. Although he can scarcely issue an enforceable judgement, nevertheless his opinion carries much weight—not only with the two parties, but with any other judicial assembly (court, moot, parish assembly) which may later consider the issue.

As part of his routine duties the chief must supervise the whole of the activities of the local government, such as tax collection, Treasury budgets and expenditure, schools, clinics, some roads, markets and trading centres, and other services provided. He should, but sometimes does not, frequently tour all the parts of the chiefdom and investigate local problems as they arise. He therefore usually has an excellent knowledge of affairs, even the details of particular disputes, conflicts and discussions which are in progress. More than any other single person he is, or can be, in touch with all that goes on, and can exert influence if he wishes. A magistrate or court clerk who is uncertain, for example, what judgement to give in a difficult case, or what the law is as required by the Government, or whether to refer a dispute back to the lineage counsellors, tends to seek the chief’s opinion and to act on it. The parish headman, whose people are slow to pay their taxes or to turn out to clear parish tracks and roads, or whose people become involved with the Forest Department, a foreign estate owner or trader, similarly seeks the chief’s advice and support. He may also be stirred to particular action by the chief’s uninvited intervention.

Age-group spokesmen or lineage counsellors may appeal to the chief for guidance because he has, or is thought to have, the authority to overcome delays and intractable situations. Even where any of these people see no reason for absolute acceptance of the chief’s advice or interference, yet they are often glad to try and put on him the responsibility of a difficult decision. He cannot easily refuse without loss of standing, for he is believed to be able to do these things if he wishes. Indeed he frequently welcomes the opportunities to intervene, for they serve to extend his influence and authority. Because indigenous judicial processes are not officially recognised by the Government, the chief has no formal power to intervene there; he cannot as of right do so continuously, and spokesmen and counsellors are not prepared to accept that he should. Nevertheless the modern alternative to indigenous processes is the official court system, the belied tool of the chief; because of this alternative, subject at least to his influence, he is able to exert influence over parish assemblies and moots.

The chief is assisted by a staff which he formally appoints—the deputy chief; clerks and messengers in his office; magistrates, clerks, assessors, and messengers of the local courts; technical supervisors and temporary employees. Although he is subject to the wishes of the District Commissioner, nevertheless this is not altogether understood by the people, including the appointees themselves. In any case he is in an excellent position to nominate men of his own choice and to press their case. The employees of the local government, therefore, feel themselves beholden to the chief for their continued employment and for promotion or salary increase. The weakness of the Tribal Council in supervisory matters, and the inability of indigenous leaders to intervene, affords the chief an autocratic position in some ways. It is an autocracy which is in part forced upon him by the Central Government’s desires for efficiency, but there is relatively little indigenously to prevent it. Even where some degree of public opinion is expressed, the chief can often afford to ignore it and may be compelled to do so. Whether he wishes or not, the chief is bound to intervene in matters touching upon vital Arusha interests. This has been especially significant in relation to the allocation of land at a time when it was becoming acutely scarce. But the Arusha have no tradition of autocracy, nor was there a conscious desire for it by the Central Government’s officers. The logic of the situation compelled it. Because of resentment about this by the people, the office of chief is an unstable one; and it remains without firm roots in the society as a whole.

Parish Headman

In each of the twenty-eight parishes there is a headman (jambo) who is selected by the parish assembly, subject to the approval of the chief and District Commissioner. The chief’s influence on the selection is generally slight, partly because he prefers not to challenge parish xenophobia, but also because headmen are commonly ineffective executives. Most headmen are well content to permit the
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chief to take responsibility in local government affairs in order that they themselves may be rid of it, especially in tax collection. Should conflict occur between a headman and the chief, the latter, in any official matter, can generally rely on his superior position and the support of the Government. In practice most headmen do little, or as little as possible, and allow the chief to intervene as he will. They explain to their people in the parish that they collect tax or impose some unpopular regulation only because the chief and the Government compel them to do so.

With only a few exceptions (where a man has been both able and willing to continue in office for a long period) headmen are members of the age-group in the formal grade of senior murrum. Arusha argue that this is properly so, for a headman is the local servant of the chief and the Government, just as senior murrum in general are expected to undertake tasks and obey orders from elders in their parish or lineage. Apart from his official duties, which in practice are slight, a headman plays a role in the parish which his age-mates do not and are not expected to do. The reason for this lies partly, of course, in his official paid position; but rather more important is the fact that he is consciously chosen by his community—largely by the elders—specifically as its representative. A headman is expected to be continuously available to people of the parish in order quickly to take action where other processes are cumbersome. He should make himself acquainted with any strangers who come to the parish, so that information about them is available if necessary and a curb may be put on any undesirable activities. More importantly he should act on behalf of parish members as difficulties arise. For example, a wife who is beaten by her husband, or men involved in a brawl, or a farmer whose field is invaded by neighbour’s cattle, can immediately appeal to the headman. They seek not so much to obtain his judgement on the issue in order to achieve a settlement of it, but rather it is desired that he shall intervene to stop the continuation of the alleged offence, pending a proper hearing in due course. People seek to make the facts known publicly, and perhaps to engage the headman as a valuable witness. Relations and neighbours may serve this purpose, and often do, but the headman is thought to be a valuable, neutral witness. To some extent, too, he serves as an outlet for enaged feelings.

The headman is expected to be able to act quickly in a way which spokesmen and counsellors cannot. The ill-treated wife, for instance, is able in due course to bring a suit against her husband or to leave home and go to her father’s or brother’s homestead; but immediately she requires protection, so that her husband shall not molest her further, and she wishes to show the headman her torn clothing or physical wounds, as well as the emotional upset, caused by her husband’s deed. If she appeals to a neighbouring spokesman, she is likely to be told to attend the next parish assembly meeting and present her complaint there, for a spokesman, qua spokesman, is rarely willing to act on his own. He does not conceive it as his duty, and prefers to act only in cooperation with fellow notables. A lineage counsellor is even less likely to take immediate action, for the arrangement of a concave or moot takes time because of the dispersed nature of lineages; and he, like a spokesman, is unwilling to act on his own in what might appear an authoritarian way.

Occasionally a headman, particularly one who has come to enjoy sustained popularity and support, may attempt to settle the conflict by hearing the arguments of the people concerned, and in effect giving a judgement, or at least recommending a form of settlement. He cannot enforce any decision, except insofar as he represents public opinion and the voice of reason. He may, however, be able to censure the drunken husband who assaults his wife, and the rebuke may be at least tacitly accepted and some immediate amends made to the wife. Where serious issues separate the married pair such that the physical violence is merely a symptom of these, the headman’s opinion is unlikely to be acceptable; indeed the headman rarely attempts to do more than protect the woman for the moment and, no more than any other man, does not seek to interfere in any affairs of people who are not his kin. Later, in an assembly, moot or court, the headman’s witness is important and his opinion may well carry weight.

The headman therefore performs a useful local function, and earns the continued support and respect of the parish insofar as he is successful. Many, but not all, headmen play an active part in the parish assembly and even in moots convened in his parish. Some fail signally to do this. Whether they do or not depends largely on the character and ability of the headman. Usually a senior murrum of demonstrable ability is selected for the office, because of the generally perceived value he provides; but sometimes, where the main
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emphasis is currently laid on his official, local government duties, a man is selected who is unlikely to be efficient in improving tax collection or the enforcement of Government regulations. It occurs also that a reaction sets in against a headman who is too successful, to the point where he seems to challenge the influence of his parish spokesman and other notables. An incumbent headman can be removed on appeal to the chief, and a successor selected by the parish assembly, although this is not common. Parish leaders prefer to avoid the entanglement with external authority, and choose to bring informal pressures against the over-powerful headman. They may censure him in the parish assembly, and actively deprecate his influence. As a murran, the headman is particularly susceptible to this kind of action by men of elders’ status, and seldom does a headman seriously attempt even to challenge them.

The headman may represent his community in extra-parish affairs. He may be called upon by the chief or a government official to report on his parish—the state of the roads, tax collection, people’s opinions on some matter—and be responsible for summoning people to a meeting requested by such a person in authority. Arusha often prefer to be accompanied by their headman when they go to seek the advice or assistance of the chief or an official, or when they go to court. Sometimes this may be required in order to establish the bona fides of a petitioner; or a man may be apprehensive, unable to speak Swahili properly, or merely inarticulate. A person seeking this kind of assistance from his headman, gives a small present of cash or beer, or he becomes indebted to the headman and his supporters on future occasions.

Like the role of chief, that of headman is not of indigenous origin, but was created by the colonial government for its own administrative purposes. It is nowadays ubiquitously accepted by the Arusha because of the useful way in which it augments the indigenous organisation of a parish. In 1957-8 there was considerable opposition to the administrative policy of reducing the twenty-eight headmanships to fourteen, each new headman having wider territorial and executive competence. In part, this opposition arose from the opinion that the amalgamation of headman’s areas was a threat to the autonomy and prestige of each separate parish, which no longer would have its own selected headman. No less importantly, the people appreciated the value of the work of their headman in the parish in what were essentially matters unrelated to the formal requirements of the local government. Although the policy of amalgamations was eventually accepted at an administrative level, such that two or three parishes were grouped under a ‘senior headman’ (okotaiatu); at the insistence of the people, an ‘assistant headman’ (okaretanu) was appointed for each separate parish, and he continues in the role of the old-style headman.

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The Tribal Council
This body (Englala o losho) was first established in 1948. It comprises one representative from each parish, two from each clan, and nine nominated members. The parish and clan representatives are not necessarily, or even usually, spokesmen or councillors respectively, because it is felt generally that men should be chosen who have some knowledge of Swahili and of the outside world. The indigenous leaders are, however, unwilling to compromise their local influence in the interests of inadequately understood tribal government. Because of this and because neither the procedures nor the responsibilities of the Council are appreciated, it has achieved little influence. The dominant position of the chief has inhibited it, and its members have little competence or experience in local government matters, such as the local tax rate, water development projects, or market regulation. It was hoped by the Government that the Council would be both a legislative and consultative body; insofar as it serves a useful governmental service, it is as a sounding-board (of unknown fidelity) for ideas and plans put to it. To some extent, in its more informal sessions, it provides a forum for the exchange of news and views at a tribal level; but for most Arusha it has little significance of any kind. It does not diminish the power of the chief, nor have influence in judicial affairs. Significantly enough, the opposition to the chief himself, and to certain aspects of the chiefship in general, and the deep disquiet over the critical shortage of land and certain features of maladministration in land affairs, have not been expressed through the Tribal Council, but instead largely by extra-constitutional methods and through the spokesmen, counsellors and headmen.

The Local Courts
In 1948 the two sub-tribal chiefs’ courts were replaced by a number
of separate official courts of first-instance (jibarago), dispersed through the country. Three salaried, Arusha magistrates have charge of two courts each, holding hearings on alternate days in each one, or as current needs require. Magistrates are appointed by the chief, but they must be confirmed and given their warrants by the Central Government, which, through the District Commissioner, is able to exercise the main influence. They must at least be able to read and write Swahili, and should be men of some integrity. Each magistrate is assisted by a court clerk who is responsible for the registering of charges and plaints, the issue of summons, the recording of cases, and other clerical tasks. Although the magistrate holds prime responsibility for his courts and the judgements there, he tends to regard his clerk as a junior partner rather than a subordinate. He commonly consults him, and is susceptible to his opinions. Both magistrates and clerks are necessarily drawn from the small educated class of Arusha, almost always Lutheran Christians. Being educated, they are therefore usually younger men with little indigenous seniority. Because of this they are not representative members of what is still a mainly pagan, non-literate and conservative people, and they are inclined to be dissociated from the standards and the values of the people with whose disputes they deal.

Each court is housed in its own permanent building, which contains both the large, open-sided court-room with a low platform at one end where the magistrate and clerk sit when in session, and also a small lock-up office where other business is transacted and records kept. Hours are usually from mid-morning to mid-afternoon, but the magistrate may adjourn the court to a temporary location in order, for example, to inspect disputed land and hear evidence there, or to take evidence from a sick person. A small fee (minimum two shillings) is payable when a suit is registered by the court clerk, who is also responsible for collecting fines. Although most of the proceedings of a court are held in the Arusha language, all records are in Swahili, and summaries of evidence by disputants and witnesses are read back to them in Swahili for their affirmation. Many technical terms (e.g. words for ‘court’, ‘fee’, ‘magistrate’, ‘plaintiff’, ‘appeal’, etc.) now in common usage by all Arusha in these courts, are taken directly from Swahili. Procedures are more formal than those the people follow in their indigenous practices.

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In a number of ways, therefore, the courts are differentiated from the judicial bodies of the Arusha themselves.

Magistrates (with their clerks) have a quite different judicial role from that of lineage counsellors and age-group spokesmen (with their associated notables). A magistrate has a position of delegated authority, deriving from a centralised government, whilst those indigenous leaders have only an acquired influence which is limited by the necessity of the continuous support and approval of their fellows in their lineages and parishes respectively. A magistrate exercises an authority which has no foundation in the society itself but is sanctioned entirely from the outside. Supervision of the courts’ work, including opportunities for appeal and regular inspections of court records, is directed wholly by the Central Government. The geographical areas of jurisdiction of a court are ill-defined, but they are unrelated to indigenous areas, and always contain several parishes or parts of them. In brief, these courts are an arm of the Central Government, but locally staffed.

An Arusha magistrate is by no means neglectful of the virtues of conciliation and the social advantages of dispute settlements which are mutually acceptable to both parties, as these are pursued by indigenous procedures: but a magistrate is obliged to give a specific judgement in every registered case which comes before him, and to give it as a third party who is not overtly aligned with either of the disputants. Cases cannot be unduly delayed once they are registered by plaintiffs, because the supervisory, Central Government officer will not permit it. It is not possible to hold a succession of hearings at which gradual attempts are made to reduce the differences between disputants, as commonly happens by indigenous procedures. A man before the court must be found innocent or guilty, or as having failed to meet his legitimate obligations or not. Considerations of the relations between disputants, and the wider context of the dispute are given less weight than they are by indigenous bodies, and some-

1 In contrasting authority and influence, here and elsewhere in this book, I do not mean to imply that authority does not have some basis in the consent of the persons over whom it is exercised. A consideration of this qualification would take me beyond the scope of this present work, for the situation here described was such that, at that time, the coercive power was so great that only vast and overwhelming dissatisfaction could raise the question of consent. To some extent this question has been raised in Tangan-

yila by demands for self-government; but an independent government still maintains essentially the same superimposed local courts in the Arusha chieftain.
times none at all. Free of partisanship and personal commitment, a magistrate is often able to reach a decision more easily and quickly, and to determine the extent of compensation payment, fine or other award. Unlike counsellors, spokesmen and notables, the magistrate has not the onus of justification outside his court in everyday life, nor the responsibility of enforcing his decision in practical terms. Deliberate flouting of his juridical orders can be punished in his own court, or a higher one, by contempt-of-court proceedings, and enforcement is, if necessary, left to the chief and to the police. Finally a magistrate has no direct responsibility for the future of relations between disputants, and between their groups of associates.

The law which a magistrate administers is not altogether the same as that with which parish assemblies and moots are concerned. It has long been the policy of the Tanganyika Government that local courts shall administer the local customary law of the region in which they are situated, where "it is not repugnant to natural justice or morality or is not, in principle, in conflict with the provisions of any law in force in the Territory". Customary law, where it is allowable, is augmented by ordinances, orders and decrees of the Central Government and by local government by-laws. Court law in Arusha is, therefore, in part different in both scope and content from 'customary law'. Parish assemblies and moots are seldom concerned with Government laws and regulations, but on the other hand they may (unlike a court) concern themselves with, for example, accusations of witchcraft or the powers of the ancestors. Even where similar matters are dealt with by both courts and indigenous bodies, the law may differ. For instance, theft is normally punishable by imprisonment, if guilt is proved to a magistrate; but invariably an agreed compensation payment is the result of a hearing in a parish assembly or moot, and the size of the compensation depends on the relations between property owner and thief and between their respective groups. In another kind of case, a magistrate (with official endorsement) imposed a fine, and ordered an economic compensation to be paid, by a cattle-owner to the Lutheran Mission in whose field his animals had strayed; but the Arusha themselves continue to put the onus of responsibility on the owner of a field to prevent livestock entering. Even where both kinds of judicial body administer the same law, as stated in objective terms—e.g. concerning

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1 Local Courts Ordinance, Tanganyika, 1951, section 15 (a).

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bride wealth or inheritance—a moot, by its essential nature, administers it with a much wider tolerance than a court, because the ultimate agreed settlement (as against an imposed settlement) necessarily requires some compromise in relation to the total social context. For example, a court is most likely to order that the full number of the appropriate animals be transferred to complete a legitimately claimed bridel wealth; a moot, on the other hand, may well reach a compromise, where perhaps a goat is handed over in lieu of the outstanding cow, or where a witness' promise is made that the wife's father shall have an interest in the bridel wealth which will be received at the marriage of his daughter's eldest daughter. In another instance, a pioneer may claim all the land he has cleared and brought into use, and his suit to evict an agnostic tenant-helper is allowable in court: a moot would doubtless acknowledge the landowner's right, but it would be most unlikely to agree to an eviction which transgresses general kinship obligations and lineage unity. The court might well express the moral sentiment that the tenant should be permitted to remain, but a moot places that sentiment before the ideal land rights of the pioneer-owner.

It is necessary, therefore, to identify a court not only in terms of its possession of authority, delegated by an outside government, but also in terms of both the procedural and substantive law, and the kinds of decisions it administers. Arusha have been slow to accept the courts' jurisdiction, where they have not been compelled to do so in cases of offences against Government laws. They do now accept it, with reservations, as an alternative to their own jural procedures, in certain situations where it seems to offer advantages to them. Particularly is it resorted to as an 'appeal' against disapproved decisions of indigenous bodies, or where such bodies' competence is weak. This feature is discussed in Chapter Nine.¹

An attempt has been made to bridge the gap between the local courts and the society in which they compulsorily operate, and also to curb the ignorance and peremptoriness of magistrates and clerks. Each court has a number of 'court elders' who are appointed from among the more notable men who live fairly near the court. They are usually junior elders, often spokesmen, and sometimes counsellors. Three or four of these men should attend court (and are paid a daily allowance) to advise the magistrate on points of Arusha law.

¹ Pages 204 ff. below.
Roles and Processes Resulting from Organised Government

Usually at least one or two are present—but not invariably—and they can be useful to a young magistrate, and also to litigants who are timid or inarticulate. In the opinion of most Arusha, with which I must concur, the ‘court elders’ have, on the whole, relatively little influence on final decisions. They do not always properly appreciate the official procedures of a court, nor the responsibilities a magistrate has to his superiors; and they have no training of any kind. They, unlike the magistrate and clerk, are seldom subject to criticism or censure by Government officials or the chief, and they are, not unnaturally, prone to avoid responsibility for the necessary clear-cut decisions in difficult cases.

Appeal from a local court is always possible to the Arusha Appeal Court, headed by another salaried magistrate, with his own clerk and ‘court elders’. He is generally the magistrate of greatest experience. He has rather wider powers of competence than the lower magistrate, and therefore also hears the more serious cases in the first instance. Fees are payable when an appeal is lodged, although there is discretion to waive them. Although an appeal court, with the record of the first hearing before it, cases are generally heard de novo. There is, however, little significant difference between the Appeal Court and the local court in procedures, kinds of decisions and general principles. Because the Appeal Court is held in the same building as the chief’s offices, some Arusha say that the chief’s influence here is greater; and in this they are likely to be right.

Further appeal is possible to the District Court, administered by the District Commissioner, who is assisted by ‘court elders’ to advise him on customary law. Appeals at this level are heard within a set of rules which arise from a mixture of the experience and sense of equity of the colonial administrator, and the ideal statements of Arusha custom provided by the court elders. Judgments at this level seldom establish precedents which are thereafter followed by Arusha magistrates in the lower courts, except insofar as an administrative order to those courts may be afterwards based on an appeal decision. Like the Central Government, and administrative officer himself, the District Court is conceived by Arusha as a powerful but alien force; the orders of all (they are virtually the same to Arusha) are not easily avoided in particular matters, but they seldom make much impression in similar matters between the people themselves.

In addition to their formal duties as a judge in open court, magis-

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strates conduct unofficial hearings on disputes in their offices. A plaintiff wishing to register a dispute for official hearing and judgement, explains his case to the court clerk and magistrate. It may be decided to register it forthwith, to collect the registration fee, and assign a time for the hearing. If a plaintiff is adamant he can scarcely be refused, for fear he may complain to the chief or to an administrative officer, who will reprimand the magistrate and order registration to be made. Where the defendant is unrelated to the plaintiff, and if there is a prima facie case, registration is virtually automatic. A trivial plaint may be rejected or referred to the parish headman or spokesman. Where the disputants are related, especially if they are close kin, the magistrate may urge that their case be taken up by their respective counsellors, or that it be referred back to them if they have already been involved. In doing this, or in attempting an act of reconciliation himself, the magistrate may request that the disputants, with one or two of their closer associates, meet in his office to discuss the issues. Here he acts as a neutral third party. He may, as a result of the meeting, suggest a compromise solution, urge acceptance of the previous decision of spokesman or counsellors, or propose a course of procedure through indigenous institutions which it is hoped will lead to a settlement. Thus a magistrate’s private hearing may lead to an acceptable solution of the case (or even agreement to drop it altogether), or it may lead to it being taken up by or reverting to appropriate indigenous procedures, with perhaps recommendations for its solution. That is to say, the magistrate’s private hearing may be an end in itself, or it may become a stage in the total process of reaching a settlement. Even if the dispute is thereafter officially registered and heard in court, the private hearing serves a useful purpose both in clarifying the issues and providing a pre-view of the magistrate’s judgement. The advantage of the private hearing lies in the fact that, as a third party, the magistrate can act both as a conciliator and as a means of emotional release for frustrated disputants. Men may welcome the opportunity to put their case to a third person who may be able to influence the final solution, even when it is acknowledged that eventually the decision of a moot will have to be accepted. Although the private hearing is entirely unofficial, it has become a recognised procedure of some value. The extent to which it is used depends a great deal on the personal inclinations of individual magistrates and their clerks.