CHAPTER TEN

PROCEDURES AND SETTLEMENTS

In the last chapter attention was concentrated on the variety of the socially defined places where a plaintiff may raise a dispute and seek to have it discussed; and on the kinds of consideration that determine a choice of locus which, in given circumstances, is thought to be most advantageous. In the course of that account, and elsewhere previously in this book, some mention was made both of the procedural rules which are observed in the process of dispute settlement, and of the factors which lead to a successful conclusion of it. These factors were deliberately under-emphasised in order to concentrate attention elsewhere first; but in the present chapter they become the focus of attention. Here I am concerned in an attempt to show how a satisfactory resolution of a dispute is achieved in this society where, indigenously, there are no judges or other specialist authorities capable of both making and enforcing decisions and settlements.

For the moment I am neglecting the modern local courts and the chief who are empowered with the coercive force of the Central Government, a foreign authority. As should be obvious, from my inclusion of the local government as a third salient sub-system of Arusha society in the context of social control, this temporary neglect does not imply that the courts and the chief can be ignored. They were, by the nineteen-fifties, deeply involved both as a means of dispute settlement and as influences on indigenous ideas and practices.

The Illegitimacy of Self-Help and Recourse to Violence

Unlike the case in a number of so-called, non-centralised societies, there is amongst the Arusha little legitimate opportunity for aggrieved individuals and their supporters to resort to physical violence as self-help. Although, as in any society, individuals may attempt to gain their end by violence or recourse to other unilateral action, this is genuinely disapproved by the Arusha. The person who attempts this by premeditation jeopardises his own case, and lays himself open to counter-claims by his victims. Arusha concede that a man may be so emotionally upset by an injury against him that, in the heat of the moment, he may take direct action against the offender rather than initiate a dispute through the media of discussion. Even this is scarcely approved; it may be understandable and excusable, but a person is inevitably censured by both his own and his victim's notables.

For example, to refer publicly to the non-Arusha origins (paternal or maternal) of a man is considered a gross insult; and younger men commonly attack an offender with fists and stick on such provocation. The proper action is to bring a suit against the offender in the parish assembly, and a calf can be claimed in compensation. Older men do this; but younger men who begin to fight on this account are usually censured by their own age-group spokesman (and probably those of their patrons' group also) later in the parish assembly, and the claim for compensation is most likely to be reduced to a goat, or even only some beer.

Adults often deal peremptorily with children, not of their own family, who offend them. The owner of a field may cuff the herd-boy who allows animals to stray on his land; or he, often she, will beat a child caught stealing ripe maize cobs from a standing crop. This may produce ill-will between the chastiser and the child's parents, but the latter are not likely to gain sympathy from anyone unless the act is viewed as an example of the perfidy of the chastiser, where some deeper dispute already exists. Were the child injured as a result of the beating, then his father might successfully claim compensation in the normal way.

These concern childish misdemeanours of little importance. More important offences are not so tolerantly regarded. The young man who presses his attentions on a girl betrothed to another man, must expect a rough handling from her brothers and her legitimate suitor; but his behaviour is only accepted as partial extenuation if he is injured and claims compensation. The correct procedure is to claim a goat or beer from the young man, and in cases of actual seduction this would be done. In one case that I recorded, a claim for compensation by the father of the seduced girl failed in a parish assembly, and the father was reproved by his age-mates because he had allowed, encouraged in fact, his sons to beat the seducer. The seducer was
rebuked also by his patron’s age-group. Afterwards, in conversation with men of the father’s age-group, I was told that although they warmly sympathised with him, and were themselves much concerned to guard their daughters, nevertheless it would be wrong to countenance self-help of this kind. ‘Everyone will fight. There will be no peace in the country. Those murrum, they like to fight; but we are elders—are we not big (senior)? We do not want fights; they are bad. We must watch those murrum and stop fighting. If there is a dispute we discuss it, but we do not fight.’

Case 17: One evening a junior elder, Johanes, the owner of a store, discovered a man stealing some bottles of beer, cigarettes and other items. This man had them under his cloth, and was leaving the store when the bottles clinked and gave him away. Johanes had been suffering a good deal of pilfering from his store, but had not before caught a culprit. In anger, he attacked the thief with a stick, inflicting bruises and cuts before the man ran off. The thief lived close to the store, and that night Johanes went and stood outside the former’s homestead and threatened further violence. He yelled to the thief to come out and fight, and in general raised a furor. A neighbouring senior elder, Olvuko, a distant agnate of the thief, came out from his homestead a short way off and remonstrated with Johanes. I gathered that Olvuko admitted his young agnate’s offence (my command of the Arusha language was then poor and was defeated in the noisy argument), but upbraided Johanes for his earlier resort to violence and for his present trouble-making. Johanes, now thoroughly enraged, insulted Olvuko—he ignored the admission of the theft and accused Olvuko of encouraging it. Eventually Johanes went home and quiet fell.

Four days later Olvuko stood up in the parish assembly, and said he wanted to raise the matter of Johanes’ behaviour. The night incident had become common knowledge by then and, without waiting for discussion, notables of the age-groups of both Olvuko and Johanes admonished Johanes for his insults to Olvuko. Olvuko stood up again and stated that, although he fully approved of the censure, his real intention was to inform the parish assembly of Johanes’ assault on Olvuko’s young agnate at the time when the theft was discovered, and his threats of violence later that same night. Johanes then described the theft, gave a detailed account of the items, and claimed a goat as compensation. This was not an unusual claim, and others like it have been accepted by parish assemblies to my knowledge.

Spokesmen of the thief’s age-group (senior murrum) ignored the claim, however, and concentrated on the assault and threats. They said—without specifying—that Johanes should pay compensation. A senior elder notable supported them, saying: ‘Who is Johanes? Is he the chief or the Government? Why does he beat another man? Is he a big man? Did he have permission? No! He is only an engulu (i.e. ‘not even a notable’), is the inference. He just did it and he asked no one. That is wrong.’

Johanes interrupted here: ‘What of my beer? My cigarettes? He is a thief, that man. Thieves must pay. Is that not our custom? Who says he is not a thief? Men are liars if they say.’ He turned to the previous speaker—‘Why do you not admit the theft and give me the goat? I want a goat.’ He continued in like manner for a little longer, until he was eventually pulled down by an age-mate.

The general discussion resumed, concentrating on the assault and neglecting the theft. Finally a senior murrum spokesman demanded a payment of beer to his age-group, as compensation for the assault. Senior elders accepted this, and one of their spokesmen directly addressed a spokesman of Johanes’ age-group. Johanes’ age-mates had kept quiet—a sure sign that they did not support him on this issue. The spokesman thus addressed muttered that he thought Johannes should give the beer to the senior murrum. There was a pause but no one of Johanes’ age-group attempted to reject the admission. Johannes himself sat still, murmuring inaudibly. The fine of beer was thus the decision of the parish assembly, and it was handed over two days later.

Johanes, by his silence, accepted the decision in the parish assembly; but he then tried to return the assembly’s attention to the theft. He was told that that was ‘another matter’, that he should pay his fine first, and then return to a later meeting of the parish assembly. The senior spokesman of the junior elders began calling to the plaintiff in the next case with some ostentation and fuss; and Johanes must have realised his unpopularity even with his own age-mates. In fact, he never did resume his claim again.

Although this is not an altogether clear-cut case, it shows the general disapproval of self-help. None of these kinds of cases are straightforward: they are complicated by the initial offence which inspired the self-help. In this case, Johanes clearly forfeited sympathy by his insults to the senior elder, Olvuko; and as a storekeeper he was not popular in the parish in any case. These considerations were not unimportant; nevertheless, they were not the crucial ones in the opinions of men in the parish with whom I discussed the whole affair. The parish assembly was not intending to condone theft, or that particular thief; neither was it consciously demonstrating a degree of general antipathy towards Johanes. It was the repugnance
for Johanes' resort to a self-help which created the mood of the assembly. Virtually the same collection of men, some months previously, had decided in favour of compensation for a butcher in another part of the parish, from whose shop some youths had stolen meat. In that instance the butcher had not attempted self-help, but had reported the theft to the parish headman and to a spokesman of his own age-group.

Arusha consider the use of violence to be tantamount to an admission of weakness in a man's argument. They also perceive it as an affront to what I may call the integrity and dignity of an individual. It is an Arusha tenet that men are susceptible to persuasion and to peaceful coercion through recognised procedures: but physical coercion against his person, or his property, or his family, is thought to be an inequitable and immoral act. Even when they themselves are not the victims, Arusha appear to be outraged by a man's resort to violence.

Informants often said that violence and self-help were more common in pre-European times: they are doubtless correct in this because the fear of the established government is a modern deterrent against such unlawful action. Nevertheless, Arusha also say that then, as now, self-help was disapproved and was never the norm. One may suggest, in addition, that it was an inefficient technique, it was hampered by the general dispersion of kinsfolk, and it was intolerable among a highly concentrated population such as probably always has existed in this small country since the tribe began. In any case, the idea of the arrogation of force by a self-claimed, injured party is directly contrary to the idea of discussion and of negotiation, in which, inter alia, the possible rights of the alleged offender can be considered.

It would be false to give an impression of the Arusha as a pacific people of passive and submissive nature. Any outsider who has experience of them would refute that characterisation. The ideal of murranchi contains the notion of young men trained, encouraged and prepared for violence—the spear and sword are a symbol of this—who are quick to take offence, and to act in order to prove and protect honour. This appears to be strongly imitative of the Masai warriorhood norms, but Arusha murranchi (in the actual rather than the formal role) tend to be divorced from responsibility in family, lineage and parish, and insulated from most dispute processes. Older men often express some fear of the arrogance and violence of murranchi, who are felt to be scarcely under control. They fear also the psychological pattern which persists into the elderhood. One elder put it to me: 'Those murranchi, they are bad. They always want to fight and use their sticks. We must stop them, but a father cannot tie (i.e. control) his sons. And we, elders, do not we remember when we were murranchi—strong and big? Ee, we sometimes want to be murranchi and fight those who hurt us, who speak bad words. Do you not remember a little while ago, I was angry with Sakure over my field? I wanted to fight then, but I did not because am I not an elder?' (He had been in dispute with Sakure over a field boundary and the use of irrigation water). It is, I suggest, in an attempt to control the inclination to violence of murranchi, which potentially runs on into elderhood, that murranchi themselves are largely denied responsibility in society, and that so much counter-emphasis is given to the peaceful solution of disputes through discussion.

As a social anthropologist, I tentatively make this analysis in the face of the apparent contradiction: between, on the one hand, the stress laid on peaceful discussion and on the paramount need for mutually acceptable agreement between disputants, and on the other, the tendency to violence which, in truth, quite often is not suppressed. Whether or not it is an adequate analysis, I wish to make clear that self-help is not only disapproved, but that it is not in Arusha society an effective technique for dealing with disputes. The proper, but also the efficient, method is to raise the dispute in an assembly or conclave, there to depend on one's associates to support one. This raises the further hypothesis that individual self-help is a negation of group cooperation in discussion. Were Arusha lineages and clanship categories more highly integrated, or the parish more unified, this might be a possible explanation; but, as I have shown, Arusha social groups are not notable for their degree of cohesion and cooperation, for these people set so great a premium on the individual autonomy of the family head.

In a rather different way, self-help is the norm. Each man is himself responsible for pursuing any matter in which he feels injured. Counsellors, spokesmen and others will help, but most usually they do not feel an obligation to watch an associate's interests—that is the concern of the individual himself. He must secure the assistance in various ways of those who are linked with him in order to press
Procedures of Dispute Settlement

his claims. As the dispute is dealt with, each disputant continues to look for the support of his own associates; he cannot act without them and there is no established third party to whom he and they can appeal for wider impartial intervention. Third parties are neutral, deliberately and carefully so usually. They do, of course, represent public opinion and socially approved norms, and in this sense may sometimes have a degree of influence. This is not clearly seen by Arusha, who are inclined to resent outside interference, although they are sometimes ready to make use of the moral force of public opinion which appears to support their own case.

Procedures in Assembly and Conclave

With the partial exception of modern, regularly-meeting parish assemblies, an Arusha plaintiff must seek to convene an assembly or conclave through the agency of a recognised man of influence. It would be considered insulting to a counsellor or a spokesman if a man attempted to ignore him, and convened a meeting with the other disputant and his associates. It is most improbable that the defendant would be amenable, and much less the defendant’s supporting notables. In any event, the plaintiff needs to secure the sympathy, advice and support of his own notables—those men of experience and ability who can do so much for his case. A plaintiff will have made a direct and personal approach to the defendant to attempt to obtain, for example, the return of an unpaid debt or the compensation for an injury; but if the defendant demurs, then the plaintiff is compelled to utilise the accepted channels of deliberation. He therefore must persuade either counsellor or spokesman to make arrangements for a meeting. The plaintiff himself, and his nearest associates, are active in informing others of the time and place of the meeting, and inviting and encouraging others to attend; but a defendant’s notables are only susceptible to the approaches of the plaintiff’s notables.

Now that parish assemblies all convene regularly (usually on a certain day each week, or twice a month) a plaintiff does not any longer need to seek to convene a meeting especially to consider his plaint. Nevertheless, spokesmen are generally unwilling to have a dispute raised in the parish assembly if they have not been informed beforehand and their general agreement obtained. A parish member, who attempts to raise an unannounced matter, is nearly always told

by his spokesman and by the junior elder spokesman to return and present his case at the next meeting when people are prepared for it. Spokesmen themselves say that they should be informed, and regard it as disastrous if they are not. 'How can we discuss a matter (in dispute) if we know nothing of it?' one spokesman said. They are not acting as arbitrators or judges who ideally come to hear a dispute with open minds, uninfluenced by prior knowledge; they act openly as partisans of their own age-mate and should therefore fully understand the case before engaging in dispute with the other party. The defendant’s spokesmen and age-mates desire to discuss the matter with the defendant, before they too engage with the other party. Indeed, it is considered to be unfair to a defendant if he does not have the opportunity to prepare his argument with his associates.

A parish assembly meets in some convenient open space roughly central for the population—a piece of waste ground, a grazing paddock, often nowadays the open space near a court or school. A moot assembles in the grazing paddock of the defendant—the paddock adjoins but is not part of the homestead. Conclaves, involving smaller numbers of men and with a notion of privacy, meet inside the homestead of the defendant—often in his own house. Both a moot and a conclave may be held at the homestead of the defendant’s counsellor, or that of another notable, if the defendant dislikes the idea of receiving his opponents at his own homestead.

At a moot, the two parties tend to sit on the grass in separate clusters, with an open space in between where the main speakers stand to express their views. The pattern of a parish assembly is less clear because each meeting generally considers more than one dispute, and the alignment of parties is therefore less straightforward. In general, men of one age-group sit together; the junior elders tend to cluster towards the centre, senior murrans sit beyond them, and senior elders sit near the outer edge. Minors such as junior murrans, women and children, who are involved in any of the matters to be discussed, sit slightly apart. The whole meeting may, however, be irregularly seated in large part—especially when it has been in session for a time—because men take the opportunity to greet and gossip with each other irrespective of age-group. Affines may discuss arrangements of mutual concern; agnates from different parts of the parish exchange news; men talk with the parish headman. There is a good deal of movement about the meeting. Not all those
Processes of Dispute Settlement

present are necessarily interested in every matter discussed, and men often withdraw to one side and go to sleep or engage in a piece of handicraft.

Both moot and parish assembly begin with a short appeal by a senior notable to Engai (the high-god) for his blessing on the people assembled. Then, in a parish assembly, the presiding junior elder spokesman calls on the first plaintiff to state his case; in a moot the plaintiff himself opens the proceedings. Occasionally a notable of the plaintiff speaks first, but this occurs only when the plaintiff himself feels unable to speak adequately—and few Arusha are so inhibited. Where an assembly is renewing its consideration of the dispute, then almost anyone may start the discussion.

Each main speaker in an assembly stands up when he speaks, and usually he comes to the middle, open space purposely left. Most men carry a stick or staff, with which they gesticulate and emphasize points by banging on the ground. Some excited speakers pace to and fro, and become something of a danger to their hearers’ feet and faces as they stamp and wave. Whilst he is standing, no one else should attempt to stand and speak, for the first man ‘holds the floor’, as we should put it, and only yields on his own admission. To stand and speak signifies that a man has a major contribution to make. Brief comments and questions are called out by seated listeners, and generally the speaker replies to them as he goes along; though he may pointedly ignore what he wishes to indicate are irrelevances. Plaintiff and disputant in particular should be permitted to speak for as long as they wish to put forward their argument and counter-argument. An over-loquacious man, or one who seems to wander from the point—or who perhaps succeeds in making no point—is liable to vocal criticism from the assembly, but chiefly from the notables who may begin to recommend the man to finish and sit down. This must be done with caution, for men may complain of having been unable to say what they wanted because of duress; and they tend to become less amenable to ultimate agreement. On the other hand, the speaker’s own notables do not want their party’s case spoiled by poor or inopportune speaking, whilst the other party’s notables may attempt to make capital by deriding a poor performance. Notables, part of whose responsibilities is eloquence, sometimes are impatient of less skilled efforts and attempt to take over from a poor speaker. Few Arusha are, in my experience, in-

articulate in meetings; but many ramble and repeat themselves and become involved in contradictions.

The plaintiff is usually followed immediately by the defendant; but the plaintiff or one of his notables may sometimes ask for a witness to speak first to support the argument. Witnesses normally follow the defendant. They are not necessarily formally called, nor in any particular order, and altercation may arise when two of them seek to gain attention at the same time. It is the responsibility of a disputant and his notables to ensure that witnesses do come forward. Facts are frequently in dispute, and an attempt is made to settle those before going on to discussion of the implications and to the effort to reach an agreement.

Case 10: Maru, the plaintiff, began the proceedings in a moot by a short speech in which he claimed repossess of a small plot (about three-quarters of an acre) which, he said, he had pledged to Namoia for two cattle a year ago. ‘Everyone knows my field,’ he concluded, ‘and everyone knows I have the two cattle here to give back to Namoia. There is no dispute. Take your cattle and give me the field.’

Namoia admitted that he had given two cattle, but declared that they were the purchase price of the field, which was not therefore recoverable by Maru. Before he could continue and whilst still standing, Maru’s counsellor called out from where he was seated: ‘Who knows about these cattle? I was not there (i.e. when the transaction occurred). I know nothing of this. Who says the field was sold absolutely? I do not know. Now then, say, those men who know.’

The counsellor was, of course, well aware of the situation. He wished to indicate, first, that the transaction was not a sale because he had not witnessed it (this is not necessarily correct); and, secondly, that there were witnesses who could affirm the agreement had been only a pledge. Maru’s brother and son-in-law were already primed to give evidence, and the counsellor wished to have them speak early.

Namoia was still standing, but his own counsellor called out that he knew the facts for he had been present at the original transaction, together with Namoia’s patrilateral cousin. Namoia’s counsellor now stood up and Namoia himself sat down, saying as he walked back to his place, that he had not finished speaking. His counsellor affirmed Namoia’s right to speak again, but said, ‘First let us tell the truth. I know this. We cannot discuss this if the truth is hidden.’ And he then described the transaction to show that it had been a sale. As he spoke, Maru’s brother grew restive, calling out, ‘No, that is not so;’ and similar remarks. Namoia’s counsellor ignored these and continued to speak, going beyond
his alleged factual evidence to review the relations between Maru and Namoia.

As the counsellor finished, he called on Namoia’s cousin to speak, but before that man could rise Maru’s brother strode to the central open space and gave his version of the transaction. He spoke in an angry tone, and accused Namoia of wanting to steal ‘our field, our father’s estate (engithaka e wawu)’. He pulled Maru’s son-in-law to his feet, and commanded him to speak. The son-in-law briefly supported the case for the pledge, saying he heard nothing of a sale, and sat down.

Maru and Namoia stood up simultaneously to speak, and Namoia’s counsellor called out, ‘Namoia speaks. He has not spoken yet. Maru has given his words; let him wait.’ Maru bent down to consult with his own counsellor, and then sat down again. Namoia walked to the centre of the assembly and began speaking again. He ignored the conflicting evidence, and continued his earlier counter-argument. It was only afterwards that his cousin’s evidence was given, when the counsellors of both Namoia and Maru had spoken.

When the two disputants have both spoken, discussion becomes general. Often their respective notables stand out to reinforce the arguments, and they call for others to speak who have evidence or relevant opinion. Anyone present may participate, although the notables and the principal disputants themselves take the chief part. Each party tends to be less tolerant of loquaciousness by secondary speakers, so that their contributions are generally briefer. As the proceedings continue, men of one party whisper together in consultation, and comments are exchanged between the two parties. The phase of suggestion and counter-suggestion may begin immediately after the disputants’ opening speeches, or there may first ensue a phase in which it is attempted to reach concensus on the facts. The two phases coalesce; but gradually the exchange of views rather than of facts comes to predominate. When it becomes clear that one side is making a definite proposal, the other side answers or makes its own proposal. A definite proposal must be answered by at least positive dissent—perhaps merely called out by a disputant or his notable without rising to his feet, or perhaps in a full speech. Silence by a party, following the other party’s suggestion, indicates approval and agreement; there is no need for explicit verbal assent. ‘Men discuss until they agree. They stop and that is the end; there is no more to say.’ This was one counsellor’s description of the process. Agreement of some kind, at least ideally, is always reached. It may be positive agreement such that both parties concur in a settlement of the dispute; or it may be negative agreement such that they ‘agree to disagree’, as we might put it.

Thus Case 18 ended in this fashion: Maru’s counsellor, in his third speech to the moot, ended by proposing that Namoia should cultivate the plot this year (the hoeing season was just beginning) and then should surrender the land and receive back his two cattle. ‘No!’ called out Namoia immediately. Maru’s counsellor stood up where he was and suggested, in a brief speech, that Maru should pay one ox now and the other cow when the land was surrendered in a few months time. A distant agnate of Namoia called out, ‘Let him give the two cattle now.’ But, before Maru’s party could take this as a proposal, Namoia himself denied his acceptance of his agnate’s suggestion.

There was a pause, and men moved restlessly as an impasse seemed to have been reached. Then Namoia’s counsellor stood up and suggested that Namoia pay Maru another cow in order to confirm the sale. (Part of Maru’s argument had been that two cattle were too low a price for a proper sale) Maru’s brother and one or two other of his supporters rejected this proposal with derisive shouts.

Namoia’s counsellor again stood up, and spoke at length of the need for peace and for an end to the dispute. ‘End it by giving us our field,’ called Maru’s brother. The counsellor pointed out the continued disagreement and the ill-effects it had on relations between the disputants. ‘Let us go to the chief,’ said Maru’s brother; ‘The court at—,’ said another supporter of Maru.

‘No, we do not want the Government in this,’ said Namoia’s counsellor, ‘Let us divide the field, part to Maru and part staying with Namoia.’

‘No, it is all our field,’ called Maru, and his brother agreed with him.

‘You can keep the cattle, and have part of the field,’ suggested Namoia’s counsellor.

There were mixed cries of ‘Yes’ and ‘No’ from Maru’s party, but Maru himself cut across these to reject the proposal. Namoia’s counsellor got up and walked away to the edge of the paddock; and his action precipitated a wholesale movement of the men in the moot. Namoia walked off with his cousin and some other men. Maru’s counsellor went into the homestead, and quickly the paddock emptied.

There was no attempt to sum up the discussions and to identify the points of agreement and disagreement. There had, in fact, been (as far as I understand it) concurrence that the original transaction had not been specified as either sale or pledge, and also on the kind
and quality of the two cattle previously transferred. There was common concensus that the dispute should be settled amicably because, as both counsellors pointed out, the disputants’ fathers, though not kin, had been age-mates, friends and neighbours, who had pioneered the land many years ago. Maru, however, persisted in claiming the whole piece of land, whilst Namoiyia had shifted to a claim of only part of it, but without any return of cattle. Neither was any mention made of the next step in the dispute. The references to the chief and the local court were not intended seriously, I think; at any event, a counsellors’ concave and then a second moot followed in the next month. At the second moot a settlement was reached by which Namoiyia returned rather less than half the plot and gave Maru an additional sheep.

In attempting to indicate the course of an assembly, I have wished to avoid giving an over formal account of procedure. The informality of an assembly is marked. After witnessing a large number of them, I have been impressed by the fact that almost any rule I might try to enunciate can be sometimes ignored for quite good reason. Nevertheless, such pragmatic flexibility does not invalidate an orderly attempt at reaching a settlement. There are general principles of proper behaviour underlying all these assemblies.

Firstly, the spacial segregation of disputants’ parties is, in intent, clear. In a moot this is never wholly neglected, although the two parties may mingle irregularly at the edges. In a parish assembly not all the age-mates of a disputant sit with him, but he is invariably surrounded by a cluster of his own closer associates who most actively support him.

Secondly, the right of each disputant to have the full opportunity to argue his case is always respected. He cannot be compelled to give way to another speaker—though he may agree by persuasion—and considerable tolerance is given even to the disputant who clearly tries the patience of both his opponent and his own party.

Thirdly, despite the broad toleration of interjected question and comment from seated members, a second speaker is not allowed to rise and begin talking whilst a previous speaker is still standing. Nor infrequently angry disputants, both standing, begin a heated exchange of opinion and accusation; but quickly this is stopped by their notables, with the right of speaking or giving way going to the first man who was standing.

Finally most spokesmen, counsellors, and other notables take their responsibilities seriously and, though avowedly on opposite sides in the dispute, they are generally ready to ally together against unruly behaviour, lengthy irrelevancies, and persistent contumacy. It is only by their willingness together to maintain orderly discussion that an assembly can carry on its work adequately. Disputants, with some of their supporters, may quarrel heatedly, but the prominent notables, though not forsaking their allegiance, are generally able to rise above this. I have seen assemblies break up in disorder, but only a few times. On the other hand, I have heard men blaming their counsellors or spokesmen for allowing this kind of debacle to occur, even when they themselves had been among the obstreperous participants.

The emphasis Arusha give to the practical value of discussion—to which reference was made earlier in this chapter—informs the whole proceedings of an assembly and the conduct of men engaged there. An argument by one party is not necessarily expected by Arusha to be wholly truthful and straightforward. They realistically expect attempt at deceit, and are wary of false diversions; and the discovery of these fetches little resentment. Even notables, no less than others, are prepared to lie and deceive on behalf of their own side, and a later admission of the truth is not thought to bring discredit. For example, it eventually was conceded, in the last case cited (No. 18), that no specific agreement had been made concerning the transaction over the plot of land and the two cattle; yet Namoiyia’s counsellor had declared at length, at the outset of the moot, that he himself had been witness to a sale. This was perhaps not quite the direct falsehood which it might appear, because the transaction, one between friendly neighbours, had foolishly been vague, and a matter of some genuine misunderstanding. Two cattle were more than the usual size of pledge for so small a piece of land, and Namoiyia may have expected to retain the plot indefinitely. There had been no time limit established. Nevertheless, a properly conducted sale should be concluded by a ritual transference of the soil from seller to buyer, involving the participation of the wives of each; and there was no evidence that it had been performed in this particular instance. Namoiyia and his counsellor could not therefore claim that a completed sale had been made. The counsellor later admitted this, in his negotiations to allow Namoiyia to retain a part of the land.
Processes of Dispute Settlement

Procedure in a conclave is much more flexible. The men sit close together on stools or on the ground, and do not rise to speak. Discussion is almost conversational, with the give and take and the interruptions which that implies. Occasionally, one or other of the men may speak at length, and in an oratorical tone; but Arusha associate oratory with a standing posture. It is incorrect to stand in a conclave, for intimate argument and reasoning are the aim of the meeting. There is usually the overt cordiality induced by drinking beer or honey-wine together, and the exchange of tobacco, in an atmosphere of privacy. The meeting may be opened by anyone—not necessarily the plaintiff, who at this stage may sometimes not be specifically identified. The general aim is, however, the same as in an assembly: i.e. the exchange of proposals which may produce an agreement. Witnesses as such seldom participate in a conclave; those who are not close associates of either disputant are not invited to the meeting, for they are ‘outsiders’. Their evidence can be accepted at second hand from one or more of those actually present. A disputant may, however, decline to accept such evidence, and this can cause for convening a moot to continue the deliberations.

Case 19: Olepuwa was claiming bridewealth from his son-in-law, Kidemi, who was procrastinating in his payments. At the conclave, Kidemi eventually agreed to give a cow, claiming that there would then remain but one ox to pay. Olepuwa disagreed, claiming that another cow was also outstanding. Kidemi then refused to pay anything until his liabilities were determined. Olepuwa’s counsellor recounted the instalments previously paid, together with the approximate dates and the witnesses. Kidemi admitted the counsellor’s tally, but again insisted that he had also transferred one other cow in addition. ‘Mebuto knows all about that. We talked of this cow yesterday.’ Mebuto was Kidemi’s neighbour and his agemate.

Olepuwa continued to deny this payment of a cow. Kidemi’s brother intervened to say that Mebuto had told him about it several years ago—the brother lived in a distant parish and did not claim first-hand witness. Olepuwa then admitted that Kidemi had given his (i.e. Olepuwa’s) married son a cow; he asserted that this was not part of the bridewealth proper, but only an affinal gift. Kidemi and others declared that there were other witnesses than Mebuto, and the implication was that they could be called if necessary to support Kidemi’s assertions.

As a listener, I had no means of knowing the truth of all this. The cow could have been either a gift or a bridewealth instalment. Whether the men mentioned were genuine witnesses, and whether they would confirm Kidemi’s claim, was impossible for me to say.

Olepuwa’s counsellor suggested to Olepuwa himself—but not in a private aside, therefore Kidemi and all the others heard—that Olepuwa should agree to the cow counting as a bridewealth instalment. Olepuwa was genuinely puzzled, for (as he told me afterwards) he had not treated the cow given to his son as a part of the bridewealth. He still expressed doubt about the matter, but his counsellor and another agematse were prepared to accept the indirect evidence. Eventually Olepuwa conceded, after obtaining a promise from Kidemi that bridewealth animals would not be given to anyone but himself in the future.

After the conclave, Olepuwa’s counsellor told me that had it been a moot he, at any rate, would have demanded to hear the witnesses. He would also have held up proceedings until Olepuwa’s son could attend and speak. He had not known of the transfer of the cow when the conclave began, but he was prepared to accept that it had been handed over, and that Kidemi had intended it as bridewealth and not as a gift or a loan. The counsellor was pleased with the successful outcome of the conclave, for it ended in considerable amity. He felt that, even had he been wrong about the real nature of the cow (and it was unlikely that he had been), it was preferable to restore good relations between Olepuwa and his son-in-law. But he added that he would not have dared to have acted as he did, in partly failing to support Olepuwa, had the meeting been a moot. A readiness to accept Kidemi’s assertions, against Olepuwa’s honest understanding of the situation, might have made him liable to public criticism in a moot for failure adequately to support his own party.

I can only give the gist of the counsellor’s words, for we were walking home in the rain and I was unable to record them properly. Clearly, however, the counsellor considered that he could act in a conclave more freely than he could in a moot. It may be added, that inside Olepuwa’s house, with beer to drink and a warm fire, in contrast to the wet and cold outside, the atmosphere was one which, to me, seemed conducive to amiability, readiness to make concession, and a desire for a concord. There was a good deal of casual chatter and joking, an air of conviviality, such as could not occur in a public assembly. Not all conclaves are so cordial as this, even between disputants who are not keenly opposed to one another; but most conclaves demonstrate a degree of intimacy which no moot ever gains.
Mutually Acceptable Settlements

Although it might have been preferable to describe the procedures of an assembly and conclave much earlier, it was thought necessary to leave it until this part of the present chapter, because a consideration of procedures must simultaneously involve an examination of the process of reaching a settlement. They are all parts of a single continuum, and inevitably a good deal has been said already on the latter aspect. It is now time to examine precisely what, in Arusha conceptions, a settlement is and how they attempt to maintain it. The question is: in the absence of centralised authority and roles of specialist coercion to which both disputants are subject, and failing self-help, how are disputes brought to a successful resolution? Further, how is the settlement enforced thereafter?

The Arusha answer to questions of this kind is typified by the reply of one counsellor: “We discuss and discuss the matter (in dispute) and then we agree. When we agree, that is the end. What else is there to do?” In other words, as we have seen in the foregoing cases, the process of establishing a settlement consists of discussion and negotiation, argument and counter-argument, offer and counter-offer, between the disputants’ parties in an endeavour to find an area of mutual agreement. Being mutually accepted, the question of enforcement does not arise, or at least only marginally. This is perhaps an ideal statement, but essentially it represents the aim of the Arusha. For them, the emphasis lies in the joint participation of the conflicting parties so that the settlement of their dispute emerges from within—that is, from them together. It is not an imposed decision, a judgement, on the disputants from outside, however rational and equitable that decision might be. As I have insisted previously, outsiders are not concerned, and they remain unconcerned. Except in a moot where the disputants belong to different moieties—and in practice then also—there are always some people who are not even indirectly involved in a dispute. They have no right to participate, let alone act as arbitrators; neither do they wish to do so. Arusha fail to see any positive value in the unbiased judge. He is not, in their opinion, to be trusted for he is not really neutral, but aligned to one party or the other; or if he is neutral, he has no real interest in either party.¹

To make a perhaps over-sharp antithesis, Arusha dispute settle-

¹ These are common criticisms of a chief.

ment is the result of a positive consent rather than passive acquiescence. This does not mean, of course, that a party to the settlement altogether and necessarily likes the agreement he makes and consents to; but Arusha point out that he does make it and he does recognise—otherwise he would refuse it—that it is, in the total circumstances, the most advantageous he can obtain, even though less than he might desire. Because it is an agreement, and not an imposition, he confidently believes that it will be carried out by the other party. Moreover, what will be carried out is better than the promise of something more but which is not fulfilled at all. For example, in a claim for compensation, a plaintiff eventually accepted two sheep instead of the heifer he had initially demanded. He said afterwards: “To talk of a heifer is all right, but I have the sheep, and peace also.”¹ That is, he not only gained some compensation but, in addition, peace, esili— or, one might say, concord, and an end of conflict. Here, this plaintiff was not thinking of the restoration of former good relations between himself and his opponent—they were distantly related patrilineally and of different parishes, and their association was slight. He was thinking of a reasonably satisfactory conclusion of an unpleasant situation.

It is possible, as Arusha are aware, that a disputant may agree to a solution of a dispute and admit to certain liabilities to be met by him (e.g. to pay compensation), but that afterwards he does nothing to put the settlement into effect. To avoid this, wherever possible the settlement is acted upon immediately—generally at the assembly itself, or at a conclave arranged then and held soon after. Almost all disputes are ended in this way in fact, because if immediate action is not possible, there will have to be a further assembly or conclave later to reiterate the agreement—and probably involving a renewal of the earlier pressures and negotiations—and to supervise its practical implementation.²

The Arusha are pragmatists, taking the view that tends to see each new dispute as in some ways unique, and therefore to be uniquely dealt with and settled. General patterns are conceivable: Arusha recognise them, and they acknowledge that they influence the process towards another settlement. Pragmatism is certainly limited and

¹ Cf. “a bird in the hand is worth two in the bush.”
² This matter and the general problem of enforcement of settlements is discussed in more detail later: see p. 275ff.
directed by accepted norms, most of which are held to be traditionally established by those who are now ancestors. But these norms are guides, and not absolute principles to be rigidly followed. They provide the initial basis for discussion, and they are manipulated during negotiations as seems most advantageous to each disputant. Flexibility is a major virtue; readiness to accept the apparently inevitable is another. This does not mean that Arusha are easily prepared to accept a dilution of their claimed ‘rights’ against another person, or that they do not argue hotly on their own behalf, railing against the alleged iniquities of that person. In addition, men are aware that too great a willingness, and especially too early a one, to make concession may well be taken as a sign of weakness, and further concessions may then be demanded. Just as the choice of the locus, in which a dispute is raised, is often shrewdly made, so the nature and the timing of proposals, terms and concessions may be carefully calculated. By miscalculation, ignorance and foolishness, and the pressure of emotions, a disputant and his associates may choose unwisely. He may not even appreciate the choices open to him. There is no need to picture Arusha as paragons of calculating willingness. Proposals and counterproposals are often cruelly made, for these people are not sophisticated lawyers.

The Arusha have become fairly well acquainted with the principles and processes of a court, and they will compare their own indigenous processes with those. They are often scornful of the magistrate’s judgement—even when they may admit its justice—for they say that a disputant is compelled to accede to the decision; and they criticise the Central Government which enforces such compulsion. They contrast the active role of discussion and agreement by indigenous means, with what they consider to be the passive role of submission to a magistrate. They concede that a disputant is often compelled to accept an indigenously produced agreement, no less than he is compelled to obey the court judgement; they nevertheless distinguish between the two, because the agreement is the result of negotiation, bargaining even, rather freely carried on, which permits him to seek the greatest advantage. Something of this has already been illustrated. It has been shown how a plaintiff may try to go to a fresh locus of discussion, rather than accept the only settlement he can obtain where he is, and in the hope that elsewhere he may be able to obtain better terms.

A useful analogy may be drawn in the contrast between the fixing of the price of a commodity by a government agency according to established and known rules (perhaps by objective reference to an economic index, etc.), and its determination by direct bargaining between a buyer and seller. The buyer would doubtless like a lower price than any he can obtain or expect to obtain, and he may be induced by various means to pay a higher price than he initially offers. Both buyer and seller usually have some general agreement as to the range of prices within which agreement will be struck. This is influenced both by similar sales in the past, and by what they can economically afford. The farmer and a buyer begin their approach and conduct their bargaining in one range for eggs, and in another for beef-cattle. Generally speaking, and with the bargain struck, there is no problem of enforcing it: The commodity is handed over and the price paid. Neither man is compelled by the other to accept a price offer, although the circumstances surrounding each man may give him more or less leeway, from a sale at almost any price, to refusal of anything much different from the initial offer.

An Arusha disputant is subject to a variety of influences in the course of seeking a settlement. It is not intended to suggest that he is really a free agent, and often he is closely limited in his action. Dispute settlement must be a social process in which a man is dependent on his associates, whose assistance he requires once a purely personal approach to the other disputant fails. If, for example, a man acknowledges a debt and agrees to repay it, or obtains permission to delay payment, then no dispute arises, for creditor and debtor have established a private agreement with which both are satisfied. If the debtor refuses payment when it is demanded—or even denies the debt—then the creditor’s recourse is to established social procedures involving dependence on his defined associates. Such dependence means not only assistance—which is what Arusha themselves always stress—but the liability of constraint. A man’s associates, though certainly supporting him, may come to urge, even insist, on a settlement which he would prefer to reject. Not only can he not afford to do without their support in the particular instance, but he is bound up with them in the permanent relationships involved in the groups and categories to which he and they both belong. Thus in a moot, a disputant’s closest associates are not only his advisors, advocates and supporters, but they are his near
agnates, members of his own lineage. He is dependent on them, therefore, for much more than assistance in a single dispute, and there are limits on the degree to which he can ignore them. Because of the importance of the lineage, he cannot reject his agnate's opinions to the point of threatening the more general efficacy of group unity, neither can he reject their right to urge a course of action which he dislikes. They can appeal to the value and to the norms of group unity; they may deny him, or at least threaten to deny, the full privileges of membership either directly or by understood implication. Much the same can be said for a disputant's close associates in a parish assembly. It is possible to say that a disputant is judged privately by his associates, who will thus determine their support of him before a wider group. However close they are to him, and however strongly they may support him, they, or some of them, are likely to take a more dispassionate view than he himself does.

Case 20: Thus in a dispute concerning a fight between a junior and a senior murran, in which the junior murran claimed compensation for injuries, the defendant and his age-group at first denied his responsibility, saying that the junior murran had caused the fight and had also injured the defendant. They might have succeeded in their rejection of the plaintiff's claim—certainly they hoped they might. But as the parish assembly discussion proceeded, it began to emerge from the evidence of witnesses and the remarks of both senior and junior elders, that the defendant's adamant stand was unlikely to be acceptable. He himself angrily refused to retract. After a little while, one of the defendant's spokesmen took the defendant and his age-mates aside for a private consultation. On their return to the main body of the parish assembly, the spokesman announced that he thought the defendant to have been in the wrong during the fight. The defendant grumbled disagreement, and the spokesman turned to him and repeated his declaration. 'Let us discuss the goat (the claimed compensation payment),' he announced to the assembly. This they did and the defendant's age-mates were successful in urging that only a payment of beer be made—that is, they continued to support him, and were able to obtain a reduced compensation payment.

A man cannot avoid the pressures of his age-group unless he moves to live in another parish, where he will be a stranger and forfeit the advantages of support he can legitimately ask of his age-mates in his own parish. In practice it is nowadays extremely difficult to move, for land is not easily available elsewhere and a man cannot well afford to quit his own land where he is. He might attempt to reject his age-mates' advice and opinion, but life would then be intolerable in his parish for they could refuse support in other ways, or at least give it weakly and tardily. A man would be almost an 'outlaw' in his own parish, not only in respect of support in future disputes but also in other kinds of assistance, in leisure activities, in participation in the parish affairs, etc. He would tend to become socially isolated.

A man may attempt to break away from part of his inner lineage, if he can retain the support of his own brothers. Lineage fission is the possible result. If his brothers refuse to support him against other agnates in the lineage, or if they are insufficient in number to establish a viable group, the disdissent is relatively powerless. He may threaten refusal of his support in the future, but the rest of his agnates can continue to support each other and can afford to ignore him. Again he is in danger of social isolation.

There is another factor involved in these situations. In the case briefly described above (No. 20) the defendant's age-mates were prepared to support their fellow in one respect—i.e. a reduction of compensation payment—if he would submit to their advice in the other respect—an admission of guilt. Negotiation is not limited only to the opposing party, but is involved also within one's own party. There is also both a moral and psychological aspect. That defendant's age-mates urged him to act as he should as an individual, and also as he should as a member of his age-group. Secondly, he was, by implication, promised approval and esteem for proper behaviour towards his age-mates, i.e. he could earn group approval. It must be noted that he did not earn group disapproval because of his fight with and injury of the plaintiff, a member of a different age-group—indeed, that was rather approved of; but he was in danger of disapproval because of his continued rejection of his age-mates' opinion. By ascertaining to their opinion, he shifted directly from a possible disapproval to a positive approval; that is, not merely from disapproval to a neutral midway position offering no reward but only escape from penalty.

Arusha pressures appear most usually to be framed both as appeals to right behaviour, and as promises of positive approval by a man's
Processes of Dispute Settlement

associates. In the case cited, the claim to compensation by the plaintiff could no longer practically be rejected, as the defendant’s age-mates perceived; but they were ready to praise him for his submission and his acknowledgement of guilt which allowed the dispute settlement to continue, and to be concluded successfully. In the following discussions over the size of compensation, several of his age-mates spoke of his right behaviour in his admission. Others afterwards assisted him in carrying the compensation beer to the plaintiff’s homestead, and in other general ways they demonstrated group loyalty to him.

More distantly linked supporters of a disputant—his patrons’ age-group in the parish, or distant agnates and members of patrilineal categories in moot and counsellors’ conclave—are more easily able to take a dispassionate attitude. By ‘dispassionate’ I do not mean a neutral or unbiased attitude, for they continue to be his supporters and continue therefore to seek his best interests. They are, however, often able to perceive those more clearly than he, or even his close associates, can. They are likely to be more influenced by accepted behavioural norms, and by the inchoate but not unimportant public opinion. Recognised notables—spokesmen, counsellors and others—have an accepted responsibility towards members of their groups to make objective assessments of possible action, and to urge their opinion on disputants. They are the skilled and experienced negotiators, and disputants are inclined to acknowledge this and therefore to accept their advice. Herein lies the diplomatic skill with which notables must work; they negotiate not only with the other disputant and his party, but also within their own party. They must not appear to give way too readily to the other party, as if deserting their own side; yet they need to investigate the reactions of the other party to possible proposals. Thus proposals made early in dispute discussions are usually tentative, often indirectly phrased, allowing room for withdrawal or manoeuvre. Many counsellors in particular are adroit in this procedure.

More distantly related supporters join with a disputant’s closer associates in their expression of approval in his accidence to their advice and constraint. Euphoria is often evident among all the participants in a dispute settlement if it is genuinely successful and in effect mutually acceptable. But among a disputant’s own supporters there is commonly a most marked sense of euphoria centred on the disputant himself. I was repeatedly impressed by this, as are the Arusha themselves.

On one occasion, following the successful conclusion of a moot, I went to the defendant’s homestead an hour or so later. There he was sitting with his inner lineage, his counsellor and a number of other supporters. They were drinking beer together, and showed every sign of amity and even cheerfulness.

‘Come and drink beer,’ someone called to my assistant and me. ‘We are truly one inner lineage (enggi) here,’ said the defendant’s cousin, and there were murmurs of agreement. ‘Ee-ee, and one maximal lineage (enggi) also,’ added the counsellor. As we sat drinking, there was a good deal of talk about the lineages, including reminiscences of pleasant times in the past. Later, conversation turned to arrangements for the men to attend a post-natal meat feast at the homestead of one of their number.

In the preceding moot, concerning a dispute in respect of a divorce, the defendant had lost the custody of a small child which he had been claiming, and he had eventually accepted a smaller bridewealth repayment than he had at first demanded. The dispute had been lengthy: the defendant had been adamant through the course of an earlier conclave. His counsellor, with a distant senior agnate and a neighbouring notable of the same sub-clan, had together been the prime movers in urging the defendant to drop his claim to the child. They obtained the agreement of the father-in-law to repay immediately the instalments of bridewealth previously transferred; but then differences arose concerning the number of animals and other wealth involved. After listening to the conflicting evidence about largely unwitnessed transactions over a period of some two years, other Arusha and I were unable to assess the truth of the matter. Eventually the defendant agreed to accept a repayment of one cow and three sheep, instead of the two cows, three sheep and some money which he had lengthily claimed. Objectively, therefore, the defendant had lost a good deal—especially the legal custody of the child.

Nevertheless, in his loss I discovered him not in bad humour, and showing no sign of resentment against his associates who had come to urge him to accept the final settlement. They made it abundantly clear to him that they were not deserting him, and that they much approved of his willingness to accept less than his demands and to end the dispute. His nearer agnates, members of his inner lineage, had not played much part in the final negotiations—apparently content to allow more distant associates to take the responsibility of urging the compromise. But they did not dissent, and they took pains to show the defendant their loyalty to him, and their approval of his final action. The defendant did genuinely accept the settlement; he appeared to hold no animus against his supporters,
Processes of Dispute Settlement

and became the centre of reiterated lineage unity. This conclusion was borne out in the following months, as the defendant continued amicably to cooperate with his agnates in the normal way, and to seek the advice of his counsellor.

Dispute Settlement Between 'Related' Persons

The nature of negotiations between the two disputants, each with his supporters, is appreciably affected by the nature of relations existing between them, both in general terms and in respect of the particular matter in dispute. Where the disputants have been in some mutually valuable relationship, then they both have an interest in maintaining or restoring it. Each is inclined to accept compromise for the sake of the relationship; but at the same time each has a measure of bargaining power to use against the other. This is immediately obvious in the case of directly contractual situations, such as a dispute between father-in-law and son-in-law over bride-price (Case 21 below), or between a stock-owner and herdsman (Case 22). But a similar situation arises when a dispute lies between members of the same nuclear group—an inner lineage or age-group. Here again, each disputant has something to offer to induce the other to modify his claims or to acquiesce in a settlement. Thus in the first instance the considerations are the maintenance of the marriage and the affinal tie, or of the herding arrangements; and in the second instance, the maintenance of group unity, reciprocal assistance and mutual activity. In both kinds of situation, reconciliation between the disputants is most important, so that a successful resolution of the affair should go beyond the dispute itself.

On the other hand, disputants may have had little or even no significant relationship between them prior to the affair which precipitates their dispute, and they seek no particular relationship thereafter. In that event the bargaining power of each against the other is both weaker and of a different order. The process of reaching a settlement is different in these kinds of situations, and this is demonstrated in the following case-histories.

Before beginning this examination, it is necessary to revert to the problem of the connection between pragmatic negotiation and the socially accepted norms of the Arusha. There has been, from time to time, a good deal of debate among anthropologists on the meaning of law in non-centralised, non-literate societies—including the

proposition that such societies have no law, but only custom. It is not intended to engage in that argument here, for it is one which is too concerned with semantics and not sufficiently with social realities. Therefore I shall content myself by asserting that among the Arusha there are, as in any society, commonly enunciated and accepted norms of behaviour. Arusha speak of onibukumo, pl. imbukumot. These norms are well known, and each is similarly enunciated everywhere in the country. Not all transgressions of norms precipitate disputes, of course; only those which seem to a person to injure his interests or welfare are, or at his volition can be, made subject to regulatory procedures. This is not a handbook of Arusha customary norms, or 'customary law', and therefore I can afford to ignore a precise definition of 'injure' or 'interests'; for in examining the process I shall confine myself to those transgressions which precipitated active disputes.

Whilst it would be incorrect to say that an agreed settlement of a dispute never wholly conforms with the relevant, socially accepted norms, it is true to say that such precise conformity is the exception. Before I began to understand the general principles of the Arusha dispute process—but often having already recorded some of the norms from informants—I was frequently puzzled by the gap between the details of an agreed settlement and the declared norms. The norms themselves were invariably quoted during dispute discussions, and this confused me further. I noted that the Arusha themselves were not worried by this gap; indeed they seldom commented on it, although it was sometimes large. After beginning to appreciate Arusha concentration on compromise, which would provide a mutually acceptable resolution of a dispute, I was almost inclined to describe them as cynical opportunists. If by that is meant 'unprincipled', it is a wrong description of the Arusha in these matters. Clearly they recognise norms, and they hold them in great respect; they are what make Arusha different from other peoples with whom they come into contact. In their modern opposition to outside influences, and their desire and attempt to preserve their distinct way of life, they have in fact come to emphasise these norms, rather than passively take them for granted. They are, then, guided by their principles of right behaviour, and they use them as the bases of claims to rights; but they accept an imperfect world in which an individual does not and should not expect to gain all the ideal
rights prescribed by the approved norms. But equally, men hope to be able to avoid some of the obligations implicit in those norms. It is perhaps significant that the Arusha have no word that can be translated as ‘justice’, nor does any such concept appear in their ideology. It is an irrelevant consideration. They are prepared to agree to something which is as near to their claims as possible in the particular context of the strengths and weaknesses of the two parties to the negotiations. Further, they believe that undue insistence on one’s ‘rights’ under these norms may well conflict with obtaining an effective settlement, and with establishing or maintaining otherwise satisfactory relations. Every dispute begins as the plaintiff contrasts, directly or by implication, the divergence between the defendant’s behaviour and the relevant norm. The defendant’s reply is usually to attempt to show that no real divergence exists; or, if it does, that some overriding and more general norm necessitates it. The process of negotiation continues from there.

The next case to be considered has been selected because it illustrates quite clearly the place of the socially accepted norms in a ‘contractual’ context. It relates to the transfer of bridewealth on which the norm, or set of norms, is well established. Inquiry among informants, as well as the statement of men in assembly and concave, showed no significant variations in this.

A proper and completed marriage—involving the establishment of certain marital rights and statuses, and including the filtration of children—is made by the transfer of a fixed bridewealth, engapati, composed of specified, named animals as follows (though not necessarily in this order):

Nondoye, female calf; enbalelu e neginhe, ewe; nakitong, ox; sidekani, ox; olker, male sheep; olkanu le menye, he-goat; olkanu le ngoto: he goat; sotwa, female calf; naker, ewe; olker le kwokwo, male sheep; eger e kaiji, fat old ewe. Occasionally, for ritual purposes, a wife’s father of Meru or Chagga patrilineal origin may demand another ege, eger e limani.

The total contains four cattle and seven small stock, with possibly an eighth sheep. The animals are distributed in the bride’s family by established rules. Transfers of other animals and material goods are obligatory during the betrothal period, and some of these are recoverable on divorce; but they are not part of the bridewealth proper. The latter is transferred by instalments, as requested by the wife’s father after the wedding, and often several years after. The norm of an Arusha bridewealth has been detailed in this way in order to show its explicit nature. The only proper modification said to be allowable is that nowadays an equivalent cash payment may be substituted for an animal, although such payment is described by the name of the animal it represents.

Case 21: Roikine had married the daughter of Temi about seven years previously, and she had borne him four children. There had been no major troubles in the marriage. Roikine had transferred to Temi in bridewealth one female calf (maccaye), an ox (gosedani) and six small stock. Temi’s son, the brother of Roikine’s wife, now had to meet demands for a cow as a bridewealth installment to his father-in-law. At the same time, both Temi and his son were fined for non-payment of tax for two years, which, together with the unpaid taxes, cost them the price of an ox. Temi therefore sent his son to inform Roikine that he must now give the animals outstanding in bridewealth. Roikine refused, saying he had no animals for the purpose, and that he had neither the money nor the condition. A few days later, when Temi was accompanying me on a tour of a recently pioneered area on the edge of his parish, he took the opportunity to visit Roikine’s homestead there. Roikine again said he could not at the moment afford to transfer the animals, though he admitted to us his unfilled liability for them. Temi insisted that he must have them, especially the two cattle, and he explained the reason for his request at this time. The visit ended by Temi declaring that he would not accept Roikine’s refusal. He told me, as we walked away, that he would go see a lineage counsellor of his sub-clan who lived in the same parish—the counsellor of his own maximal lineage lived about five miles away—and discuss what to do. This he did that same day. He also consulted with a paternal cousin, a member of his inner lineage, who lived nearby. The counsellor, Kisita, agreed to convene a concave. For six days nothing further occurred; and then at the regular meeting of the parish assembly, Kisita took the opportunity to speak with the younger brother of Roikine’s father and with Roikine himself, both of whom were attending the assembly. A concave was agreed to, and it was arranged to hold it in Roikine’s homestead three days later. The next day Temi sent a young son to inform his two brothers who lived elsewhere, inviting them to attend. One brother arrived the evening before the concave and slept the night at Temi’s homestead. The other brother came the next morning and, together with their cousin, they all went to Kisia’s homestead. Temi told me, during the concave, that they had discussed the dispute with Kisia before walking to Roikine’s homestead.
Processes of Dispute Settlement

The conclave began about two p.m. It was held under a tree near Roikine's house. Roikine was supported by Olaimer, his counsellor, by his father's brother, his own brother, and a neighbouring agnate of his maximal lineage. After some desultory conversation, Kisita began the discussion proper by speaking of Roikine's marriage, saying it was a good marriage without quarrels and trouble. Two of the children were playing nearby, and Kisita pointed to them and asked rhetorically whose children they were. 'Are they your children, Roikine?' he inquired. Roikine assented with a murmur.

'Truly, it is good you have children,' said Kisita, 'but you have not finished the bridewealth. They are not yours. No, you cannot have animals and children.' He referred to the animals that should be given to Temi as bridewealth.

'He has given bridewealth,' said Olaimer. 'Has he not given? Has there been trouble about bridewealth? No, Roikine is a good affine. Who can say he is not? Does he not live well with his wife? They are his children—is she not his wife?'

'Ec, but he has not finished the bridewealth,' Temi interrupted. 'What about wakitieng and sotua?' These were the two outstanding cattle.

'Well, let us discuss the bridewealth,' replied Kisita.

There followed a lengthy listing of the items already transferred, including the pre-marital items not specifically part of the bridewealth. Temi grew restive as this continued, and he whispered to his brother a number of times. Finally he interrupted the discussion and said, 'Yes, those cattle are all right. We agree, we agree. What about wakitieng and sotua? Those are the big (i.e. important) ones now.'

Olaimer protested, saying that it was important to be certain about the whole bridewealth transaction; and he resumed discussion of the transferred items. My assistant, who sat with me, whispered that he thought that Roikine and Olaimer were trying to establish that Roikine had hitherto been a good son-in-law. He was doubtless correct in his inference, because, when the listing of items was completed, Roikine began an account of the occasions when he had helped Temi in the ways a dutiful son-in-law should. He referred also to the time when his wife had been ill, describing how he had been to a diviner and had obtained Temi's permission to perform supplications to his (Roikine's) father and ancestors. His wife recovered as a result, he claimed.

Temi listened and murmured assent now and again. Once or twice Roikine's brother interjected that he could bear witness to some event recounted by Roikine.

All this took over an hour to complete. When Roikine stopped, Temi again asked about the two outstanding cattle. 'They have not been given. Give them now! I want them.' And he explained why he needed them, emphasising that he had a genuine need and that it was not merely an arbitrary demand which he was making. Temi's brother briefly endorsed this explanation.

'Now, where are these cattle?' asked Kisita. 'Have you cattle?'

Roikine admitted he had, but said he had only two cows, an ox and a calf. 'We want milk to give the children. Are they not to drink milk? What will the grandfather (i.e. Temi) say if the children are hungry? No milk?' He turned directly to Temi; 'Do you want the milk of the grandchildren? Are you not a grandfather?'

Temi's cousin suggested that Roikine had other cattle. This remark was not followed up because Roikine reverted to an explanation of his need of the cattle. Temi's elder brother interrupted to declare that Roikine could give the ox and one cow, and still have milk for his children. 'One cow stays, and it has a calf,' he said, 'A cow is like a herd for it will bear calves and soon there will be many. It is wrong to hold on to other cattle when there is bridewealth (to pay).'

Roikine replied quickly, 'No, it is impossible. I want those cattle.'

A pause followed this, then Kisita began to say that he had heard that Roikine was wanting to buy a piece of land adjacent to his own. This was apparently new information to everyone, for there were ejaculations of surprise.

'Who told you that?' Roikine exclaimed. 'What do you know? I have bought no field.' Olaimer, his lineage counsellor, echoed his words.

Kisita replied, 'Olorombot here (i.e. Roikine's neighbour) is my kinsman, is he not? He has come to talk with me about selling a field. Am I not the counsellor? Why should he not talk with me? He says you want to buy that field there.'—he pointed to an area of land just beyond where we were sitting—'He speaks of cattle and money.'

There was silence. A man who could consider buying a field must have wealth—cattle were indicated—and he ought to pay his bridewealth debts if he has wealth. I learned afterwards that Olaimer had not known of Roikine's intentions in this matter, and his ignorance appeared to explain his silence during the rest of the conclave, and was a factor in the deadlock which now quickly arose.

Roikine attempted to deny any intention of buying land, but an explosive snort and a noisy spit from Kisita expressed the doubts everyone felt. Roikine reverted to the need for milk for his children, and he spoke of using the ox for ploughing work.

Temi's elder brother, to whom Roikine was a virtual stranger, slapped his stick noisily on the ground, saying, 'Give us the cattle, give us the cattle. Be, to buy land! With our cattle! Are they not bridewealth, those cattle? Give us the cattle.'
Roikine murmured dissent. Temi's elder brother spoke again, addressing Temi himself. He recommended that Temi take his daughter back to his homestead and away from Roikine, until such time as Roikine would pay the outstanding instalments of bridewealth. Roikine should also, he said, pay an extra cow to recover his wife, and should apologise to Temi. (Such a payment is common practice when a wife deserts her husband because of maltreatment.)

"No," replied Temi, "No, that is wrong. Roikine is a good affine. You have heard, and my daughter, she has done nothing wrong. She is content here at Roikine's homestead. This is her homestead now; this is a good marriage. Have I not grandchildren, small murran?" Although technically perhaps able to break the marriage, or threaten to do so, he had no wish to so, even in the light of Roikine's obduracy. Temi was a rather gentle, elderly man and anything but a trouble-maker. His brother, I knew, thought Temi rather weak; the brother himself was an impulsive and rather irritable person.

The brother shouted, 'Take our daughter to the homestead! Take her, I say! We want the cattle.' He jumped up and walked away out of sight beyond the house.

Temi reiterated that he did not want the marriage broken, and did not intend to take his daughter away. There was a silence after this. Kisiita got up and walked away. Olaimer and Roikine's father's brother began a low conversation between themselves. My assistant whispered to me that the concave was finished in disagreement. Temi then got up and, with his other brothers and his cousin, walked off. They were joined by the first brother and by Kisiita, and all left the homestead together. It was about three thirty p.m.

To sum up the results of the concave: there had been ready agreement on the amounts of bridewealth already paid and still outstanding; and agreement on the good relations in the marriage and between father-in-law and son-in-law. There was disagreement as to whether Roikine could afford to hand over the two cattle—no mention was made of the sheep outstanding. The disclosure of Roikine's negotiations to buy land threw doubt on his declared inability to fulfil his bridewealth obligations. Thus both the norm in general and its particular applicability in this instance were clear. It was clear also that, although Temi had the right to take his daughter away because of Roikine's refusal to give the two cattle, he was not prepared to do so. Roikine appeared to depend on Temi's compliance and might have succeeded had it not been for Temi's irascible brother. Neither spokesman had altogether committed himself to a specific stand—Roikine's counsellor, because of his ignorance of the proposed land purchase.

Procedures and Settlements

No mention had been made of what, if any, steps Temi would take next. He probably had not then decided; but it may have been partly decided for him, because his elder brother on his way home that afternoon, called at the homestead of Ndaanya, the counsellor of their own maximal lineage, and recounted the course of the concave. Apparently he urged that a moot be convened, for next day a son of Ndaanya came to Temi's homestead to obtain further news. Three days later Temi and his cousin went to visit Ndaanya, and spent the night at the latter's homestead. On his return, I learned that Ndaanya would attempt to convene a moot. Some time later Roikine visited Temi, bringing a little beer as a present; but he did not offer to hand over any animals. I assumed that he was hoping to influence Temi to drop the whole matter; but if this was so, he failed. The moot convened eight days later. In the meantime, Temi had sold an ox to a neighbour, in order to pay the court fines and overdue taxes by the date decreed in the magistrater's judgment.

The moot was held at Roikine's homestead on a grassy flat some distance from the houses. Roikine and Temi were members of the same clan-division of Molelian clan, and thus the operative, dichotomous segments were the sub-clans. The main participants, seated in their separate groups, were as follows:—Temi and his two brothers, the neighbouring cousin with his brother and an autonomous nephew (i.e. the inner lineage complete); Ndaanya, the lineage counsellor; Kisiita, the counsellor of the linked maximal lineage; and a senior elder of the sub-clan who was also a parish spokesman. There were about ten other men with them all of whom, near neighbours, were members of the maximal lineage or the sub-clan. With Roikine were his father's brother, his own brother who lived nearby, another brother and a cousin (the inner lineage, but not entire); Olaimer, the lineage counsellor; a notable of the lineage and a notable of a linked lineage, both of whom lived in the same parish; and two other distant agnates. There were also eight other supporters, members of the sub-clan. In addition there were a number of onlookers who sat to one side, and whom I joined. Altogether over forty men were assembled there, all but a few of whom were positive participants. The moot began at about eleven a.m.

Casual gossiping died down, and some whispering ensued between Temi and his supporters. Temi then rose and went to stand in the space between the groups. He said that he came to collect his two cattle owing in bridewealth. He pointed out that Roikine had not attempted to deny the debt, and that it was a proper claim that he was making. He explained his need for the animals. It was a brief speech, quietly made.

Roikine went to the centre and began his counter-argument. He more or less repeated what he had said earlier in the concave. He spoke of the
Processes of Dispute Settlement

...good relations between himself and his wife, and his father-in-law. He enumerated the children; and he began recounting the bridewealth installments already paid. In the middle of this, Temi's elder brother called out, 'Yes, we know all this. You have given some cattle, but not all. Tell us you will give us two more cattle. That is it, two cattle.'

Roikine answered that it was not merely a question of two cattle, but also one of a marriage and affinal relations. 'He wants to break off affineship,' he said, pointing at Temi's brother, 'But Temi does not. He knows I am a good affine.' And he continued his account of the marriage and of his behaviour towards Temi. Temi's brother muttered, but was quieted by Ndaanya. Roikine's speech was a long one. He did not attempt to discuss the outstanding installments of bridewealth, but built up a picture of idyllic affinal relations.

Olaimer, Roikine's counsellor, followed him but merely affirmed Roikine's own account.

Temi's brother, who had attempted to interrupt Olaimer, then stood up, but he was pulled down by Temi, and Ndaanya rose and went to the centre.

Ndaanya began with some polite remarks about the parish (in which he was a stranger, of course) and gave formal greetings to Roikine's supporters. He stood with his back to his own supporters, leaned on his staff, and spoke quietly to the opposing party. He agreed that Roikine had been a good son-in-law, but said that Temi had been an even better father-in-law, for he had been tolerant in his bridewealth demands. He reiterated the norms of bridewealth, counting the animals on his fingers and bending over each finger to indicate an animal paid. He paused with two outstretched fingers and said slowly, 'Ootaaw, nukitieng. Those are what we want. They are not yet given. Why? Are they not part of the bridewealth? Yes, we all know they are. Roikine admits it, and we all know the custom. We do not want to quarrel; we want our cattle.' A supporter of Temi called out his approval, and there were general murmurs of assent on that side of the moot.

'I hear,' continued Ndaanya, 'that Roikine has cattle. He can give cattle to us then. I also hear that he wants to buy a field. Kisita says this is so.' Kisita called out that it was so. 'But who can buy fields when there is bridewealth?' Ndaanya went on. 'To buy a field is good if another is foolish enough to sell. But Temi wants his cattle first; that is right. You must agree, it is right. Who can say no? We Arusha have always given bridewealth; it is our custom from long ago and it has always been so. Did not the big men long ago do this? You, Roikine, you say you have been a good affine; but good affines give bridewealth. We want no other words, only cattle. You have cattle— I have heard that you have cattle although I have not seen them—so give us the cattle.'

Procedures and Settlements

Roikine's father's brother spoke next. He argued that a good father-in-law should be generous to a good son-in-law, and not make heavy demands for bridewealth when the son-in-law cannot afford to pay. Several of Temi's supporters called out, 'He can pay; he has a cattle,' and similar remarks. The notable of Roikine's lineage spoke next, virtually repeating the previous speaker's remarks.

Roikine came forward again and spoke. He now admitted to having some cattle, and he admitted to his hopes of buying the adjacent land. He explained that he had only a small piece of land at the moment, not enough for his family to live on. In fact he had approximately seven acres in this region, off the mountain slopes where rainfall is low and soils are poor. With the requirements of rotational cultivation of maize and beans, and the need for grazing for both his own and his brother's cattle, his submission of an inadequate amount of land was, I think, reasonably correct. The area he hoped to buy was some three acres in size; it adjoined Roikine's present land, and had never been cultivated by its present owner, who had a large holding.

Roikine's counsellor, Olaimer, stood up again. He spoke of Roikine's small holding of land, explaining how Roikine had been a late pioneer in the area and so had less land than most of his neighbours. He described Roikine as a hard worker, who nevertheless was scarcely able to feed his family and at the same time to produce enough crops to sell for cash. Temi's elder brother called out, 'We have only a little land these days. I have only a little, but I give bridewealth to my affine.' Olaimer replied that Temi's brother was fortunate enough to live on the mountain slopes where rain and soil are good and bananas are plentiful. He spoke at length of the difficulties of cultivation in this semi-arid region, and then explained Roikine's good fortune in having the opportunity to obtain more land by purchase. He appealed to Temi not to prevent his son-in-law buying the extra land—for the sake of Temi's daughter and his grandchildren. He obtained a murmured assent from Temi that he did not want to prevent this. Olaimer then said that he knew that Temi had already met his court fines and paid his taxes, and that therefore the need for bridewealth was less than it had been. He concluded by appealing to Temi to delay his demands.

Temi then spoke, explaining that his own son must take an animal to his father-in-law (that son had so far given no installments at all after three years of marriage). Roikine's father's brother then called out, 'Take a calf, then. There is a calf; take it.' This was applauded by some of Roikine's supporters.

Temi whispered with Ndaanya and his elder brother, and eventually called out that he agreed to the calf. 'That is nakiing,' announced Olaimer. There was no reply from Temi's side, and thus acceptance was indicated.
Processes of Dispute Settlement

After a pause, Ndaanya stood up and went to the centre of the moot. ‘Wakiteng is good, but now satwa—the female calf, we want that,’ he declared. He argued that there was no disagreement that this item of bridewealth was owing, and since Roikine had agreed to give the one animal, he must agree to give the other also.

Roikine stood up and said that he could not give a further instalment if he was to buy the piece of land. ‘One male calf is enough,’ he said, ‘that is all now. I have no more cattle.’ There were immediate calls of ‘No,’ ‘That is not good enough,’ and the like from Temi’s party. Roikine, still standing, again said he could give no more, and then went and sat down.

Temi’s brother stood up in the middle of his party and shouted that Roikine must give the second animal. ‘This case has gone on for a long time,’ he continued, ‘and we want it finished. We do not want all the trouble of another meeting to discuss this. I say, let us finish it. Are we not all here? Do we not agree about satwa? That it must be given by Roikine? Give it, I say; we have discussed too long. We want the calf, not words.’

Ndaanya did not rise, but called out, ‘That is right, that is right. Ee, our satwa! Give it!’

There was a pause after this, and then the counsellor, Olaimer, went to the centre again. He said that he had already pointed out that Temi no longer had the pressing need for the second animal from Roikine, because he had paid his taxes and court fines. ‘A good affine does not claim bridewealth for nothing. You, Temi, you have no need now. Your son can use the wakiteng to give to his affine as bridewealth; that is good. Why do you keep on saying that you want another ox? Why? Leave your son-in-law; let him buy the field and care for your grandchildren. Later, when you need an ox, Roikine will give it. He is a good son-in-law, and he will give then. We all know that he has no cattle now.’

Temi’s party consulted together in whispers, whilst the other side waited. After a few minutes Ndaanya rose and said that Temi wanted the satwa animal now. Although the taxes were paid, they had cost an ox from Temi’s herd, and this he wished to make good from Roikine. This was a legitimate claim, not a capricious one, Ndaanya asserted.

Roikine’s brother came forward to say that it was obvious that Roikine could not give the satwa animal immediately; but he too, like Temi’s brother, wished to see the case settled. Temi’s brother interrupted him by calling out, ‘Give us satwa and finish. You can finish the case.’ Roikine’s elder brother replied, ‘All right, perhaps my brother can give after a little while—after a few months. Take satwa when the short rains come.’ Silence followed this suggestion, thus indicating the agreement of Temi’s party. Olaimer then stood up and spoke of the satisfaction that the agreement brought; and he concluded by turning to Roikine, saying he must give Temi a sheep later on, at the time of the short rains. This caused whispered discussion among Temi’s party, but no audible dissent, whilst some of Roikine’s supporters called out their approval. Roikine himself remained silent.

The moot ended in this way after about three hours of discussion. The participants remained seated where they were, talking quietly, until Roikine’s wife brought out beer from her house. Temi sent a murrun to a neighbouring homestead where his own contribution of beer was waiting, and this too was brought to the moot. The men dispersed about half an hour later, having drunk all the beer.

The agreement was that Roikine should give Temi a male calf immediately, and this was to be the wakiteng animal. Arusha always describe wakiteng as a large, fat ox, and it is an important bridewealth animal because it establishes the full affinity status of the two parties. Thereafter they address each other as wakiteng, and the son-in-law is regarded as escaping the ascribed inferiority to his wife’s kin to which he has hitherto been subject. Nevertheless, despite its well-understood importance, Temi had agreed to accept a calf in lieu of a fine ox.

Secondly, it was agreed that a sheep should be given to Temi by Roikine within a fairly short, specified period—the short rains could be expected after about five months. This sheep was to be regarded as the equivalent of the outstanding satwa heifer. This had not been clear to me, and I had assumed that the promise of a sheep was only to fulfil the other outstanding obligation of a small animal, okami: but it was explained to me afterwards by Roikine’s supporters that in addition to the wakiteng ox, only the satwa heifer had been discussed in the moot, and therefore the promised sheep could only refer to the latter item. This, it turned out, was in fact the case. About six months later, at a concave on Temi’s incentive, Roikine handed over an ewe which was dubbed satwa, despite the great differences in value between a heifer and an ewe. Neither in the moot, nor at the time of the later transfer of the ewe, was mention made of the still-outstanding small animal. This should be a castrated male, preferably but not essentially a goat. Temi told me later that he had not forgotten it, saying that he would claim it when he had need for it.

In this fashion a mutually acceptable resolution of the dispute was made. To the participants in the moot, the acceptability of it was
obvious—a number of them chided me because, at the time, I tactfully hinted that it might not work. They were entirely justified in their expectations for the agreement was honoured fully, and the two animals handed over and publicly named before witnesses of both sides. If Temi afterwards attempted to claim that the calf had not really been the wakitieng ox, or the ewe not really the sorwa heifer, he would have had no valid justification. In addition, the friendliness of the affinal relationship had been retained and no threat to Roikine’s marriage was made. Roikine was, moreover, able to retain sufficient animals to go ahead with his land purchase negotiation; he completed this a few weeks after the moot.

This was the first major bridewealth dispute whose treatment I had been able to observe. The substitution of less valuable animals for the specified items impelled me to make particular inquiries on this matter. This led to the discovery that often, although not invariably, there was such substitution. More than that, the substitute was sometimes almost only a nominal item, where the difference in value was greater than it had been in that first case—e.g. perhaps only a few shillings, whereas a good cow had a market price to the Arusha of over two hundred shillings at that period; or perhaps some beer and a length of cloth. In some cases—a minority, I think—an item was agreed to be waived altogether by the father-in-law. Of course there were also instances where the father-in-law had taken his married daughter back to his homestead, until her husband would agree to transfer the claimed animals. Arusha admit that such a father-in-law acts within his rights over bridewealth, for the daughter is not a proper wife until all bridewealth is transferred. Nevertheless, most informants concurred with Temi’s position in the above case, where he was clearly unwilling to risk breaking up an otherwise satisfactory marriage and affinal link. Sons-in-law are aware of this, and are ready to take advantage of it.

On the other hand, a wife sometimes takes advantage of the dispute to desert her husband whom she no longer likes, and divorce follows. If the husband then wishes to retain the children of the marriage, he must pay the outstanding bridewealth quickly and his bargaining power is slight. A plaintiff-claimant does not then agree to an inferior substitute for the specified items.

Thus the negotiating strengths of the disputants vary according to the circumstances of each particular case. Sometimes the ‘letter of the law’ is rigidly applied; sometimes a greater or lesser deviation from it is agreed to. Such variations from the norm of bridewealth are not new in the ethnographic literature, and in themselves would scarcely have been worth comment, had not Arusha often emphasised the specific constitution of a ‘proper bridewealth’ containing explicitly described items. What is more important for present purposes is, that the possibility of departure from expressed and socially approved norms exists in reference to most, perhaps all norms, the transgression of which may precipitate a formal dispute. It can be said that in the process of discussions and negotiations towards a mutually acceptable resolution of a dispute, there is most usually a departure from the applicable norms in the end result.

For the Arusha, one might say that it is what a plaintiff can obtain (after, if necessary, long negotiations) which is important, rather than what he ought to obtain.

This can be illustrated for a quite different kind of dispute, but one in which still there is an element of bargaining power on either side.

Case 22: Ngatieu had a small farm on the mountain slopes. His mother’s brother’s son, Moruo, had a large farm in the peripheral lowlands. It was arranged that Moruo would pasture and look after some of Ngatieu’s animals (four cattle and three goats) for which Ngatieu himself had difficulty in finding adequate feeding on his own farm. This is a fairly common agreement; sometimes the accommodating herder agrees because of kinship obligations only, but often there is a negotiated contractual arrangement between the two men that the herder shall receive some kind of payment—a young animal, money, foodstuffs such as bananas which the herder cannot grow, etc.

Shortly after placing these animals with Moruo, Ngatieu went on a journey to Kitumbeini, a mountain area in Masailand where an agnate had settled. When he returned after about two months and visited Moruo, he discovered that one of his oxen was missing. At first Moruo declared that it had strayed and he had been unable to find it. Ngatieu was unwilling to accept this story and, on making inquiries in the neighbourhood, he learned that Moruo had slaughtered the ox and sold some of its meat. Confronted with this, Moruo admitted his offence, and offered Ngatieu an ox plus a sheep in compensation. Ngatieu refused this, and went to request his lineage counsellor to arrange a conclave. Meanwhile Moruo continued to look after the remaining animals belonging to Ngatieu.

The conclave was held at Moruo’s homestead, and Ngatieu was accom-
Processes of Dispute Settlement

panied there by his lineage counsellor, a brother and a notable agnate of his maximal lineage. Moruo was supported by a counsellor of his clan-division, a neighbouring parish spokesman of his maximal lineage, and a patrilineal cousin who lived a mile or so away. I was not present at the conclave, but I knew both Ngatieu and his counsellor quite well, and the result of the meeting was clear enough. It was a matter of local gossip at the time.

Moruo immediately admitted his guilt and again offered an ox plus a sheep. The approved norm in such a case of theft, where the stolen animal has been killed and eaten, is an equivalent animal plus three others as compensation (enyama). The compensation, say Arusha, may be reduced by one animal where the thief is a kinsman. Ngatieu demanded two cattle in compensation in conformity with this norm. In this case the eventual agreement was that Moruo gave Ngatieu an ox in return for the stolen beast, and paid a male calf in compensation plus a gift of three debe (12 gallons) of beer delivered to Ngatieu’s homestead.

Moruo, although admitting his offence, naturally wished to pay as small a compensation as possible. His negotiating strength lay in the fact that, despite his misuse of, Ngatieu still wished if possible for his animals to be maintained by Moruo on the latter’s lowland farm. Ngatieu had no-one else to whom he could turn for this service. None of his nearer agnates had a lowland farm where grazing was available, and he had previously quarrelled with his sister’s husband in whose cattle camp he had formerly kept his beasts. Since making the arrangement with Moruo, Ngatieu and his adult son had hoed up over half of his own grazing paddock in order to plant coffee and bananas, thus he could not contemplate taking his animals back to his own farm. Finally Ngatieu’s only other son (about ten years old) could no longer be depended on by his father as a regular herdsboy, because he was attending school full-time. Usually a man sends a son with any animals he puts out to another homestead, and one of the advantages of Ngatieu’s arrangement with Moruo was that there was no need for this. Moruo had a number of sons capable of all the herding work which was necessary.

On the other hand, the herding arrangement was advantageous also to Moruo. He obtained extra milk, the promise of a female calf in due course, and the expectation of occasional gifts of bananas from Ngatieu. He did not wish to defy Ngatieu’s claims to the point of causing him to remove his cattle altogether. In any case, Moruo had committed the theft; and at one point Ngatieu had angrily spoken of taking the matter to court where, since the evidence was ample, Moruo was likely to be made to pay the full compensation and to incur the possibility of imprisonment in addition.

In the agreed settlement, Ngatieu obtained a larger compensation than that initially offered. Before his own supporters and those of Moruo, the total animals of Ngatieu were paraded and inspected. It would be difficult in the future—at least so Ngatieu hoped—for Moruo to attempt chicanery again. Moruo escaped with a smaller compensation payment than Ngatieu initially claimed, and he avoided the threat of court proceedings. For both men the useful herding arrangement was retained. The conclave was ended by a performance of ritual reconciliation (olomomai) between the two men before their supporters, so that further offences or further accusations of offences by either would bring supernatural punishment.¹

A final example follows of a dispute in which the conflicting parties had negotiating-strength against one another, but of different kind than that involved in the previous two cases. In this instance the disputants were members of the same inner lineage: each attempted to use the cause of continued lineage unity and the value of the restoration of agnatic cooperation as a lever against the other.

Case 29: (Cf. the accompanying skeletal genealogy). About ten years before the dispute itself arose, Kadume’s mother had separated from his father, Makara; and taking Kadume and the other children with her, she went to live on her own brother’s farm in the adjacent parish. There in due course Kadume was initiated. Makara remained on his farm alone for he had no other wife, and he came to depend a good deal on his immediate neighbour and half-brother, Soina, and his wife. On Makara’s death his land was occupied by Soina.

Later Kadume married and shortly afterwards, as a mature adult and autonomous family head, he obtained the two cattle and three goats left

¹ See pp. 288-90 below.
Processes of Dispute Settlement

by his father. Although these cattle were stalled in the house of his wife
on the land of Lembutua, his mother's brother, an arrangement was made
for them to graze in the daytime in the paddock of Soine. Kadume
was accepted as a full member of the inner lineage founded by Mesuji.

About a year after the establishment of the grazing arrangement,
Kadume claimed possession of all of his father's land which Soine
had been cultivating for the fourth or fifth season. Soine refused to give up
the land and, after a quarrel, refused to allow Kadume to continue to graze
his animals in the paddock.

Kadume went to the lineage counsellor who convened a conclave of
the inner lineage. This ended in failure and further quarrelling. Soine
held to the arguments that Kadume's mother had deserted Makara and left
him fatherless and uncared for, except by Soine himself and his wife; that
Kadume had never cultivated his father's land; that Soine himself had only
a small farm, but that he had rightful claims in the estate of Mesuji (i.e.
the land Makara had inherited from Mesuji); and finally, that Kadume
already had a piece of land on his mother's brother's farm where he was
living. Soine found some support among his brothers, but Kadume
was supported by Olamal, the son of his father's full-brother. The suggestion
by the counsellor (a member of a different inner lineage), that Kadume
should resume grazing his animals in Soine's paddock but drop his claim
to arable land, was angrily rejected by Kadume.

Later, at Kadume's insistence, the counsellor convened an internal
moot which was held at Soine's homestead. In addition to all the members
of the inner lineage and the counsellor, there were present nine members
of the maximal lineage who lived nearby. Kadume, who was only a senior
murrum and not yet occupying the actual role of elder, had persuaded a
lineage notable, Kirevi, to speak for him. Kirevi began the moot, and he
argued that Kadume, the only adult son of Makara, had the right to inherit
his father's land now he was a big man (eskokh—implying maturity in
this context). The land was well known, and there was no question as to
its proper boundaries. He pointed out that Kadume had already
inherited Makara's animals, and by the same right he should now take the
land.

Soine, in reply, relied on the same arguments he had used in the earlier
conclave. He emphasised particularly his own shortage of land, and his
claimed rights in Makara's land which had previously been part of the
single estate of Mesuji, their father.

Kadume called out, 'Brothers do not inherit, it is sons who inherit.
That is the custom of long ago.' This fetched murmurs of asent from some
of the men present, but a retort of, 'Not always,' from Soine himself.

Kirevi stood up again, and reiterated what Kadume had just asserted.
He then introduced overtly the subject of the inner lineage. 'You say,' he
addressed Soine directly, 'that you inherit from your brother because of
your father's estate of long ago; but what of your father's engang, engang
of Mesuji? (engang referred not only to the former family of Mesuji,
containing both Soine and Makara, but to the lineage founded on Mesuji).
Is there not one engang? Do you want to break it and spoil it?' He described
the ideal behaviour of close agnates, and then went on; 'And what of
your father? Will he not be angry and send trouble to his sons who
quarrel and fight? Do you not beg Mesuji? He truly is the big one (principal
ancestor), and our big ones do not like quarrels among their children.
He stressed the notion of ancestral wrath, and a dead father's desire for
a strongly unified lineage among his sons. Kirevi continued, 'And Kadume,
is he not big (mature) now? Does he not take part in olmekoko (ancestral
rituals) with the others? He is one of the lineage.'

Kirevi's three principal points brought calls of approval from, among
others, the lineage counsellor.

Olamal, the autonomous patrilateral cousin of Kadume, spoke briefly.
He pointed out that he and Kadume were only small (junior) in the lineage,
whilst all the other members were their fathers. He said they did not
want to seek control of lineage affairs while their fathers remained alive.
Nevertheless he and Kadume were no longer children; they were both
married men, heads of their own families, and they had rights in the
lineage. He accused Soine of trying to drive Kadume out, and said that
Mesuji, the lineage founder, would certainly send them illness and trouble to
them all because of Soine's actions. But in addition, he and Kadume were
beginning to gain seniority and soon they would be the important mem-
ers of the lineage as their fathers became old men, dependent on their
juniors. 'Shall we help you then?' he asked Soine and the other fathers.
'If you do not help us now, why should we help you then? We are your
sons, you are our fathers. Help us! Give us our land!'

The counsellor commended Olamal for his speech, but said that he
must look after his fathers in their old age whatever they did now. Then,
turning to Soine, the counsellor said that perhaps it would be a good
thing to talk of giving Kadume his father's land. (I can only suggest here
something of the oblique way in which the counsellor phrased his pro-
sal. It seemed to me that whilst sympathising with Kadume, the
counsellor feared rousing the hostility of his peers, i.e. Soine and the
others). Lokure, the eldest of the third set of brothers, agreed aloud that
they should consider giving Kadume the land. Silence followed this
statement, signifying agreement on the point. In effect Soine had tacily
expressed his willingness to allow Kadume some of the land, for when he
spoke he entered immediately into a consideration of what part of the
land Kadume might occupy.

Kadume broke into Soine's speech to demand that he be given the
whole of his father's land; but Soine replied that Kadume had land already at his mother's brother's farm, as much almost as Soine's own farm. 'Does Lembutu (the mother's brother) want to drive you away? Are you and he not friends?' Kadume was silent, but, stirred by the insistence of Soine and the counsellor, he admitted that Lembutu did not want to evict him from that land. 'And have you not planted coffee there? Ee, and bananas and trees also?' Kadume agreed that he had. 'Then you have a farm,' announced Soine; 'And you do not need all of Makara's land. Take that portion beyond the bananas—that is yours.' He indicated the area referred to.

There was some discussion, and then the members of the moot all walked over onto the land in question nearby. The establishment of the new boundary took some time—about half an hour—and a good deal of bargaining, but it was successfully concluded in the end. The result was that, despite the enunciated norms of inheritance, Kadume obtained only about half of his father's land, and Soine retained the rest.

The moot resumed discussions back at Soine's homestead, as the counsellor reminded the members of the inner lineage that this was a settlement of the final inheritance of Makara's estate—a settlement which had not been made after his death, because his sons were then but children.

'Who is the inheritor of the calf?' He asked. Since Makara's full brother was also dead, this role fell to Saroya, the eldest half-brother of Makara's Ohawe. 'Saroya wants a calf from your father's herd,' the counsellor formally told Kadume. After further negotiation, Saroya agreed to accept a female goat in lieu, and a son of Soine was sent to fetch it from Kadume's homestead. It was later formally handed over to Saroya before the witnessing members of the moot.

The whole moot concluded by retiring to Soine's house to drink beer in communal cordiality. Agnates took the opportunity to congratulate both Soine and Kadume on the success of the agreement, and on the conclusion of the inheritance settlement.

**Dispute Settlement Between 'Unrelated' Persons**

Although in Arasha, all people are structurally related to all other people through the patrilineal descent system, nevertheless those who live more than a few miles apart, and whose patrilineal link is relatively remote, may be said for practical purposes to be 'unrelated'. In that case, when such people come into dispute their bargaining

---

Power against each other is unaffected by considerations of mutual advantage and reconciliation. There tends to be instead a greater emphasis on ideal norms of behaviour as justification of claims, and more effort is made to appeal both to public opinion and to the less deeply committed supporters of the other disputant. As will be demonstrated, the norms are still guides rather than dogmatic rules, and a good deal of toleration occurs. The settlement itself must still be one to which both disputants agree and therefore one which they will make practically effective.

Earlier in this chapter, in Case 20 at page 236, it was shown how a man's supporters may come to be convinced that he must in some respects give way to the claims of his opponent. There, in a parish assembly, a senior murray was persuaded to admit his guilt in a fight with a junior murray; he was induced to do this by his age-mates. The plaintiff—or more precisely one of his patrons' age-group acting for him—had directed his advocacy towards the defendant's age-group and also that of the senior elders. In this case, however, the process took place within a single parish and therefore the defendant and his supporters were acting in a situation of pre-existing relations between age-groups within the unity of the parish. Therefore the disputants were not altogether 'unrelated'. In the following case a dispute is examined where the social distance between the two parties was much greater.

**Case 24**: Ravaya, a senior murray, was betrothed to the daughter of Lavilal, a man of a different parish. Ravaya had already begun to make the usual series of pre-marital gifts, and Lavilal had his daughter's clitori-dechotomy and initiation completed. Kidene, a junior murray from a parish above five miles distant from Lavilal's homestead, became friendly with the girl, unbeknown to either Ravaya or Lavilal; and eventually, with her agreement, he abducted her to his married brother's homestead, where he seduced her. The brother, Baraa, came to the homestead of Lavilal next day, bringing a sheep and beer, and a request that Lavilal consent to the marriage of his daughter to Kidene. Lavilal refused to discuss the matter, and he refused also to accept the gifts in order not to commit himself. The girl returned home on her own later that day.

Lavilal thereafter consulted with Ravaya, who refused to surrender his betrothal rights and demanded that Lavilal should claim compensation from Kidene and Baraa. Lavilal then went to discuss the matter with his lineage counsellor who lived in another parish. Ravaya accompanied him to urge the case, for he believed (and correctly, as it turned out) that
Lavilal was likely to be slow to take action. The counsellor suggested a conclave between Lavilal and Baraa, and this was held some days later at Lavilal’s homestead. Baraa came accompanied by two paternal cousins, a counsellor of a lineage of his sub-clan, and a notable of his lineage. Lavilal was supported by his counsellor, a brother, a cousin and a lineage notable. Baraa attended with his father’s brother. Baraa continued to press the idea of marriage between his brother and Lavilal’s daughter; but Baraya, followed by Lavilal, would not consider the proposal, and the conclave broke up after only a brief meeting.

Some days after the conclave the girl again spent a night with Kidene at Baraa’s homestead, and Baraa sent a message again the following day asking Lavilal to agree to the proposed marriage. Lavilal refused; and, urged on by Baraya, now asked his counsellor to convene a moot. But this was extremely difficult to arrange. Baraa, and Kidene also, refused to agree and claimed that no wrong had been done which Lavilal’s agreement to marriage could not put right. Baraa’s lineage counsellor lived over ten miles away and made no effort to join with Lavilal’s counsellor in arranging a moot: he did not positively refuse, but merely took no apparent action. The dispute remained in abeyance for about two weeks, when the girl again went to Baraa’s homestead—this time for two consecutive nights. Then she disappeared, and both Kidene and Baraa refused to say where she was. (She hid at the homestead of Baraa’s mother’s brother for two days, before returning home).

Incensed by this fresh offence (as it seemed to him), Baraya raised the matter in the parish assembly of his own parish a day or two later. At first the junior elder spokesmen refused to listen to him: they said that Lavilal and Baraa and both their counsellors lived elsewhere, and it was no concern of theirs. Lavilal replied that he wished to confront members of the parish who were ‘agnates of Kidene and Baraa—two patrilateral cousins—and also the counsellor of a maximal lineage of the same sub-clan as those men. The counsellor and one cousin were present, and they denied knowledge of the matter at first. Baraya insisted that they should see that a moot was arranged and he gained the general assent of several spokesmen of the parish who, though not connected with either party directly, were prepared to express public opinion in favour of a moot. Shortly after that, Lavilal’s counsellor raised the matter publicly at a bloodwealth assembly where large numbers of Arusha were collected. He too gained general approval in favour of a moot. A number of Baraa’s agnates were there and, though not speaking, signified by their silence that they accepted the proposal. There were further delays, but eventually a moot was arranged, and largely as a result of these tactics. Thus Baraya and Lavilal had accomplished their first task—a task which would have been fairly simple had the disputants been more nearly related by descent or parish.

The moot was a complicated one. Baraya and Lavilal refused to meet at the homestead of Baraa, the defendant and it was agreed to meet on the site of his parish assembly. Lavilal, the formal plaintiff, and Baraa, the defendant (representing his junior murran brother) were supported by their counsellors, agnates and other notables. Baraya, the real plaintiff and effective force behind the plaint, also attended with some of his agnates and the counsellor of a lineage linked to his own in the same sub-clan. Lavilal and Baraa were of different moieties; Baraya was of the same moiety as Baraa, but of course clearly he was not supporting Baraa, as ideally he should by structural definition. It was a large moot, partly because of the three parties who were involved, and partly because the dispute had become a matter of much gossip and therefore numbers of men attended to hear it argued. The supporters of Baraya and of Lavilal sat together, with the conventional open space separating them from Baraa’s party.

Lavilal opened the moot by stating his claim against Baraa—compensation of an ewe and beer, and permission to use ritual means to prevent Baraa acting as the accomplice of his younger brother in the future.

Baraya followed immediately. First he described the whole history of the affair (Lavilal had not attempted this), and then he stated his claim against Kidene—a female calf and two sheep in compensation, and permission to use ritual means to prevent Kidenee consorting with the girl again. Baraya also asked Lavilal to affirm that his daughter would still marry him. Baraya’s speech was long, historic and clearly aimed at Baraa’s supporters rather than Baraa himself. Baraya appealed to several of them individually by name, but never addressed Baraa himself personally.

Baraa then replied and denied any offence. He ignored Baraya, and urged Lavilal to agree that the girl should marry Kidenee: he offered to pay the virginity fee to Lavilal and to bring pre-marital gifts. Thereafter in succession three of Baraya’s supporters, in similar speeches, censured Baraa and Kidenee, and appealed to the latter’s counsellor and others to admit Baraya’s claims. Baraa’s counsellor began to defend Baraa and his brother, but quickly became involved in a running debate with Baraya and his supporters—the counsellor standing and being subjected to a succession of questions and comments from the men of the party of Baraya and Lavilal sitting opposite.

Has not Kidenee done wrong? Has

1 He asked permission to use the ewan, ‘cooking-pot’ oath; cf. p. 290ff.
2 If Baraya was to marry the girl he would be responsible for paying the fee for the breach of the girl’s virginity (anglisha o ngilata o rejia), whether or not he himself had deflowered her. His claim for compensation from Kidenee was equal to this fee. This is a conventional claim in such circumstances.
Processes of Dispute Settlement

not Baraa done wrong? 'Why did the counsellor not help to convene a moot earlier? 'Are not Rayanya's words right?' and so on. The counsellor parried as best he could, and eventually sat down again, leaving his speech unfinished. A patrilateral cousin of Rayanya, a senior elder spokesman of his own parish, stood up next. He repeated the claims of Rayanya and Lavilai; he spoke of the opinion expressed in Rayanya's parish assembly and at the bloodwealth assembly. He ended by challenging Baraa's supporters to deny that Kidemy and Baraa had done wrong, that a girl could be 'stolen' from her father, and that the claim for permission to use ritual coercion was a good one.

When this speaker sat down, amid commendatory remarks from his own side, the members of Baraa's party began a low discussion among themselves. Baraa's counsellor then stood up and suggested that the ritual oath be performed a few days later. Tactily he had thus admitted the claims of Rayanya and Lavilai. Rayanya called out to inquire about the compensation claims, and the counsellor suggested that these be discussed at the subsequent meeting. Silence followed this proposal, indicating assent. The time of the next meeting was arranged and then the moot broke up.

The disputants met again six days later. This time it was a conclave attended by Rayanya, two of his agnates and his lineage counsellor; by Lavilai and one of his brothers; and by Kidemy and Baraa with their counsellor, a related counsellor and another agnate. A day or two before the conclave met, Baraa had visited Lavilai, taking a gift of beer. He had pleaded with Lavilai to drop his claim for compensation and Lavilai had agreed. Therefore at the conclave only Rayanya's claim was outstanding. First the ritual oath was performed by Rayanya against Kidemy and Baraa together, before the assembled witnesses. It bound them not to have any further contact with Lavilai's daughter, 'Not to speak to her or even to see her.' I was told that Kidemy or Baraa and the girl must thereafter strictly avoid each other, turning off a path if they happen to be walking towards each other. When the ritual was completed, Baraa went to bring a large ewe and a half-grown male goat which were already tethered to one side. These he offered to Rayanya as compensation for his and Kidemy's offence. He said also that Kidemy would take beer the next day to the homesteads of both Rayanya and Lavilai.

Here I must report my own failure adequately to record the proceedings. I had not witnessed this form of ritual oath before, and had become involved in talk with my assistant and one of the participants concerning it, so that I missed much of the rest of the brief conclave. Therefore I am not certain how far Rayanya objected to the payment of the two animals instead of the legitimate compensation he had originally claimed—i.e. a female calf and two sheep. It appeared, however, that arrangements had been made before the conclave between Baraa and Lavilai. Lavilai would accept a virginity fee of two animals from Rayanya; so that Rayanya was content to receive only those in compensation from Baraa, because he would merely pass them on to Lavilai. My assistant was of the opinion that Lavilai had accepted this compromise in order to end the whole dispute quickly and without additional trouble. Rayanya was satisfied by his performance of the ritual oath, his freedom from further commitment in the matter of the virginity fee, and his hope that now his marriage would go forward.

This last case illustrates the difficulty which arises, when the disputants are 'unrelated', in bringing a dispute to discussion. My conclusion, supported by the opinions of uninvolved Arusha, is that Baraa had hoped first to force the hand of the girl's father to accept a fait accompli. Failing in this, he had hoped to avoid the consequences of his actions—in which he was supported by his counsellor—by refusing to convene a moot. The plaintiffs met these tactics by a refusal to be thwarted: by appeals to public opinion to support the demand for a moot, and by challenging the defendant's supporters (especially his lineage counsellor) to deny in public that an offence had been committed. This strategy was successful, at the expense of the girl's father who agreed to take smaller payments than he had a right to by the accepted norms. Had the father refused to take a smaller virginity fee, and had he insisted on a compensation payment from Baraa, the dispute might not have been settled so readily. There was, of course, never any real question that Kidemy and Baraa had committed injuries against both the girl's father and her betrothed suitor, and ultimately this was where the plaintiff's strength lay in the dispute.

Most serious disputes occur between people who are directly and fairly closely related to one another in one or more ways—members of a single lineage, or of a single parish, affines, contracting parties to a mutual agreement, etc. These are the people who, because of their relationships and co-activities, are most likely to come into dispute. Arusha indigenous procedures are on the whole able to deal with these relationships because the procedures themselves emerge out of the social sub-systems in which these relationships operate. 'Unrelated' people are less likely to come into serious dispute; but when they do, indigenous procedures are cumbersome and not altogether efficient. Injuries may have to be tolerated under the circumstances because of the difficulty, perhaps impossi-
Processes of Dispute Settlement

bility of taking useful action. The following case is an example of this.

Case 25: On his return home one evening, Lamal discovered that a sheep was missing from his paddock. His son, the herdsboy, was sheltering in the house because of the cold and damp (it was the rainy season) and knew nothing of it. Immediately Lamal went off to try and trace the animal, and he claimed afterwards that he found its tracks in the mud leading to the nearby stream and a small watering-place. There some women told him that Maliten had earlier been watering a flock of goats and sheep. They said also that no other person had been at the stream for some time; but they denied any knowledge of theft or even suspicious action by Maliten. Next morning Lamal sent his man to make enquiries in the neighbouring parish beyond the stream, where Maliten lived. The son returned later to report that he thought Maliten was the thief, because he had learned that Maliten had killed a sheep at his homestead the previous evening. Maliten, however, had denied the theft, saying that he had slaughtered one of his own animals. Lamal’s son could ascertain no reason why Maliten should have killed an animal, and this was a matter arousing suspicion because Arusha do not usually kill merely to eat meat.

Lamal and Maliten were related only by their common clan, and Lamal had no near agnates or other close kin in Maliten’s parish. After consultation with a nearby cousin and with a lineage counsellor of his sub-clan who lived in his own parish (his own lineage counsellor lived about eight miles away), Lamal went to see the headman of Maliten’s parish. The headman denied knowledge of the matter, but promised to investigate. Whether or not he did so, nothing further came of this attempt to press the case. A few days later, therefore, and after consultation with members of his inner lineage, Lamal went again to his local counsellor to ask him to arrange a conciliate with Maliten. The counsellor was apparently sceptical of the evidence which Lamal had obtained, and the subsequent failure to obtain a conciliate may, therefore, have been partly the result of a lack of zeal by the counsellor. Maliten and his associates refused to agree to a conciliate, and he was supported in this by a lineage notable who lived nearby and whom the counsellor also visited.

Lamal refused to accept the stalemate; and a few days later he attended a meeting of the parish assembly in Maliten’s parish. He went accompanied by his paternal cousin, and he gained the introductory assistance of a spokesman in Maliten’s parish with whom he was friendly—they were sons-in-law of the same man, and members of the same age-set (though not, of course, of the same age-group). At the parish assembly Lamal was told that he could not present his case because Maliten and his agnates were not present. The junior elder ‘chairman’ said that they (i.e. members of the assembly) knew nothing of the dispute and could do nothing; but after some argument Lamal obtained permission to attend the next meeting, and the parish headman agreed to notify Maliten of this. The following week (now about three weeks since the alleged theft) Lamal again attended the parish assembly, and this time he was able to present his case. Maliten and his father’s brother both denied the accusation outright; and they expressed indignation at false charges against him in their own parish by a stranger. The junior elder ‘chairman’ declared that he thought that Lamal had no evidence to substantiate his case, and he went on to say that people in his parish were not thieves and liars. He made reference to the recent case of a proved theft in Lamal’s parish, and told Lamal to look elsewhere. The rest of the assembly remained silent. Lamal made a brief justification of his accusation, and challenged Maliten to say why he had slaughtered a sheep that evening of the theft. No-one attempted to reply to this after Lamal sat down, and instead the assembly began discussion of another matter. Soon after this, Lamal and his cousin left quietly.

In conversation afterwards with men present at the assembly meeting, I found that some of them suspected that Maliten might have been the thief. I asked one of these why he had not supported Lamal’s request for discussion of the case—Maliten had flatly denied the accusation, made no attempt at explanation, nor called any witness. My informant replied: ‘Why should I? Lamal is a stranger here; no kinsman of mine, not a neighbour (i.e. not a member of his parish), not an age-mate.’ I pressed my question again, suggesting that an elder of some importance, such as he, should have intervened to ensure that Lamal received proper consideration. ‘Why?’ asked my informant, ‘it is no affair of mine. And Maliten, he is of my parish. Why should I speak against him? Yes, he is not my kinsman; but we are neighbours and we have peace here. Why should I spoil peace here to support Lamal?’

In the event Lamal was defeated. He attempted to persuade his local counsellor to obtain permission for him to use a ritual oath against Maliten; but the counsellor advised against it, and suggested that Lamal should go to the counsellor of his own lineage if he wished to take that course. The counsellor also advised against taking the matter to the local court. Lamal discussed the affair with members of his inner lineage, and they too tended to support the counsellor’s opinions on the uselessness of further action.

Whether Maliten was in fact the thief was never determined, nor even publicly discussed. The dispute was settled in effect because Lamal was forced to accept his failure to bring the matter to proper
Processes of Dispute Settlement

The plaintiff or defendant may appeal to a court where the indigenous processes seem to him unsatisfactory. An alternative possibility is to attempt to obtain the support of the chief or a magistrate by an appeal to them to consider the ignored plaint. The chief, or magistrate, can call a conclave in his office which the defendant and his close associates cannot easily ignore. This, like the appeals to public opinion made by the plaintiffs in Case 24, forces the hand of the defendant. He is virtually compelled to attempt to make some answer to the charges. As a result of a chief's or magistrate's conclave, the plaintiff is usually able to obtain a moot or counsellor's conclave, and, supported by public opinion, he is in a strong position to gain at least some settlement. Usually neither chief or magistrate himself seeks to impose a settlement—although that can happen.

Rather he is content to have brought the two parties together. He declares the appropriate norms, indicates his opinion on the kind of settlement that is warranted, and enjoins the two parties to arrange a subsequent meeting.

The Local Courts

The procedure in connection with a court is briefly as follows. A formal dispute between Arusha is begun by the plaintiff applying to register a case with the court clerk. The acceptance of registration and of payment of the appropriate fee presupposes the opinion of the clerk, and also of the magistrate perhaps, that a prima facie case exists. The magistrate may make enquires if he has doubts, and, as I have shown previously, he may recommend alternative out-of-court procedure. Often a plaintiff is accompanied by his parish headman, or a reputable related notable, who can affirm the validity of the plaint. Once a case is registered, it must be heard in the court within a few days, unless the plaintiff himself agrees to its abandonment. It becomes the magistrate's responsibility to fix a time for the hearing and, if necessary, to issue summons to the defendant and witnesses to appear.

In the court, the magistrate and his clerk sit at a table on a dais at one end of the open-walled courtroom. The 'court elders' also usually sit on the dais, or at least nearby, together with one or more court messengers. Litigants, witnesses and the general public sit in the main body of the courtroom, but in no particular order. A person giving evidence comes to stand before the dais.

The plaintiff should first state the nature of his charge and claims. If the magistrate does not already know—and usually he does—he then asks the defendant whether he admits the claim or not. If the defendant denies it, the plaintiff states his case, and this is usually followed immediately by the defendant in reply. Thereafter the supporting witnesses of each party are heard, and any neutral witnesses such as a parish headman, medical orderly, policeman, etc. Magistrate, clerk or court elder may interrupt any witness to elucidate testimony or to obtain further information; they may also cross-question a witness or confront him with conflicting evidence.

Most or all of the evidence is given in the Arusha language, but the court clerk makes a written summary in Swahili, the official
Processes of Dispute Settlement

language of the court. After each witness completes his testimony, the summary record is read out to him (orally translated by the magistrate, if necessary). The witness can require alterations of the record—though usually he does not—and finally he attests it by his thumb-print or signature. The plaintiff or defendant, who are primarily self-responsible for their respective cases, may speak more than once if they wish to rebut evidence or develop their argument further. Finally, and after consultation with his clerk and the court elders, the magistrate sums up the evidence and argument, and then issues his decision, giving the reasons for it. This also is recorded in summary form by the clerk, and signed by the magistrate.

The contrast between this procedure and those followed in indigenous assembly and conclave is well marked. The magistrate sits apart from the disputants and others; the whole proceedings are more formal, this being especially underlined by the process of recording and attestation of evidence. A court hearing is usually much briefer than one in assembly or conclave. Witnesses' statements are noticeably shorter, and there is little or no discussion directly between the two parties to the dispute. Evidence and argument are directed mainly at the magistrate, for it is he who must be persuaded by virtue of his dominant role in the court. Proposals and counter-proposals are seldom made. The decision-making phase is entirely monopolised by the magistrate, who issues his finding together with any obiter dictum he sees fit.

The two features of judicial procedure in a court to which chief attention is directed are, firstly, the obvious one of the dominating authority and coercive power of the magistrate; and secondly, the nature of a magistrate's decision and its relation to the relevant, established norms of behaviour.

A court is established by powers and forms external to Arusha society. Its existence and competence are created by a legal warrant issued by the Central Government of Tanganyika—actually by the Provincial Commissioner with the approval of the Governor. The powers and procedures of a court are laid down in the Local Courts Ordinance, 1951, and all courts are subject to the supervision and revisionary control of Government officials. These officials—and especially the immediately supervisory District Officers—are advised not to require too great a formality in court procedure, nor to force

Procedures and Settlements

English law-court practices upon African magistrates. In the Arusha Chiefdom, however, and unlike some areas of Tanganyika, there is no tradition of more or less formal courts upon which the modern local courts can be based. Their existence as well as their authority depend essentially on the power of the Central Government and the alien-established local government system. The procedure followed by a court must be largely of an imported kind; and it has inevitably tended, therefore, to be patterned on English-style court procedure, as successive District Officers have required in the light of their varying experience with other African local courts in the territory. Arusha magistrates are roughly aware of the nature of judicial procedure in courts (e.g. in the township) presided over by English magistrates and judges, and these provide a more relevant model than the indigenous procedures of their own society. Additional formality of an alien kind is required because of the necessity of written records of testimony, and also in order to preserve the dignity and authoritarian role of the magistrate himself.

The magistrate has a defined and sanctioned authority which no indigenous notable holds, and which is foreign to Arusha culture. He acquires this directly from his appointment and continued support by the Central Government. Within the limits of his ascribed competence, his authority is unavoidable. Furthermore, he exercises this authority not only to uphold court procedure, but to issue decisions ex cathedra, as a neutral party to disputes before him. His decision is binding upon both parties in a case, in that his order must be obeyed, and his award to one disputant must be accepted by the other. But although a magistrate has this authority, he also has an explicit obligation to exercise it—that is, an obligation to reach a decision, and one which he cannot avoid. Ideally, he should do this entirely on the evidence presented to him without personal consideration for either party.

In parenthesis, it may be noted that, whilst acknowledging the indisputable authority of a magistrate, Arusha often suspect his impartiality. They find it difficult—sometimes impossible—to accept the idea of an unprejudiced decision, for they can scarcely conceive of a man who is not susceptible to pressures. In the past, some magistrates have certainly been guilty of accepting bribes or other inducements.

Processes of Dispute Settlement

ment to bias their decisions. Unsuccessful disputants are ready to blame their failure on the magistrate’s partiality, rather than on the evidence and the law. But in any case a magistrate himself is a member of an age-group and parish, or an inner and maximal lineage, and of a clan. He cannot entirely divorce himself from his obligations in these groups; but most Arusha do not expect him to do so.

Nevertheless, despite his position of authority—and also his somewhat atypical nature as an educated person—a magistrate is, of course, culturally conditioned by his own society. In principle therefore, he is mindful of the value which Arusha place upon discussion, negotiation and a mutually acceptable settlement in disputes. He is aware of the nature of compromise which permeates indigenous judicial procedures, and on the whole accepts its rationale. As far as I could ascertain, magistrates approve of indigenous principles; they do not perceive their courts as competitors attempting to replace assemblies and conclaves. This is the reason why a magistrate often attempts to refuse registration of a civil case (i.e. a dispute between private individuals), either commending the potential plaintiff to his lineage or parish notables, or arranging a concave in his own office. This is not an essential part of a magistrate’s formal duty; but the fact that it is so commonly done is most important to the total contemporary pattern of dispute settlement in this society. The magistrate, if not his court, is thus a part of the system of negotiation procedure typical of his culture.

If a dispute nevertheless comes to his court, despite his conciliatory efforts, a magistrate seldom refuses to take cognisance of any previous indigenous proceedings, and the opinions of the notables concerned. Usually one or more notables are especially requested to attend the court hearing in order that they may inform the magistrate of previous events. They do not necessarily give formal evidence, but may discuss the matter with the magistrate before the court opens. Magistrates have said that they prefer to have the guidance of such notables in any dispute which is at all serious in itself, or may have important repercussions in a related situation. Undoubtedly a magistrate’s weighing of the evidence may be biased by his understanding of the need for a compromise settlement, and the need for the reconciliation of disputants where they are related in some way. It is difficult to assess the significance of this because it does not appear in the court record, and not always is it evident even

in the course of a hearing. It is certain, however, that lineage counsellors in particular do take care to advise the magistrate—not just to gain his favour on their own side, but to assist him in a mutually satisfactory solution insofar as a magistrate is able to go in that direction.

To some extent, therefore, a magistrate is able (and is expected, by Arusha) to depart from rigid adherence to the ‘law’—stated norms and established precedents—and to imitate indigenous aims and methods. If, however, one of the disputants is adamant in his legalistic claims, the magistrate is severely limited in a way the notables are not, by the threat of appeal and fear of revision. Unlike the notables and other supporting associates of a disputant, a magistrate has no means by which he can bring strong pressure to bear in an attempt to gain a reduction of a plaintiff’s claims, or an admission of guilt from a defendant. He cannot use his magisterial authority, for it has no substance here. There are no sanctions at his disposal to back his efforts at persuasion towards compromise—much as he may perhaps prefer compromise. A disputant is unlikely to be considerate of the approval or disapproval of a magistrate, since those affections are of no importance to him. The magistrate has no authority to threaten other loss of privilege or to promise reward for compliance. He is an unrelated person and therefore in that sense powerless. His formal, neutral role of judge can make him easily open to criticism, reprimand and over-ruling if his court decision is not in conformity with the objective facts and the law.

Thus, for example, a magistrate hearing a dispute such as that in Case 21 (p. 243ff), concerning failure to pay outstanding bridewealth, must state the norms and rule accordingly. He could not order that a male calf be substituted for a large fat ox, or a goat for a heifer, as was agreed in the moot in that instance. Or at least, he could not unless the plaintiff voluntarily agreed to accept the inferior substitutes. This might occur, but a survey of court records indicates that it is not usual, once a plaintiff has determined to go to court; and where it does occur, it appears that it is largely the persuasion of the defendant and of the notables of both disputants which is important, rather than that of the magistrate himself.

The magistrate, whilst making his judgement conform to the

1 Court records are inspected monthly by the District Officer, who can order a revision of any judgement which seems necessary to him.
Processes of Dispute Settlement

'law,' may add a recommendation that the successful litigant show generosity to his opponent. An actual case illustrates this fairly common feature.

Case 26: Sendu was allocated a piece of land in a peripheral pioneering area by the chief in 1941, and in the following year he allowed two of his younger brothers to have the use of part of it. In 1944 one of those brothers died, and the other, Leshiolo, claimed the field which the deceased had cultivated. Sendu refused, asserting that all the land was his by right of its legitimate allocation to him by the chief. In the subsequent quarrelling, Sendu sought to evict Leshiolo altogether, and eventually he appeared as plaintiff for that claim in the local court.

I have no information concerning pre-court procedures; but in the court itself, in 1955, the magistrate awarded the whole area of land to Sendu. In his judgement, the magistrate noted that there was no evidence at all to indicate that Sendu had shared the original allocation, and there was ample witness (the ex-chief and the parish headman) to the legality of the allocation itself. So overwhelming was the evidence in support of Sendu, that both the Arusha Appeal Court and the District Commissioner’s Appeal Court upheld the first court’s finding without amendment.

In each of the three successive courts, the magistrate pointed out that the chief ought to have made provision for Sendu’s brothers when he made land available to Sendu himself. More emphatically, each magistrate declared that it was Sendu’s duty to assist his younger brother (Leshiolo was his half-brother) and to give him the use of some land. The magistrate of the Arusha Appeal Court actually advised Sendu to allow Leshiolo to remain on the land cultivated for twelve years by the two younger brothers; the magistrate of the local court and the District Commissioner in his Court merely counselled the general obligation to be generous and to observe fraternal responsibility. These were all merely aetior dixit, and the actual judgements awarded the whole area to Sendu.

The fact that Sendu had taken the dispute to court indicates fairly clearly that he was dissatisfied with any settlement he could obtain otherwise. In my opinion, the lineage counsellor and notables would never agree to a man evicting his brother from land which the latter had occupied and cultivated for so many years. Their constraint must have failed to move Sendu—or alternatively there was no time to make if efficacious before Sendu resorted to the court, an action they could not easily prevent. Had there been no possibility of a court hearing, the final solution would almost certainly have followed the lines of the magistrates’ moral admonitions. I base this opinion on a number of similar cases decided in moot and conclave, and on discussions with Arusha informants.

In discussing Case 23 (pp. 255-8) with a magistrate, he was certain that, had the case come before him in court, he would have awarded all the disputed land to the son, Kadume. This decision would be based directly on the rule that a son has the right to inherit his deceased father’s land in precedence to his father’s brother. I pointed out that, in the moot in question, the father’s brother, Soine, had been allowed to retain part of the land. The magistrate commented that it had been a good settlement in the circumstances. It had, he said, taken account both of Soine’s special relationship with his brother before the latter’s death, and of Soine’s shortage of land in contrast with Kadume who had a farm on the land of his mother’s brother. Additionally, the magistrate noted, the settlement had been such as to permit full lineage unity to continue without great strain. ‘Those men (i.e. counsellor and notables) were right,’ he declared. ‘They know the custom of inheritance, but they also know the people of the lineage and their affairs. But I cannot judge like that for I am a magistrate of the court. I must follow the custom. The law is that a son inherits his father’s property. If I fail to follow the law, people will say that I am wrong—and the chief and District Commissioner too.’ He continued ‘But how could I persuade Kadume to give way and let his father’s brother keep some of the land? He would say that I am not his kinsman, nor his counsellor. Oh yes, he listened to his counsellor and his elder father, for they are near (i.e. closely related) and they are seniors in that lineage.’

A magistrate’s exhortation is sometimes heeded by a successful litigant, especially if the other disputant seeks a moot or, more likely, a conclave in an attempt to use the weight of the court’s admonitions. This often does not occur, however, because of the bitterness engendered by the conditions leading up to and during a court hearing. A magistrate is in much the same position as many early doctors in Africa, who complained that they had difficulty in building up a medical reputation among the people because they tended to receive so large a proportion of hopeless or badly delayed cases.

The still persisting notion that courts are alien-imposed institutions; the failure to understand the principle of the impartial judge,
and disbelief that such a judge usefully exists; the antipathy to imposed settlement of dispute; the dislike of court formality; these are the bases of Arusha lack of faith in the courts, and their lack of enthusiasm for them. But, as indicated above, they also see what, to them, are unsatisfactory solutions of disputes. In addition, for most Arusha, the indigenous procedures and the settlements they provide continue to meet people’s needs. On the other hand, as already discussed in the previous Chapter, the courts are attractive to some disputants:—those who wish to attempt to avoid the necessity of compliance with the pressures and sanctions of their associates, and those who can scarcely pursue their claims at all by available indigenous means. Sometimes, also, notables are ready to pass on the onus of difficult and unpopular decision to the magistrate, who cannot refuse. Thus disapproved in general as they may be, the courts are fairly well established in Arusha society and, even by Arusha standards, serve some useful purposes.

CHAPTER ELEVEN

ADDITIONAL MEANS OF COERCION

Coercion of a non-violent kind is integral to the indigenous process of dispute settlement among the Arusha. It is a moral and sociological kind:—appeals to past precedents, and to custom established by the ancestors; appeals to right behaviour, and especially right behaviour to close associates (near agnates, age-mates); threats of disapproval and ostracism, and promises of approval, fellowship and cordiality; threats to curtail rights and privileges, and offers to maintain or even increase them; appeals, both emotional and practical, to the cause of group unity. Examples of these have been given in the preceding chapters. Such coercion is aimed not only at the disputant himself, but also against his supporters who can influence him. It may be directed, too, by a man towards his own associates with the intention of stimulating their support and loyalty. The whole pattern of discussion and negotiation, both in public assembly and in conclave, is permeated by pressures and counter-pressures, with the object of persuasion and constraint, in which reference to the commonly accepted norms of right behaviour is but one factor. Ideally, but very often in practice, the dispute is resolved by an eventual, mutually accepted settlement, to which either side concurs because it is felt to be the most advantageous one that can be obtained with an expectation of its proper fulfilment in the circumstances.

But although the agreed solution is mutually accepted, Arusha are well aware of the remaining practical considerations of putting it into effect. They recognise that a disputant, who finally admits to liability and agrees to meet his obligation to pay compensation, etc., may do nothing about it afterwards in the hope of avoiding his material responsibility. To prevent this, there are two common techniques. One is to insist that the agreement be put into effect immediately, before the assembly or conclave disperses. For example, the new field boundary is physically marked out there and then.¹

¹ Cf. Cases 13 (p. 200), and 23 (p. 255); and the conclusion of Case 6 (p. 278).