PART FOUR

PROCESSES OF DISPUTE SETTLEMENT
CHAPTER NINE

THE LOCUS OF DISPUTE PROCEDURE

The preceding parts of this book have dealt in turn with three major sub-systems of Arusha society—the parish and age-group system, the patrilineal descent system, and the modern local government. Although these are not the only coherent sub-systems which can be analytically isolated, they are essential to the study of almost any particular field of action and belief among the Arusha. Their especial importance for present purposes lies in three intimately inter-connected features. Firstly, two of them provide a set of corporate groups or established categories of people, which largely determine both the kind and the strength of support and constraint to which men are subject when disputes occur and settlement of them is attempted. Secondly, each of these sub-systems identifies a number of particular roles of influence and leadership, the occupants of which, *inter alia*, play a permanent part in the arrangement for and the carrying out of dispute procedures as advisors, advocates and conciliators. Thirdly, each sub-system provides regularised means for dealing with overt conflict and dispute between individuals. These means are of two kinds—a public assembly, at which disputants present their cases before a joint congress of their respective supporters in formal meetings, at which attendance is open to any who care to be present; and a conclave, which comprises either the members of a basic, nuclear group to which both disputants belong, or a few of their closest associates where the disputants are members of different nuclear groups.

For convenience of exposition, these three sub-systems have been described separately, almost in isolation from each other. It is now necessary to consider them in conjunction in order to give an articulate account of dispute procedures among the Arusha. Before attempting this, a summary recapitulation of each, in respect of these three principal features, may help to clarify understanding.

The age-group system is largely confined to a single parish. The
nuclear unit is the age-group itself, but also there are the segments of
the group—circumcision-sections—and the combinations of
groups—the streams. The men of influence are the age-group
spokesmen, together with the other notables, of each age-group.
Regularised means of dispute settlement are provided by the public
parish assembly; or by conclaves which comprise either the members
of a single age-group, or—where disputants belong to different age-
groups—they comprise some of the age-mates of each man, together
with relevant men of influence.

In the patrilineal descent system, the nuclear group is the inner
lineage, i.e. near agnates. Beyond that are the maximal lineage, and
the various levels of patrilineal olwaishe from the dichotomous seg-
ments of a lineage to tribal moiety. Roles of influence and leader-
ship are played by the counsellors selected in each maximal lineage,

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and by certain ill-defined, but readily identified, notable members of
each lineage. In respect of this sub-system, the public assembly is the
moot. This may be an external moot, where a dispute concerns
members of different maximal lineages, so that the assembly com-
prises members of each olwaishe of the disputants within the smallest
descent category to which both belong; or it may be an internal
moot, where the disputants belong to a single maximal lineage, and
the assembly is confined (at least initially) to lineage members.
A conclave comprises either the members of a single inner lineage,
or—where disputants belong to different inner lineages—it com-
prises a few close agnates of each man, together with their respective
counsellors.

The local government system precipitates no corporate groups
or categories of importance which are not of indigenous origin in
the other sub-systems. The particular roles of influence here are
those of chief, magistrate, court clerk and parish headman. The public
assembly is the local court, beyond which are the appeal courts;
each is controlled by a magistrate. Conclaves occur under the aegis
of a magistrate, the chief, or a headman.

This summary is set out in tabular form in Figure 9.

The principal indigenous roles of influence are specifically named:
here they are translated as age-group ‘spokesman’, and lineage
‘counsellor’. They are not the only important roles, however, as I
have shown. For convenience in the following account of Arusha
judicial procedures, the term ‘notable’ will be used generically to re-
fer to all roles of influence and leadership, including spokesmen and
counsellors. Government officials, and sometimes Arusha them-
selves, loosely use the word ‘elder’, or the Swahili equivalent, mwana,
for such men in those positions. In this monograph the word ‘elder’
is used to refer only to the occupants of a particular age-grade—
formally, a man whose age-group has been transferred from marran-
hood—and in that sense not all elders are notables.

The Arusha have no specific term for a public assembly or a
conclave, either generically or for particular kinds. The only
technical word they use is engigwana, which literally means ‘a dis-
cussion’ (a noun derivative of nguwa, ‘to discuss’), but which most
usually refers to ‘a matter in discussion’, or what I describe as ‘a
dispute’. Arusha say that a plaintiff ‘has engigwana’ (eka ngigwana),
and they mean, as we might put it, ‘he has a matter to be discussed’,

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or 'he has a dispute'. Plaintiff and defendant are not verbally distinguished; both 'have engigwana'. The spokesmen and notables in a parish assembly, or the counsellors and notables in a moot, who are leading the consideration of a dispute, also 'have engigwana'; and they or the whole of either assembly may be referred to directly as engigwana. If it is wished to distinguish different kinds of assembly, they can speak of engigwana e mbalhal (parish assembly) engigwana e ngaji (internal moot), and engigwana e njishome (external moot). Arusha might be a little puzzled by my translations since, for example, engigwana e mbalhal really means 'a (matter in) discussion in the parish'. The parish assembly is often referred to simply as 'the parish', mbalhal, which indeed is accurate enough because the assembly is in fact the corporate meeting of the parish in action, or at least of those of its members considered qualified to participate on its behalf. A similar reference is applied to a moot.

There is no direct way of distinguishing a conclave from an assembly. A conclave is engigwana in the extended meaning of that word; it is also 'the age-group', 'the parish', 'the lineage' or 'the clanship group', as the case may be, but without specific delimitation. Nevertheless, both empirically and in the understanding of the people, a counsellor's conclave, for instance, is different from an internal moot in its composition, its procedure and its scope. This will be made clear in this and the following chapter. Both are engaji (maximal lineage), both are (or alternately, have) engigwana: but the conclave is a small, private meeting of a few agnates in the homestead—often the house—of one of them, whilst the moot is a larger, public meeting of many—ideally, all autonomous male—agnates in an open place, usually a grazing paddock.

A court is usually referred to as albaraza (from the Swahili word), although it too is sometimes referred to as engigwana, as is the matter under discussion—the dispute—there. A chief's and a headman's conclave is engigwana, with the appropriate qualification; a magistrate's conclave may similarly be referred to or it may be described simply as albaraza.

Although the various kinds of public assembly and conclave are properly defined in terms of the sub-system in which they emerge, nevertheless it can happen that any one of them may involve men who are not, strictly speaking, members of it. A man may participate because he has special evidence to give which it is desired to make use of. An example of this is given in a later case (No. 16, page 210): an internal moot convened to deal with a land dispute between paternal cousins, was attended by a counsellor of a linked maximal lineage; this counsellor lived fairly near the plaintiff, and had previously been concerned with the piece of land in question as well as other matters in that lineage. A disputant may wish to have the strongly supporting evidence of a particularly close friend or a neighbour. Whilst such additional participants do not attend merely as witnesses in the objective, information-giving sense of a western court of law, their part in the proceedings tends to be smaller than that of full members. A conclave, but seldom a public assembly, is generally willing to forego the attendance of a really neutral witness, and to accept his evidence at second hand. It is not desired to have present in a conclave someone who has little or no relationship with the disputants, for such a meeting is pre-eminently the occasion for private discussion.

The roles and relationships of one sub-system may intrude in the procedures pertaining to another. Thus at a parish assembly, a bona fide parish member may also be a lineage counsellor. He cannot dissociate his two roles, and, if his agnate is a disputant, he speaks as and is accepted by others as a counsellor as well as a member of the age-group. It sometimes occurs that a parish assembly is virtually taken out of the hands of the spokesmen by parish members who, as counsellors and lineage notables, are connected with particular disputants. Conversely, a member of a moot may be given particular attention because he is also an age-group spokesman. A magistrate or the chief normally summons to a conclave either the spokesmen or counsellors of the disputants—both if necessary.

It would be an error, then, to define too rigidly the membership and functions of members in a judicial meeting. On the other hand, having made this allowance, it must not disguise the principle features of definition which refer to the particular sub-system concerned. This would not only deny the practical reality of the different kinds of procedures, but it fails to distinguish the kinds of roles, relations and processes which are involved in each, and which are fundamental to its operation.

The various kinds of public assembly and conclave are available

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1 The Swahili words mikut undikuta are sometimes used for plaintiff and defendant respectively, deriving from the official usage in courts.
to all Arusha in the event that they are involved in a dispute. Any single one of them may be able to produce an adequate settlement of the matter, such that it goes no further and both parties are satisfied, at least for the time being, and perhaps permanently. But any one of them may become—often by conscious intent—only a single stage in a total process of several stages during the attempt to reach an acceptable and practicable solution. In such a process any two of the assemblies or conclaves may be linked together successively, and any one may be repeated as a further stage at any point. An Arusha seeks to make use of that assembly or conclave which seems most likely to suit his purpose, taking into consideration the nature of the relationship between himself and the other disputant, the nature of the matter in dispute, and the advice, support and constraint he receives from his close associates. The procedural rules which govern a disputant’s choice and the reaction of his opponent are extremely flexible, but there are certain limitations. Arusha themselves are inclined to over-simplify the rules, and thereby both distort and over-formalise them, by saying that a parish assembly takes disputes between members of the same parish; that a moot takes disputes which, pertaining to kinship relations, are more critical, such as those concerning inheritance, land, marriage, bridewealth and the like; and that a court takes disputes in which a settlement seems impossible or at least highly difficult by indigenous procedures, and where then the coercive authority of the magistrate becomes paramount. The reality is by no means as simple as that, even when the possibilities of conclaves are ignored. Partly, this is because disputants may be related both patrilineally and by membership of the same parish, and therefore an element of uncertainty and choice arises. Partly, it is because there is generally no essential compulsion to follow one kind of procedure rather than another, and a man tries to choose that which is most advantageous for him, and which his opponent does not or cannot easily reject. As a general rule, other than in petty cases, a final settlement is the end-product of a chain of two or more kinds of procedures each of which takes the treatment of it a step further.

Initiative in the choice of the particular procedure may lie with either disputant. Generally the man who seeks redress of an alleged injury, and therefore desires positive action in his favour, is the one who instigates a stage in the total process; but the defendant may himself take the initiative in attempted self defence. Neither disputant has an entirely free choice, for each is subject to the constraint imposed on him by the need for support from his associates, and thus by their opinions. Except in the heat of the moment, a man invariably consults with his near agnates, members of his inner lineage, for these men are the ones most likely to be of assistance, and most nearly involved in his actions. The choice of procedure commonly results from discussions in the inner lineage and a decision to take joint action. It may happen that members of this lineage are scattered and not immediately easy of access; and perhaps too they are, or seem likely to be rather unhelpful. Then a man may instead, or additionally, consult with those of his age-mates who live nearby or with whom he is especially friendly. Further, he must approach one or more of the men occupying a role of influence relevant both to his own position in the social structure and the nature of the matter in dispute. This he does both because of the specialist advice which they can give him, and because he requires the active agency of one or more of them actually to put into operation the procedure decided upon. A moot or patrilocal conclave can only be convened through the agency of a lineage counsellor. A man cannot permanently be denied the opportunity to register a plaint in a court, but he must at least make a prima facie case to the magistrate or court clerk. Formerly a man required the agency of a spokesman to gain a consideration of his case by a meeting of the parish assembly; nowadays, with regular meetings in all parishes, he cannot be denied access to the assembly, but a sympathetic hearing is more likely if he comes with the initial support of one or more spokesmen. Consultation with one or more of these notable men—including also, perhaps, the chief and parish headman—leads to a decision of the course of procedure to be followed.

The defendant in a dispute does not inevitably have to submit to the initiative of the plaintiff, though in some circumstances he may be compelled to do so. Once a plaint is formally registered at a court, the defendant must appear when called, on pain both of contempt of court action and of the possibility of the case being judged in his absence. If a spokesman agrees to promote a plaintiff’s case in the parish assembly, the defendant makes himself liable to a fine if he refuses to appear and answer the charge made against him. On the other hand, he may attempt to shift the venue by suggesting an
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alternative procedure before the hearing is made, or even during the course of it. Both a magistrate and a spokesman may be willing to allow the matter to be further discussed, and perhaps settled ‘out of court’, if that seems more satisfactory, and if both disputants agree. The proposal for a moot may be rejected by a defendant, but once his own counsellor becomes involved in the matter this is not easy, for the counsellor has obligations also, both to other members of his maximal lineage and to fellow counsellors, which induce him not to countenance undue delays in convening a moot. This is more fully discussed later, and all that need be said here is that if the plaintiff and his counsellor remain adamant, and unless an acceptable alternative is agreed to, the defendant may become subject to coercion by his counsellor and by his patrilineal supporters to accede. Fear of intimidating that his case is a poor one, thus weakening himself in the eyes of his supporters, his opponents and general public opinion, is a main sanction here; but counsellors may impose a fine or use some other compulsion should the need arise. One of the objectives of a conclave may be to reach agreement on the mutually acceptable procedure to be followed; although it may itself bring a settlement, or at least advance the discussions towards that end. On the whole, defendants do not attempt to refuse to accept the choice of procedure made by the plaintiff.

The kind of close associates with whom a potential plaintiff consults, and the men of influence he approaches, are themselves in some degree a matter of choice which often leads logically to the further choice of the particular procedure to be used. Even where this does not occur, the two connected decisions are both subject to two considerations:—the nature of the matter in dispute, and the nature of relationships between the disputants.1 Neither of these considerations is an absolute determinant, as will be illustrated, but at least they provide guiding lines for the individuals concerned, and heuristic indicators for analytic understanding. Thus whilst it is not possible to assert dogmatically that, given the kind of dispute then the procedures open to a plaintiff are such-and-such; on the other hand, it is possible to suggest which are the more likely procedures from which a plaintiff will choose. This is most readily done by stating the following general principles which derive both from the statements of the Arusha themselves and from empirically observed action. These principles follow logically from the nature of the three sub-systems of Arusha society which have already been described. In stating these principles, illustrations are given not only of their actual manifestation, but also of significant instances when they fail to be observed. Ultimately it can be fairly said that the choice and prosecution of a particular procedure, or chain of procedures, depends on the unique circumstances of each new dispute and the individual men involved in it.

A parish assembly, or conclave with spokesman, deals only with disputes between members of the same parish. The reason for this is obvious: the authority of corporate age-groups and the influence of age-group notables are restricted to a single parish, and therefore spokesmen and notables are unwilling to consider the plaint of a member of another parish. A plaintiff feels, with good reason, that he is unlikely to receive equitable treatment from men who are not linked to him by age-group and stream. These considerations apply irrespective of the kind of matter in dispute.

Nevertheless it may sometimes be to the advantage of the plaintiff—or so it may seem to him at the time—to take the matter to a meeting of the parish assembly of the defendant.1 This is not because he expects to gain an acceptable, final settlement there, but rather because he hopes to compel the defendant publicly to acknowledge the existence of the dispute, and to make at least some answer to the charge. If he has a good case, the plaintiff may be able to suggest to the defendant’s age-mates or patrons that their associate has acted wrongly and is tending to bring disrepute upon them. If he is able to accomplish this purpose with some success, it may then be easier to obtain the defendant’s acceptance of a conclave or moot. That is to say, the parish assembly is utilized not as an end, but as a means towards the end. The parish assembly might be able to suggest an acceptable settlement, but this is highly unlikely and I have no verified instance of it in my records. Spokesmen, with whom I discussed the matter, said that they would not attempt to suggest a

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1 It will be remembered that any two Arusha must be related at some point in the patrilineal descent structure. Ideally any two Arusha are also related in some definable way in both the age-set and territorial systems, but outside the single parish and its own set of age-groups the relationship is unimportant in jurid processes.

1 A parish assembly never deals with a dispute between people neither of whom are members of that parish, even where the alleged offence concerns the parish in some way, e.g. a fight occurring within the parish boundaries between men of another parish.
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settlement in detail, although they might state the general norms appropriate to the dispute.

Case 1: Lerombe alleged that he had loaned Meitan (of an adjacent parish) a goat, to be slaughtered in order to provide meat following the birth of a child to Meitan's wife. This happened some years previously and Meitan now refused to acknowledge the loan, and denied any obligation to pay a goat to Lerombe. The councillors of Lerombe suggested that he should attend a meeting of the parish assembly in Meitan's parish, and there state his allegations and demand for repayment. This Lerombe did. He persuaded a maternal kinsman, Wetoo, living in Meitan's parish to accompany him so that he should not have to sit alone in the assembly, and Wetoo informed the 'chairman' (the seniormost spokesman of the junior elders) that he (i.e. Wetoo) wished to raise a matter during the meeting. When Wetoo was called on, he merely introduced Lerombe without comment. Before Lerombe could speak, one or two notables objected: 'Who is this man?' 'He is not one of us. We do not know him here.' 'Let him go to his counsellor if he has a matter (to discuss).'

Wetoo stood up again and said that, although Lerombe was from another parish, 'Is he not an Arusha? Has he not the right to speak, to bring a matter? Let us listen to his words. We all know Lerombe. He lives over there (indicating the opposite side of a stream about a quarter of a mile away) beyond the Ngarenarok.'

After some discussion, it was agreed that Lerombe should be allowed to speak, and he proceeded to state his allegations. When he had finished, the 'chairman' asked where Meitan was. On hearing that he was at his homestead about half a mile away, a murmur was dispatched to summon him, and the assembly began meanwhile to deal with another matter. Sometime later Meitan appeared, and, after the conclusion of the subject under discussion in the assembly, he was called on to speak.

First a spokesman of Meitan's age-group briefly summarised Lerombe's statement. Meitan denied knowledge of the alleged debt at first, and grumbled about being summoned unexpectedly when he was occupied in his fields. The same spokesman asked him if he truly knew nothing about the matter: 'Does Lerombe come here with lies and bad words to make trouble in Kidlings (Meitan's Parish)? Do you know why he does this?' A murmur of approval went up from several of the men present. Meitan then began to answer the allegation; he agreed that he knew of Lerombe's demand because Lerombe had been to his homestead some days previously. He eventually (after questioning by the spokesman) gave his version, which was that, although he had received a goat from Lerombe, it was a purchase for money. At the end of his statement, Meitan sat down and there was a silence.

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Eventually, and without standing up (as all speakers should in the assembly), a notable said, 'What do we know of this? Truly debts should be paid; but is there a debt?'

Wetoo then stood up and said, 'I do not want trouble in this parish. I am not bringing this matter here. How do we know the truth? Who knows about this payment for the goat? Can we not ask?'

A spokesman rose and turned to another man sitting in the meeting. 'Palael, you are the father (actually father's younger brother) of Meitan, what do you know? Surely kinsmen know these things.'

Palael rose and agreed that he knew of the matter, and that Meitan was in the right. 'We can show we are right,' he said, 'But we are not all here today. We did not know these words would come today.' He said that his sons were witnesses of the money payment, and that he knew from them the truth of the matter. These sons were not present and no one knew where they were at the time. Palael declared that his sons, and others who knew, could if necessary give evidence, but not at that time. A spokesman of Palael's age-group thereupon suggested that Lerombe and Meitan should meet together with their supporters and witnesses to discuss the matter. This brought a general chorus of assent, and was accepted by Lerombe immediately. Meitan stood up and demurred, saying that there was no need for such a meeting for he had done nothing wrong and owed no man anything. After some further questioning of both Meitan and Palael, they eventually agreed to arrange a meeting with Lerombe, but no mention was made of the nature of the meeting—that is, moot or concave. Finally a spokesman of Palael's age-group reiterated the agreement, and discoursed briefly on the evil of false accusation and on the trouble caused when men refused to discuss disputes between them. He also said that debts should be repaid if they really existed, and when the creditor needed repayment.

My inquiries afterwards revealed that, according to his own statement, Lerombe had accomplished what he had intended. Further, the dispute was in fact known to at least some of the men in that parish assembly, and one of the participating spokesmen told me that he believed Lerombe to be in the right, although not altogether so. He said, and the subsequent mooot bore him out, that Lerombe had received some money but not the full price of a goat. 'We could not make Lerombe agree to lower his demands,' the spokesman said, 'Because his is not a neighbour (i.e. a parish member) of ours. His age-group is different.' In fact no attempt was made to bring pressure to bear on Lerombe; but it is doubtful if he would have been susceptible to it in any case. At least he told me he would not, for he feared they would be biased in favour of Meitan.

Disputes between age-mates should be dealt with by a concave of the
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age-group. The principles involved here have already been discussed in the account of the age organisation. Briefly, the notion is that affairs between age-mates (co-members of one age-group) are no concern of other age-groups, i.e. in a parish assembly; but also a solution to a dispute is thought more likely to be found through the friendly conciliation of fellow age-mates. There is the idea, also, that public disputation between men of one age-group spoils its reputation, and its external unity in the eyes of other age-groups of the parish. Therefore members of the disputants’ age-group make strong efforts to persuade them to accept the intervention and assistance of their fellows, and to prevent the intervention of men of other age-groups. Spokesmen and notables take the lead in this. If, however, the dispute is not fairly readily resolvable, the plaintiff may perhaps take it to the public parish assembly, where it is hoped that the combined influence of the parish’s leading men would be available on his behalf. This is especially the case if the disputants are murray, so that the plaintiff seeks the assistance of his patrons’ age-group.

Age-mates other than the disputants tend to be as much concerned with reconciliation as with justice, because their interest is the unity of the age-group and the desire to avoid outside intervention: at least plaintiffs feel this to be a danger, and I have heard it said in a parish assembly by a plaintiff that he fears being coerced to cede his equity on behalf of group solidarity. He may, of course, be prepared and be persuaded to make this concession if he feels but slightly aggrieved, or if his plaint is shown to be weak or ill-founded. But should he feel a marked sense of injustice, then personal advantage may be sought over group loyalty. Should a plaintiff perceive a lack of sympathy in the parish assembly, he may decide to seek a counsellor’s concilium rather than press for a solution in the parish. Nevertheless, having indicated the possible exceptions to the general principle under discussion, it must be noted that almost every dispute between age-mates is at least initially dealt with by age-group concilium, and many are successfully concluded by that procedure.

The principal may be illustrated by three disputes resulting from fights breaking out among junior elders at beer-drinks. The larger beer-drinks may become occasions for drunken brawling, and men of junior elder status tend to participate more frequently in such drinks than other men.

Cases 2, 3 and 4: On one occasion a man accused an age-mate of assaulting him and causing bruises and slight cuts. The plaintiff appealed to the spokesman of his parish-division to assist him in obtaining a goat as compensation. The spokesman, who had been present at the beer-drink, deprecated the whole matter; but at the plaintiff’s insistence he arranged for a conclave of the age-group at the defendant’s homestead. I was told that informal discussions among spokesmen and notables, preceding the conclave, brought a general agreement that the plaintiff’s injuries were slight, and that he himself was at least partly to blame that the fight occurred. This opinion was pressed on the plaintiff, whilst the defendant was censured for his behaviour. By this time, three days after the fight, the plaintiff’s injuries were less troublesome, and he was prepared to be mollified. Fairly quickly the matter was settled without any further demand for compensation by the plaintiff, and the conclave ended in congenially consuming beer provided by the defendant, in recognition of the balance of the fault being against him.

In another similar case, the injury to the plaintiff was more severe. He had been hit so hard with a stick that he was unable to use his arm because of severe bruising of the shoulder and upper arm, and he had a cut on the head. He claimed a large male sheep in compensation, and also a calf because of the slander against him, by the defendant, which had precipitated the fight. According to the plaintiff, his Chagga ancestry had been referred to, with the suggestion that he was not a proper Arusha. At the age-group conclave, the plaintiff’s allegations were quickly established, for several age-mates had witnessed the affair and had, in fact, stopped the fight by their intervention. The defendant attempted to minimise the seriousness of the matter; but in addition he counter-claimed that the plaintiff had not invited him to a recent meat-feast, and thus had shown unfriendliness. Several age-mates pointed out that the two men were chronically inimical, and the general feeling of the conclave began to emerge that fault was not all on one side. A spokesman suggested that the defendant pay the sheep for the injuries, but that the calf for slander was unwarranted. The plaintiff promptly refused this, saying that his age-mates were against him. Discussion continued but no agreement reached.

Eventually, and apparently in anger, the plaintiff began to rail against his age-mates that they would not support his legitimate demands. He went on to say that he would go to the parish assembly, and to his lineage counsellor, and no longer depend on his group’s spokesmen who showed so little concern for him. ‘You are all against me because my father was a Chagga,’ he stated, ‘But he came here as a youth and married here, and I
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was born here. Am I not an Arusha? Should the spokesmen not help me? You are not spokesmen, you are just old men. Why do you not help? I will go to Sabaya (his lineage counsellor) and to the chief. They will help. They are big men. There are no big men here.

Here the plaintiff put himself in the wrong by insulting the spokesmen, and he was cut off in his shouted speech. One spokesmen suggested that he should be fined, but no one took this up. The spokesman of the plaintiff’s parish-division and circumcision-section (a near neighbour) then spoke, reminding his hearers that they were age-mates and should settle their differences in amity, not with fines and angry words. ‘Are we not all Dzito (the name of their age-group)? Are we not friends? One parish, one age-group. What is this, that we do not help? It is our duty to help. We are one, we must remain one. Do we want those Dareto (senior elders) here? No! Let us discuss this and finish it properly. We know what to do, we know the customs of the Arusha.’

In effect he made an appeal to group loyalty, only a small part of which I have reproduced here. His appeal was well taken by his hearers for there were choruses of ‘Eseva!’ (‘truly’), ‘Tokul!’ (‘absolutely’), ‘Ee-ee!, and Ndiyo!’ (Swahili: ‘that is so’), after each brief statement. Men turned to the plaintiff and sought his approval. Eventually the spokesman concluded by reiterating the agreement for payment of the sheep as compensation for the physical injuries, and suggesting that the defendant present the plaintiff with four deli (a four gallon can) of beer as an expression of regret for the slander. The plaintiff was unwilling to accept this reduction of his claims, but after further persuasion he finally did. The defendant took no part and his silence was taken as a token of his assent. Finally the plaintiff agreed. He said later that he had been compelled to accept less than his rights because of the appeals of his age-mates. Both he and other Arusha were of the opinion that had the matter gone to the parish assembly or a moot, the plaintiff would have obtained at least a goat or a sheep for the slander claim.

In the third case, the fight occurred between two age-mates who were already in conflict. Olkeru’s old father was the owner of land which Kiteng occupied as tenant. By plying the old man with beer, Kiteng had obtained his witnessed permission to build a store in semi-permanent materials and to plant coffee bushes on the land. There had been a lengthy but desultory dispute over this tenancy, as Olkeru contested the legitimacy of Kiteng’s improvements and sought to evict him from the land. The end of this seemed most likely to be that Kiteng could not be evicted until he was paid full compensation for the improvements; and, since these were costly and beyond Olkeru’s means, it appeared that Kiteng had effectively gained secure tenure. Olkeru much resented this, and declared his feelings on several occasions. At a beer-drink he became intoxicated and began to insult and taunt Kiteng who, also affected by the drink, retaliated verbally. According to age-mate witnesses later, Olkeru left the scene at dusk and lay in wait as Kiteng walked home. He confronted Kiteng with more insults and the fight followed, during which Kiteng’s clothing was torn and he himself suffered head and chest wounds.

This was a serious matter, the culmination of increasing animosity between two fellow-members of the age-group. Next day two spokesmen of the group in that parish-division arranged for a conclave of their age-mates, and this was held on the following day. Because of the ill-feeling between Olkeru and Kiteng, the conclave met in the grazing paddock of one of the spokesmen—i.e. on neutral ground. It was attended by the two spokesmen and one other, two ingamini, and about 25 other age-mates, most but not all, of whom lived in the same parish-division. Kiteng demanded the replacement of his spoiled clothing and a compensation payment of a young ewe. The facts of the case were straightforward and well attested, and the notables and age-mates were inclined to support Kiteng. But they agreed in suggesting the substitution of a male sheep for the young ewe, to be accepted by Kiteng as a show of willingness for reconciliation—which was explicitly stated by one spokesman. Olkeru was ready to accede, but Kiteng firmly refused. The reason he made clear: he declared that the fight was the result of the earlier and persisting land dispute, and he demanded that Olkeru should acknowledge the legitimacy and security of his (Kiteng’s) tenancy rights. ‘I want no peace without my land,’ he said bluntly. In the event it appeared that Kiteng was not prepared to be satisfied with anything that the conclave could give him, for later he refused even the young ewe unless he also obtained Olkeru’s endorsement of the tenancy. The conclave broke up after he said that he wished to raise the matter in the full parish assembly.

A few days later Kiteng stated his case in the parish assembly and asked that Olkeru and the assembly declare his security of tenancy. Before the assembly meeting Kiteng had been persuaded by his two spokesmen to claim only a male sheep as compensation. He had agreed on the understanding that they would give him some support in the assembly, whilst they were able to show Olkeru their efforts on his behalf. Thus the compensation claim was quickly settled because, as one senior elder spokesman pointed out, both Olkeru and his age-mates (notables and others) were willing to accept it. The parish assembly then began to consider the land dispute; but two members of Olkeru’s maximal lineage (senior elder and senior murran respectively) pointed out that this was a matter for the lineage and their counsellor. Olkeru’s aged father agreed (he was verging on senility) and this therefore bound Kiteng—as perhaps Olkeru had planned. The real dispute which lay behind the fight was therefore advanced little if at all, but the attempt by Kiteng to accom-
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This had moved him decisively to refuse his age-mates' efforts at conciliation.

There is a major exception to the principle that an age-group conclave deals with disputes between age-mates. This applies where the two men are kin—especially if they are agnates, but often also when they are related by any link of known kinship. In such cases the following principle is the norm.

Disputes between kinsfolk should be dealt with by a moot or by a conclave with counsellors. Here Arusha are primarily distinguishing disputes between agnatic kin from those between non-kinsmen. It is considered not merely impractical, but wrong to take agnatic affairs to a body not connected with the lineage, and composed of a heterogeneous congregation. Conflict between lineage members should be dealt with by an internal moot, or a conclave with their common counsellor. Between nearer agnates of a single inner lineage, a conclave of lineage members is preferable. The smallness of this group and the difficulties of resolving such vital conflict as often arises over inheritance and demands for repeated and lavish assistance, as well as the fact that often the counsellor is a member of another inner lineage, tend to result in such disputes being taken to an internal moot. This is the norm for disputes between agnates of different inner lineages. Men say that they dislike becoming involved in the affairs of another maximal lineage, just as that group itself desires to have no external interference. A lineage counsellor seldom, if ever, is prepared to agree to such interference; partly because it appears to reflect on his abilities, but mainly because he has responsibilities for both disputants, and is instrumental in bringing them together for discussion. Moreover, disputes between agnates are likely, directly or indirectly to concern some of the more important aspects of Arusha life—inheritance, land, marriage and children, agnatic rights and obligations—and therefore a potential plaintiff goes to his counsellor, who is already well informed in these matters relating to his own lineage, rather than to a stranger of his age-group. Even although the two disputants themselves may live in the same parish, it is fairly certain that at least some of their nearer agnates do not; and they, of course, are unwilling to appear before a 'strange' parish assembly.

Although Arusha stress the agnatic sector of kinship in this context, much the same principle applies to maternal and affinal kin, and for similar reasons. Further, it applies not only to disputes specifically concerning kinship relations as such, but also to any kind of dispute between kin: that is, not only, for example, the rights and obligations of a mother's brother, or the question of bridewealth payments between affines, which arise directly out of the particular relationship, but also disputes in affairs which might occur between any two people.

Case 3: For example, Kamian had been invited to the initiation celebrations for the son of Terong, his mother's patrilateral cousin who lived a short distance away in the same parish. It is usual, though not absolutely obligatory, that men who are specially invited (kinsmen, age-mates, neighbours, friends) by the initiate's father should make a gift of an animal. This establishes a debt to be repaid on a similar occasion at the donor's homestead. On this occasion, Kamian presented Terong with a male calf. When several years later, Kamian's only son was circumcised, Terong failed to attend the celebrations or to send the reciprocal gift. He claimed afterwards that he was absent visiting a kinsman many miles away, and he promised to make the return gift on the next occasion. Because Kamian had no other son to be initiated, he demanded the animal immediately; and further he accused Terong of deliberately absenteing himself. Kamian consulted with his lineage counsellor, and both went to see Terong's counsellor to urge a conclave to discuss the matter. Kamian told me that parish spokesmen would be of no assistance to him, and he also said that he did not want to cause trouble between his own age-group (junior elders) and that of Terong (senior elders). It so happened that Terong's counsellor was the half-brother of Kamian's mother (i.e. he belonged to her natal inner lineage), and therefore Kamian could appeal to kinship sentiment in seeking that counsellor's agreement to a conclave. I do not think that this latter feature was crucial to the procedure chosen, for other Arusha commented on the rightness of the decision of Kamian and his counsellor in acting as they did. ‘Kinsmen’ (itinlanu) should not quarrel before the parish assembly,' one spokesman in that parish told me, when we discussed this case.

It is this principle of jural procedure which inclines Arusha to state over-simply, that moots take disputes between kinsfolk, and parish assemblies take other disputes. This is not correct in one way which has previously been discussed (disputes between members of different parishes); and is not altogether true even of disputes between members of the same parish. Neither is it entirely true that
kinsmen, even close agnates occasionally, never raise disputes in a parish assembly. For much the same reason which persuades a non-member of the parish to use the parish assembly, so a parish member may raise a dispute with a fellow-member who is a kinsman—i.e. to make the dispute public, to try to compel the defendant to make some answer, and to gauge public opinion. Both the plaintiff's agnates and his lineage counsellor tend to disapprove of the stratagem. But they can do little to prevent it, other than by making efforts to pursue the matter more strongly by another procedure; and that also may be the intention of the plaintiff.

**Case 6:** In a temporary pause during the proceedings of a parish assembly, a man suddenly stood up, without invitation or warning, and began to accuse his paternal cousin of encroaching on his land. The two men owned adjacent fields, and they had for about five years bickered desultorily over the alignment of their mutual boundary—which lay in uncultivated land in area about 75 yards long and 2 yards wide. The matter came to a head when the defendant hoed up and planted a portion of the unused land. The plaintiff obtained little sympathy from the only member of his inner lineage (a half brother) who lived near, because, his agnate said, he had plenty of land, whilst their cousin had little. Factually this was true. The parish assembly met next day in the normal course, and the plaintiff (as he explained to me) resolved to raise the matter there. This he did in what seemed a highly dignified, self-righteous manner. Perhaps because he was himself a spokesman (junior elder), his unexpected outburst was not interrupted. When he had finished, he was censured directly by other spokesmen and indirectly (by their failure to support him) by his half-brother and a counsellor of a linked maximal lineage. It was quickly agreed that the plaintiff had acted with impropriety in raising the dispute there. 'Go to Namukal (the plaintiff's lineage counsellor). Do not bring the shame of brothers (i.e. agnates) quarrelling here. We know nothing of all this,' said one spokesman. The plaintiff became incensed at the lack of sympathy, and in his emotion began to upbraid the men present. He was quickly cut short this time and, after a short discussion, it was agreed to *levy a fine* (sogu) of beer on him for his contumely. After this announcement, the plaintiff's half-brother stood up and said that they must both go to the counsellor and discuss the matter. This brought approving remarks from the assembly, together with an admonition to the defendant (who was not present) to be prepared to accept the counsellor's intervention, and to discuss the matter peacefully with his agnate, the plaintiff. One spokesman made a short speech about the modern difficulties of land shortage, and of the need to demarcate

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boundaries once and for all, making them clear with trees, sial plants or other markers in order to avoid dispute. He expressed disapproval of the defendant's action in hoeing up the disputed strip of land before a settlement had been made; but he said that the plaintiff was not short of land, and had not acted as a 'brother' should. The plaintiff should, said the spokesman, have been ready to help his 'brother'. 'Brothers ought not to quarrel over two paces (the width of the strip of disputed land). That is bad. They must discuss the matter in peace.' No one else got up to speak when this spokesman sat down, and his speech therefore represented the general view of the meeting, i.e. of public opinion.

The plaintiff said later that by his action he had achieved the aim he desired. This was correct in that an internal moot was held soon afterwards at which he obtained the support of members of his inner lineage. He had, however, incurred a fine because of his intemperate behaviour; and it appeared that, contrary to his intention, he had alienated public opinion. The moot agreed that the defendant had acted imprudently in hoeing up the land, but in the end he was allowed to retain the disputed strip. Clearly the plaintiff's nearest agnates (brothers and nephews) felt less sympathy for him than they might, had he not brought the dispute to the parish assembly and there spoken so wildly. The half-brother, who had been present at the parish assembly, reported what had occurred, and his implied censure was not gainsaid by his listeners. Thus the plaintiff may well have chosen the wrong procedure, despite his assertion to the contrary, and at least he had pursued it clumsily.¹

A plaintiff may choose to take his dispute to the parish assembly, rather than to a moot or a counsellors' conclave, if he considers that he is likely to obtain more support there, particularly if he is unsure of the degree of support he may obtain from his inner lineage. In the following case, the plaintiff chose the parish assembly rather than impose a strain on already brittle relations with his patrilateral cousins.

**Case 7:** Two brothers, the only surviving sons of their deceased father, were concerned to maintain and if possible strengthen their ties with their father's brother's sons and autonomous grandsons, because they feared to be left alone as a non-viable lineage. Their cousins were capable of acting independently of them, being numerous enough to make a viable group. One of the two brothers, Karime (see the genealogy), became the plaintiff in a dispute concerning the repayment of bridewealth. His second wife had deserted him for another man, and now requested a divorce. Karime agreed to the divorce, and demanded the return of a number of animals

¹ The conclusion of this case is referred to again at p. 278.
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and a sum of money he claimed to have paid to her father, Teronge, as the early installments of bridewealth. Teronge agreed to this. Two matters caused dispute—the amount of bridewealth which had been paid, and the fee for the woman’s virginity. This kind of case normally is dealt with by a moot or a counsellors’ conclave, and a conclave had been held at which the only result was to isolate the points of disagreement. At the conclave, Karime was supported by his elder brother (C in the genealogy), and by one of their cousins (B) who lived in the adjacent parish. The other agnates lived farther away, and Karime had contented himself with informing them of the dispute and of the arrangements for the conclave; they did not attend it.

Following the failure of the conclave, Karime had to decide what procedure next to follow. A moot would compel him to request the participation of all his cousins, some of whom might refuse, thus perhaps breaking up the lineage. Even if they did attend, he was not, he said, sure of the degree of support they would give him. It so happened that Teronge, the father-in-law, lived in the same parish as Karime; and Teronge was a senior elder whilst Karime was a junior elder. Thus Karime could go before the parish assembly, and he could look for the support of his age-mates against Teronge and his age-mates. Furthermore, it was to Karime’s advantage that at this time (1958) his age-mates, formally in the junior elder grade, were beginning effectively to act as senior elders; that is, they were engaged in replacing the next senior age-group, that of Teronge. Inter-group opposition was stimulated by inter-stream conflict. The formal senior murrum were preparing for promotion to elderhood, supported by the formal senior elders, and the two murrum age-groups were engaged in bickering and quarrelling, each looking to its patrons to support it. Karime was able therefore to make use of this sociological situation for his own purposes. His age-mates tended to regard the dispute as another example of the pettiness of the men of the other stream, and they desired to demonstrate their own strength by Karime’s success. Karime was therefore able to avoid the problem of the danger to his own inner lineage, and also to recruit the stronger body of supporters in the circumstances. The counsellor of his own maximal lineage lived several miles away, and Karime was accustomed to consult a locally resident counsellor of his sub-clan. This counsellor was also an age-mate and a spokesman, and so his assistance could be expected in either a moot or the parish assembly.

It is, of course, impossible to say whether Karime’s choice was the right one—the eventual compromise settlement was slightly in his favour with reference to the conflicting claims he and Teronge had made at the earlier conclave. In any event, it might seem that Karime was merely avoiding the issue concerning his fragile inner lineage. I suggested to him that members of his lineage, on whom he could not depend for support in an instance like this, were of little use to him. He would not accept this evaluation, for he said that he had been able to avoid an act which might have precipitated fission. His contention was that so long as the lineage remained intact, relations might improve. His cousins might need the assistance of him and his elder brother, and would thus incur an obligation to reciprocate.

This example is given because the issues which determined the plaintiff’s choice of procedure were perfectly clear to him. Every fresh dispute is in some way unique according to the total context in which it occurs, and I can only attempt to illustrate the kind of choice-situations which may arise. Karime might have chosen differently had his father-in-law been dead, and had he, therefore, been disputing with his wife’s brother. Had the two disputants lived in different parishes, the possibility of access to the parish assembly would have been denied. He might then have chosen to go to a magistrate’s court, or to appeal to the chief; or he might have thought a moot to be preferable.

Disputes between members of a single parish who are not kinsfolk should not be dealt with by moot or conclave with counsellors, but by intra-parish procedures. This is the reverse of the preceding general principle, but it is more commonly ignored. Arusha say that neighbours (elatio), i.e. co-members of a parish, should settle their affairs, through the agency of fellow-neighbours in the parish assembly, or in a conclave with spokesmen and notables. This has the advantage not only that parish affairs do not go beyond the parish—as they must if a moot is convened—but more pertinently, that it is easier and generally quicker to use intra-parish procedures. Nowadays a parish assembly meets regularly at known times at a central spot, and formerly a man

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...
could readily approach a nearby spokesman and seek a meeting. Living fairly near together, unlike agnates or clansmen, members of the parish assembly can meet within a day or two without much difficulty.

Case 8: Kasenje accused Tomas of the same parish of stealing, killing and eating one of his goats. Kasenje claimed that a near neighbour had seen Tomas drive off the animal, which had strayed from Kasenje's paddock into the fields one evening. Kasenje went to Tomas' homestead and angrily denounced him, but Tomas and his wife denied the matter. Kasenje then went to a counselor of his clan who lived in the parish—his own counselor lived several miles away. The counselor advised Kasenje to complain before the parish assembly in a few days time, and this he did. Kasenje and Tomas were related only within the common moiety; Kasenje was a junior elder, and Tomas a senior murran, and therefore Kasenje obtained the support and assistance of his age-mates in the parish assembly. This case was fairly straightforward because a second witness had seen Tomas with the goat, and an immediate neighbour of Tomas related that he had seen a new goat skin in the house of Tomas' wife for which no satisfactory explanation was given. Tomas' age-group spokesmen fairly readily acceded to his guilt, and concentrated on urging a light compensation.

As Kasenje explained later, there was no need to take the trouble in this case of going a distance to his own lineage counselor, and of asking his agnates to meet at Tomas' homestead. That might have taken many days to arrange; whereas the parish assembly successfully settled the matter within a few days. One of the spokesmen of Kasenje's age-group told me that Kasenje had acted properly. 'We must watch these Ilmembuki (the senior murran, the age-group of Tomas),' the spokesman said. 'They are bad. They thieve and lie and bring bad words upon us here.' He was thinking of the dispute in an age-group context, as a feature of the opposition between adjacent groups. It was to Kasenje's advantage to make use of this, for the support he obtained from his age-mates was clear and firm.

This was not a difficult dispute to settle. The facts were well substantiated: no real defence was put forward, nor were any mitigating features found acceptable. Tomas accepted the decision of the parish assembly, and the compensation was in fact handed over to Kasenje the following day in the presence of spokesmen of both men. There might have been a number of factors which could have produced a different procedure. Had Tomas' guilt not been well established; or had he made a good case for extenuating circumstances (for instance, that Kasenje owed him a goat and refused to give him it); or had the parish assembly been unable to reach a decision easily (perhaps by the senior elders supporting their wards and refusing to accept the conclusions of the junior elders); or had Kasenje and Tomas belonged to the same age-group—in any of these circumstances, Kasenje might have considered it more advantageous to ignore the parish assembly and to attempt to convene a moot or patrineline conclave. Alternatively, in the light of the difficulty of acceptable decision in the parish assembly, he might afterwards have sought another procedure thought more likely to satisfy his demands. A man cannot be compelled to accept the decision of a parish assembly, unless that decision is so unanimous that the spokesmen of his own age-group are affronted by his refusal to accept it, and they impose a fine on him and threaten further coercion. In that event, apart from the coercion, he is not likely to gain a more advantageous settlement by any other procedure. Thus in practice Tomas had no alternative other than to accede.

If the dispute between co-members of the parish is of a more important kind, then the plaintiff may well decide to ignore the parish assembly altogether, and instead seek the support of his agnates and others in a moot.

Case 9: Ndaisken alleged that Malenda, his immediate neighbour, was cultivating a field which had been originally loaned to Malenda's father by Ndaisken's father. Ndaisken now demanded that Malenda give back the field so that Ndaisken's newly married son could have the use of it. Malenda denied Ndaisken's allegation, saying that Ndaisken's father had merely allowed his own father to take an adjacent piece of untouched forest, which Malenda's father himself had cleared by his efforts as a pioneer. If Malenda's account was correct, then Ndaisken had no claim at all. This dispute arose in a mountain parish where the density of population was about 1000 people per square mile. Land was therefore acutely scarce, and the matter of a field of about one acre was of major importance to both parties.

As far as I could ascertain, neither Ndaisken nor Malenda considered an approach to their age-group notables, of senior elder and senior murran

1 In the actual case the senior elders took little part. One of their notables accepted Tomas' guilt and tacitly agreed that there were no mitigating factors. Another briefly suggested a lighter compensation than the junior elders' spokesman demanded, but he did not attempt to pursue this.
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status respectively. The conflicting contentions were not new; but it was not until the marriage of his son that a specific demand was made by Ndasiken. Both men visited their respective lineage counsellors, and an external moot was convened. The case was complicated by the lapse of time since the original occupation of the piece of land by Malenda's father some thirty five to forty years previously, and the deaths of the better witnesses; and also by personal animosity between the two disputants which induced each of them to raise a number of side-issues. The patrilinial descent group of smallest size to which both belonged was a clan-section, but the first moot involved only a small portion of each man's potential supporters in their respective sub-clans. There were three moots and a number of conclaves before the dispute was settled.

At no stage was the parish assembly involved. An attempt by the senior elder spokesman of Ndasiken's age-group to convene a conclave with the spokesmen of Malenda's age-group came to nothing. Ndasiken said to me at that time: 'Will these men (of his own age-group) help me as my brothers will? No! Why should they? They are not of my maximal lineage. And Lokwaya (one of the spokesmen) is he big like Kirika (his own counsellor)? Lokwaya says that we must have peace here, that Malenda is our ward; but why should I care about that? I want my land. It is mine. Was it not (part of) my father's estate? My brothers know this, and Kirika knows it; and they will help me. Olmulaka knows too, and he will help.' Olmulaka was a counsellor in another lineage of the same sub-clan as Ndasiken, and he lived in a nearby parish. I was not able to record Malenda's thoughts or declared motives; but in any event he did not attempt to avoid the moot. Clearly Ndasiken believed that his strongest support lay with his agnates, most of whom lived elsewhere, and he was encouraged by the warm support he gained from Olmulaka, the other counsellor. He considered that he could not expect such unequivocal support from his age-mates or other parish members.

In cases of this kind, which Arusha consider to involve interests of great importance such that the support of agnates is mandatory, although the real intention of a plaintiff may be to convene a moot, he may nevertheless make use of the parish assembly. An example was given earlier (Case 6, p. 190), where in doing this the plaintiff's desire was to make his dispute a public matter, and to stimulate his agnates to action where they seemed to him to be apathetic. An alternative intention in going to the parish assembly may be to attempt to convince those men of his own olwase segment, who live in his parish, that his case is good, so that their attendance at the subsequent moot is more readily gained. It may be useful also for a

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plaintiff to hear the kind of defence his opponent will bring to the moot, and what witnesses, by putting the onus of explanation on him in the parish assembly. Of course, a defendant should be aware of the plaintiff's stratagem, but he may be unable to avoid its results altogether if the spokesmen require him to answer the allegations. A refusal to answer may damage his own case; but he may perhaps be so moved by emotion (anger, fear of loss, etc.) that he commits himself more deeply than intended. A lineage counsellor may advise the plaintiff to go to the parish assembly for these reasons, in the hope of making his task of advocacy easier in the subsequent moot. But apart from such calculated design, a plaintiff may merely seek to make his case before anyone who will listen, and the parish assembly is an excellent and ready forum for that purpose. Despite the degree of skill with which many counsellors advise their agnates, it would be incorrect to suggest that men invariably assess available procedures coolly and objectively. Although seeking that which seems to afford most advantage, they often act unwisely, without forethought, and under the pressure of poorly controlled emotions.

A conclave is preferred to a moot, and sometimes to a parish assembly, when the dispute is of a minor kind, or where speedy settlement is important. Conclaves are also convened to deal with a dispute arising in a public assembly, or to execute the details of a settlement in an assembly, or to establish an injunction pending an assembly hearing. A conclave is essentially a small private meeting between the disputants and their associates—age-mates or nearer agnates. Here intimate discussion, bargaining and counter-bargaining can occur, without direct attention to other people, and without the need for some degree of rhetoric and self-justification. A conclave with a headman, or with one or two notables related to each disputant, is the easiest juridical procedure to invoke, and therefore resort to it is common for petty affairs. Sometimes the initiative is taken by the headman or spokesmen themselves in an attempt to end the dispute speedily, before it can go further; although many spokesmen do not conceive it their responsibility to take such action without a request by an agnate. Both kinds of conclave, and especially that with the parish headman, are sought also by complainants who seek the equivalent of an injunction against an offender—for example, the wife who fears further assault by her husband; the man who finds his cattle being harried by another man's herdsboys at the watering point; the
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cultivator who objects to a new path being made across his field of growing crops; the storekeeper who fears the brawling of murrain in his store. Such complainants may be satisfied with a cessation of the annoyance, and they may be able to gain some small compensation for damages—a shilling or so, a gift of beer. If more serious injury is claimed, it is, of course, always possible to go later to the parish assembly or to seek a moot. Thus the assaulted wife, who initially desires free access to her house and fields (having fled to her father’s homestead) may, through her father, later claim a heifer and beer as compensation before she will return; or she may perhaps sue for a divorce.

A conclave, under the aegis of their counsellors, is the common result of a less serious dispute between kins. Again, a major advantage is the relative ease and speed with which it can be arranged. Although a man may wish to obtain his rights against a kinsman, he does not necessarily desire to air their dispute in public. Not that the results of a conclave can be kept altogether secret, but rather a man feels more able to speak freely in private.

Case 10: A typical example of this was the dispute between Nkoyia and his estranged wife who had been living with her father, Sanya, for several months. The reasons for this situation are irrelevant here. Nkoyia wished to have his wife return, and had sent his full-brother earlier to invite her back. She and her father refused, and demanded first a suitable acknowledgement of his ill behaviour by Nkoyia, and a payment of compensation. A conclave was agreed to at Sanya’s homestead. Nkoyia came accompanied by his two brothers, a paternal cousin, their lineage counsellor and two notables of the maximal lineage who lived near to him. Sanya had with him four members of his inner-lineage, his counsellor and a counsellor of a linked lineage who lived nearby. After a meeting of some two hours, an agreed settlement was achieved, including the promise of Sanya that his daughter would return to Nkoyia’s homestead. This was a straightforward case, since Nkoyia did not attempt to deny his actions which had driven his wife away; and he badly wanted her back, as he admitted.

In other similar cases, agreement is not reached either because the husband refuses the minimum compensation demand by his father-in-law, or because the wife refuses to consider returning. A moot may then be convened by either the husband or the father in an attempt to settle the matter of compensation, or to establish divorce; although often the situation of stalemate is accepted for a period until either party resumes negotiations by, perhaps, another conclave.

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Conclaves, and especially those between kin and involving counsellors, are almost inevitable concomitants of the hearing of a dispute in a public assembly. My notes indicate that most moots were preceded by a conclave which failed to produce agreement. Many public assemblies reach a deadlock over some aspect of the matter in discussion—the facts of the matter, the size of a compensation payment, the period within which payment should be made, associated arrangements. etc.—and the discussion is adjourned. There may be a positive agreement to meet privately, or the situation is left fluid. One party, probably at the advice of his counsellor, later convenes a conclave to discuss the particular points of dissent. This can result in a final settlement, or it may open the way to a resumed public discussion in a fresh moot or at the parish assembly.

Case 11: A man accused of adultery in the parish assembly, insistently denied his guilt and refused to discuss compensation. His age-group spokesmen were not prepared (so one said afterwards) to refuse to support the defendant against the plaintiff, a member of the next senior age-group. The discussion in the assembly became deflected from the particular issue to mutual recriminations between members of the two streams; and eventually, in some disorder, the assembly broke up. It was clear to the defendant’s spokesmen that he was in fact guilty of the charge, and the cuckolded husband persisted in declaring that he would raise the matter again, He talked of seeking to convene a moot. A private meeting of the defendant with some of his age-mates, including several notables, made it obvious that they believed him guilty and would only support him further if he confessed and allowed discussion of compensation to go forward. The defendant acceded to these pressures, and agreed to meet in conclave with the plaintiff. The conclave was held at the plaintiff’s homestead. It comprised, on the plaintiff’s side, two spokesmen, two notables and his elder full-brother, and on the defendant’s side, three spokesmen and three notables. The defendant’s admission of guilt was declared, and the plaintiff agreed to resume the public discussion at the next meeting of the parish assembly, and to stop negotiations for a moot. Subsequently at the parish assembly, discussion concentrated entirely on the nature of the adultery compensation, without overt mention of the defendant’s admission. His age-mates spoke strongly on his behalf and urged a small

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1 In fact the brother was of a senior age-group, so that this was not purely an age-group conclave. He attended primarily as a supporter of his younger brother but also because he might, as a pa...
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compensation; and their patrons interceded to persuade the plaintiff and his age-mates to agree to reduce their demands.

After a generalised decision has been reached in a public assembly, it may be deliberately left to a subsequent conclave to determine the final details and to execute them; or this may be performed by the assembly leaders themselves. Much depends on the nature of the matter in dispute and the degree of genuine, mutual agreement between the two parties.

Cases 12 and 13: In two essentially similar disputes over tenancies, different procedures were followed. Both involved the claim of the legitimate owner to evict his tenant, who was his father's sister's son. At the moot in each case the eventual agreement was that the tenant should be allowed to remain on part of the land. In one case, however, there was little if any animosity between the land owner and his tenant; they were age-mates and friendly, and the land owner had frequently in the past received assistance of various kinds from his tenant. Primarily, the owner in this case wished to secure a public affirmation of his ultimate title to the land, and to acquire the actual use of an area sufficient to make a coffee plot. The tenant was persuaded to accede to this, on the understanding that he would remain secure on the rest of the land; and he also received permission to plant coffee there. The land owner was not suffering a severe land shortage, and he valued the association with his kinsman-tenant. In this case the moot did not discuss in detail the precise alignment of the new boundary. This was established a day or two later by the two men, witnessed by some of the near agnates of each, the tenant's counsellor and two notables of the owner's maximal lineage.

In the second case there was a long history of quarrelling between the owner and tenant, which may have been causally connected with the acute shortage of land at the actual use of the owner, who therefore resented the privation whilst some of his land was occupied by his tenant. Whatever the cause of the ill-feeling, the owner declared his determination similarly to evict the tenant. After two successive moots, a magistrate's private hearing and two or three conclaves, the owner was persuaded to leave the tenant on part of the land (as in the previous case). He remained resentful of the tenant, and declared the latter to be stealing his

land. He quarrelled with the members of his inner lineage (brother, father's brother, three patrilateral cousins) as they gradually came to advocate the compromise solution to him. The lineage was a tight-knit group, unafraid of segmentation whilst the father's brother (still only middle aged and a strong personality) was alive, and it was the constraint of these men which finally caused the land owner to accept the solution. In view of the animosity between the disputants, and the strains already imposed on the inner lineage, it was suggested that the demarcation of the new boundary be carried out by the two men's counsellors and other notable agnates together. They, it was believed, could take the responsibility more easily. The second moot, therefore, adjourned to the land in question, established the new boundary, and directed murran to plant shoots of *dracena* bush at points along it. Any future attempts to ignore these markers would, it was declared by the tenant's counsellor, be construed as an act of contempt against himself and the owner's counsellor. Thus no final conclave was necessary.

It may be considered necessary by a plaintiff and his associates to seek an immediate injunction on the defendant's actions until a full consideration of the dispute is possible in a parish assembly or a moot. Some examples of this, in connection with a headman's conclave, were given earlier (pages 160ff.); a chief's or a magistrate's conclave may act similarly. It is not always the intention of the plaintiff to gain this end—he may well be seeking a complete settlement of the dispute—but he may accept the temporary decision until he can take the issue elsewhere. Although typical of conclaves of chief, magistrate, and headman, this kind of procedure is not limited to these alone, as the following example shows.

Case 14: Mbavaani, a tenant on Kito's land, was accused by Kito of planting coffee without permission. When Kito remonstrated personally with Mbavaani, the latter declared that he had been given permission earlier, and that now Kito was attempting to deny this in order to avoid compensation claims (i.e. for the coffee already planted) by Mbavaani in case of eviction. Mbavaani continued the next day to put in more coffee seedlings. Kito went to see his counsellor, Lorowan, who lived in the same parish, and with him he visited Mbavaani's patrilateral cousin and another of his agnates who lived near. These latter men, of the same clan-division as Kito, had sometimes sought Lorowan's assistance in the past, because their own counsellor lived several miles away. Lorowan's request for a conclave to discuss the coffee planting was agreed to, and it was held three days later at Kito's homestead. Kito was supported by his

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1 This is important, because if coffee is planted or other improvements made with the land owner's permission, the tenant cannot be evicted until full compensation is made for those items. In effect this commonly means that he can never be evicted, because the compensation is too high: in 1917-8 compensation was five shillings per coffee tree.

2 The magistrate advised against the dispute coming to open court, and returned it to the lineage counsellors.
Process of Dispute Settlement

brother and a cousin, and by a neighbour (also the father-in-law of Kito’s daughter), a spokesman of his age-group (senior elders) and the counsellor, Lorowan. Mbavani was supported by his cousin and the other agnate, and by a notable and a spokesman of his age-group (senior munnar) who were his near neighbours. This was a mixed conclave: the counsellor was the leading figure in it, but it was accepted that the neighbours could contribute.

The discussion first turned to the conflicting claims concerning the legitimacy of Mbavani’s acts in planting coffee. Neither party produced evidence which satisfied the other. Mbavani said that Kito had given permission, but that the only witness, a suitor of Mbavani’s daughter was away travelling and could not be immediately contacted. Mbavani’s age-mate neighbours supported him, saying that Kito had not objected to the planting of some coffee the previous year—i.e. the inference was that since Kito had not objected then, although he must have known of it, he at least tacitly approved. Kito denied ever giving permission, and said he had not known of the previous year’s planting. This could hardly have been true. Kito’s adjoining neighbour said that he had heard Kito refuse permission to Mbavani to plant trees on the land; and that Kito had protested immediately when Mbavani had begun planting coffee this year. He denied knowledge of happenings the previous year. Kito’s brother and cousin completely supported Kito’s assertions. Lorowan, the counsellor, said he knew nothing of all this, and demanded to know why he had not been informed if Kito had permitted planting the previous year (for his own benefit a man normally keeps his counsellor informed of such matters). Mbavani’s age-group spokesmen suggested that in any case Kito ought to permit the planting as an act of friendliness. Kito rejected this angrily, and the discussion began to become acrimonious on both sides. Lorowan, the counsellor, suggested suspending further consideration until Mbavani’s own counsellor could attend—this seemed to me and my Arusha assistants that Lorowan felt uncomfortable, in that he had some obligation to Mbavani and his localagnates although his main obligations and his sympathy lay with Kito. He suggested a moot should be held as soon as Mbavani’s witness (the absent suitor) returned. The spokesman of Kito’s age-group disagreed, and suggested that the dispute be taken to the parish assembly since it was confined to members of the parish. Either alternative was possible, but Kito did not commit himself to one or the other at that time. He reverted to the fresh plantings that Mbavani had made two days earlier, and demanded that no more be made. All of Kito’s supporters immediately backed him up, and both Lorowan and the spokesmen told Mbavani that he was not to plant any more seedlings until the dispute was settled. The spokesmen appealed to the spokesmen and notables of Mbavani’s age-group to support this and they agreed after some hesitation. Thus if Mbavani attempted any further planting he would make himself liable to contempt of both the spokesmen and the counsellor. On this apparently interim agreement, the conclave broke up.

The dispute was not renewed afterwards—at least not during the following year before I left the country. No further plantings were made by Mbavani, and Kito appeared prepared to accept the fait accompli, either because it was really legitimate, or because he did not wish to continue in conflict with his tenant, and had achieved his limited intention. Other Arusha suggested that the dispute would be raised again later, because Kito’s eldest son (not involved in the conclave) had said elsewhere that he would evict Mbavani in order to get the land for his own use. Thus the conclave may have produced a settlement of the dispute, or it may have provided only an injunction against Mbavani planting more coffee. I did not know Kito well enough to be able to discuss the matter adequately or to learn his intentions; but it is probable that he was of two minds in the matter. In any case, at least the limited results of the conclave were clear to all concerned.

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Courts deal with cases which involve offences against ordinances, orders and laws issued by the central or local government: for example, failure to pay local taxes or to pay school fees, failure to obey a legitimate order of the chief or his representative, damage to government property, etc. These are not strictly disputes between Arusha, and most men feel no obligation to support the superimposed laws and authority. Such cases are, however, brought to court by the chief and his representative, or by a parish headman, as part of their official duties; and the defendant has no choice but to accord to the judicial procedure. Nevertheless even here there is sometimes an alternative procedure available, as illustrated in the following case.

Case 15: As usual each year an order from the chief was sent to parish headmen to arrange for the clearing and improving of all motor tracks in their parishes, after the rainy season was ended. This order was announced by the headmen at the next parish assembly meeting in X parish, and arrangements were made that all munnar should attend on alternate days the next week, to give their free labour until the task was completed. On the first of these days about a fifth of the munnar did not attend. As soon as the morning’s work was completed, an emergency meeting of the parish assembly was held at which the names of absentees were announced by the headmen. Some absentees were found to be justifiably
brother and a cousin, and by a neighbour (also the father-in-law of Kito’s daughter), a spokesman of his age-group (senior elders) and the counsellor, Lorowan. Mbavani was supported by his cousin and the other agnate, and by a notable and a spokesman of his age-group (senior murray) who were his near neighbours. This was a mixed conclave: the counsellor was the leading figure in it, but it was accepted that the neighbours could contribute.

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excused on the grounds of illness, employment obligations, or absence on a journey which began before the chief’s order was announced. Several alleged cases of malingering were discussed in detail before an absentee was either excused or declared an offender. Finally the spokesmen of both age-groups of elders together enjoined the two murran age-groups separately to punish their defaulting age-mates. Absentees were ordered to pay a fine of one goat or sheep each on the next working day. It happened that one absentee junior murran appeared during the course of the assembly meeting, and protested against the compulsory road labour. He said he would pay no goat, nor would he appear for work on the next occasion. The spokesmen of his patrons’ age-group (who were already effectively acting as senior elders) quickly silenced the young man, and ordered their wards to go immediately and seize one of his cows, and to slaughter and consume it on the spot. The offence of the murran was taken as an offence against both his own age-group and that of his patrons, and members of both participated in eating the meat shortly afterwards. As far as I know, no report of the offences of the absentees was made either to the chief or a magistrate; certainly there was no need for it. The turn-out on the next working day was practically a complete one.

This was an example of indigenous institutions working to meet modern needs; but whilst parish members may be stirred to corporate action in a matter which directly affects them in a very obvious way, they have never taken a similar action against the tax defaulter. In the latter case public opinion merely sympathises with the offender. Similarly, offences against, for example, local government by-laws dealing with butchers’ shops and with trading centres never come to an indigenous public assembly.

Courts deal with disputes between men who are distantly linked patrilineally, and who live more than a few miles apart. Such men, having no access to a common parish assembly, often have great difficulty in convening a patrilineal moot or conclave. If they are linked at the level of the clan-section or more distantly, they and their respective supporters may be virtual strangers to one another. It is not always easy for the plaintiff to persuade his geographically near supporters to journey with him to the defendant’s distant homestead. Unless the dispute is exceptionally critical—and it seldom is between men living far apart—a moot is scarcely considered. The plaintiff may choose to take one or two near agnates and a counsellor to a conclave at his opponent’s home. Before there were courts, and indeed until the

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courts were accepted as juridical alternatives to indigenous procedures, this was the only practicable procedure. Nowadays many Arusha find it simpler to register a plaint at court. Then it becomes the magistrate’s responsibility to summon the defendant and witnesses to appear on a specific day which is set for the hearing. There is the disadvantage of payment of a fee—but this is recoverable from the defendant if the plaintiff’s case is upheld—and also the disadvantage of the intervention of an unknown quantity in the magistrate and his clerk. Most frequently in such cases, these disadvantages are outweighed. A plaintiff will not, of course, go to a court whose magistrate or clerk are known to be fairly nearly related to the defendant. Most Arusha would not expect an equitable hearing in these circumstances.

As in the great majority of disputes, the plaintiff attempts to make an assessment of the relative advantages. Evidence which he fears might be unacceptable by the more formal rules of court procedure will perhaps be accepted in a conclave. An agnate, willing to go to the distant conclave, may be considered so experienced and skilful a proponent of the case that his value exceeds that of a more or less neutral third party, the magistrate. Arusha feel that there is always an incalculable risk in going to court; they are unconvinced of the impartiality of court justice. Courts are on the whole only appealed to when indigenous procedures seem unhelpful, as will be described more fully later.

According to older informants, it was sometimes (I can give no quantitative assessment) impossible formerly to obtain a settlement in a dispute with a distant person. The chances of this were doubtless reduced by the fact that agnatic and wider patrilineal kin have always been scattered; and thus there are sometimes one or two living near the defendant who will then be able to assist the plaintiff readily. Formerly, before the colonisation of the peripheral lands, the Arusha settled area was small—roughly eight miles by five miles in extent—and therefore few disputants lived far apart; and those who did had little or no contact. Nowadays men meeting in the township or at the local government headquarters, for example, may come from homesteads twenty miles apart. Nevertheless, still the contacts between distant men are not of the kind to produce a serious dispute unless they are related in some way which makes them more susceptible to indigenous procedures.
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The kinds of disputes involving men living far apart, which plaintiffs choose to take to a court are of the following type:—injuries from a fight occurring at a market or a beer club; the seduction of a girl by a murrum; theft; damage to property; obtrusive behaviour, especially to a local notable. They may be slight matters, but even if they have some importance (e.g. quite serious injuries resulting from a fight) they are not, by Arusha standards, of the same degree of significance as matters concerning land, marriage, children, or kinship obligations.

Courts and conclaves with magistrates or chief deal with disputes which indigenous procedures have failed to settle; or in which the men of influence wish to avoid responsibility for advocating a solution. Just as courts provide a latter-day alternative to plaintiffs whose opponents are distant people, so they do also to plaintiffs who are unwilling to accept the only settlement to which the defendant can be persuaded to agree through indigenous procedures. Sometimes disputants and their respective supporters are unable to find common ground in which a mutual agreement is possible that can be practically executed. Formerly all they could do in this situation was to leave the dispute, the plaintiff seeking to resume it as circumstances seemed to warrant. In effect, by default the defendant was successful; he might not necessarily have obtained a clear settlement exonerating his past action, but at least he suffered no loss. The plaintiff might resort in these circumstances to supernatural means to support his claims, as described in Chapter Eleven. In such an impasse nowadays the plaintiff may go to court; here the court is treated by the Arusha as if it were almost an appeal body taking the case from a lower court. I have heard the Arusha version of the Swahili word for 'appeal' (olufaa) explicitly used for such a court hearing. Although officially the 'court of first instance' (baraza) should hear every case de novo, merely taking into consideration any earlier, unofficial (i.e. unrecognised indigenous) hearings, nevertheless Arusha magistrates generally show deference to counsellors, spokesmen and notables who have previously been involved. One or two of them are asked to attend the court hearing as witnesses, not only of the facts, but also of previous deliberations. A magistrate may take the opportunity for private consultation with these notable men before he issues his judgment.

The impasse which had been reached must be broken if the plain-

tiff registers his plaint and persists in pursuing it. A magistrate must
hear the case and give judgment without undue delay. If the plaintif feels confident of his justification for continuing the dispute, he expects to gain at least some satisfaction which the dead-locked moot or parish assembly could not give him. Genuine failure to reach any measure of agreement at all in public assembly and conclave may be the cause of the impasse; but it may also occur because the principal supporters of a disputant hesitate to take the course of persuading him to admit his wrong and to concede the other disputant's claim. Even where many of these supporters are convinced of the necessity of this, they hold back for fear of disloyalty, and for fear of introducing disunity into the group—the inner lineage, the maximal lineage, the age-group—which might result from the disputant's refusal of advice. A counsellor is compelled to consider the unity of the whole lineage in the future, as well as in the present dispute—similarly the spokesman in his age-group. It is a way out to suggest that the adamant disputant take his case to court. The responsibility for decision is thus removed from the notables and supporters, and put on the magistrate who cannot refuse it. He, however, not being a directly interested party, can more easily attempt to deal equitably with the matter. The avoidance of responsibility—a failure of responsibility and performance in a way—is not only the result of a weakness and turgidisation (thought that it may be), but it may be the considered plan of a counsellor or spokesman in his attempt to avoid the possible disunity which might occur by his definitive profession for one side or the other. Where a counsellor, for instance, does not have a loyalty and responsibility to both disputants (i.e. they are of different maximal lineages) he is less likely to recommend recourse to a court. Formerly, I was told, disputes might continue unresolved for many years, being raised again periodically and even into a succeeding generation. Resort to supernatural forces was more prevalent. A resolute counsellor sometimes refused to equivocate, and therefore advocated action against the interests of one disputant and in favour of another of the same lineage: such resolution was sometimes successful, but sometimes it caused the disadvantaged member to withdraw from the group altogether and, with his nearer agnates, to transfer to another clan and lineage. Such changes of allegiance were rare in the nineteen-

1 Cf. p. 165.
fifties, but genealogical surveys indicated that they were more common in earlier times before the official courts were accepted. There is, then, good reason to conclude that counsellors are justified in recommending disputants to go to court in so far as lineage unity is not irreparably damaged.

In the following illustrative case it might be concluded, so bitter had relations become between patrilateral cousins, that the retention of lineage unity was an empty success; but, as Arusha pointed out, other members of the lineage remained friendly among themselves and with each disputant and his immediate supporters. There was still the possibility of restoring lineage unity, and in fact experience of similar instances indicates that the possibility was a justifiable one in the estimations of the people themselves.

This case is given in rather more detail than previous examples for two reasons. First, it is not possible to appreciate how the impasse was reached, and at what point the unsuccessful but persistent plaintiff resorted to local government procedures—the chief, and later a magistrate—unless some knowledge of the earlier stages of the dispute is available. Secondly, I wish to take the convenient opportunity to give an example of a total judicial process, involving a succession of different and also repeated procedural stages, and to demonstrate how Arusha handle them and with what intentions.

Case 16: This dispute occurred over the ownership of an area of about 3½ acres of land. It occurred between patrilateral cousins, one of whom (the defendant) had sold nearly 2½ acres of it, thus setting off the overt conflict which involved the whole maximal lineage. This lineage comprised the descendants of Mioron (cf. genealogy in Figure 10a). Mioron’s oldest son, Sati, had been an early pioneer in one of the higher parishes, probably going there about the middle of last century. He had six sons who survived into adulthood.1 In his late middle age, as was not unusual for Arusha, Sati used his daughters’ suitors and husbands to assist him in pioneering a new farm about one-third of a mile higher up the mountain slopes. The old farm, part of which was scarcely cleared properly, was divided up amongst his three married sons, and it was a part of this land which was disputed now. Everyone agreed that slightly over a third of the farm was allocated to Meyang and his wife, and no dispute had ever arisen there. The plaintiff, Petro, claimed that part of the remainder was allocated to his father and mother by Sati, and part to Lomoni’s father and mother. The defendant, Lomoni, denied this, and claimed that his father had been

1 Historically, one ‘son’ was a Meru war-captive, and another a Dorobo immigrant.
allocated the whole of the remainder, after Meyang’s share was taken out. (See Figure 10b). The difficulty chiefly arose because neither Petro and his brothers, nor Lomoni and his brothers, had ever in adulthood lived and cultivated there. They had all pioneered new farms elsewhere, and tenants had eventually occupied the fallow land. It was to one of these tenants that Lomoni had sold the portion of land which that man occupied. The proceeds of the sale (over 1200 shillings according to the Appeal Court records) were shared by Lomoni and his brothers, with Lomoni, the eldest, taking a larger share because he had negotiated the sale. The sale was witnessed on the sellers’ side by Sakure the lineage counsellor (a junior elder), and by Mbaani, a counsellor in the same sub-clan, who lived about three miles away.

The sale was not a secret transaction such as to suggest any fear of its illegitimacy by Lomoni or the counsellors; but Petro did not learn of it until it had been concluded, for he was a bush school teacher and spent a lot of his time away. It is not clear whether his other brothers knew about it—the eldest lived no more than three-quarters of a mile away from the land in question—but there is no suggestion that they raised any objections to the sale at the time when it occurred. Once Petro learned of the sale, he went to see Sakure, the counsellor, to complain. Sakure was (according to his later statement) non-committal, and suggested a conciliation between Lomoni and Petro and their brothers. This was held at Sakure’s homestead, and by then Petro was supported by Mili, his elder brother. Lomoni lived in a higher parish a mile or so distant, and he brought with him two of his brothers. The conciliation was a failure, and was reported to have ended in angry words.

Petro next asked for a moot, and despite the counsellor’s reluctance and an initial peremptory refusal by Lomoni, he succeeded in convening one through the support of his collateral cousins of inner lineages 1 and 4. The moot was no more successful than the conciliation. Lomoni refused to admit any claim of Petro; but that claim was now supported by Loisita and Lutike, two retired elders, who asserted that they were better acquainted with the facts than any one else alive. The only non-member of the maximal lineage to attend was Mbaani, the counsellor of the linked lineage, who had witnessed the sale. He recalled that many years ago—fifteen or more—he had been invited by the then counsellor of this lineage to assist in the division of the disputed land, on some of which tenants were already in occupation at that time. No division was made, however, for the attempt fell through. Each party claimed this evidence to support him: Petro, because it proved that his father had also claimed the land; and Lomoni, because it proved that no division was made favouring Petro’s father. Lomoni claimed that Petro’s father had allowed the matter to drop because his claim was unfounded. Mbaani said that he did not know why the matter was not followed up, but this seems unlikely for he must surely have known what happened, even though it was not in his own lineage. I assume that he did not wish to commit himself to either side. The moot ended in a continued deadlock; or perhaps it is more correct to say that relations between the two parties deteriorated further, without any sign of a resolution of the dispute.

Petro appeared to be highly indignant about the failure of the moot, for he made several declarations in public—at a beer club, at a pre-marital feast and on other occasions—of his alleged rights and the inequity of Lomoni. There may well have been some deliberate intent in his actions; but in any case they stimulated the notables of his age-group (junior elders) to intervene. Although Lomoni now lived in an adjacent parish, he had been initiated in the same parish as Petro—where Petro still lived and where the disputed land lay. Lomoni was also a junior elder and he had continued to acknowledge the influence of the age-group’s notables. At a beer-drink, when the parish’s junior elders were gathered round their allocation of the beer, one of the spokesman raised the issue of this dispute between their age-mates. Lomoni was present—but not Petro—and he explained his case to the group and appealed for their support. There was a division of opinion: some age-mates were reluctant to discuss the matter at all, saying that they should not interfere with a quarrel between near agnates which had already brought ill-feeling to their lineage. They feared the conflict would invade their age-group, they explained. The majority of the age-mates desired to attempt reconciliation; feeling generally supported Lomoni and there was talk of persuading Petro to accept the fait accompli, and to reconcile himself with his cousin. A spokesman suggested a conciliation, and Lomoni agreed on the understanding that some of the notables would approach Petro.

A spokesman and an engomiwin visited Petro, but he refused the proposal. He was not, he said, prepared to concede to Lomoni, who was his enemy. Petro’s gambit (if that is what it had been) had failed because on the whole his age-mates were against him, and now he feared the pressures they would bring against him in the interests of reconciliation and of Lomoni. He told the two notables that he would raise his plaint in the parish assembly; this they did not want, but they had to accept his intention. Petro said that there were a number of retired elders and some senior elders who had known well the fathers of himself and Lomoni, and who would remember the truth of the original allocation of land. At the parish assembly a few days later, discussion was as fruitless as before, and no new evidence appeared. One or two older men denied knowledge of the matter, saying that ‘it was all long ago and the affair of another lineage, not our lineage’—the implication being that they did not wish to become involved in the matter, as several informants pointed out.
Processes of Dispute Settlement

to me. Petro and Loisita attempted to press the issue, but had no success at all. Lomoni, however, declared that he was angry at Petro's continued claims and the calumny to which he was subject. He said that he had been ready for the conciliatory intervention of his age group, and then began an acrimonious speech against Petro and his supporters. He was cut short by one of his spokesmen. Both men were censured by notables of their own and of the senior elders' age-group, all of whom expressed the need for peace between agnates and criticised the extension of the conflict into the age-group.

About this time some directly associated disputes began to be raised. Loisita sought to evict a tenant from his land—this tenant being the husband of Lomoni's sister, to whom he had allocated an area at the request of Lomoni's father many years ago. Meanwhile Orikhu (Loisita's half brother), who had alleged that Petro had been responsible for his conviction for his possession of illegal spirits, began a field boundary dispute with Lotuke, one of Petro's supporters. Kadenya, the younger brother of Lomoni, then claimed the repayment of a calf he had loaned to Lotuke's son. In suggesting that these disputes were directly connected with the first one, I am giving the views of a number of unrelated informants in the parish, as well as my own and those of Petro himself. The inference was that the maximal lineage was under strain, and that therefore difficulties, hitherto accommodated tolerantly, were being raised as disputes between the two parties to the main conflict.

A second moot was convened to which the lineage counsellor invited two other counsellors of the sub-clan who had not been involved until that time. Not only the dispute between Petro and Lomoni, but the other three also were discussed. Loisita agreed to drop the demand for eviction, and Lotuke's son promised to repay a calf to Kadenya. In the dispute between Petro and Lomoni no further progress was made.

After this moot, the lineage counsellor attempted to arrange another conclave. Let it be known that he was suggesting that Lomoni should allow Petro to share the proceeds of the sale. Lomoni was reported to have decisively rejected the proposal, and to have begun negotiations with the sitting tenant to sell the rest of the disputed land. On hearing of this Petro went to the chief to seek his intervention. The chief summoned both men and a few supporters to his office for a private hearing. He ended the hearing, at which no new feature emerged, by saying that men ought not to sell their land, and that Lomoni had been wrong to do this. He recommended that the two cousins meet with their counsellor and other notables to settle the issue. It appears that the chief was intending to represent public opinion against land sales in general; but Petro returned home claiming that the chief had supported him and called for an annulment of the sale.

The Locus of Dispute Procedure

Informants told me that in the old days there might have been fighting and other physical violence at this point because a complete deadlock had occurred. Petro's only recourse would have been to self-help—a disapproved and illegitimate course, but one not unknown. The lineage counsellor said that he still feared violence might occur. He was on the side of Lomoni, but had never expressed strong support. He was a younger man than almost all of his generation and had had unexpected single responsibility thrust on him when his senior counsellor (a senior elder) died a short time before the dispute broke out. He was not an altogether happy choice as counsellor, and in this affair had been ineffective. Unrelated informants suggested to me that a more forceful counsellor would have assembled such a weight of opinion against Petro, that he would have been compelled to accede and allow his claims to die. Whatever the truth of this, certainly the counsellor was in a dilemma. He wished to preserve the unity of the whole lineage, and Petro had threatened at the second moot that he would secede from the lineage if his claim was not met. The way out chosen by the counsellor was to recommend to Petro that he take his plaint to court. A private meeting of Petro and his open supporters, together with the counsellor, brought agreement on this suggestion; and Petro went next day to register the case.

The magistrate first held a private hearing in his office with the hope (he told me) that he might achieve a reconciliation and a dropping of Petro's claims. He failed, and had to agree to a formal court hearing. I was unable to attend the hearing, but both the official record and the comments of the magistrate and others indicate that nothing new arose. The magistrate found against Petro. Still Petro would not let the matter rest. He appealed to the Arusha Appeal Court, but the judgement of the lower court was upheld, and Petro had to pay the full fees. He threatened to continue and appeal to the District Commissioner, but in the end he did not.

Thus the case finally concluded. The total process had involved a counsellor's conclave, an internal moot, a parish assembly, a second and expanded moot, an abortive attempt at another conclave, a chief's conclave, a magistrate's conclave, a court and appeal court. Associated with these nine stages were a number of separate private meetings of either party to the dispute to discuss arrangements. Although this case covered rather more stages than the average, it was not by any means unusual. A similar kind of land dispute between cousins, in another parish and lineage in 1956-7, covered eleven stages—two counsellor's conclaves, three successively expanding moots, a headman's conclave (following fighting between
the disputants' murrain sons), a magistrate's conclave, a court, Arusha Appeal Court, District Appeal Court, and a petition to the Provincial Commissioner for permission to appeal to the High Court. This last was refused. In this case, unlike that of Petro and Lomoni, the conclusion of successive stages did not all favour one disputant.

I have no adequate records of the progress of enough disputes to make a statistical analysis of the number of stages with accuracy and sample significance. Whilst regretting this, I believe it to be more important to demonstrate the kinds of principles involved.

The general principles of procedural action, which have been stated and illustrated above, have been abstracted from both the statements of Arusha and actual practice in specific cases. In order to avoid the impression that they are rigid rules, I have indicated how these principles may for some good reason be ignored in particular instances. The nature of dispute processes among the Arusha can only be understood if it is appreciated that, in some circumstances, virtually any kind of dispute can be dealt with by any one of the public assemblies or conclaves, in an attempt either to obtain a settlement outright, or to further the treatment of the matter towards that end. The members of an assembly or conclave may refuse to attempt to settle a dispute, but seldom do they refuse to suggest a more appropriate procedure; and almost always they make some contribution by the expression of accepted norms and the quoting of relevant precedent.

With the exception of a court, which, at least officially, should make a single hearing and issue a judgment forthwith, no assembly or conclave is necessarily expected to reach a settlement at a first attempt. Even the judgment of a court can be delayed temporarily on the pretext, or perhaps genuine justification, of awaiting further evidence. In that case, the dispute may, on the initiative of the magistrate or notable men of influence, be actively referred to another body in the meantime. Should an out-of-court settlement be reached the magistrate can merely reiterate this in his formal judgement.

As I have noted already, the plaintiff seeks to invoke the particular procedure which seems to him likely to be most advantageous to him in the circumstances. Together with his closest associates—primarily the members of his inner lineage—he attempts to assess where he may expect the most support and the least opposition. The degree of urgency he feels is important, as also his immediate intention in acting as plaintiff: for example, the desire for an immediate, outright settlement together with the appropriate compensation, restoration of rights, etc.; the desire to obtain an affirmation of his legitimate rights but without subsequent action (e.g. the plaintiff’s ownership of land occupied by a tenant, but without seeking to evict the tenant); the desire to initiate the dispute preparatory to a definitive hearing of it by another procedure; the desire to test public opinion, to convince wavering supporters of the strength of the plaintiff’s claims, and to force the defendant to declare himself. A plaintiff is, of course, subject to the opinions of his associates, and his chosen course of action can be affected by their attitude and by his assessment of their probable support. A disputant, with the solid support of his inner lineage behind him, is in a different position from one who considers that some of his close agnates may give only lukewarm support, or who believes that he may seriously weaken what are in other ways valuable intra-lineage relations. It has been emphasised that both the kind of dispute and the nature of the structural relationship between the disputants are of fundamental importance in the decision; to which may be added the geographical relationship between them both in terms of parish membership and the sheer distance between their homesteads. The determination of choice is dependent on the attitude of the defendant and his willingness to accede to that choice. The defendant's hand can sometimes be forced—he must answer a court order, and can rarely refuse the summons of a spokesman of his age-group on pain of a fine or other punishment; and a refusal to state his argument may jeopardise his case, if it is believed he is merely taking refuge in silence in order to hide his weakness. In a total process relating to a single dispute, the initiative may change hands as the defendant at one stage attempts to make the choice of the succeeding stage. Finally, any disputant is subject to the advice and suggestions made to him by the acknowledged specialists in that field—the lineage counsellor especially, but also age-group spokesmen and notable men in the three sub-systems. Especially when a counsellor does not have allegiance to both disputants (i.e. where they are of different maximal lineages), a disputant is markedly susceptible to his advocacy.