

GIRIAMA RECONCILIATION*

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I. Introduction

Reconciliation is the express purpose of elders' councils and oracles, two traditional dispute institutions¹ of the Giriama of Kenya². Before decisions are rendered by the elders at the elders' councils (*kambi*, pl. *kambi*) or by oracles (*kiraho*, pl. *viraho*) during trials by ordeal, those in attendance ritually chant, "Let good things come, let bad things go away/Let all bad things end here..."³ These conciliatory goals, however, sometimes are not realized or even attempted. The case studies below will show that the techniques used to reconcile disputants are highly variable and reflect such factors as the gravity of the accusation, the social relationship between disputants, and their explicit purposes in litigating. This paper will try to convey how these factors can influence dispute settlement procedures and how, to a lesser degree, these procedures can affect social relations. Although the cases demonstrate the dynamism of Giriama dispute settlement procedures, it will also be apparent that the outcomes of disputes are largely predetermined by the attitudes and motivations that disputants bring to the forum: "Dispute processes are but part of a larger continuum" (Gulliver, 1969:60). This paper will emphasize, however, the intricacies of the dispute settlement procedures themselves and the dyadic relationship between disputants. Ethnographic data extrinsic to the disputes will be presented to suggest the possible sources of conflict inherent in these relationships and how the breaking of certain culturally approved norms will affect the future of the relationships.

The discussion will thus attempt to avoid the apparent contradiction that arises when descriptions of dispute settlement procedures are confused with the ideal aims of dispute institutions, such as promoting compromise and reconciling parties in multiplex relations⁴ (e.g., Gluckman, 1955; Gulliver, 1963; Bohannan, 1957). Finally, I hope to clarify the inadequate concept of "African arbitration" which, surprisingly, appears to co-exist with rigid systems of compensation (Coons, 1964:780).

II. The relevance of the Compromise Model for Giriama Disputes

To some extent, my discussion follows suggestions made by critics of the analytic models that have commonly been used in the study of dispute settlement procedures, either

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explicitly or implicitly⁵. The compromise model of dispute settlement has been favored by analysts of multiplex, face-to-face communities in which the values of disputants have been assumed to be reconciliation and social harmony (Gluckman, 1955; Gulliver, 1963; Bohannon, 1957; Nader, 1969). This model includes compromise decisions, agreements, prospective reasoning, and a de-emphasis of guilt or innocence.

Critics of the compromise model reject the underlying assumption that reconciliation and social harmony are dominant values shared by individuals in multiplex relationships. There is also dissatisfaction with the quality and analysis of the case material that has formed the basis for the compromise model. Abel (1973:241) says that we still know too little about the qualities of disputes to begin grouping them into typologies, and questions whether the elements of the compromise model form a fundamental style of dispute settlement. Van Velsen (1969:148) and Starr and Yngvesson (1975:562) emphasize that analyses of the presence or absence of reconciliation or compromise should take into account the purposes of the litigation and how each party to the dispute defines his goals. Van Velsen (1969:144) points out the failure of the literature to note the stage in the judicial process at which it is possible to effect reconciliation; from this has followed the invalid assumption that precise interpretations of rules preclude reconciliation. Thus the case material in the literature that tends to over-emphasize reconciliation (e.g. Holleman, 1950; Bohannon, 1957) contains clear evidence that conciliatory efforts, and decisions that unequivocally ascribe wrongdoing, are not mutually exclusive, but may be appropriate under different circumstances and at different stages in the judicial process (Van Velsen, 1969:44-45). An intensive reanalysis by Starr and Yngvesson (1975) of case materials contained in Gluckman (1955), Gulliver (1963), and Nader (1969), finds that compromise decisions and reconciliation are not inevitable outcomes of disputes in these multiplex communities, notwithstanding the assertions of those writers. Thus, it is clear that the prevalence of multiplex relationships is not the only significant factor influencing dispute outcomes; disputes must be analyzed within a broader context of litigants' ongoing social relationships so that we can perceive variation in the procedures for handling disputes.

The discussion that follows attempts to take these criticisms and suggestions into account to the extent that the data allow. I have also tried to be responsive to the comment by Gluckman (1968:291) that

for tribal courts we lack detailed records of cases, including the examination of evidence and judicial decisions. No one has published sufficiently detailed records of processes of argumentation towards decisions.

Many Giriama disputes, although they typically involve disputants in multiplex relationships, may not allow compromise of the validity or amount of the claim because of the nature of the claim or its remedy. Public allegations of sorcery, theft, adultery and incest--frequent sources of Giriama disputes--are inflammatory and require a decision announcing whether a wrong has been done and ascribing blame. Such a decision is also necessary for the victim to claim compensatory damages. Thus someone who has been wrongly accused is entitled to damages for "spoiling the name." If a proven wrong has resulted in death (often believed to be the consequence of sorcery or incest), the relatives of the deceased have the right to death compensation (kore); a cuckolded husband or the father of an unmarried girl who is abducted has the right to receive compensation (malu) for the wrongful taking of the female's sexual services. Allegations that seek to ascribe blame and present difficult problems of proof are often taken to oracles: fact-finding institutions that decide only guilt or innocence. We shall see, however, that none of these factors--even the procedural framework of a trial by ordeal, with its inevitable "either/or" outcome--preclude eventual reconciliation. Rather, the possibility of reconciliation depends on the disputants' broader social relationship, of which the immediate dispute is but a partial reflection.

The case studies below of the three disputes (sorcery, adultery, and brideprice debt) were deliberately chosen because neither the validity nor the amount of the claims could have been compromised by the dispute institutions (except indirectly, by avoiding some of the issues). The analysis is thus diverted at once from the assumption that reconciliation is inevitable, or inextricably linked to compromise decisions, to a closer consideration of the qualities of each case that encourage or preclude reconciliation. The cases will show that disputants' predispositions to become reconciled differ, depending on their purposes in litigating; that reconciliation must be evaluated according to the modal conduct appropriate to the parties in a non-dispute situation. Thus attempts to reconcile disputants vary in form and vigor and reflect factors that are extrinsic to the instant dispute. The elders who are present at both the councils of elders and trials by ordeal may make conciliatory efforts, before the decision is rendered, that may be influenced by such factors as: the gravity of the accusation and its implications for the disputants' relationship, the sources of conflict known to inhere in such relationships, the history of this relationship, including prior conflict and disputing, the motives for making the claim. These factors, which may be personally known to the elders, readily surmised, or revealed in the course of giving testimony, appear to be weighed and combined differently for each dispute and account for the variation in conciliatory efforts. Those efforts can be lively and ascribe degrees of wrongdoing to both parties, praise the ultimate loser, and chasten the ultimate winner. By comparison, the actual decision that often

favors one party is brief and dispassionate and, in the case of the oracles, may be only symbolic. Thus the individualized conciliatory techniques lay the foundation for possible reconciliation by considering the unique aspects of each case and providing a measure of individual justice. But these proceedings are quite separate from the decision. In this manner dispute settlement can be encouraged when it is feasible and yet the norms that order conduct remain uncompromised.

III. The Giriama and Their Dispute Institutions

According to legend, Giriama society as it is known today began at Kaya Fungo, a fortified village in the Kilifi District of Kenya, of which vestiges still remain. There the founding ancestors of the six original, exogamous patrilineal clans, and their descendants, corporately owned land on which they cultivated maize. New clans were created when sibling rivalry--often between sons of co-wives in polygynous households--could no longer be contained within the existing structure.

The Giriama were governed by the Vaya, the most prestigious of the secret societies. Composed of duly initiated elderly men, the Vaya are reputed to have been the guardians of the Giriama: they regulated seasonal activities such as planting and harvest, prayed for rain in times of drought, consulted diviners for the cause of pestilence, and initiated youths into their age-grades. The Vaya presided over trials by ordeal and listened to disputes that could affect the welfare of the society. The Vaya were greatly feared and respected because they possessed powerful coercive equipment: the right to execute persistent offenders by strangulation, and the administration of the dreaded Kiraho cha Fisi, the Oracle of the Hyena, an ordeal by poison that killed offenders instantly. Members of the senior age-grade, the kambi elders, gathered daily to listen to the petty quarrels of everyday life.

The supernatural played an important role in discovering and dealing with wrongdoing. Mulungu, the Sky-God, through his spirit-messengers, the pepo, relayed supernatural information about wrongdoing to diviners who were often consulted during the fact-finding stage of disputes. A higher-ranking diviner, an mgonga wa mwingo⁶, accused individuals (most often of sorcery) in public ceremonies during which he sang frequent prayers to God and the ancestors asking for guidance. God and the ancestors were believed to decide the outcomes of many disputes. These omniscient beings decided who was guilty at trials by ordeal. As a last resort, disputants could petition God through his spirit-messengers at their sacred dwelling places called mizimu, to request the death of a false accuser or a recalcitrant transgressor.

Many generations ago the clans left the confines of Kaya Fungo. Today the Giriama live in widely scattered ham-

lets often composed of a man and two generations of his patrilineal descendants. Although the dispersal of the population and the passage of time have eroded the corporate structure of the clans and the power of the Vaya, the institutions for handling disputes have largely endured.

A. The Jurisdictions of Elders' Councils and Oracles

Psychological rather than physical power is the basis of the jurisdiction of the councils of elders and the oracles. Although a party may use social or physical pressure to persuade an adversary to submit to adjudication, the dispute institutions themselves do not force litigants to be present. Councils of elders will not give a default judgment if the defendant fails to appear or walks out. At the oracles, litigants participate in trials by ordeal only after they have testified to their willingness to do so.

Councils of elders evaluate conduct on the basis of testimony and allocate rights and duties. The oracles ascribe blame by revealing hidden facts through trials by ordeal. When a dispute requires both an ascription of blame and an allocation of rights and duties, the council of elders and the oracle may become different stages of a single process.

Through the oracles, God and the ancestors act as supernatural judges who reveal the guilt or innocence of litigants by the physical reactions of the latter to ordeals by poison or fire. In the poison ordeals of the Kiraho cha Papayu and the Kiraho cha Mwalola, a secret medicine is ingested and the guilty party becomes ill. In the ordeal by fire, the Kiraho cha Tsoka, the litigants' hands are smeared with medicine over which a red-hot wedge of iron is passed; blistering indicates guilt.

Most often, accused and accuser go to an oracle together. If the accused suffers adverse effects from the ordeal he is guilty; a similarly affected accuser is adjudged to have made a false accusation, a wrong in itself. Sometimes the accused alone submits to a trial by ordeal simply to prove his innocence, an act known as kudzagesa ("to wash oneself").

The guardians of the oracles are called wagonga (sing. mgonga) because they alone own the secret formulae of the medicines used in the ordeals. These guardians say that the oracles reveal what is unknown to men, that is, the invisible truth of the matter. In the course of lengthy proceedings before an ordeal is administered, this "truth" however, is narrowed down to the question of whose version of events is correct. When presented with a simple "either/or" version of truth, the oracle resolves the question by making a selection.

The authority of the oracles was omnipotent in former times, but today it does not go completely unchallenged. It is significant, however, that litigants do not challenge

the veracity of an oracle within a traditional context. Litigants who question the outcome of an ordeal take their cases to a government Magistrate's Court and usually allege that they took the ordeal unwillingly or that the outcome was "fixed." Nevertheless, even government magistrates appear to uphold the decisions of oracles.⁸

Oracles remain peculiarly suited to ascribing blame by determining difficult factual issues. Their authority derives from omniscient supernatural beings who need not reason and weigh conflicting, sparse testimony to determine what happened. The oracles simply reveal the truth by inflicting symptoms of guilt in response to the assertions of the litigants.

In former times, all members of the councils of elders were chosen from the most senior age-grade, the kambi. Today those councils (which are called kambi because of their constituent membership) still appear to be composed of older men widely respected for their knowledge of the customs. Sometimes, however, their authority is openly challenged, and there are rumors of corruption.

In 1914 Authur Champion, a colonial District Officer, reported that disputants often took their cases to several councils of elders in different areas until a favorable decision was obtained by bribery (Champion, 1967:18). Although today this opportunism has been curtailed by requiring the plaintiff seeking a hearing before the elders to obtain written permission from the Location Chief,⁹ there are other signs that the judicial authority of the elders remains weak. If a litigant senses an unfavorable judgment, he may simply leave before the decision is announced. Upon hearing an unfavorable judgment, some litigants stalk out in an attitude of defiance. For their part, the elders may "announce" potentially controversial opinions in sarcastic, informal asides that are quite separate from their formal judgment; they may also recommend that a disputant, faced with an obdurate opponent, resort to self-help.

History indicates that the elders' weakness is not entirely a result of the passage of time. As we already noted, in earlier times the members of the secret society of the Vaya were the most powerful and effective of the secular adjudicators; the kambi decided less important matters. As an institution, however, the kambi has survived better than the Vaya, possibly because requirements for membership are less onerous and it needs less of an administrative center. Even more important was the willingness of the British administration to recognize the kambi as an indigenous agency for dispute settlement (see Native Courts Regulation, No.52 of 1897, §2 (b)). Today, with some reservations, the kambi are still considered to be aides in local administration. By contrast, the administration succeeded in eliminating the more powerful of the ordeals controlled by the Vaya. A few Vaya still live at Kaya Fungo where they administer the respected but non-lethal Oracle of the Papayu, but their real power has been dissipated.

The history of the kambi, and their present quasi-administrative role, have combined to preserve a judicial weakness that has, ironically, reinforced the traditional division between secular and supernatural jurisdictions.

B. Procedure at Councils of Elders and Oracles

Councils of elders vary little in their basic structure and procedure. The five councils which I visited regularly were composed of from four to six elders. Apart from an occasional fortuitous kinship relationship between an elder and a disputant, elders have no personal interest or stake in the outcomes of disputes before them. They have a conservative outlook that often has a discernible effect on their decision-making: they often cite the importance of custom and tradition and steadfastly defy requests by local government administrators that they not hear sorcery disputes. The elders present a united front by not disagreeing publicly among themselves and by chanting in unison after a decision has been announced: "That is indeed what we have decided."

Councils meet at least twice a week, but can be convened at any time if a dispute arises suddenly. When a council is in session, the elders sit in a line on a log or on individual stools; the disputants sit on a rock before the elders, in the center of a circle created by spectators. Plaintiff and defendant are separated from each other by having only one disputant occupy a seat in the center of the circle or, alternatively, by having the disputants seated side by side.

Basic procedure does not vary from one council to another. Disputants are allowed to tell their story with few restrictions. The plaintiff presents his case first, immediately followed by a reply from the defendant. Plaintiff and defendant make lengthy opening speeches, are given complete freedom to express themselves, and attempt to reply or counter what the other has said. Each disputant has the opportunity to answer the other at least twice before the elders intervene and begin to play an active role. There are thus at least two speeches given by each disputant without interference by the listening elders. During these speeches, the disputants are forbidden to interrupt each other; if either attempts to do so he is silenced immediately by the elders. The speaker singles out one elder to address, and this provides a focus for his speech. The elder addressed responds in the customary manner of attentiveness by sharply and audibly sucking in his breath at appropriate pauses in the speaker's narrative. At the end of the initial submissions there may be a brief question from any of the elders to clarify a factual point, but at this time the questions are not combative or argumentative, which they may be in later phases of the hearing.

When the opening speeches by the disputants have been completed the elders may question each disputant at length on

any point that was raised during the initial speech. If it is practicable, the elders may encourage the disputants to negotiate a resolution (perhaps only an interim one) that will be affirmed in the formal decision. To this end, the disputants may go a short distance away to confer briefly and return to announce their agreement. Failing this, the elders begin to prepare the disputants to accept a unilateral decision by the elders, using a combination of threats, flattery, and common sense. Here lies the heart of Giriama reconciliation: it does not necessarily compromise claims or create lasting good feeling, but it does lead to the acceptance of a reasonable disposition of the case that is in the disputants' best interests for the time being.

Finally, the disputants are told to go far away from the elders, who now hold their private conference (njama). During this conference, some of the male auditors who have been seated among the spectators are free to venture an opinion, but the elders dominate. When this discussion is finished and a decision is reached, the disputants are called back and the themo--the fee to the elders for listening to the case--must be paid by each disputant before the elders will announce their decision. Then an elder, usually one who is unusually fluent, delivers the decision. Though individual styles of delivery may vary considerably, the facts of the case--cleverly arranged and interpreted--are commonly reviewed to cajole the disputants into accepting the actual decision, given at the end of the speech.

At the oracles the wagonga who administer ordeals, and the other elders who are invariably present, insure that the circumstances of the dispute are fully related before a trial by ordeal is given. The pre-ordeal procedure for giving and receiving testimony is remarkably similar to the procedure at the elders' councils. The terseness of pre-ordeal testimony compared with that at the elders' councils can be explained by fear of the ordeal and the bitterness and determination that often accompany the quest to ascribe blame. In addition, the administrators of the ordeal may be less familiar with the case than the council, for disputants are free to range widely in selecting ordeals. This is almost always the case, for example, with the prestigious poison ordeal Kiraho cha Papayu, located at the isolated village of Kaya Fungo.

Neither relative unfamiliarity with the case, nor an oracular decision that harshly ascribes guilt or innocence, deters the administrators of ordeals from making conciliatory gestures appropriate to the circumstances of the case. In proceedings before ordeals, disputants may be cajoled or coerced into accepting the outcome in much the same way as kambi elders prepare disputants for their decisions.

IV. Case Analyses and Ethnographic Materials

A. The Case of Sidi Simba¹⁰

Giriama sorcerers (mutsai, pl. atsai) use medicines which they instruct to have some ill-effect on human beings, crops, or livestock. Sorcerers work at night to secrete the medicine in places frequented by the intended victim: paths, garden, waterholes. While concealing the medicine, the sorcerer murmurs the victim's identity and the medicine's intended effect.

There is often an aura of sorcery surrounding those who distinguish themselves, whether by success or eccentricity. People who behave oddly may be called sorcerers in a jocose manner, but the laughter is uncomfortable. There are whispers of sorcery about rich, powerful men or favored wives in polygynous households. The motives for sorcery most frequently mentioned by diviners are economic competition and sexual jealousy.

Individuals or groups who suspect sorcery must follow a strict, expensive investigative and accusatory procedure. Before a public accusation can be made, at least three diviners (wagonga wa mburuga) must declare in private sessions that sorcery is the cause of the misfortune and must provide a description of the sorcerer. Only then can a diviner of a higher grade, an mgonga wa kuvoyera, accuse the suspect in a public ceremony (ngoma).

Sorcery is a grave offense. After being publicly accused, alleged sorcerers are sometimes stoned or beaten and their houses burned; they are always shunned. Setting in motion the procedures culminating in a sorcery accusation is tantamount to ending a relationship--often one that has been marred by bitter conflict over the years. It is difficult to reconcile parties to a sorcery dispute; such disputes tend to fulminate and often end with death or exile.

* * *

At the time she was accused, Sidi Simba was living with her husband in the hamlet of her three brothers. One of her brothers, Ngoa wa Simba, had been sick for a long time and eventually a diviner (an mgonga wa kuvoyera) came to the hamlet and publicly accused Sidi of sorcery.

Sidi Simba is a half-sibling to her three brothers: her father had two wives. Disputes between children of the same father but different mothers are common in Giriama society, possibly because of the stresses inherent in the relationship. A mother and her children are regarded as a semi-autonomous group that historically provided the structure of the lineage

system and today is the unit for the allocation of domestic resources and inheritable property. Legends say that the number of major lineages (mryango) within the six original clans (mbari) was determined according to the number of wives each founding ancestor had, although each lineage took the name of that wife's eldest son; further fission occurred after epic disputes between sons of the same father but different mothers within the lineage. Today, a mother and her children often form independent agricultural units; each wife has her own garden and a maize granary that is filled by her and her children's efforts. Grain from the granary common to all of a man's wives and children is divided equally among wives regardless of the number of children each may have. Inheritance of land is per stirpes patrilineally, that is, divided according to the number of wives and then sub-divided among the sons of each wife. These practices tend to pit groups of half-siblings against each other, and individual acts may aggravate tendencies toward conflict. For example, a husband may reward a favorite wife by distributing a disproportionate amount of food and clothing to her children and providing her sons with brideprice before it is paid for other, equally eligible sons. Ill-feeling may arise when the brideprice received for the marriage of the daughter of one wife is used to provide brideprice for the son of another. An apocryphal case history dramatizes the situation by recounting a neglected wife's triumph when she forced her six married daughters to leave their husbands and return home, necessitating the return of their brideprice and wreaking economic havoc in the village.

Sidi Simba and her ailing half-brother Ngoa are competitors even in adulthood. Both are diviners, but Sidi's reputation and clientele are more widespread; she herself cites jealousy as the real reason for her accusation. Her personality makes her conspicuous in the village and elsewhere: she is forceful and her spirited words and laughter dominate everyone. By having Sidi accused of sorcery, her four brothers obtain a ready explanation for Ngoa's illness and rid the village of a bothersome competitor. These motives underlying the sorcery accusation (although admittedly speculative), together with the grave implications of the accusation itself, make reconciliation unlikely. The circumstances of the dispute forecast increasing acrimony and the relentless pursuit of an all or nothing decision.

After the accusation, Sidi brought her brother Nyanje Simba to an elders' council near their home. As the transcript will show, the general issue that Sidi raises is procedural: did her brothers take the proper steps relating to her accusation? Sidi makes two separate claims. First, Nyanje went to bring the accusing mgonga himself; as an interested party he should not have done this. Since personal contact with the mgonga smacks of collusion and casts doubt on the supernatural source of the accusation, Sidi accuses Nyanje outright of having told the mgonga whom to accuse. Secondly, and less important, Sidi complains that Nyanje did not consult enough divi-

ners in the preliminary stages of gathering evidence before taking the irrevocable step of having her accused in public.

One cannot discount the possibility that Sidi's appearance before the elders was merely a delaying tactic or a deliberate annoyance; or she may have truly believed that she could nullify her accusation. Whatever her real reasons, Sidi's options as an accused sorcerer were limited. She did not choose to go to an oracle at this point because an oracle could have determined only her guilt or innocence; at present she wanted to challenge the validity of her accusation on procedural grounds, a claim that only the elders could decide.

Sidi: It was the day before yesterday, in our village; my brothers sat together and talked about me. I was not told about the meeting, but I found out about it later...Two days later, an mgonga wa kuvoyera came to the village. He came and played his ngoma and found that I was the sorcerer.

After the mgonga had gone away, my brothers discussed what they should do. They called me and said: "Now that you have been found a sorcerer, we would like to solve the matter as brothers. After all, you are one of us. We want you to pay us the money that it cost to bring the mgonga."

They said that they did not want to bring the matter to the elders, they just wanted me to pay the money and that would be the end of the matter. All they wanted to know was who was the sorcerer, and now they knew.

I did not admit it. I have never been a sorcerer in my life. But I knew that this would happen. I knew that my brothers would get an mgonga wa kuvoyera and that the mgonga would come and accuse me as a sorcerer. And if that mgonga had come and had found someone else, my brothers would refuse to pay him his fee. So, knowing that the mgonga was meant to catch me, I knew that it was a trick, that there was no truth in it.

Elder: Whom are you accusing? Of all of your brothers, with whom are you ready to speak?

Sidi: I will speak with Nyanje, he is the leader, he is the one who came and told me that I would pay the cost of the mgonga.

Nyanje, seeking to quell suspicion, emphasizes that Sidi Simba's mother was consulted before and during the accusation. He defends the validity of the accusation and protests that Sidi is making the case more serious by bringing it to the elders.

Nyanje: I would like all of you to know that Sidi Simba is my own, young sister, though we have different mothers. My mother was the elder. But now my mother is dead, and her mother is left. Our mothers had only one husband and that was our father. All this was brought about by my young brother Ngoa wa Simba. He has been sick for many days, and I have tried in all ways to make him well.

Now when Ngoa had been sick for a long time, I called the mother of Sidi Simba and asked her what we should do. We asked her about bringing an mgonga wa kuvoyera. To that our mother consented. It took me a long time to get the mgonga to come; almost a month I spent searching for him, but at last he came.

The crowd was so large! The people were singing and shouting, they all wanted to know who the sorcerer was! The mgonga took all the Mwaziro (the clan name), all of us, and put us on one side. And then the mgonga began asking my mother, "Where are the daughters here? Are they working with the sons of the village?" That was the beginning of all suspicion. It went on like that, then all at once the mgonga said that the sorcerer was Sidi Simba!

I do not know why Sidi Simba is making this such a big thing. How would the mgonga know that Sidi is the sorcerer; he lives very far from here. He never met Sidi Simba before. He did not know that I have a sister named Sidi Simba. Nor was the ngoma played in darkness, or in a house. It was played in daylight, in front of many people.

After I found out that Sidi Simba was the cause of Ngoa's sickness, I told her that it was very bad, but that I would forgive her if she paid the expense of bringing the mgonga. Then she and I would get other wagonga to come and use all their skill to cure Ngoa. That is all that I asked. I did not want this case brought to the elders here, because it would make the matter more difficult. Everyone would be fighting over the bad name of Sidi Simba. But she forced me to come here, and here I am.

Sidi repeats her complaints of Nyanje's chicanery and sarcastically dismisses his righteous protest that he wanted to settle the matter peaceably at home.

Sidi: I think that all the elders here know the customs to be followed when one wants to bring an mgonga. The person with the sick person in his house does not go. The person who goes to get the mgonga is one who does not live in the house, is unconcerned with the matter... I was surprised to find out that it was my brother himself here who went to get the mgonga.

Another thing, he (Nyanje) said here that he gave money to the elders who consulted diviners (wagonga wa mburuga). But why did Nyanje consult only one diviner? It should have been two or three or four.

You (Nyanje) went and consulted a diviner and kept his information secret; and then you went and got an mgonga wa kuvo-yera, and I saw you pointing to me, telling the mgonga that I was the one who was the sorcerer. How do you expect me to agree with what you have said?

* * *
Do not try to be kind and settle this thing at our home because I am your sister. I do not think it is right to have kindness for a sorcerer. If I really am a sorcerer, and I give you all the money that you ask for, I shall be very angry and kill you, because I am a sorcerer!

You did not treat me as a person you really liked. If you knew that I was

doing a bad thing, you could have told me so. Did you do that? Instead, you went and got an mgonga to come, and I saw you pointing to me, telling the mgonga that I was the sorcerer. How do you expect me to agree with what you have asked? What I want is for you to do all that is possible to prove that I am a sorcerer.

To bolster her allegations that the procedure Nyanje followed was devious and that therefore the accusation could have no foundation, Sidi gives some practical reasons why she has no motive for causing Ngoa's sickness:

Sidi: * * * Ngoa has nothing, he is not working, he is not married, he is the poorest of all the people in the village. You (Nyanje) are in a better position, you are working, you have a wife...if I were really a sorcerer, I would have used my medicines on you because then you would die and maybe your wife would go home and I would get a part of the brideprice...

Nyanje retorts to Sidi that it was not so unreasonable to think of her as a sorcerer because she had been accused once before of sorcery; that was why her first husband divorced her. Nyanje also asserts that he actually consulted two diviners and asked some elders on the council to consult two more before he took the step of seeking an accusation. These elders affirm this before the rest of the council. Apparently satisfied with this testimony, the elders then vigorously pursue the question of collusion in the accusation and a lively interrogation follows:

Elder: Is it true that you yourself went to search for the mgonga wa kuvoyera?

Nyanje: Yes, I did it.

Elder: Why did you go yourself? Because it is possible that when you went you could have told the mgonga that Sidi was a sorcerer. At that time you were strongly convinced of that. Is that not so?

Nyanje: Yes.

Elder: Now who can be sure, who can trust you that when you went and stayed there for one month that you did not tell him (the mgonga) that Sidi was a sorcerer? Then all he (the mgonga) had to do was dance and then catch your sister! And you would agree... If the mgonga had come and caught another person, would you have agreed?

Nyanje: I think that I would have agreed because I did not tell the mgonga anything. (Elders all laugh derisively.)

Elders: You are deceiving us; only a short time ago you told us that you were sure that Sidi was a sorcerer and that when her husband divorced her there was a big case about sorcery, and now that your brother is sick you are sure that Sidi is the sorcerer. So be honest, if the mgonga had caught someone else, would you have agreed? Wouldn't you have refused to pay him his fee?

Nyanje: How can you elders know? Can you prove that I told the mgonga what you think I did? Were you there?

Elder: We can tell you if it is proper, if it is you who has suspicions, to go to the mgonga yourself. We have all kinds of suspicions ourselves because you did not follow the correct procedure. You should have sent someone else.

Nyanje: I did send several people, but none succeeded in bringing the mgonga.

Elder: Then what trick did you use to get the mgonga to come? When you mentioned money, did you mention a bribe?

Nyanje: What are you saying! How has the question of a bribe come in?

Having demolished Nyanje, the elders turn to Sidi with a question: What does she want the elders to do? Her response sets the tone for the elders' ultimate judgment:

Sidi: What I want is for Nyanje to go to the oracle with me. The Kiraho cha Papayu. That will prove if I am a sorcerer or not. I am not sure that I am; I have told you all of the reasons why I doubt the work of the mgonga wa kuvoyera. I have never been a sorcerer in my life.

Nyanje: I am ready to go (to the oracle).

Then the elders send Sidi and Nyanje away and deliberate in private. They debate how to handle Nyanje's misconduct:

Elder: *Nyanje did a very wrong thing... he should have sent someone else to get the mgonga.*

Elder: *You, elder, are just making this problem more difficult. Sidi herself has said that she wants to go to the oracle and she is right. If a person feels that the mgonga is wrong, the only thing to do is to go to the oracle. Let us decide the same. To ask Nyanje to bring another mgonga would just bring confusion.****

Nyanje and Sidi are called back and an elder delivers the judgment, preceded by the ritual chanting of reconciliation:

Elder: *Sumilani kambi!*
(Attention kambi)

Elders: *Hae.*
(Yes)

Elder: *Kambi mukisumila, kumala vidzo na vidze...*
(kambi when you are attentive, let good things come...)

Elders: *Na vidze...*
(Let them come)

Elder: *He vii, na vishuke!*
(About bad things, let them pass away)

The elder reviews the facts of the case in a manner most effective to channel the disputants to the oracle, for the elders cannot resolve the occult question of whether or not sorcery has been committed. Thus the elder emphasizes the public course the dispute has taken, the hostility between brother and sister, and Nyanje's collusion with the mgonga, but concludes with the need to determine the truth:

Elder: **** And the mgonga found that it was Sidi Simba who was the sorcerer. Now even though Sidi had been caught, well, Nyanje's father is Simba. Sidi's father is Simba. When Nyanje found out that the sorcerer was of his own*

blood, he thought that the matter should be discussed in their own village***

***Sidi said, "If you did not want me to be ashamed, why did you bring an mgonga wa kuvoyera from very far? Many people came here, everyone knew that I was a sorcerer."

***In fact, Sidi started asking Nyanje what kind of tree he had used to make the medicine to cast spells on Ngoa. She refused to pay anything. What she wanted was a kiraho, to prove whether she was a sorcerer or not. She said, "When the mgonga came, I saw the mgonga and you pointing at me, so you told the mgonga to catch me."

Another Elder says spiritedly: and it looks like what you say is true!

Elder continues: But now Sidi wants to go to the oracle, and Nyanje also wants to go. We elders believe in the mgonga wa mburuga. in the mgonga wa kuvoyera, and in the kiraho. You are mgonga wa mburuga yourself, Sidi Simba; you would have been wrong to refuse to go to the oracle. Now that you want to go, we cannot refuse you.

We also think that you should go to the oracle because Nyanje went to get the mgonga himself; this was wrong, he should have sent someone else.

Now we have come to a decision. The elders have thought that we cannot refuse you what each of you wants to do. Sidi wants to go to the oracle. Nyanje has also agreed. You may go either to the Kiraho cha Papayu which will cost each of you 200 shillings, or a local kiraho which will cost 100 shillings...
***Is this not what we have decided, elders?

It is apparent that the elders ascertained, during the giving of testimony, what solution would be immediately acceptable to both parties. Their decision to send Sidi and Nyanje to an oracle, however, was not a compromise of conflict-

ing claims but a mutually acceptable course of conduct that would lead to a determination of guilt or innocence. The elders had been called upon to resolve a procedural matter, and this they pursued vigorously. They cast aspersion on Nyanje's honesty and announced that he was wrong to bring the mgonga himself; his protestations of innocence could not dispell the presumption of wrongdoing. But the elders declined to nullify the improper accusation. Perhaps they decided that the stigma of a sorcery accusation, no matter how improperly it was made, would be too strong to be dismissed on procedural grounds. As one elder said privately, requiring another accusation was pointless because the case had already gone too far.

The elders made no attempt to reconcile Sidi and Nyanje. There was palpable hostility between them; Sidi complained bitterly of her expulsion from the confidence of her kin group and of the public manner in which their dispute was aired. The course that the dispute would take had been chosen by her brothers, and she would pursue this course until she was condemned or cleared by the oracle.

Two weeks after this meeting, Sidi and Nyanje journey to the Oracle of the Papayu at Kaya Fungo. They present themselves to the Vaya living there and to the mgonga who owns the oracle. The head of the secret society of the Vaya, whom I will call "Elder Pembe," questions Sidi and Nyanje about their willingness to take the ordeal. Then he begins the ceremony that summons the ancestors to the ordeal and calls for the reconciliation of the disputing parties:

Elder Pembe: Kambi mukisumila kumala
vidzo na vidze
(Kambi, when you are
attentive/let good things come)

Elders: Na vidze
(let them come)

Elder Pembe: Vii vidze na vishuke
(bad things/let them
come/ and let them pass away)

Elders: Na vishuke
(let them pass away)

Elder Pembe: *These people have come because of sorcery between someone and his sister. It is said that this woman sitting in front of me here is a great sorcerer. It is not people who say this; it is the diviners (mburuga). This man says that this woman is casting spells over his brother. Now as they have come here, let it be the end of their misunderstanding.*

Elders: *Let their misunderstanding come to an end.*

Elder Pembe: *Madziziho kudza haha kanani na zigome.*
(as they have come here/
arguments/let them end)

Elders: *Kanani na zigome.*
(arguments/let them end)

* * *

Elder Pembe: *Koma (spirit) of Bimbo wa Fungo (the founder of Kaya Fungo), spirit of Kaidza, spirit of Mwambogo... let all of the spirits that I have mentioned come near and see the ordeal!*

Elders: *Let them give the kiraho power!*

Elder Pembe: *Now as they give the kiraho, let the person who is wrong shine like the moon!*

Elders: *Let him shine like the moon!*

Elder Pembe: *Let the person who is wrong be burnt by the sun.*

Elders: *Let him be burnt by the sun!*

Elder Pembe: *You people have come here because of arguments; let them come to an end.*

Elders: *Let them end!* * * *

It is evident that exposing wrongdoing and deciding guilt are not considered to be incompatible with dispute settlement. Although the words of the ritual cannot be taken too literally, they seem to say that deciding guilt or innocence is a necessary step in the process of ending the quarrel for then, at least, suspicions will be laid to rest. The seemingly contradictory juxtaposition of harsh guilt-finding and reconciliation indicates that the ordeal itself is but one event in a dispute that can ultimately be settled. In this case, however, no conciliatory steps other than the ritual words of reconciliation are taken, even when Sidi and Nyanje present their cases in detail to the mgonga who will administer the ordeal.

When Nyanje speaks to the mgonga, he reviews the circumstances of his brother's illness and the steps that he

took in having Sidi accused. He presents these steps in their correct form, and does not allude to the complaints made by Sidi at the elders' council. He realizes that a valid, fact-finding course of divination presents the prima facie case required before the question can be put to the oracle. He says that he has brought Sidi to the oracle not to prove to himself that she is a sorcerer (he himself is sure that she is), but to put the question to an unimpeachable authority so that he will have the right to claim damages:

Nyanje: * * * *...she refused to pay the money because she claims that she is not a sorcerer. So I thought that the best thing to do was to bring her to the oracle, so that she is proved guilty and I will be able to claim the money that I spent in treating the sick person, in consulting with diviners, and in bringing the mgonga wa kuvoyera.*

Sidi emphasizes that it was her idea to come to the oracle and simply denies her guilt. The mgonga says that he knows nothing, but that the oracle will show everyone who the sorcerer is.

After elaborate cleansing ceremonies to insure that neither Sidi nor Nyanje has taken antidotes to the poison of the ordeal, Sidi and Nyanje seat themselves before a bowl of medicine-soaked papaya. Each presents his own narrowly defined version of the truth before he eats:

Nyanje: * * * *...the diviners told me that Sidi was a sorcerer. If they told me the truth, then Oracle! Go to the garden! But if the diviners did not tell me the truth, then Oracle! Catch me!*

Sidi: *...if this hand with which I have picked the papaya is the one that got the medicine to use against my brother, please, Oracle, catch me! But if these people are speaking only because they hate me, if there is no truth in what they say, Oracle! Go to the garden!*

Even at the ordeal, Sidi insists that the accusation is founded only on hatred. But, as it turned out, neither Sidi nor Nyanje was caught. This apparent anomaly, although rationalized by the mgonga, was explained by others as a consequence of the mgonga's increasing ill-health and incompetence. The failure of the oracle to reveal the truth in this instance actually emphasized the oracle's importance in resolving important factual questions so that disputants can know their obligations. Here, Sidi and Nyanje each inter-

preted the ambiguous results to his own advantage and the dispute reached an impasse. When they appeared before the elders again, each demanded the rights of an innocent party: Nyanje claimed damages for the expenses he incurred in paying for the mgonga and in taking the ordeal; Sidi claimed damages for "spoiling the name" and the expenses of the ordeal. The elders were unable to resolve this dilemma because they had no factual basis from which to proceed.

Then Sidi went to mizimu, the sacred place where God's spirits dwell, to pray for the death of Nyanje if she was innocent and Nyanje had spoiled her name. Nyanje had been in ill-health for some time, and when he died a few weeks later the local interpretation of events was as ambiguous as that of the oracle: either Sidi Simba was a very great sorcerer or Nyanje had been killed justly for his false accusation.

B. The Jealous Husband

It is difficult to generalize about the sources of conflict in Giriama marriages. Polygyny and patrilocal residence can promote conflict between husband and wife--conflict that often arises not so much within the marital relationship itself as from the tensions in other relationships, such as those of a wife with her co-wives or with her husband's mother. The length of the marriage, the number of wives, relationships among the co-wives, and the individual dispositions of husband and wife all affect the quality of the marriage.

There is often considerable disparity in age between the senior wife (mke muzhere) and subsequent wives (ache ahoho, sing. muchu muhoho) in a polygynous household because a man often acquires additional wives with the brideprice he collects from the marriage of daughters of his first wife. Dissension among co-wives of these later, secondary marriages is often minimized because the senior wife needs domestic help; she may herself choose the other wives and bring them to the village after the brideprice has been paid.

The most brittle Giriama marriages are leviratic. Relations between a levir and the residents of the deceased's hamlet are frequently poor. The levir usually does not reside there and is often an infrequent visitor. He may be aged and already have several wives; there is no pretense that the widows are faithful to him, although they must at least be discreet in their adultery. Many widows elect to return to their kinsmen and perhaps re-marry rather than being inherited, even though their brideprice must then be refunded to the surviving agnates of their deceased husband.

* * *

One night, a husband brought his wife into the hamlet of the mgonga who administers the ordeal of the Kiraho cha Mwalola. The husband suspected that his wife had been committing adultery, and he had taken several steps before going to the oracle. He had beaten his wife several times and she, in turn, had left him to seek asylum in the hamlet of her older brother. As custom dictates, the husband followed his wife to her brother's hamlet and presented the details of the dispute to him. The husband told him that he wanted his wife to admit her guilt so that he could collect adultery compensation (malu), but the wife continued in her denials.

This dispute could have ended--as many disputes of this type frequently do--if the wife had admitted her guilt or if her brother had been able to mollify her husband. The husband, however, intended to demand adultery compensation from the suspected lover; to do this, he had to have proof. His wife readily agreed to take an ordeal, for she denied her guilt, and an oracle appeared to be the only recourse in the absence of strong evidence.

In this marital dispute, the prognosis for reconciliation between husband and wife is good. The couple are young and the marriage is presently monogamous. Furthermore, in Giriama culture an adultery accusation does not necessarily have serious implications for the marital relationship. An admitted adulteress receives a perfunctory slap from her husband who then collects adultery compensation from her lover. Only flagrant, repeated adultery leads to divorce.

The husband in the instant dispute pressed for an ordeal out of suspicion and jealousy and, of course, an awareness that he must prove adultery before having the right to compensation. The alleged lover, and important party to the dispute and a major object of hostility, is absent, although the outcome of the ordeal will affect his rights and obligations more than those of anyone else.

At six o'clock in the morning, the husband and wife appear before the mgonga of the Kiraho cha Mwalola. The mgonga is accompanied by two other elders who also know the secret of this oracle. Together, the mgonga and the two elders will hear the facts of the dispute, mix the medicine in the seclusion of the bush, administer the ordeal, and share the fee paid by the disputants.

The hearing before the ordeal reveals several things. Despite the adultery accusation, both husband and wife speak highly of their relationship; they have been married for some years and profess to love each other very much.

Mgonga: Tell us what your problem is.
Why do you need an ordeal?

Husband: This is my wife. We have been married for a number of years. We have been living nicely, but about two months ago, I saw that my wife was misbehaving. As you know, you can sometimes give your wife permission to visit a place outside the village. She may go to her home. I gave my wife permission to visit a place outside, to go on a journey, and then I began to suspect something. I asked my wife if she was having a secret affair; was that why she wanted to go away? When I asked her this, she denied it, and then I asked her whether or not I should bring an ordeal. She said that she would not mind. That is why we have come here.

Mgonga: Can you tell us why you suspected your wife? If you suspected something, you should have called your wife and asked her, "Did you do such a thing?"

Husband: I called her and told her that I suspected that she had an affair with someone, but she denied it.

Mgonga: Are you sure of what you are saying, or are you speaking from what others have told you? Can you tell us details? Did you catch her? Did someone tell you exactly what your wife had been doing?

Husband: I did not catch her, and no one came and told me anything. I just have my suspicions.

Mgonga: It seems to us that you are not sure. You may be making a false accusation. Tell us why you are so sure of your wife's guilt.

Husband: I started to suspect something because all of a sudden my wife and I were not getting along. Whatever I asked her to do, she didn't want to do it. So I began thinking that she would rather obey someone other than me. I had an idea who that someone else was, so I told my wife to be honest and tell me. But she denied it, and that is why I decided to come here to the oracle.

Mgonga (to the wife): Do you have anything to say?

Wife: What my husband has said is completely wrong. I know that my husband loves me very much, and I also love him. But I do not know what he is thinking at this time. He says that I have been having an affair with someone, but that is not true.

Once I ran home to the hamlet of my brother Kingoa wa Mitsanzi...when my husband came there the next morning, he asked my brother if I had revealed the name of the person who was my lover. But I admitted nothing. When my husband was told this, he collected me, and we returned to our village. I thought everything had ended that day.

Then the next week, my husband started beating me and saying again that I was having an affair. I went back to Kingoa, my brother.

The next day a man came, whose name was Kitsao. I said, "Kitsao, can you tell us the name of the boy you are always walking around with in our village?" When Kitsao answered, he asked me if I was being beaten because of this boy; he said that he thought that this boy had done nothing. "Your husband is being unfair," Kitsao said. But he told me that the name of the boy was Solubu. When I knew that, I went and told my husband his name and also told him that the boy Solubu and I had nothing to do with each other. My husband did not believe me, and started beating me up again.

I then told my husband that I was ready for an oracle. If the oracle confirmed what he said, then I was ready to be divorced. He could divorce me to my father. Then I would be happy, for I would be punished for something that I had done. But if I found that I was not wrong, then I would have something to say...

Husband: As for me, there is nothing that I will do if the oracle catches me or not.

I just want to know if my suspicions are correct. If the oracle proves that my wife has done wrong, then she will still be my wife. If the oracle proves that I am the one who is wrong, then she will still be my wife. I do not intend to use this oracle as an excuse to divorce my wife. If it is proved that my wife is having an affair with this person, then I will just collect malu and forgive my wife.

The combination of a strong marital relationship, the absence of any evidence, and the wife's insistence that she be given an ordeal--these are not lost on the elders listening to the pre-ordeal testimony. They praise the husband for saying that he does not want a divorce but only the truth and the clearing away of any suspicion. The elders persistently press the wife to make the same declaration, which she eventually does, and further emphasize that it is their wish and purpose to reconcile the couple.

Mgonga: This man has spoken well. He just wants to clear away suspicions he has of his wife. We should make sure that the wife has the same attitude as her husband. For this oracle is only something that confirms the truth. We can, of course, try to see what should be done to the person who is wrong, but the question of divorce should not enter into the discussion.

We should look into this matter to make sure that these people solve their problem in a friendly way. This case should end when all suspicions are cleared away; it should go no further. We want to see these people united rather than each going his separate way.

An Elder Speaks to the Wife: Now, woman, your husband's statement was very good. But you have gone too far in saying that if you were caught by the oracle you were ready to be sent to your parents. If you were not caught by the oracle, you also said that you would do something--that sounded like a threat to us. It worries us. We hoped that you had come here to finish your quarrel. When the suspicions are settled, that should be the end of it. Our aim is to ensure that everything is finished here.

Wife: Thank you, mtumia (elder) for your fatherly advice. I said at the beginning that I loved my husband very much. And I know that he loves me. But I think that he has a lot of jealousy in him. He knows that I have not been well for a long time. I have a disease. He knows that--it is a private matter between me and my husband. And my sickness has prevented me from having sex with my husband for almost two months now. That is why he is suspicious. But if I were unable to have sex with him, how could I go and have it with someone else? That is why I am surprised to hear him say these things.

Elder: What you have said is very good. But you know that we men are a suspicious lot. When someone sees his wife being greeted by someone nicely, he begins to have all kinds of suspicions.

The other day we had a case similar to yours here. The woman spoke so nicely, just as you are doing. And we thought that she was right, and we told her husband that he should stop the whole matter; we asked him why he was continuing to insist on an ordeal. And do you know what happened? After three minutes, the oracle caught the woman who had been speaking so well! That is why we do not go by the good speeches that are made here.

After the hearing, the mgonga of the oracle and the elders leave the village and go into the bush where they will make the medicine for the ordeal; two hours later they return and administer the ordeal. The procedure for taking this ordeal is the same as the Kiraho cha Papayu. Both disputants address the oracle (kukotera), here by grasping the calabash containing coconut liquor and the crushed leaves that are the medicine. Each exhorts the oracle to catch him if he is wrong; if he is right, to "go to the garden."

After the husband and wife drink, the observation period begins: then the mgonga and the elders calmly gossip, weave baskets, and watch for the signs of intoxication that indicate a person has been caught. After almost three hours, during which the husband and wife periodically walk to the elders to demonstrate the steadiness of their gait, the husband leans over and vomits. His eyes are bloodshot. He says: "I have been caught by the oracle."

In several ways, the task of the wagonga is ambiguous: they must hear all of the evidence of the case, and yet ultimately reduce the testimony to a single issue that can be decided by the oracle. Here, the history of the disputants' marital relationship is examined, but the question for the oracle is whether or nor adultery has been committed. The wagonga give opinions on the strength of the evidence, and yet emphasize that the final judge is the oracle. Thus, the wagonga speak disparagingly of the husband's flimsy evidence, and yet caution the wife that although she has spoken well the oracle will discern any subterfuge. Finally, the wagonga must mentally prepare the disputants for the decision. The wagonga's task in this regard is two-fold: they must prepare the disputants both to accept the decision and to forego any ill-feeling that an "either/or" judgment can generate.

In the case of "The Jealous Husband," the mgonga addressed himself to the particular controversy, but in so doing declared that the ideal role of the oracle in the judicial process should be dispute settlement: "Our aim is to ensure that everything is finished here." The oracle's decision could have "settled" this case either by reconciliation or by divorce, depending on the disputants' aims in coming to the oracle and how the outcome of the oracle related to those goals. Here, the husband was suspicious of the reasons for his wife's refusal to have sexual relations and he had become jealous; he needed reassurance or, failing that, the right to collect adultery compensation. He clearly stated that he did not want to divorce his wife even if she had been unfaithful. The wife was convincingly indignant but the elders exposed her threats to leave her husband regardless of the ordeal's outcome as expressions of the depth of her hurt. She, too, wanted to clear away suspicion and to be reconciled with her husband. Reconciliation was possible here because the disputants were predisposed to it; the mgonga and the elders were, accordingly, persuasive in their conciliatory efforts. These efforts were successful: months later the couple appeared to be living happily together.

The disputants in the cases of Sidi Simba and The Jealous Husband both participated in a trial by ordeal; but the inevitable "either/or," guilt-or-innocence outcome of the ordeal did not impose uniformity on the two disputes. In The Jealous Husband, the mgonga and the elders vigorously plumbed the depths of the disputants' marital relationship, exposed stubbornness and misunderstandings on both sides, and exhorted the couple to reunite regardless of the oracle's decision. Although they narrowed the wide-ranging testimony to a single issue that could be decided by the oracle, this was almost imperceptible and did not disturb the participants' broader view of the dispute. In Sidi Simba, by contrast, the testimony at both the elders' council and the oracle quickly revealed the bitterness between brother and sister; the ultimate aim of the disputants seemed to be a vengeance that could only partially be fulfilled by the payment of damages. Consequently, the narrow issue of guilt remained the focus of all the investigations and discussions.¹¹

C. In-Laws before the Elders: A Brideprice Dispute

Giriama brideprice (mali) is divided into two parts: the hunda, payable in money or animals, secures conjugal rights in the woman; and the uchi wa magomani, the "liquor of a mature, fertile woman," paid in coconut liquor, filiates the children to the husband's clan. If the hunda is not paid in full after a reasonable time the bride's father or brothers may retrieve her; they may also claim her children if the uchi was not paid, even after many years.

The arrangements and the payments of brideprice are handled by the father and mother of the prospective bride and groom. These are formal transactions requiring witnesses from both sides who count the calabashes of uchi wa magomani and the shillings and calculate the value of the animals offered for the hunda. If the bride's parents reject any animal as too small or sickly, the replacement or promise of replacement is carefully noted. If the groom's parents cannot pay the entire amount of hunda at once they must offer a substantial down-payment that may be rejected. If it is accepted, the down-payment is counted by the witnesses and the parties agree on a schedule for paying the balance (kisalire).

The Giriama are strict about the type of witnesses for brideprice transactions. Witnesses must not be relatives of any kind, even strangers from the same clan, for kinsmen will not be credible in case of a dispute. A father said that should he die and his daughter-in-law later divorce his son, the witnesses who were present at the original payment would ensure the proper refund of brideprice.

Disputes about the brideprice debt, the kisalire, are frequent and are often extensions of the haggling that accompanies the initial brideprice negotiations. For although the hunda is fairly standard (3,000 shillings or the equivalent in animals), the amount of the initial payment is very flexible. The more acrimonious brideprice disputes (such as that in the case study below) are usually a consequence of personal dislike between the husband and his in-laws (atsedza, sing. mutsedza), or of more serious disputes among other members of the opposing exogamous clans. Conflict about the brideprice debt can be in deadly earnest, sometimes culminating in a visit to the spirits of the sacred tree (mizimu), to pray for the death of a creditor. Alternatively, disputants may seek non-traditional remedies by taking the case to a Magistrate's Court where a government magistrate hears the intricate testimony on the value of various animals and disputed presentations of livestock over the years, sometimes even over generations.

Relations between a husband and his wife's male relatives--her father's father, father, and father's sons--are restrained. Ritual speeches at weddings illuminate the

nature of the in-law relationship (utsedza). A father's speech to the bride often admonishes her not to return home for frivolous reasons, but sternly warns the son-in-law that his daughter can be withdrawn and her brideprice returned if she is not treated properly. It is not uncommon, in fact, for a woman's brothers to beat her husband severely if she complains of ill-treatment. During brideprice negotiations after the seduction of an unmarried woman, the prospective groom's offer of an amount for the initial payment is usually greeted with derision. On one such occasion, the girl's brother sneered, "Why did you not come armed like a man?" Even in the most harmonious in-law relationships, the son-in-law must show respect to his father-in-law to the point of subservience. At regular intervals, he is expected to bring several calabashes of coconut liquor to his atsedza's village; upon meeting his father-in-law on the path, he must stand aside deferentially.

* * *

At an elders' council, Chang'aa accused Jivu of breaking an agreement: when Jivu married Chang'aa's daughter three years earlier he agreed to pay 3,000 shillings brideprice. At that time, Jivu paid 2,000 shillings and agreed to pay the remainder, kisalire, at a rate of 50 shillings per month. Jivu gradually paid 600 shillings, but had made no payments for the last eight months. Exasperated when his demands for payment fell on deaf ears, Chang'aa went to Jivu's hamlet, beat him, and took his daughter back to her village.

When this case appeared before the elders' council the kinship and personal relationship between the disputants permitted only an interim settlement. Chang'aa intensely disliked his son-in-law; this was the fifth time that he and Jivu had brought their case to the elders. Chang'aa now had resorted to self-help, but it was clear that this action was futile, for Jivu simply did not have the money. (Jivu had been quarrelling with his deceased father's brother who had made the initial and subsequent payments of brideprice for Jivu.) A new agreement was needed that took into account both Jivu's present financial situation and his father-in-law's disposition. The elders' council, as the only neutral dispute institution recognized by both parties, was in a good position to negotiate a new agreement.

In the interests of brevity, only the first speeches of Chang'aa and Jivu are given here:

Chang'aa: Elders, I went to the village of my mutsedza to get my daughter back, because there was no hope of getting my kisalire. When I went to my mutsedza's house, he behaved badly, he insulted me, called me names, told me to get out. I told him that I would not leave his house without my daughter.

Now, mutsedza, you say that you are annoyed because I beat you. I could not do anything else; I tell you, elders, that even where my mutsedza is seated now, he knows that I am strong! He tested my strength and he felt it very much.

Jivu: Elder Kafuu!

Elder Kafuu: Eh?

Jivu addressing Elder Kafuu: The man who just spoke is my mutsedza. And the person who came with him is his father. If you hear that I have been killed, have no doubt as to who did it. These are the ones who hate me more than any other in the world. This man has not just beaten me once; I remember that once I went to his village with a small problem and he told his sons to beat me up. Now I ask you: If he always beats me because he says that I am not paying him, what is done when someone owes you money?

Elder Kafuu: That person is accused.

Jivu: Then why did not Chang'aa wa Ngonyo accuse me? Instead he beat me. Chang'aa wa Ngonyo, I do not understand why you beat me so early in the morning. If it was because of the brideprice, we had made arrangements about that, so I ask, what had I done? It had nothing to do with mali.

After an interminable discussion that reveals the initial brideprice agreement, disagreements about prior payments, previous conflict between Jivu and his father-in-law over the debt, and the dispute between Jivu and his father's brother, who has ceased helping Jivu pay the debt, the elders return to the immediate dispute. They want to hear more details of the assault on Jivu in his village and sound out the disputants on what kind of solution would be agreeable. The elders explore that possibility of ending the in-law relationship--the source of the continuing conflict--by an agreement that Jivu and his wife would divorce. Chang'aa rejects the idea of divorce and says that he has already spent the portion of the brideprice that he received and it would be difficult to provide a refund. Jivu testifies that he does not want to divorce his wife. Jivu's wife is summoned from a nearby meadow where she and Jivu's mother have been waiting. After the wife refuses to speak, her mother-in-law supplies details of the assault. Finally the girl tells the elders that she loves

her husband and if she stays with her father, she will never marry again. Since the parties agree that they do not want to end their relationship, the only solution appears to be a new agreement between Chang'aa and Jivu for the payment of the debt.

Elder to Jivu: Would you rather have your mali back, or would you rather have your wife?

Jivu: I would rather have my wife. I have not seen any other girl whom I love better. But because of the trouble that my mutsedza is giving me, I am wondering what to do.

Chang'aa interjects: Did you give me all of the mali and then I came to remove my daughter, or am I removing my daughter because I have not been paid my mali?

Elder: I am surprised at Chang'aa's attitude. He seems to think that we do not want to help him get his mali from this boy. That is why he refuses to listen to us. But we are on his side; if he is the father of the girl, he should get mali.

* * *

Elder to Jivu's wife: Will you tell us how your father behaved when he came to take you from your husband? Can you give us a true picture of what happened that day?

Jivu's wife refuses to speak, but Jivu's mother speaks: I saw this man coming to our village. I went to help him with whatever he carried, but he waved me away. He went to the house of his mutsedza, and then I heard the wife of my son saying "My husband is being killed!" I made a lot of noise so other people would come. When I got there, I saw this man gripping the neck of my son, and this other person was gripping his legs. They wanted to kill him. They were strangling him.

Elder to Jivu's wife: I would like you to say something. Can you tell me in front of your father, was there a disagreement between you and your father when you wanted to marry this man? Was the person you wanted to marry not the choice of your father? Now it is up to you. Either you defy your father and stay with this man, or follow the advice of your

father and leave him.

Jivu's wife: Even if I stay with this man, my father will never come to my home, he will never greet me, none of my relatives will greet me. For this reason, I cannot go back to my husband. I will go with my father, but I will stay without a husband.

Elder: Your father has said that he only wants his kisalire. If you can give the rest of the brideprice, everything will be all right.

Jivu's wife: My father does not like my husband. He does not want a mutsedza like him.

Elder: Do you really love your husband?

Jivu's wife: I do. If my husband pays all of the mali, I will follow him, and then there will be no reason for my father coming to the home of my husband and fighting him. Perhaps what you have said is true.

* * *

Elder to Chang'aa: You have come here to collect your daughter; is that really the reason for coming here?

Chang'aa: It is true that I took my daughter from this person so that the husband would miss his wife and I would get my kisalire. But I want my daughter only because the mali has not been completed.

* * *

When the disputants and their kinsmen have been sent away, the elders confer and add their personal knowledge of the case to the deliberations. The elders use this supplemental knowledge in deciding what their decision will be and, most important, in plotting the strategy of their presentation so that their decision will have maximum psychological impact. One elder affirms that Chang'aa simply does not like his son-in-law and this dislike prompted his aggressive behavior. Chang'aa, in fact, had forced his daughter to marry someone else before Jivu, but she abandoned this husband and ran away with Jivu. The elders agree that Chang'aa is being unduly harsh in demanding the payment of the debt at this time of year, at the end of the dry season, when stores of food are almost exhausted, livestock emaciated, and the planting not yet begun.

When the judgment is delivered, the elder emphasizes that Chang'aa, to whom an obligation is admittedly owed, has nonetheless behaved badly. The purpose of this sarcastic harangue is to reduce Chang'aa's arrogance and by so doing to convince him to accept the resolution tentatively agreed upon by the parties themselves. The elder upbraids Chang'aa for beating Jivu and for his selfish and greedy motives in breaking up his daughter's marriage. In openly discussing how much Chang'aa despises Jivu, the elder hints that Chang'aa welcomes the chance to beat and harass him over the brideprice debt. To emphasize the unfairness of Chang'aa's demands, the elder slyly suggests a difficult alternative: finding a new son-in-law to pay the brideprice in full. Chang'aa's motives for having accepted Jivu as his son-in-law are impugned, if this is how he treats Jivu now.

Excerpts from the judgment:

Elder: Attention elders; let all good things come...

This is a case between Jivu and his mutsedza Chang'aa wa Ngonyo. These people started utsedza (the state of being in-laws) in the most respectful manner. We know that in the customs, a mutsedza is respected very much; he is someone who has honored you by giving you his daughter. For that reason, you are not allowed even to call your mutsedza by his own name; but here, it has come. The relationship between Jivu and Chang'aa is so bad that Jivu has the arrogance to address his mutsedza as "Chang'aa wa Ngonyo." Their poor relations are further shown by the fact that although they are supposed to hold each other in the greatest respect, they have come to the elders five times.

Chang'aa wa Ngonyo, I know well that you do not love Jivu. You think that his is not the kind of mutsedza that you should have. May I give you some advice? Get a mutsedza whom you do like and ask him to get you mali, in full. Then you go to the mutsedza whom you do not like and say, "You took my daughter. And because I do not like you, here is the money that you gave me, and I am taking my daughter." If you do that, everyone will support you because you will not have any debt.

For Chang'aa to say that his mutsedza is ill-mannered, I do not think that he is wrong. He is very right--we know that.

But Chang'aa wa Ngonyo knew that even before he went to collect his mali; and that is why, Chang'aa wa Ngonyo, you did not want your daughter to marry Jivu, because you knew his manners. Even though Chang'aa knew that Jivu was marrying his daughter against his will, and that Jivu would be his mutsedza, and that his daughter would suffer, we elders find it strange that you, Chang'aa, agreed to enter into this marriage agreement. You gave your consent as a father. If you did not want your daughter to marry Jivu, you should not have collected any money at all. You should have told your daughter, "If that is the man you want to marry, I will not give you anything; I do not give my consent."

But did you do that, Chang'aa? You consented to Jivu because you were lured by the money. Are there no other young men from whom you could have collected mali? You could have forced your daughter to marry one of them! But no! Your interest is with money only. And we would like to warn you, Chang'aa, that the action you took the other day of beating your mutsedza was terrible.*** Be careful, I am warning you. Do not fight anyone. If you have trouble, bring the matter to the elders.***

The idea of thinking of your daughter as a property is getting you into trouble. Your daughter is not like an animal. She is human. There are some things that you as a father should not interfere with. Instead of doing things properly, you acted as if your hen or sheep had been stolen. You think of your mutsedza as a thief, just because he has not finished paying the mali.***

When you came here before, after Jivu had come to your home and you beat him, we fined you thirty shillings. Today we will not fine you anything. But know that you were wrong to beat him.

You have heard what your daughter has said: she loves her husband. You have a wife; in fact, you have four wives. You are happy. Your daughter is trying to get the same happiness. What a selfish man you are!

*The elders know that we cannot stop you from beating your mutsedza. Beat him anytime that you want. You who are so strong and wise. But our decision is that this girl is not to go with you now. ****

And now we discuss your mutsedza. You are always being beaten by your mutsedza because you refuse to pay mali. Why don't you pay it? Pay the mali so that all of these problems will end. We have decided that you will begin paying the mali again after the next harvest. You and Chang'aa will agree to that now. We do not think that Jivu will deceive us now.

*Have we decided this, elders?
(Hedu mudzambadze atumia?)*

Elders: That is indeed what we have decided! (Hudzamba vizho!)

The disputants appear to agree readily with this decision, and Chang'aa returns his daughter to Jivu in the presence of the elders by taking her hand and placing it in Jivu's.

Although the elders tried to reach a decision that appeared to be acceptable to all of the parties, their aim was not to negotiate a compromise by reducing or forgiving the amount of the debt, but to end open hostilities. Thus the elders tried to bring Chang'aa and Jivu to the realization that ending their relationship was not in their best interests. Personal dislike had to be subordinated to Jivu's interest in staying married to his present wife, and to Chang'aa's economic interest in being paid and his probable inability to obtain a better arrangement elsewhere. Jivu's wife's attitude, that she loved Jivu and would remain unmarried if she returned to her father (thus depriving him of any chance to receive bride-price again), made Chang'aa's position untenable. The elders' judgment also painfully recalled Chang'aa's failure in forcing his daughter to marry someone against her will.

The conciliatory efforts that were made here were consistent with the relationship between the disputants and these attitudes and interests: the elders persuasively focused not on peace and harmony but on expediency and money. An interim cessation of conflict and a postponement of the obligation were all that the elders expected to achieve, and for this the proceedings were well suited.

V. Summary and Conclusions

Some success in reconciliation following disputes is essential; unabated dissension would indeed destroy the "permanent" relationships on which, Gluckman writes (1955), societies such as the Giriama are built. It has been shown that Giriama judicial institutions have the ideology of settling disputes amicably; nevertheless this is often combined with an unambiguous ascription of wrongdoing. Any attempt to reconcile the parties must deal with this fact. The Giriama deal with it, first, by drastically narrowing the question to be answered by the oracles and elders, thus reducing the dispute to a single simple issue that can be appropriately dealt with in the decision but represents only part of the total problem. This leaves the nuances of the case out of the decision that ascribes wrongdoing and allocates rights and duties. But the nuances are dealt with before the decision is made. It is during the preliminary testimony and questioning that the sting is taken out of the eventual ascription of obligation or blame. At this time, each side is blamed for its respective failings and for not seeing the other party's point of view and legitimate grievances. Both sides are exhorted to become reconciled, whatever the decision. Thus, when the decision is announced, it is clear that the loser is wrong but on a rather narrow question, while the winner is also not blameless in many matters that are germane to the whole issue.

I have described Giriama elders' councils and oracles in terms of their respective jurisdictions, styles of procedure and, within this framework, the highly variable qualities of particular disputes. If the analysis adhered to a rigid model of dispute settlement procedure, reconciliation would appear to be precluded by the harsh, "either/or" outcomes of the oracles and their emphasis on guilt-finding. Elders' councils, on the other hand, with their greater familiarity with local disputes and verbal decisions based on argumentation and negotiation, would appear to be particularly suited to rendering compromise decisions and mollifying disputants. The case studies have shown, however, that the ways disputes are handled are not necessarily "consistent" with the form of the decision; nor does a particular type of outcome in itself necessarily presage the possibility of reconciliation. Decisions rendered at elders' councils are variable and may be, for example, an agreement to pursue a winner-take-all decision at another institution (as in Sidi Simba) or a confirmation of an indivisible obligation owed to one party (as in A Brideprice Dispute). Moreover, the significance of these decisions for future social relations cannot be assessed without considering the disputants' interests and purposes in coming to the forum: dilatory strategy, vociferous airing of an injustice (Sidi Simba); harassment, the need to parley after fruitless violence (A Brideprice Dispute). Oracles ascribe guilt or innocence when such a determination of blame is a prerequisite for reme-

dies such as compensatory damages; but the cases suggest that oracles, too, can serve many disparate purposes depending on the predispositions and the interests of the disputants: vengeance and the desire to expel a kinsman from the village (Sidi Simba); reassurance and the quieting of suspicion and anger (The Jealous Husband). At both elders' councils and oracles we have seen that the individualized conciliatory efforts (or the lack of them) and the tone of the proceedings before the decisions are rendered reflect these unique qualities of each dispute and forecast and even manipulate the course of the conflict. Viewed from this perspective, the actual outcomes of the disputes become predictable: the shattering of agnatic relations in Sidi Simba; barely controlled simmering of in-law hostility in A Brideprice Dispute; reconciliation in A Jealous Husband.

It has not been my primary objective to demonstrate the futility of using models to analyze dispute settlement procedures; that has been done elsewhere. In concentrating on the individual qualities of disputes and the dynamic procedures for handling them I have tried to show how disputes can vividly express human conduct that is a significant aspect of a wider framework of social relationships.

RESUME

Les institutions juridiques des Giriama du Kenya promeuvent le règlement des conflits sans recours aux décisions qui compromettent soit le bien-fondé, soit le montant des revendications. Dans beaucoup de conflits chez les Giriama une décision par compromis est exclue par la nature de la revendication (par es., la sorcellerie, l'adultère), par un système de compensations non-négotiables, ou par le caractère de l'institution juridique elle-même (par ex., l'ordalie). L'analyse d'un certain nombre de conflits examine les circonstances extrinsèques influant sur la mesure et l'efficacité des tentatives de conciliation qui souvent précèdent la décision. La tentative de conciliation propre à chaque cas et la décision sans compromis sont toutes deux nécessaires pour régler les conflits et pour assurer la certitude du système juridique.

NOTES

1. My use of the term "dispute institution" follows Abel (1973). Elders' councils (kambi, pl. kambi) and oracles (kiraho, pl. viraho) are the two Giriama dispute institutions that are in the public domain and whose personnel have no kinship relationship (except a fortuitous one) with disputants.
2. Field research among the Giriama during 1972-73 was made possible by a Predoctoral Anthropology Field Training Fellowship (1 FO1 MH 54507-01) from the National Institute of Mental Health.
3. These conciliatory chants vary and may become quite elaborate, but the following is representative:

<u>Kumala vidzo na vidze...</u>	Response: <u>Na vidze</u>
<i>Good things/let them come</i>	<i>Let them come</i>
<u>He vii na vishuke</u>	Response: <u>Na vishuke</u>
<i>Bad things/let them pass away</i>	<i>Let them pass away</i>

4. Multiplex relations are defined as permanent relations serving a variety of purposes (Van Velsen, 1969:138).
5. The compromise and zero-sum models of dispute settlement are discussed and criticised at length in Abel (1973), Starr and Yngvesson (1975), and Van Velsen (1969).
6. Today the mgonga wa mwingo's accusatory tasks are performed largely by three wagonga wa kuvoyera (wagonga who pray) who range widely throughout the Giriama area and hold public accusatory ceremonies called ngoma.
7. The term mgonga (pl. wagonga) is used for anyone who uses medicines (muhaso, pl. mihaso) in a socially approved way.
8. E.g., Kahindi Karisa v. Baya Masha, Civil Case 327 of 1972 (Malindi District Magistrate's Court); Bendera Wanje v. Karisa Ngala, Civil Case 338 of 1972 (Malindi District Magistrate's Court).
9. Location Chiefs are elected by the indigenous population to administer the smallest official administrative units.
10. The three cases used here were selected because they are intrinsically interesting, relevant to the points being made, represent different types of claim, and representative. The last quality I judged on the basis of the case materials that I collected which vary in completeness: sixty-six complete transcripts and numerous other case histories varying from complete narratives to fragmentary anecdotes. The transcripts are English translations of tape-recordings in the Giriama language (Kigiriama) made during the observation of disputes. My proficiency in Kigiriama was never great enough to achieve this level of detail. For their quality I must thank Erastus Charo Tsuma, formerly Chief of the Malindi and Ganda Locations, Republic of Kenya. Some of the case transcripts are quite long: S Sidi Simba, for instance, is almost 100 pages. Of necessity, the transcripts have been heavily edited; three asterisks mark large deletions. Needless to say I have taken great care, in editing, to ensure that the unfolding of the cases--particularly the order and selection of testimony which pertains to disputant strategy--has been preserved as much as possible.
11. It may have occurred to the reader that the terseness of the proceedings at Kaya Fungo compared with those at the local Kiraho cha Mwalola (where the proceedings seem less ritualized and more personal) may be attributed to the isolation of Kaya Fungo from the mainstream of Giriama social life rather than to the social factors emphasized here. This does not appear to be the case. Transcripts of other cases show that the proceedings at Kaya Fungo can be highly individualized and conciliatory. One dispute, the case of Mae and his sister Nyevu, was similar to the case of Sidi Simba in most respects, except that Maw and Nyevu had made serious conciliatory moves towards each other before coming to the oracle. Maw had paid Nyevu a fee of 140 shillings for "taking away the bad smell, "that is, removing the injury to

reputation that the accusation of sorcery had caused; Nyevu, in turn, had blessed (kuhasa) the sick son of Mae, believed to be a victim of her sorcery. The Vaya of Kaya Fungo were conciliatory, emphasizing the good points of the relationship, and were reluctant to administer an ordeal. There was happiness when Nyevu was not caught, and two months after the ordeal the two appeared to have reconciled. Apparently Mae wanted to teach Nyevu a lesson: she married and divorced repeatedly, and he had the responsibility of refunding her brideprice (Mae and his father were once even stabbed in their village by one of Nyevu's ex-husbands).

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RESUME

Cet article emploie l'exemple du Malawi pour illustrer un argument d'une application plus générale qui peut être résumé brièvement comme suit: L'absence d'études historiques des changements du droit africain au cours de la période coloniale a eu pour résultat une confusion de temps nuisible à notre compréhension du droit africain. En conséquence du colonialisme les états précédemment colonisés par la Grande-Bretagne avaient un système juridique dit dualiste: en partie britannique, en partie africain. Les juristes africanistes se sont préoccupés depuis par le renouvellement, la reformulation et la réaffirmation de cet élément africain. Très peu conscients de l'évolution historique de cet aspect du droit, ils ont souvent tendance à le considérer comme une sorte de 'survivance' africaine, hors des changements historiques. Cependant le droit africain de l'Afrique contemporaine est né et formé pendant la période coloniale. Il peut être démontré qu'en matière du droit pénal et du droit de la famille le droit africain représente la réaction des aînés à une perte d'autorité sur les offenses en général et, d'une façon plus accrue, d'un relâchement de leur autorité sur les femmes. Cette réaction s'est développée pendant les premières trente ou quarante ans de la période coloniale. Ensuite, suivant la politique de l' "indirect rule", une large part de l'administration de la justice a été confiée précisément aux gens motivés à définir et, plus important, d'appliquer la loi dans une manière restrictive et autoritaire. Ces définitions constituent la base du droit africain d'aujourd'hui. La recherche historique sur "l'environnement juridique" auquel le droit pré-colonial est devenu le "droit coutumier" de la période coloniale pourrait nous aider à modifier le processus par lequel l'Afrique se voit donner un droit autoritaire qui sans bien-fondé prétendent incarner son génie juridique authentique.