
Contested Kinship and the Dispute of Customary Law in Colonial Kenya

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Abstract: In the 1930s, individuals claiming membership in the dispersed Luo Ugenya Kager clan and the local officials of the British colonial administration were actively disputing Native rights to land and authority in a region of the central Nzoia River valley of western Kenya. In this article I argue that this dispute was part of a larger discursive process in which both colonizer and colonized participated. This process is seen as one in which colonizing agents invented clan-based tribal forms that privileged agnatic principles of customary law, while "Kager" peoples utilized alternative notions of kin-based rights to land and authority in an attempt to construct meaningful forms of community identity.

Résumé: Dans les années trente, les individus revendiquant l'adhésion au clan dispersé Luo Ugenya Kager, et les fonctionnaires locaux de l'administration coloniale britannique, se disputaient activement les droits naturels à la terre et à l'autorité dans la région de la vallée centrale Nzoia River au Kenya occidental. Dans cet article, j'expose que cette dispute faisait partie du plus important processus discursif auquel ont participé, à la fois, les colons et les colonisés. Ce processus est considéré comme étant un de ceux pendant lequel les agents colonisateurs ont inventé les formes tribales, basées sur le principe de clan, qui privilégiaient les principes agnatiques de droit coutumier, tandis que les peuples «Kager» utilisaient des notions alternatives de droit à la terre et à l'autorité, basées sur la parenté, pour essayer de construire des formes positives d'identité de la communauté.

On August 15, 1932, the Ugenya Kager Luo Clan Association of Nyanza Province (UKLCA) in western Kenya, sent a petition to the British Governor of Kenya Colony in which they claimed their rights to land in the Musanda Region of the central Nzoia River valley.¹ This was not the first, nor the last, time that individuals representing the Kager clan would assert their rights to the territory frequently referred to as the Musanda valley.² Archival records document numerous Kager attempts to reclaim land and authority in this region between 1913 and 1919, and again beginning in 1930. The most common Kager demands on these occasions were an investigation of land tenure and administrative boundaries and the replacement of all native administrative officials with Kager elders. These demands were most often supported by assertions of Kager status as *wuon gweng* ("owner of the land") in the Musanda valley.³

The British colonial administration responded to the UKLCA petition of August 1932 in a fashion consistent with their own assumptions about the customary basis of land rights and political authority in this region. They saw Kager demands in the Musanda valley as emblematic of long-standing disputes between what they believed to be the two major tribal divisions in western Kenya: the Nilotic-speaking Luo and the loosely connected association of Bantu-speaking clans that would later be known as the Abaluyia.⁴ In fact, administrative officials had long recognized the Musanda valley as a central focus of disputes between representatives of these so-called tribal units: on the one hand, the Ugenya Kager clan (Luo) and, on the other hand, the Wanga clan (Abaluyia) and other smaller Bantu-speaking clans. Archival documents demonstrate very clearly that most British colonial officials believed the Bantu-speaking clans, especially the Wanga, had ancestral, and thus legitimate, rights as landlords to much of the Musanda valley, while the Kager had more recently, and illegitimately, expanded into the area by force. British intervention had supposedly settled these conflicts, as

part of the work of colonial administrators was to determine and administer ancestral, customary clan rights over land and political authority. Thus, these same administrators interpreted the contradictory land claims of the Kager, and their assertion of *wuon gweng*' status in the Musanda valley, as an attempt by disenfranchised and dispersed tenant groups to gain control over land to which they had no customary clan-based claim.⁵

This dispute in the early 1930s between British administrators and representatives of the Kager clan reveals just a small portion of what I contend was the contested terrain of customary law created by the interpenetration of law and culture in colonial western Kenya. My approach to the analysis of this kind of local-level dispute within colonial society departs somewhat from other studies of customary law in colonial contexts. Since the early 1970s studies that investigate aspects of customary law have looked at how the transformation (Colson, 1971; MacGaffey, 1970; Moore, 1986, 1989; Vincent 1989) or invention (Iliffe, 1979; Ranger, 1983) of indigenous political and legal traditions served to establish the ideological dominance of colonial authority. Within these contexts, scholars have considered indigenous disputative responses primarily as the manipulation, negotiation or appropriation of these traditions, rather than exploring the possibility that these responses might represent an alternative understanding of the ways in which community identity and thus rights to land and authority are constituted.

More recent works have taken a slightly different perspective and considered how the process of describing, ordering and administering colonized peoples led to the construction of supposedly indigenous political and legal traditions (Cohen, 1987; Dirks, 1992; Mitchell, 1991; Thomas, 1994). While these works have brought welcome attention to the role of customary law and other colonial institutions in the creation of relations of power and political and legal identity, they have not, for the most part, explored the response of the colonized as an alternative part of this discursive process itself. Timothy Mitchell, for example, notes that the new forms of power introduced into Egypt through the British colonial method provided, "spaces for manoeuvre and resistance, and [could] be turned to counter-hegemonic purposes" (1991:xi), but he also insists that "colonial subjects and their modes of resistance are formed within the organisational terrain of the colonial state" (ibid.). Thus, he leaves no space for the possible production of alternative forms of local meaning as an integral part of the ongoing process by which customary law is contested and negotiated (cf. Pels, 1996).⁶

In this article, I examine the discursive production of a political and legal order in western Kenya. I suggest that British policies of locating tribes and defining tribal modes of social organization artificially designated certain indigenous means of acquiring rights to land and authority as custom. I also contend, however, that, at the same time, this administrative practice obscured or silenced conflicting voices of the colonized and their use of other old and new avenues to the acquisition of these rights in response to the restrictive dictates of customary law. Kager claims to *wuon gweng*' status, I suggest, can be seen as an example of such a conflicting voice, as they utilized an alternative avenue to the construction of a community identity conferring rights to land and authority.⁷ In this context, then, customary law, and colonial administrative policy in general, can be seen as a highly contested arena in which dominant and subordinate voices continually negotiated the meaning and substance of local community identity.

Mapping Tribes and Administering Kavirondo

In 1895 the British Foreign Office sent First Class Assistant C.W. Hobley to Kavirondo territory, the region on the northeastern shores of Lake Victoria that would later be called Nyanza Province. In Hobley's words, he was sent there to establish an administration over "various sections of the turbulent collection of tribes" about whom "nothing much was known" (Hobley, 1970: 80). This is a telling comment, since it is evident from the records Hobley left behind that the task he undertook, aside from that of pacification, was to make this "turbulent collection" of peoples "known" within the imagined landscape of colonial society. Hobley's records, and those of the colonial administrators who followed him, demonstrate that, in the context of the British empire, the peoples of Kavirondo were to be "known" solely as members of clan-based, tribal populations.

Timothy Mitchell's recent examination of the colonial method in Egypt suggests that local indigenous populations became "known" or were made visible through the "reordering of material space," or more particularly, the establishment of "new kinds of spatial frameworks and the means of coordinating and controlling those who move within them" (1991: 93). In Kavirondo territory in the late 19th and early 20th century, colonial officials like Hobley carried out this particular administrative practice primarily through the identification, topographic location, and, I would argue, invention of local tribal and subtribal units. The invention of tribes in colonial Africa has been

well documented by Africanist scholars (Crehan, 1997; Iliffe, 1979; Jackson and Maddox, 1993; Pels, 1994, 1996; Ranger, 1983; Vail, 1989; Worby, 1994). In various studies they have identified those administrative practices that, in many colonies, created tribes and thus invented the “closed corporate consensual system which came to be accepted as part of ‘traditional’ Africa” (Ranger, 1983: 248). Much of their work also suggests that this invented tribal system differed significantly from a situation in pre-colonial Africa in which “far from there being a single tribal identity, most Africans moved in and out of multiple identities” (ibid.). Thus, analyses such as these have shown that, in the context of colonial society, the creation of tribal units was the primary means by which the social spaces of indigenous communities were materially reordered as more rigid and more familiar frameworks of social control were established. They suggest, implicitly if not explicitly, that the practice of representing local populations as tribes was a tactic that gave these populations a recognizable form and identified them as “objects” that could be “govern[ed] effectively in a rational and conscious manner” (Foucault, 1991: 100). I contend, however, that we need to consider not only how administrative practices such as these created fixed units of tribal identity, but also how they gave substance to European assumptions about the essential, kin-based nature of those social relations that defined and delimited the tribal unit. By constructing the tribal unit as kin-based, I argue, these practices determined the rights and obligations that were supposedly inherent in customary social practice.

With respect to the invention of tribes in Kavirondo territory, the records and memoirs of administrators like Hobley indicate that there were a number of techniques used to make local populations visible, or to give a seemingly natural order to what, to European eyes, must have been a confusing mix of peoples and communities. One of the most effective techniques was the locating, mapping and classifying of tribal populations as localized clan units. By the early 1900s Hobley had identified what he believed to be the ancestral territories of tribal populations in Kavirondo (Hobley, 1898, 1902, 1903). He designated the two primary tribal groupings as the Bantu Kavirondo (most of whom were later known as the Abaluyia), occupying the highland regions in the east and centre of the region, and the Nilotic Kavirondo (later known as the Luo) in the lowland areas to the west and along the shores of Lake Victoria (Hobley, 1898: 364). He also, however, located specific tribes on an accompanying map of this region on which they were inscribed as if they occurred in, and were thus part of, nature. In the

way they were placed, the names of these tribes signified the presence of the human population in the natural landscape in much the same way that the descriptive notes “Grass Country” or “Euphorbia Scrub Country” would denote the terrain to be found in that landscape.⁸ It is important to note that although Hobley recorded the presence of Nilotic-speaking, or Luo peoples, in what would eventually be recognized as the Musanda region of the central Nzoia River valley, this area was designated as part of the (seemingly naturally occurring) tribal territory of the Bantu-speaking Kisesa, or Wanga, clan.⁹

What is significant about this early mapping of Kavirondo, however, is not just the allocation of tribal identities to localized populations, but also what this map (and others like it) might have conveyed about the basic relationship between the people and the land they occupied. Adam Kuper has noted that, by the late 19th century, British scholars had generally concluded that “extended ties of kinship,” defined by ties of blood, were the basis of primitive, or tribal, societies (1982: 73). I would argue, then, that this map not only represents local communities as naturally occurring tribal populations, but, by extension, also naturalizes consanguinity and related ties of descent and kinship. Thus, an important aspect of the “knowledge” about Kavirondo represented by this map is the natural connection between blood and the organization of peoples within a tribal territory. Perhaps the clearest demonstration of this presumed connection can be seen in the numerous colonial documents that record, in even the smallest passages, the ethnographic data on descent-based custom collected by colonial officials working in this region. I suggest, however, that what we find in these documents is not so much the recording of ethnographic fact, but rather, evidence of the conceptual reordering of social space in this region through the description of traditions and customs supposedly associated with descent-based tribal populations.

Agnatic Privilege and “Customary Law”

While serving the purpose of making “known” the peoples of Kavirondo territory, Hobley’s cartographic exercise also would have transformed the human chaos of local communities into an objective, “comfortingly familiar and yet ‘scientific’ ” (Crehan, 1997: 206), tribal framework that would certainly have simplified the administration of this region. In fact, in 1908 district and locational boundaries were established on the basis of these perceived tribal and subtribal divisions. Colonial officials fixed the boundaries of administrative districts based on their understanding of the natural, tribal divisions in the

Kavirondo region. Thus, they designated what was believed to be the tribal territories of the Bantu Kavirondo as Elgon District (later North Kavirondo and then North Nyanza) and the territories of the Nilotic Kavirondo as Kisumu District (later Central Kavirondo and then Central Nyanza). Within these districts, officials identified administrative locations that corresponded to the perceived territories of specific tribes or, as they were also recognized, localized clans. Notably, this served to formalize the designation of large areas of the Musanda valley as Wanga tribal, or clan, territory.¹⁰

Thus, through the creation of this naturalized order of tribal divisions, Hobley, in effect, produced those governable objects required by a British colonial administration. However, more was required for an effective administration than just the identification of the objects of rule. In 1909, John Ainsworth, the new commissioner of what was now Nyanza Province, sent a memorandum to the Governor of Kenya, Sir Percy Girouard, strongly suggesting that the principle of Indirect Rule should be more formally implemented in the colony. This required, he argued, that "African laws and customs" must be followed in political and judicial matters (Maxon, 1980: 183-184). Ainsworth's views on the importance of tribal traditions are not surprising. As several recent studies have demonstrated (Crehan, 1997; Pels, 1994, 1996; Worby, 1994), colonial officials who adopted the policy of Indirect Rule in Eastern and Southern Africa believed that adherence to tribal traditions was extremely important because these customary forms would act as legitimate channels for the implementation and regulation of administrative policy.

By 1909, then, administrative policy in Nyanza Province required not only a knowledge of tribal identity, but also a working knowledge of tribal custom. Quite a bit of ethnographic data had already been collected by Hobley during his time as administrator (see Hobley, 1902, 1903) and this was soon added to by other administrators working under Ainsworth (see especially Dundas, 1910). Officials used this data to determine and specify what they believed to be tribal customs relating to such things as marriage, land tenure and political succession in Nyanza Province. It was on the basis of this so-called tribal custom, in fact, that in later years administrators justified their predecessor's earlier decision to grant the region of the Musanda valley to the Wanga and repeatedly denied Kager claims of *wuon gweng*' status.

Ranger argues that so-called customary forms—"customary law, customary land-rights, customary political structure and so on"—"were in fact all invented by colonial codification" (1983: 250). He points out that "once

the 'traditions' relating to community identity and land rights were written down in court records and exposed to the criteria of the invented customary model, a new and unchanging body of tradition had been created" (ibid.: 251). Obviously, a process such as this would have enormous consequences for colonized communities. For example, studies of this process demonstrate that as a result of this invention of tradition, some indigenous individuals and groups were able to enhance their own positions in colonial society through the manipulation of certain ethnographic information that would be taken down by administrators as tribal custom (Pels, 1996; Worby, 1994). I believe, however, that there was a more far-reaching and fundamental consequence of the invention of tribal custom, at least in Nyanza Province.

A close reading of the archived information on tribal custom from the early 1900s, taken together with reports on day-to-day conditions in local communities from this same period, suggests that administrative officials in Nyanza Province selectively used certain native customary forms as iconic representations of larger tribal populations, especially those customs associated with principles of agnatic descent. For example, Hobley (1903: 326-331) provides three examples of Luo origin myths: two of these indicate that one way ancestral Luo groups established rights to new territory was by creating ties through women to occupying groups; the other makes no mention of links through women, and instead emphasizes the importance of descent through men. While Hobley presents all three versions to the reader, he insists that the latter version is more authentic. According to Hobley it is the "ancient genealogy, brought down from the Nile valley by the people when they migrated to the south" (ibid.: 331).

As administrative officials, like Hobley, engaged in this process of privileging agnatic custom, they also considerably underplayed the significance of those customs deriving from other forms of relationship, such as uterine links, affinal relations and non-kinship ties such as friendship. Customs associated with these latter forms of relationship are certainly described in reports and appear to have had some local and regional significance. Nevertheless, those customs associated with agnation are privileged and thus held to be representative of the larger social whole. As a result this particular colonial practice of associating custom with agnation conceptually re-ordered the social space of local communities, producing models of these communities as descent-based groups with fixed systems of agnatically defined tribal custom. What is most significant in the context of this article is the way in which this practice extended the implied

connections between blood and tribal territory by creating certain patrilineal clan groups as authentic inhabitants with natural rights of possession over and against other groups that might be in occupation of specific areas.

One of the common strategies by which colonial administrators imagined certain localized groups as authentic, and thus determined their rights to land, was by reference to clan histories. This was especially true for those peoples living in regions in which there was some ongoing conflict over community rights and identity. For the Musanda region, district officers began writing the histories of the Luo and Wanga peoples into the colonial record as early as 1911.¹¹ This practice became more frequent in the 1930s as the Kager Luo began actively pressing their claims of rights as *wuon gweng'* in this region.¹² What is striking about these histories is how administrators wrote the pre-colonial past of Wanga and Luo clans into provincial and district records in such a way as to emphasize the natural, kin-based rights of Wanga to land in this area. For example, Wanga peoples are usually referred to as "original" occupants whose ancestors found the land uninhabited or empty upon their arrival in the Musanda region. Luo groups in this area, on the other hand, are consistently described as invaders. The ancestral, or natural, rights of the Wanga are also emphasized in these histories through frequent reference to the strength of the genealogical, or agnatic, connections of localized groups. Conversely, these administrative clan histories fail to mention such genealogical connections among the Luo, emphasizing instead the dispersed character of their clan population.

There were other strategies used by colonial officials working in the Musanda region that further designated Luo groups as temporary occupants with no rightful claim to own the land. Summaries of census data, for example, while almost always verifying the presence of a significant population of Luo in this region, often reported this information in such a way as to suggest the illegitimacy of their presence.¹³ Indeed, it seems clear that colonial officials saw the presence of groups without agnatic connections to those imagined as original occupants as problematic and unnatural, creating what one District Commissioner referred to as a "mixed population."¹⁴ In fact, by the early 1930s, administrative officials had adopted the Luo term *wuon gweng'* (always glossed as "owner of the land") and had designated certain Bantu-speaking clans, usually the Wanga, as owners of the land with legal possession of this territory as "landlords." At the same time, all Luo groups, including the Kager, were labelled "tenants" occupying land only

at the "will" of those with these customary rights of possession.¹⁵

This would certainly have been highly problematic for those Luo peoples (and Bantu-speaking peoples not members of the recognized landlord clan) now designated as tenants. Generally, archival documents from this period suggest that there were large numbers of Luo living in the Musanda valley who were well integrated into local communities and claimed residence for several generations back.¹⁶ It is also apparent from these records that these Luo were connected to Wanga peoples through long-term, uterine, affinal or other non-kinship ties. Nevertheless, official ethnographic practice and the gradual codification of customary laws establishing rights of landlord and tenant groups had now made these ties structurally meaningless. Furthermore, Luo groups in this region had no recourse to a claim of any administratively significant, agnatic identity. In other words, as tenants they were unable to claim a status that would allow them to effectively utilize established customary laws in regard to such things as land tenure and access to political authority.

It is not surprising, then, that by the 1930s Luo individuals and groups in the Musanda valley were consistently attempting to claim an identity for themselves as *wuon gweng'*. What is interesting, however, is that archival records of their written and spoken claims of *wuon gweng'* status as well as their activities in this region suggests that they had a rather different understanding of what it meant to be, and how one becomes, *wuon gweng'* than that now codified in customary law. As we will see, Kager discourse relating to their claims to "own the land" constructed a much more encompassing and fluid understanding of this concept, one that asserted their rights to become *wuon gweng'* contrary to their defined administrative status as "tenants."

Becoming *Wuon Gweng'*

According to archival records, Luo peoples living in the Musanda region of Nyanza Province began trying to redefine their administrative status even before the official gazetting of district and locational boundaries in 1908.¹⁷ It was not until the early 1930s, however, that these efforts were organized under the authority of the Ugenya Kager Luo Clan Association (UKLCA). Throughout the 1930s this organization provided a strong Kager voice in the Musanda region.¹⁸ During this period members of the UKLCA made claims of *wuon gweng'* status in petitions to the colonial government, in local council meetings and in private meetings with administrative

officials. Records of their formal statements, testimony and conversations show that the Kager used a number of different discursive strategies to fashion an identity as *wuon gweng'* in colonial society. And, as was true for the administrative project of constructing tribal or clan identity and defining customary law, one of the most common strategies was the telling of their clan history. However, a consistent theme in this often-repeated clan history was not the status of ancestral Kager as original inhabitants of the Musanda region, nor even as invaders or interlopers. Instead, these Kager were more concerned with the circumstances of conquest and occupation in their recent past and with their position within a larger and heterogeneous indigenous community.¹⁹

This idea that the Kager were part of an historically interconnected community of diverse populations is a central image in their discourse on their own past in the Musanda region. In fact, their claim of conquest generally leads to statements alluding to the establishment of extended community relations through the process of occupation. For example, colonial records document Kager statements concerning the presence of trade between themselves and the Wanga prior to colonial intervention, as well as to their political alliances with other Bantu-speaking groups in this area.²⁰ I argue that by making these and other claims concerning the significance of intergroup relations, Kager representatives portrayed pre-colonial Musanda as a region in which one came to "own the land" through the process of negotiating relations with others, rather than as part of a pre-determined agnatic birthright.

Perhaps the most telling example of the Kager understanding of what it meant to "own the land" in Musanda region can be found in allusions in speeches and petitions to the importance of ties through women in the pre-colonial community. The most frequently occurring instance of this was in the retelling of the Kager conquest of the forces of the Wanga leader, Shiundu, not too long before the arrival of the British. In December of 1931, one elder stood before a council meeting in the village of Musanda and claimed Kager rights to "own the land" in this region. As part of his statement, he told a brief version of the story of the establishment of relations between Kager and Wanga in this region, stating that "there was a time when we defeated the Wanga under Shiundu. We had him pinned in his *boma*. Then he gave us a girl, and we helped him in his war against the Kitosh."²¹ Taken at face value, this statement would appear to contradict Kager claims to be *wuon gweng'* in this region. After all, it implies that shortly before the arrival of the British the Kager became affines and allies

of the Wanga, rather than replacing them as *wuon gweng'* through conquest. Yet, this story appears in other records of Kager accounts of their clan history and is always cited by the Kager as proof of their rights to "own the land."²²

Given this, it would seem that we need to take this story seriously, as part of a larger Kager strategy to become *wuon gweng'* and gain rights to land and authority in the Musanda region. To get some idea of the significance of this story, I will briefly discuss one exchange between the British administration and the Kager recorded in the archives. In March of 1931, Provincial Commissioner Thompson of Nyanza Province held a meeting with several Kager elders who had come to see him about their claims in the Musanda region. Mr. Thompson's official report of this meeting notes that when these elders were reminded of their historical status as tenants in this region, they told him that "in the past we were never tenants, we were *jodak*."²³ I suggest that if we examine this fragment of dialogue, and consider the possible meaning of *jodak* for these Kager elders, we might get a better understanding of how Kager peoples in the 1930s were trying to fashion a meaningful identity and in the process remake the terms of clan identity as assigned to them by customary law. Colonial records show that, generally, Luo peoples used the term *jodak* ("people who stay") to designate those individuals or groups living in a community who had actual or potential ties through women (uterine, affinal) to established *wuon gweng'* groups, or to those peoples that the British had designated landlords. In other words, those people that the British designated tenants—those people without agnatic ties to *wuon gweng'*—the Luo referred to as *jodak*. I contend that by denying their status as tenants, but admitting their earlier status as *jodak*, the Kager elders who visited P.C. Thompson in 1931 were in effect asserting an understanding of the significance of ties through women in the indigenous community that was rather different than that of British administrators. I believe that this understanding is one that contained the possibility of becoming *wuon gweng'* through the creation of links between various landed populations based on ties through women; a possibility that would be denied the Kager under the provisions of customary law.

But how is it that the Kager could admit being *jodak* in the Musanda region in the late 1800s and yet assert their rights as *wuon gweng'* in this area in the 1930s, especially since customary law defined these rights solely on the basis of ancestral, agnatic links to landlord groups? I have already pointed out that the Kager back

up their claims to “own the land” by telling of the historical establishment of trade relations and the forging of political alliances with other localized groups. It would also seem likely that historical ties through women with Wanga groups would both have reinforced these links and, initially, would have also strengthened the status of those Wanga previously in occupation of the region. Nevertheless, if the Kager understanding of becoming *wuon gweng'* is based on the creation and negotiation of significant regional relations and alliances, it is equally possible for them to presume that, while their parents and grandparents entered this relationship as *jodak*, they in turn have transformed their status to that of *wuon gweng'* by creating their own *jodak* relationships. Thus, it is highly significant that by the 1930s Kager living in the Musanda region were frequently reprimanded by colonial and native authorities for “bringing” Luo from other locations to live as *jodak* on that land which the Kager officially occupied as tenants.²⁴ This, along with the previously mentioned archival evidence, indicates that Kager peoples perceived rights to land and authority, and thus the status of *wuon gweng'*, as partial, negotiable and based on a network of significant regional and community ties. This is quite different from the rigid, bounded, inflexible and linear definition of those rights in customary law and constitutes an alternative construction of a meaningful community identity, and hence rights to land and authority.

Contesting Customary Law

I will end by returning to the larger issue of the relationship between customary law and culture and the investigation of indigenous disputative response, or what some people might describe as indigenous resistance. Much of the anthropological work that has been done in this area looks at customary law as an historical construct that has been “forged in struggles between colonial power and colonized groups” (Merry, 1991: 897). This focus on history and power has done much to enhance our understanding of the role of customary law in the perpetuation of the power of the state and in the construction of an arena for indigenous response. But, I suggest that it is not enough to identify the ways in which colonized peoples have disputed or resisted the imposition of colonial institutions such as customary law. Instead we must also consider the possibility that the very act of disputing this colonial power constituted an attempt to put forward an alternative form of local meaning that might have served to contest and renegotiate what were now the fixed terms of customary law.

The Kager claiming *wuon gweng'* status in the Musanda valley in the 1930s were not just challenging institutionalized structures of power in an attempt to change its terms. They were, instead, attempting to remake the terms of that power and thus the terms of their own identity. British notions of customary law reduced the concept of *wuon gweng'* to a category of land tenure fixed by what were imagined to be the natural, ancestral and restricted rights of bounded, agnatically defined clan units. Kager discourse, on the other hand, relied on an understanding of becoming *wuon gweng'* that was more inclusive and that would have encompassed many of those peoples who had been dispossessed because of their invented status as tenants under the terms of customary law. In this context, then, Kager claims to “own the land” can be seen as an attempt to remake a community identity that is more viable and meaningful than the identity assigned to them within the dominant administrative discourse of customary law. Thus, in considering the role of colonized peoples in disputing, resisting or even contributing to customary law, what must be more fully addressed is how these actions might be connected to struggles over the imposition of meaning, especially as this meaning relates to the issue of identity. As Peter Just has noted, “disputing is not just about my rights and your obligations, it is about who I am and what we are” (Just, 1992: 409).

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Notes

- 1 Kenya National Archives (KNA) DC/NN10/1/1, Petition from Ugenya Kager Luo Clan Association to Governor of Kenya Colony, August 15, 1932.
- 2 The specific boundaries of the territory being claimed by the UKLCA in 1932 are difficult to determine because they

made reference only to specific community locations, some of which are no longer extant, and because the precise locations they claimed changed over time. They claimed rights to land, and a number of villages, found in the administrative locations of Wanga, Buholo and South Marama. The claimed territory lay on what were then the borders of North Kavirondo and Central Kavirondo and roughly covered the southern tip of Wanga, much of Buholo, and the northwestern region of South Marama. This area did not correspond with any specific territorial unit of colonial administration, therefore it was generally referred to as the Musanda valley after the village of Musanda in southern Wanga.

- 3 Most accounts of council meeting speeches made by Luo elders, as well as memoranda and petitions submitted by members of the Ugenya Kager Luo Clan Association and others, were translated into English in the archives. Nevertheless, indigenous terms were occasionally retained and from this evidence it appears that, at least in the early 1930s, the most common identity marker used by Luo people to refer to their status with respect to the Musanda valley is the phrase *wuon gweng'* (pl. *weg gweng'*). In these documents this phrase is glossed as "owner(s) of the soil" or "owner(s) of the land" and there is no direct translation given. It is most likely that the term *wuon* could be literally translated during this period as "father of," since British administrators, and after them anthropologists, consistently glossed the Luo term for "father of" as "owner." The appropriate translation for the term *gweng'* is not quite as apparent. Various administrative documents detailing Luo custom with regard to land tenure suggest that the term *gweng'* refers to a specific, bounded locality associated with an agnatic clan unit (see KNA, "Rough Outline of History of the Luo in Central Kavirondo," memorandum submitted by Major B.W. Bond, District Commissioner, North Kavirondo, 1932, Kenya Land Commission Evidence Vol. 3; KNA PC/NZA3/14/27, memo from District Commissioner [Central Kavirondo] to Provincial Commissioner [Nyanza] on Luo land tenure, March 30, 1937; KNA DC/CN3/3/1, "Report on Luo Law and Custom Regarding Land," G.M. Wilson, 1953). However, there is nothing in Luo reported speech or in written documents submitted by Luo individuals and groups from this period that indicates that those "Kager" people claiming to have the status of *wuon gweng'* in Musanda valley were defined only by their connections to a bounded and, at one time, territorially defined Kager clan through agnatic ties alone. Instead, in these archival documents the term *wuon gweng'* seems to be used in a more indeterminate fashion to refer to a loosely connected set of individuals who claim rights over a region that has fluid and inexact boundaries and that incorporates an ever-changing number of villages and homesteads. Given the difficulty of rendering this meaning into a specific translation, I will be using the administrative gloss, "owner(s) of the land."
- 4 In the early years of colonial administration, this loosely knit association of semi-autonomous Bantu-speaking clan groups was united to a certain extent under the leadership of the administrative chief Mumia, the individual believed, by the British, to be the hereditary ruler of the Wanga. In the 1920s these clans joined together to form the Bantu Kavirondo Taxpayer's Association. In 1940 this became the

Abaluyia Welfare Association. According to Gunther Wagner (1949: 69), the term *luyia* can be translated as "one clan." By the mid-1960s the Abaluyia were recognized as a distinct tribal, or ethnic population (see Osogo, 1966; Were, 1967).

- 5 Similarly, historians and anthropologists who have discussed these kinds of claims and counterclaims to "own the land" tend to treat them as expressions of pre-colonial conflicts over land that occurred between historically distinct clan units (see Evans-Pritchard, 1949; Ochieng', 1973; Ogot, 1971).
- 6 In his review of several recently published texts dealing with the anthropology of law, Peter Just suggests that we need to consider both local meaning and historical processes of power in the analysis of dispute and conflict (1992: 376; see also Merry, 1991). This combined focus on meaning and power is evident in a number of recent studies that approach the law as a realm in which symbols, narratives and performance can be deployed and manipulated (see, for example, Lazarus-Black, 1994; Lazarus-Black and Hirsch, 1994; Yngvesson, 1993). These studies examine the productive power of the law and its role in the "formation of discourses—both dominant and subjugated—which set the parameters of what can be said, thought, challenged, struggled over, and achieved in a given historical moment" (Hirsch and Lazarus-Black, 1994: 3). However, they also approach the law as "simultaneously a maker of hegemony and a means of resistance" (ibid.: 9). Thus, as with other works concerned more specifically with customary law, they offer a rather circumscribed understanding of the local meaning that might inform those actions commonly labelled as resistance.
- 7 For other recent studies that have demonstrated the significance of such alternative voices in the construction of community identity and community rights see Worby (1994) and Pels (1994, 1996).
- 8 There is a difference in the type used for descriptions of the landscape (e.g., "Euphorbia Country") and tribal names, but there is no indication of what this indicates. In fact, one is left with the impression that the difference in type could indicate either a different category of naturally occurring features, or that one feature has greater importance than the other.
- 9 Although in his 1898 publication on Kavirondo territory Hobley identifies the people of this region as belonging to the Kisesa tribe, he later classifies this as Wanga tribal, or clan, territory (Hobley, 1902, 1903). He and later administrators were somewhat imprecise in their use of terms such as tribe, subtribe and clan. So, for example, the Wanga may be referred to as a tribe in one publication or memorandum and as a subtribe or clan in another. As I will demonstrate, I believe that this is due to administrative (and generally European) assumptions about the segmentary and clan-based nature of tribes, rather than administrative sloppiness.
- 10 KNA PC/NZA1/14, Provincial Commissioner Ainsworth, Annual Report, Chart of Native Populations. See also Ogot (1971: 96) and Were (1967: 175).
- 11 KNA DC/CN3/5, Political Records, Book 2, Central Nyanza, April 14, 1911. There is no indication in archival records where, or from whom, administrators collected this and

- other clan histories. It is evident, however, that in every case the administrator is rewriting this history in the sense that he is choosing what information to include in his summary. For this reason, I am treating these clan histories as a form of administrative discourse, although as told to local officials by native informants they originally stood as a form of indigenous discourse.
- 12 See especially KNA DC/NN3/1/17, "Early History of Wanga Chiefs," 1931; KNA, "Historical Survey, North Kavirondo," memorandum submitted to Kenya Land Commission by District Commissioner (North Kavirondo) C.B. Thompson, September 1932, Kenya Land Commission Evidence, Vol. 3; KNA, "Rough Outline of the History of the Luo in Central Kavirondo," memorandum submitted to Kenya Land Commission by Major B.W. Bond, September 1932, Kenya Land Commission Evidence, Vol. 3; and KNA CO 533/447/12, Governor Byrne to Secretary of State for the Colonies, March 31, 1934.
 - 13 See, for example, KNA DC/NN3/3/6, Safari Report, Assistant District Commissioner (North Nyanza) W.H. McGeach on March 9, 1929. In this report McGeach provides a list of all of the clans belonging to the resident Bantu-speaking subtribe in the southern region of the Musanda valley, the total number of villages belonging to these clans and then the number of Luo huts to be found in each village. The latter stands out in this report as the marked, or the problematic, category. This impression is strengthened by the accompanying record, presumably collected by McGeach in the field, of the history of these local clan groups.
 - 14 Central Nyanza District Archives, District Commissioner S.H. Fazan in Political Records, Book 2, Kisumu, March 25, 1913. It should be noted that colonial officials also assumed that it was the Luo who were guilty of creating these unnaturally "mixed" populations. For example, while giving evidence before the Kenya Land Commission in September of 1932, the Reverend Monsignor Brandsma stated that "I do not think that there is much likelihood of the majority of Bantu clans mixing with others. They are very clannish, especially in regard to intermarrying. The Luo do marry Bantu women, but the Bantu do not marry Luo women. . . . There is a good deal of Luo marrying Bantu wives, but few Bantu marrying Luo wives" (KNA, Kenya Land Commission Evidence, Vol. 3).
 - 15 See, for example, KNA DC/NN10/1/1, memos between Provincial Commissioner Montgomery (Nyanza Province) and the District Commissioner of North Nyanza, February through April 1932.
 - 16 See, for example, KNA DC/NN3/3/6, Safari Report, Assistant District Commissioner (North Nyanza) W.H. McGeach, March 9, 1929; KNA DC/NN10/1/1, Evison (Lawyer for Kager Luo) to Chief Native Commissioner, April 19, 1932; and KNA DC/NN10/1/1, Petition from UKLCA, August 15, 1932.
 - 17 See KNA DC/NN3/3, Political Records, North Kavirondo, 1916. Here there is a reference to the unauthorized assumption of headmanship by a Luo resident in the southern region of the Musanda valley. Further Luo claims of political authority, as well as rights to land, in this area are noted sporadically in colonial records up until the late 1920s. It was not until the early 1930s, however, that these records consistently refer to Kager agitation in this region (see KNA DC/NN3/1). Before 1913, administrative records designated all Luo peoples of this region as Wa-Nife and listed Gero as a local leader and one of those resisting colonial incursions (significantly, the Kager translates as "the place of Ger"). By 1913 these records identified all contentious Luo in this region as Wagenya. Aside from one or two references to the "Kageri" in the Political Record Book of North Kavirondo in 1916, this was the most common name given to these peoples until 1931, when all Luo claims to "own the land" in the Musanda region of the central Nzoia River valley were recognized as Kager claims. Perhaps not coincidentally, the Ugenya Kager Luo Clan Association was established in this same year (Ogot, 1971: 100).
 - 18 By 1933, however, there were other representatives of a Kager voice in the Musanda region besides the UKLCA. In late 1932, one of the major figures in the Kager movement, the Reverend Alufayo Mango, broke all ties with the local arm of the Christian Missionary Society (CMS) and established a new religious sect called *Jo-Roho* ("People of the Spirit"). The headquarters of this sect were at Mango's homestead in the village of Musanda. From then, until his death in 1934 at the hands of a Wanga raiding party, Mango continued to act in ways that, at least symbolically, asserted his claimed *wuon gweng'* status. Archival records show that his actions were denounced not only by local Wanga peoples, but also by those Kager in the area who remained loyal to the CMS and the UKLCA (see KNA DC/NN10/1/1, Ugenya Kager Luo Clan Association Petition of September 25, 1933; KNA DC/NN10/1/1, District Officer F.D. Hislop's report on the Musanda Massacre, February 9, 1934; see Ogot, 1971: 104).
 - 19 At the same time, when referring to their dispersal from this region in 1897, shortly after the establishment of a British administration, Kager representatives made repeated references to the role of colonial officials in this defeat. As one Kager elder noted in front of a council meeting in December of 1931, "Our trouble is that the Wanga did not drive us out, Hobley did. Others who were beaten by the Europeans are in their *bomas* now, why aren't we?" It is perhaps also significant that this type of assertion commonly drew a counter-assertion from Wanga peoples that they acted alone in their defeat of the Kager. So, for example, in the same council meeting, the Paramount Chief of the Wanga, who was also a leader of the Wanga at the time of British intervention in the 1880s, stated that, "I asked Jackson [Hobley's assistant] to help me with my wars. He refused. So I bought guns and defeated you. Hobley did not fight you at all. He fought in North Ugenya certainly near the Boma of Gem. He also fought the Kitosh, but did we take their villages?" (KNA DC/NN3/2/18, Record of Council Meeting, Matungu, South Wanga, December 13, 1931).
 - 20 See KNA DC/NN3/2/18, Record of Council Meeting, Matungu, South Wanga, December 13, 1931; KNA DC/NN10/1/1, UKLCA Petition, August 15, 1932; Public Records Office, Kew Gardens, CO/533/442/12, UKLCA Petition, January 22, 1934; KNA DC/NN10/1/1, UKLCA Petition, June 12, 1935; KNA DC/NN10/1/1, Shadrack Awelo Omolo, Secretary of the UKLCA, to the Provincial Commissioner, June 12, 1935; and KNA PC/NZA2/2/27, Oyama Omoro, Secretary Ugenya Community Development, to the Chief Native Commissioner for Native Affairs, August 20, 1951.

- 21 KNA DC/NN3/2/18, Record of Council Meeting, Matungu, South Wanga, December 13, 1931.
- 22 See KNA DC/NN10/1/1, Record of Council Meeting, Musanda, South Wanga, May 5, 1932, KNA DC/NN3/3/6, Safari Report, Assistant District Commissioner (North Nyanza) W.H. McGeach, March 9, 1929; and references to Kager and Wanga clan histories in Ogot (1967) and Were (1967).
- 23 KNA DC/NN3/2/18, Provincial Commissioner Thompson (Nyanza Province) to District Commissioner Anderson (North Nyanza).
- 24 See, for example, KNA DC/NN10/1/1, UKLCA Petition, September 25, 1933; KNA PC/NZA4/5/2, Intelligence Report, North Nyanza, October 24, 1938; and KNA DC/KMG1/1/33, Secretary of the UKLCA to Provincial Commissioner, Nyanza Province, May 14, 1946.
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