

THE *KPELLE* MOOT

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Africa as a major culture area has been characterized by many writers as being marked by a high development of law and legal procedures. In the past few years research on African law has produced a series of highly competent monographs such as those on law among the Tiv, the Barotse, and the Nuer. These and related shorter studies have focussed primarily on formal processes for the settlement of disputes, such as those which take place in a courtroom, or those which are, in some other way, set apart from simpler measures of social control. However, many African societies have informal, quasi-legal, dispute-settlement procedures, supplemental to formal ones, which have not been as well studied, or--in most cases-- adequately analysed.

In this paper I present a description and analysis of one such institution for the informal settlement of disputes, as it is found among the *Kpelle* of Liberia; it is the moot, the *berei mu meni saa* or 'house palaver.' Hearings in the *Kpelle* moot contrast with those in a court in that they differ in tone and effectiveness. The genius of the moot lies in the fact that it is based on a covert application of the principles of psychoanalytic theory which underlie psychotherapy.

The *Kpelle* are a Mande-speaking, patrilineal group of some 175,000 rice cultivators who live in Central Liberia and the adjoining regions of Guinea. This paper is based on data gathered in a field study which I carried out in 1957 and 1958 among the Liberian *Kpelle* of Panta Chiefdom in north-east Central Province.

Strong corporate patrilineages are absent among the *Kpelle*. The most important kinship group is the virilocal polygynous family which sometimes becomes an extended family, almost always of the patrilineal variety. Several of these families form the core of a residential group, known as a village quarter, more technically, a clan-barrio. This is headed by a quarter elder who is related to most of the household heads by real or putative patrilineal ties.

Kpelle political organization is centralized although there is no single king or paramount chief, but a series of chiefs of the same level of authority, each of whom is superordinate over district chiefs and town chiefs. Some political functions are also vested in the tribal fraternity, the Poro, which still functions vigorously. The form of political organization found in the area can thus best be termed the polycephalous associational state.

The structure of the *Kpelle* court system parallels that of the political organization. In Liberia the highest court of a tribal authority and the highest tribal court chartered by the Government is that of a paramount chief. A district chief's court is also an official court. Disputes may be settled in these official courts or in unofficial courts, such as those of town chiefs or quarter elders. In addition to this, grievances are settled informally in moots, and sometimes by associational groupings such as church counsels or cooperative work groups.

In my field research I studied both formal and informal methods of dispute settlement. The method used was to collect case material in as complete form as possible. Accordingly, immediately after a hearing, my interpreter and I would prepare verbatim transcripts of each case that we heard. These transcripts were supplemented with accounts--obtained from respondents--of past cases or cases which I did not hear litigated. Transcripts from each type of hearing were analysed phrase by phrase in terms of a frame of reference derived from jurisprudence and

ethno-law. The results of the analysis indicate two things: first, that courtroom hearings and moots are quite different in their procedures and tone, and secondly, why they show this contrast.

Kpelle courtroom hearings are basically coercive and arbitrary in tone. In another paper I have shown that this is partly the result of the intrusion of the authoritarian values of the Poro into the courtroom. As a result, the court is limited in the manner in which it can handle some types of disputes. The court is particularly effective in settling cases such as assault, possession of illegal charms, or theft where the litigants are not linked in a relationship which must continue after the trial. However, most of the cases brought before a *Kpelle* court are cases involving disputed rights over women, including matrimonial matters which are usually cast in the form of suits for divorce. The court is particularly inept at settling these numerous matrimonial disputes because its harsh tone tends to drive spouses farther apart rather than to reconcile them. The moot, in contrast, is more effective in handling such cases. The following analysis indicates the reasons for this.

The *Kpelle berei mu meni saa*, or 'house palaver,' is an informal airing of a dispute which takes place before an assembled group which includes kinsmen of the litigants and neighbors from the quarter where the case is being heard. It is a completely *ad hoc* group, varying greatly in composition from case to case. The matter to be settled is usually a domestic problem: alleged mistreatment or neglect by a spouse, an attempt to collect money paid to a kinsman for a job which was not completed, or a quarrel among brothers over the inheritance of their father's wives.

In the procedural description which follows I shall use illustrative data from the Case of the ousted Wife:

Wama Nya, the complainant, had one wife, Yua. His older brother died and he inherited the widow, Yokpo, who moved into his house. The two women were classificatory sisters. After Yokpo moved in, there was strife in the household. The husband accused her of staying out late at night, of harvesting rice without his knowledge, and of denying him food. He also accused Yokpo of having lovers and admitted having had a physical struggle with her, after which he took a basin of water and 'washed his hands of her'.

Yokpo countered by denying the allegations about having lovers, saying that she was accused falsely, although she had in the past confessed the name of one lover. She further complained that Wama Nya had assaulted her and, in the act, had committed the indignity of removing her headtie, and had expelled her from the house after the ritual hand-washing. Finally she alleged that she had been thus cast out of the house at the instigation of the other wife who, she asserted, had great influence over their husband.

Kolo Wa, the Town Chief and quarter elder, and the brother of Yokpo, was the mediator of the moot, which decided that the husband was mainly at fault, although Yua and Yokpo's children were also in the wrong. Those at fault had to apologize to Yokpo and bring gifts of apology as well as local rum for the disputants and participants in the moot.

The moot is most often held on a Sunday--a day of rest for Christians and nonChristians alike--at the home of the complainant, the person who calls the moot. The mediator will have been selected by the complainant. He is a kinsman who also holds an office such as town chief or quarter elder, and therefore has some skill in dispute settlement. It is said that he is chosen to preside by virtue of his kin tie, rather than because of his office.

The proceedings begin with the pronouncing of blessings by one of the oldest men of the group. In the Case of the Ousted Wife, Gbenai Zua, the elder who pronounced the blessings, took a rice-stirrer in his hand and, striding back and forth, said:

This man has called us to fix the matter between him and his wife. May yala [the supreme, creator deity] change his heart and let his household be in good condition. May yala bless the family and make them fruitful. May He bless the children and the rest of the family so they may always be healthy. May He bless them to have good luck. When Wama Nya takes a gun and goes in the bush, may he kill big animals. May yala bless us to enjoy the meat. May He bless us to enjoy life and always have luck. May yala bless all those who come to discuss this matter.

The man who pronounces the blessings always carries a stick or a whisk [kpung] which he waves for effect as he paces up and down chanting his injunctions. Participation of spectators is demanded, for the blessings are chanted by the elder [kpung namu or 'kpung owner'] as a series of imperatives, some of which he repeats. Each phrase is responded to by the spectators who answer in unison with a formal response, either e ka ti [so be it], or a low, drawn out eeee. The kpung nama delivers his blessings faster and faster, building up a rhythmic interaction pattern with the other participants. The effect is to unite those attending in common action before the hearing begins. The blessing focuses attention on the concern with maintaining harmony and the well-being of the group as a whole.

Everyone attending the moot wears their next-to-best clothes or, if it is not Sunday, everyday clothes. Elders, litigants, and spectators sit in mixed fashion, pressed closely upon each other, often overflowing onto a veranda. This is in contrast to the vertical spatial separation between litigants and adjudicators in the courtroom. The mediator, even though he is a chief, does not wear his robes. He and the oldest men will be given chairs as they would on any other occasion.

The complainant speaks first and may be interrupted by the mediator or anyone else present. After he has been thoroughly quizzed, the accused will answer and will also be questioned by those present. The two parties will question each other directly and question others in the room also. Both the testimony and the questioning are lively and uninhibited. Where there are witnesses to some of the actions described by the parties, they may also speak and be questioned. Although the proceedings are spirited, they remain orderly. The mediator may fine anyone who speaks out of turn by requiring them to bring some rum for the group to drink.

The mediator and others present will point out the various faults committed by both parties. After everyone has been heard, the mediator expresses the consensus of the group. For example, in the Case of the Ousted Wife, he said to Yua: 'The words you used towards your sister were not good, so come and beg her pardon.'

The person held to be mainly at fault will then formally apologize to the other person. This apology takes the form of the giving of token gifts to the wronged person by the guilty party. These may be an item of clothing, a few coins, clean hulled rice, or a combination of all three. It is also customary for the winning party in accepting the gifts or apology to give, in return, a smaller token such as a twenty-five cent piece to show his 'white heart' or good will. The losing party is also lightly 'fined'; he must present rum or beer to the mediator and the others who heard the case. This is consumed by all in attendance. The old man then pronounces blessings again and offers thanks for the restoration of harmony within the group, and asks that all continue to act with good grace and unity.

An initial analysis of the procedural steps of the moot isolates the descriptive attributes of the moot and shows that they contrast with those of the courtroom hearing. While the airing of grievances is incomplete in courtroom hearings, it is more complete in the moot. This fuller airing of the issues results, in many marital cases, in a more harmonious solution. Several specific features of the house palaver facilitate this wider airing of grievances. First, the hearing takes place soon after the breach has occurred, before the grievances have hardened. There is no delay until the complainant has time to go to the paramount chief's or district chief's

headquarters to institute suit. Secondly, the hearing takes place in the familiar surroundings of a home. The robes, writs, messengers, and other symbols of power which subtly intimidate and inhibit the parties in the courtroom, by reminding them of the physical force which underlies the procedures, are absent. Thirdly, in the courtroom the conduct of the hearing is firmly in the hands of the judge but in the moot the investigatory initiative rests much more with the parties themselves. Jurisprudence suggests that, in such a case, more of the grievances lodged between the parties are likely to be adjusted. Finally, the range of relevance applied to matters which are brought out is extremely broad. Hardly anything mentioned is held to be irrelevant. This too leads to a more thorough ventilation of the issues.

There is a second surface difference between court and moot. In a courtroom hearing, the solution is, by and large, one which is imposed by the adjudicator. In the moot the solution is more consensual. It is, therefore, more likely to be accepted by both parties and hence more durable. Several features of the moot contribute to the consensual solution: first, there is no unilateral ascription of blame, but an attribution of fault to both parties. Secondly, the mediator, unlike the chief in the courtroom, is not backed by political authority and the physical force which underlies it. He cannot jail parties, nor can he levy a heavy fine. Thirdly, the sanctions which are imposed are not so burdensome as to cause hardship to the losing party or to give him or her grounds for a new grudge against the other party. The gifts for the winning party and the potables for the spectators are not expensive as the fines and the court costs in a paramount chief's court. Lastly, the ritualized apology of the moot symbolizes very concretely the consensual nature of the solution. The public offering and acceptance of the tokens of apology indicate that each party has no further grievances and that the settlement is satisfactory and mutually acceptable. The parties and spectators drink together to symbolize the restored solidarity of the group and the rehabilitation of the offending party.

This type of analysis describes the courtroom hearing and the moot, using a frame of reference derived from jurisprudence and ethno-law which is explicitly comparative and evaluative. Only by using the type of comparative approach can the researcher select features of the hearings which are not only unique to each of them, but theoretically significant in that their contribution to the social-control functions of the proceedings can be hypothesized. At the same time, it enables the researcher to pin-point in procedures the cause for what he feels intuitively: that the two hearings contrast in tone, even though they are similar in some ways.

However, one can approach the transcripts of the trouble cases with a second analytical framework and emerge with a deeper understanding of the implications of the contrasting descriptive attributes of the court and the house palaver. Remember that the coercive tone of the courtroom hearing limits the court's effectiveness in dealing with matrimonial disputes, especially in effecting reconciliations. The moot, on the other hand, is particularly effective in bringing about reconciliations between spouses. This is because the moot is not only conciliatory, but *therapeutic*. Moot procedures are therapeutic in that, like psychotherapy, they re-educate the parties through a type of social learning brought about in a specially structured interpersonal setting.

Talcott Parsons has written that therapy involves four elements: support, permissiveness, denial of reciprocity, and manipulation of rewards. Writers such as Frank, Klapman, and Opler have pointed out that the same elements characterize not only individual psychotherapy, but group psychotherapy as well. All four elements are writ large in the *Kpelle* moot.

The patient in therapy will not continue treatment very long if he does not feel support from the therapist or from the group. In the moot the parties are encouraged in the expression of their complaints and feelings because they sense group support. The very presence of one's kinsmen and neighbors demonstrates their concern. It indicates to the parties that they have a real problem and that the others are willing to help them to help themselves in solving it. In a parallel vein,

Frank, speaking of group psychotherapy, notes that: 'Even anger may be supportive if it implies to a patient that others take him seriously enough to get angry at him, especially if the object of the anger feels it to be directed toward his neurotic behavior rather than himself a person. In the moot the feeling of support also grows out of the pronouncement of the blessings which stress the unity of the group and its harmonious goal, and it is also undoubtedly increased by the absence of the publicity and expressive symbols of political power which are found in the courtroom.

Permissiveness is the second element in therapy. It indicates to the patient that everyday restrictions on making anti-social statements or acting out anti-social impulses are lessened. Thus, in the Case of the Ousted Wife, Yua felt free enough to turn to her ousted co-wife [who had been married leviratically] and say:

"You don't respect me. You don't rely on me any more. When your husband was living, and I was with my husband, we slept on the farm. Did I ever refuse to send you what you asked me for when you sent a message? Didn't I always send you some of the meat my husband killed? When your husband died and we became co-wives, did I disrespect you? Why do you always make me ashamed? The things you have done to me make me sad."

Permissiveness in the therapeutic setting [and in the moot] results in catharsis, in a high degree of stimulation of feelings in the participants and an equally high tendency to verbalize these feelings. Frank notes that: 'Neurotic responses must be expressed in the therapeutic situation if they are to be changed by it.' in the same way, if the solution to a dispute reached in a house palaver is to be stable, it is important that there should be nothing left to embitter and undermine the decision. In a familiar setting, with familiar people, the parties to the moot feel at ease and free to say all that is on their minds. Yokpo, judged to be the wronged party in the Case of the ousted Wife, in accepting an apology, gave expression to this when she said:

"I agree with everything that my people said, and I accept the things they have give given me--I don't have anything else about them on my mind."

As we shall note below, this thorough airing of complaints also facilitates the gaining of insight into and the unlearning of idiosyncratic behavior which is socially disruptive. Permissiveness is rooted in the lack of publicity and the lack of symbols of power. But it stems, too, from the immediacy of the hearing, the locus of investigatory initiative with the parties, and the wide range of relevance.

Permissiveness in therapy is impossible without the denial of reciprocity. This refers to the fact that the therapist will not respond in kind when the patient acts in a hostile manner or with inappropriate affection. It is a type of privileged indulgence which comes with being a patient. In the moot, the parties are treated in the same way and are allowed to hurl recriminations that, in the courtroom, might bring a few hours in jail as punishment for the equivalent of contempt of court. Even though inappropriate views are not responded to in kind, neither are they simply ignored. There is denial of congruent response, not denial of any response whatsoever. In the berei mu meni saa, as in group therapy, 'private ideation and conceptualization are brought out into the open and all their facets or many of their facets exposed. The individual gets a "reading" from different bearings on the compass, so to speak, and perceptual patterns... are joggled out of their fixed positions....'

Thus, Yua's outburst against Yokpo quoted above was not responded to with matching hostility, but its inappropriateness was clearly pointed out to her by the group. Some of them called her aside in a huddle and said to her:

"You are not right. If you don't like the woman, or she doesn't like you, don't be the first to say

anything. Let her start and then say what you have to say. By speaking, if she heeds some of your words, the wives will scatter, and the blame will be on you. Then your husband will cry for your name that you have scattered his property.”

In effect, Yua was being told that, in view of the previous testimony, her jealousy of her co-wife was not justified. In reality testing, she discovered that her view of the situation was not shared by the others and, hence was inappropriate. Noting how the others responded, she could see why her treatment of her co-wife had caused so much dissension. Her interpretation of her new co-wife's actions and resulting premises were not shared by the co-wife, nor by the others hearing a description of what had happened. Like psychotherapy, the moot is gently corrective of behavior rooted in such misunderstandings.

Similarly, Wama Nya, the husband, learned that others did not view as reasonable his accusing his wife of having a lover and urging her to go off and drink with the suspected paramour when he passed their house and wished them all a good evening. Reality testing for him taught him that the group did not view this type of mildly paranoid sarcasm as conducive to stable marital relationships.

The reaction of the moot to Yua's outburst indicates that permissiveness in this case was certainly not complete, but only relative, being much greater than in the courtroom. But without this moderated immunity the airing of grievances would be limited, and the chance for social relearning lessened. Permissiveness in the moot is incomplete because, even there, prudence is not thrown to the winds. Note that Yua was not told not to express her feelings at all, but to express them only after the co-wife had spoken so that, if the moot failed, she would not be in an untenable position. In court there would be objection to her blunt speaking out. In the moot the objection was, in effect, to her speaking out of turn. In other cases the moot sometimes fails, foundering on this very point, because the parties are too prudent, all waiting for the others to make the first move in admitting fault.

The manipulation of rewards is the last dimension of therapy treated by Parsons. In this final phase of therapy the patient is coaxed to conformity by the granting of rewards. In the moot one of the most important rewards is the group approval which goes to the wronged person who accepts an apology and to the person who is magnanimous enough to make one.

In the Case of the ousted Wife, Kolo Wa, the mediator, and the others attending decided that the husband and the co-wife, Yua, had wronged Yokpo. Kolo Waa said to the husband:

“From now on, we don't want to hear of your fighting. You should live in peace with these women. If your wife accepts the things which the people have brought you should pay four chickens and ten bottles of rum as your contribution.”

The husband's brother and sister also brought gifts of apology, although the moot did not explicitly hold them at fault.

By giving these prestations, the wrong-doer is restored to good grace and is once again acting like an 'upright *Kpelle*' [although, if he wishes, he may refuse to accept the decision of the moot]. He is eased into this position by being grouped with others to whom blame is also allocated, for, typically, he is not singled out and isolated in being labelled deviant. Thus, in the Case of the Ousted Wife, the children of Yokpo were held to be at fault in 'being mean' to their step-father, so that blame was not only shared by one 'side', but actually ascribed to the other also.

Moreover, the prestations which the losing party is asked to hand over are not expensive. They are significant enough to touch the pocketbook a little; for the *Kpelle* say that if an apology does

not cost something other than words, the wrong-doer is more likely to repeat the offending action. At the same time, as we noted above, the tokens are not so costly as to give the loser additional reason for anger directed at the other party which can undermine the decision.

All in all, the rewards for conformity to group expectations and for following out a new behavior pattern are kept within the deviant's sight. These rewards are positive, in contrast to the negative sanctions of the courtroom. Besides the institutionalized apology, praise and acts of concern and affection replace fines and jail sentences. The mediator, speaking to Yokpo as the wronged party, said:

"You have found the best of the dispute. your husband has wronged you. All the people have wronged you. You are the only one who can take care of them because you are the oldest. Accept the things they have given you."

The moot in its procedural features and procedural sequences is, then, strongly analogous to psychotherapy. It is analogous to therapy in the structuring of the role of the mediator also. Parsons has indicated that, to do his job well, the therapist must be a member of two social systems: one containing himself and his patient; and the other, society at large. He must not be seduced into thinking that he belongs only to the therapeutic dyad, but must gradually pull the deviant back into a relationship with the wider group. It is significant, then, that the mediator of a moot is a kinsman who is also chief of some sort. He thus represents both the group involved in the dispute and the wider community. His task is to utilize his position as kinsman as a lever to manipulate the parties into living up to the normative requirements of the wider society, which, as chief, he upholds. His major orientation must be to the wider collectivity, not to the particular goals of his kinsmen.

When successful, the moot stops the process of alienation which drives two spouses so far apart that they are immune to ordinary social-control measures such as a smile, a frown, or a pointed aside. A moot is not always successful, however. Both parties must have a genuine willingness to cooperate and a real concern about their discord. Each party must be willing to list his grievances, to admit his guilt, and make an open apology. The moot, like psychotherapy, is impotent without well-motivated clients.

The therapeutic elements found in the *Kpelle* moot are undoubtedly found in informal procedures for settling disputes in other African societies also; some of these are reported in literature and others are not. One such procedure which seems strikingly parallel to the *Kpelle* *beri mu meni saa* has been described by J. H. Beattie. This is the court of neighbors or *rukurato rw'enzarwa* found in the Banyoro kingdom of Uganda. The group also meets as an ad hoc assembly of neighbors to hear disputes involving kinsmen or neighbors.

The intention of the Nyoro moot is to 'reintegrate the delinquent into the community and, if possible, to achieve reconciliation without causing bitterness and resentment; in the words of an informant, the institution exists "to finish off people's quarrels and to abolish bad feeling." This therapeutic goal is manifested in the manner in which the dispute is resolved. After a decision is reached the penalty imposed is always the same. The party held to be in the wrong is asked to bring beer [four pots, modified downwards according to the circumstances] and meat, which is shared with the other party and all those attending the *rukurato*. The losing party is also expected to 'humble himself, not only to the man he has injured but to the whole assembly.'

Beattie correctly points out that, because the council of neighbors has no power to enforce its decision, the shared feast is not to be viewed primarily as a penalty, for the wrong-doer acts as a host and also shares in the food and drink.' And it is a praiseworthy thing; from dishonorable status he is promoted to an honorable one...' and reintegrated into the community.

Although Beattie does not use psychoanalytic frame of reference in approaching his material, it is clear that the communal feast involves the manipulation of rewards as the last step in a social-control measure which breaks the progressive alienation of the deviance cycle. The description of procedures in the rukurato indicates that it is highly informal in nature, convening in a room in a house with everyone 'sitting around'. However Beattie does not provide enough detail to enable one to determine whether or not the beginning and intermediate steps in the Nyoro moot show the permissiveness, support, and denial of reciprocity which characterize the *Kpelle* moot. Given the structure and outcome of most Nyoro councils, one would surmise that a close examination of their proceedings would reveal the implicit operation of therapeutic principles.

The fact that the *Kpelle* court is basically coercive and the moot therapeutic does not imply that one is dysfunctional while the other is eufunctional. Like Beattie, I conclude that the court and informal dispute settlement procedures have separate but complimentary functions. In marital disputes the moot is oriented to a couple as a dyadic social system and serves to reconcile them wherever possible. This is eufunctional from the point of view of the couple, to whom divorce would be dysfunctional. *Kpelle* courts customarily treat matrimonial matters by granting a divorce. While this may be dysfunctional from the point of view of the couple, because it ends their marriage, it may be eufunctional from the point of view of society. Some marriages, if forced to continue, would result in adultery or physical violence at best, and improper socialization of children at worst. It is clear that the *Kpelle* moot is to the *Kpelle* court as the domestic and family relations courts [or commercial and labour arbitration boards] are to ordinary courts in our own society. The essential point is that both formal and informal dispute-settlement procedures serve significant functions in *Kpelle* society neither can be fully understood if studied alone.

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