



Discourse and Social Relationships
in Land Tenure Evaluation:
A Claim for Land Rights in an African Agrarian Society

Soichiro Shiraishi

Kyoto Working Papers on Area Studies No.78
(G-COE Series 80)

August 2009

The papers in the G-COE Working Paper Series are also available on the G-COE website:
(Japanese webpage)
http://www.humanosphere.cseas.kyoto-u.ac.jp/staticpages/index.php/working_papers
(English webpage)
http://www.humanosphere.cseas.kyoto-u.ac.jp/en/staticpages/index.php/working_papers_en

©2009
Center for Southeast Asian Studies
Kyoto University
46 Shimoadachi-cho,
Yoshida, Sakyo-ku,
Kyoto 606-8501, JAPAN

All rights reserved

The opinions expressed in this paper are those of the author and do not necessarily reflect the views of the Center for Southeast Asian Studies.

The publication of this working paper is supported by the JSPS Global COE Program (E-04):
In Search of Sustainable Humanosphere in Asia and Africa.

Discourse and Social Relationships
in Land Tenure Evaluation:
A Claim for Land Rights in an African Agrarian Society

Soichiro Shiraishi

Kyoto Working Papers on Area Studies No.78
JSPS Global COE Program Series 80
In Search of Sustainable Humansphere in Asia and Africa

August 2009

Discourse and Social Relationships in Land Tenure Evaluation: A Claim for Land Rights in an African Agrarian Society

Soichiro Shiraishi**

1. Introduction

Land is the foundation of agrarian societies. In this study, I attempt to show that how people consider and construct value related to land tenure in an African agrarian community in eastern Uganda. Using the case study based on my field research on a land dispute, I modify the analysis of previous works of anthropologists.

1-1. Customary law / Negotiation

Classical works of anthropology tried to find indigenous systems of social order. They just presumed that people in traditional societies have some indigenous systems in common as unwritten 'customary law'. Land tenure systems were one of their main topics. Their finding was that, unlike the western concept of private property based on individualistic 'person-thing' relations, the rights related to land are multi-layered in many cases in Africa ---plural people claim his/her ownership or control over a piece of land. They suggest that the significant assets in a certain society, such as land among agrarian people or cattle among pastoralists were 'cluster of rights / bundle of rights' [Gluckman 1955, 1965; Baxter 1975]. Hann explains this idea in his volume as follows;

For example, the right to use a particular thing might not coincide with the right to bequeath it to others, or to sell it to a stranger. When anthropologists emphasize social relations and criticize the tacit assumptions of possessive individualism that these rights should coincide, they should realize that they are in fact continuing to weave one of the enduring threads of the Western tradition. [Hann 1998; p. 8]

* The original version of this paper was read at the *Symposium on Crossing Disciplinary Boundaries and Re-visioning Area Studies: Perspectives from Asia and Africa*, in Kyoto University, Japan held on November, 2006.

** Research Associate of the Graduate School of Sociology, Kwansei Gakuin University, Nishinomiya, Japan. E-mail: soichiro@kwansei.ac.jp

In short, all property relations must be social or political relations. This idea is useful for working up image of multi-layered rights condition in non-Western tradition.

Yet the problem is that, the idea of the property paradigm of 'person-thing' relation still remains. Even though each actor of particular social categories has his / her particular right(s), social relationships are not static. The idea of 'cluster of rights / bundle of rights' visualized the situation of property complex in African indigenous societies, but fetishized them [Ohta 1996].

These criticisms are valid, so anthropologists turned to the present anthropological formula that says 'property is best analyzed in terms of the whole system of the social, cultural and political relations' [Verdery 1998; p.161]. Verdery suggests we better to speak of property as a 'bundle of powers'. That means, property relations are more dynamic, and we should pay more attention to the process of how and on what do people negotiate those.

1-2. Scope of the study

Decades ago, Gulliver [1979] illustrated the model of negotiation in contrast with the modern model of adjudication. He shows 'a cross-cultural perspectives' on the principal formation of negotiation, using the examples from small-scale East African societies and complex Western industrial societies. Referring an example of a land dispute among the Arusha of Tanzania in 1957, he insisted that different from modern adjudication approach, negotiation approach of disputes brought the processes of persuasions, mediation, compromise and even conversion between two parties into our view. However, we should distinguish land disputes in African rural societies from labor negotiations in the West, because in former cases people do not negotiate the same goal like a certain line of the wages. To sum up, in the process of every land dispute, they performatively review their social norms and their social relationships.

But, what are the relationships between this kind of negotiation and understanding of

social process in each community? To make clear this, I will introduce value theory of Graeber [2001]. He argues that value is “the way in which actions become meaningful to the actor by being incorporated in some larger, social totality”. And he adds important point that, “in many cases the totality exists primarily in the actor’s imagination.” So those totalities are plural, and imaginary, not institutionalized. The actors’ imaginary totalities originated from or constructed by their interpretation of historical experience, reputation to each actors of the community and the contexts of their social norms¹.

Using this definition of value, this study analyzes the people’s discourse about a specific case of a land dispute of which I collected data in my field research. I assert that people argue about land rights not only within the context of the ‘person-land’ relation but also within their social totalities that they used to evaluate their actions.

2. Background of the Research Area

Under commercialization of agriculture in rural Africa, land became valuable and individual households occupy the land exclusively. This phenomenon just seems as based on the idea of private property. I do an outline of the historical change in ‘people-land’ relationships in the research area in chapter3, and in chapter4, I analyze the discourse in a land dispute case.

The Sabiny are a Southern-Nilotic people who live on the northern slope and foots of Mt. Elgon. They have a patrilineal, exogamous clan (*aret*) system and virilocal residence. Until the first half of the twentieth century, they were agro-pastoralists, keeping cattle and goats, and growing crops like sorghum, millet and yam for family consumption. In the research area, the ox-plow and maize were introduced around 1950. Maize cultivation prevailed gradually afterwards.

¹ In general, ‘social norm’ is expectations which serve as common guidelines for social action. But it is a complex rather than a system, here I technically define it as complex of myriad customs and values. Moore [1975] suggested that to analyze social changes, we must take into account inter-relationships of process of regularization or situational adjustment, and the factor of indeterminacy of social norms.

Many elders say the landscape of the area at that time was covered by bush and most of the land was uncultivated, used for grazing their livestock. There was drastic change of their land use pattern in the latter half of twentieth century. After the ox-plow had prevailed, most of the area was cultivated and occupied.

In the last decades of the twentieth century, they began to grow hybrid maize and nowadays fields of maize and bananas cover the landscape (see Fig. 1). In recent years, maize has become the main crop. Since the Ugandan government began encouraging production of maize as a non-traditional commercial crop, the national production rose sharply after 1990. Today the research area is one of the main producing areas in eastern Uganda.



Fig.1 Landscape of the research area

3. Changes in *people-land* relationships

Along with this drastic change of the land use pattern, people-land relationships had also changed. In the following slides, I explain how the relationships of people and land had changed from past to present.

3-1. Changes in *people – land* relationships

1) Immigration and cultivation

From the turn of the twentieth century until the 1950s, most of the ancestry of the present residents immigrated from various areas within the Sabiny.

According to my interviews to the elders, there was plenty of frontier in and around research area, migrations were common. Those who had conflicts with parents, relatives or neighbors, or who lost children immigrated from other areas. In many cases, they immigrated to places where their clan's men or mother's clan's men were. But after a significant proportion of the land was cultivated, there was no such free migration. Therefore, within less than one hundred years, people belong to more than ten different clans divided the whole lands in the area like patchworks. In Sabiny way of land inheritance, father passes his lands to all his married sons, so lands have been fragmented through generations and due to population growth.

2) Land as medium of social relationships

In the past, it was practiced to exchange reciprocal assets. For instance, they would exchange a bull with five goats, a bull with a heifer, likewise sometimes land with cattle, either direct exchange or a heifer and a few year leases of a land. There is even an expression to indicate relationships with whom they're had exchange as quasi-kinship, '*tilyet*'. As Goldschmidt [1976] mentioned, formerly they translated this word as 'kin of a cow', but now people explain it as "the real friendships with a person to whom you sell your land or from whom you buy land".

Herdboy and herdsman were given a piece of lands from the owner of the herd for their lodging. It was common that a man had a number of cattle requested his herdsman to built a house and live nearby. So, lands were a kind of media of social relationships as cattle were. These days, those practices have almost died out. Today, land has become an economical asset; individual households exclusively occupy their land.

3-2. Incomplete fetishization of land tenure

Unlike past years, people do not give or lease their land as a gift. The boundaries of

land have become strict and lots of land are measured by foot (there is a law saying an acre is equals 35*120 paces). When they sell and buy land among villagers, or sometimes inherit lands within a family, witnesses are called and make documents called an 'agreement'. They draw a map; write the paces and all neighbors' names and witnesses of the agreement.

Thus, although the government land registration is not popular in the area, villagers follow the way of registration and have fetishized land itself as a valuable. However, their fetishization of private land tenure is incomplete. They know the boundaries and acreage of their own lands, so the area looks like the collection of private plots. But the locals also know the background of each land, which portions or which boundaries were disputed in past years, and which are still in dispute tacitly. In a manner, they have their multi-layered land maps in their memory which the boundaries and land owners are indeterminate, changeable with years. These land disputes often evoke hidden agendas. This seems to be a common situation in agrarian society in Africa.

4. Case study: Discourse of legitimacy, discourse on social relationships

In this chapter, I show the results of my research on a dispute over a land in the research village. Discourse data were taken from minutes of village court and open-ended interview to villagers. People (including the plaintiff / defendant themselves) describe and evaluate their action referring to their social norms, in Sabinu vocabulary, '*ndarastit*' (*ndarastinuk* pl.), which usually translate traditional belief, custom, or culture. But *ndarastit* is not the thing as law; it is complex myriad of customs and values rather than systematic rule, it will not introduce clear-cut adjunction and sanctions (cf. Moore 1975). People do not merely obey it, but people often manipulate situation by referring it. Moreover, as I mentioned in the last chapter, value related to land tenure changed so much in last decades. Most land disputes deal with historical matters from decades ago, and in those years people did not conceptualize lands as demarcated spaces with boundaries.

4-1. Synopsis of the Case

The man 'K' cultivated the land and migrated to another area more than 40km from the research area forty years ago. K was born in the area where he migrated. He had married a woman in research area, and he had lived there with his wife and his children. After some of his children and his wife died, he migrated to where he was born. K died in 1999. The son of K came to the research area and found B, the man who uses the land at the present. The son of K asserted B to the village council in 2002, saying that he inherited the land from his late father so the land was his. Though village council dealt with the case, they did not reach any agreement. B appealed to the Land Tribunal in 2003. More than one year later, B won the case because he had documents from a land survey.

Both the son of K and B are in their 50s, and the use and value of the land has drastically changed since their adolescence.

4-2. Discourse I : The *person – land* relationship

Discourse of parties in the village council were based on 'person - land' relationships.

1) Discourse of the son of K

What son of K stated in village court is that, in the beginning of the 1960's, the man who cultivated the land was his father, K. Three of K's sons died in the 1950's, and were buried on the land. The wife became ill, and moved from that land to her birthplace. She died three years later. Her body was moved to the land and buried. K was disappointed, he went back to where he was born the year his wife died. K died in 1999 and the son of K inherited the land, but B had already occupied the land.

The son of K stressed the point that his mother and brothers were buried there. It was interesting that K and his in-laws carried K's wife's dead body from home and buried it on the land. He shows his father obeyed *ndarastit*. In fact, a person who lost his family member bury his/her body on their compound where they spent years, called '*snyet (sinon pl.)*'. Showing the place for the dead is the same as showing their familial place. And more, migration was the typical choice of the person who

lost his/her family member in those years.

2) Discourse of *B*

According to *B*, on the other hand, his father was the first one who occupied the land. His father exchanged his land for a bull of neighbor. This neighbor is *K*'s brother-in-law, *E*. They became '*tilyet* (kin of a cow)' after this exchange. Some years after that, *E* asked the father of *B* to temporarily lent a piece of the land to his son-in-law, *K*. The father of *B* accepted it and *K* lived in the land, but after some years *K* migrated to another area.

B stressed the point that his father lent that land temporarily, so after the family of *K* migrated another area, that land belong to the family of *B* for forty years.

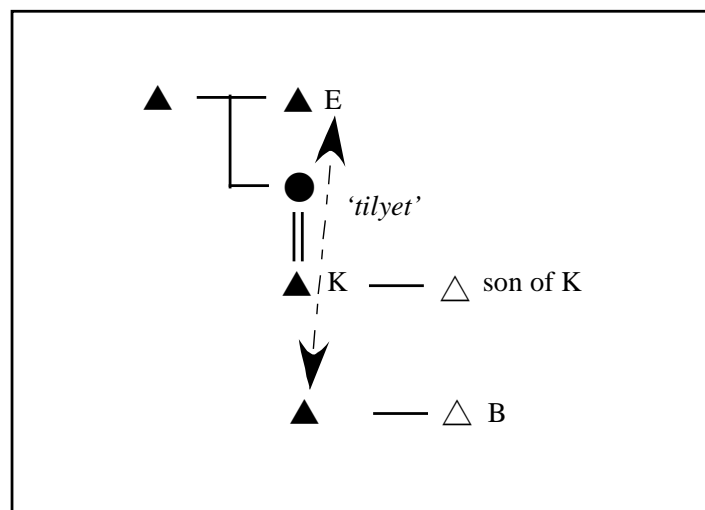


Fig.2 Skeleton genealogy for the case

Goldschmidt explained 'the Sabiny Law' over lands as follows;

When labor was invested in these resources, they became private property... when a woman broke the sod with her hoe to cultivate a garden, that plot was hers so long as continued to use it; when a man dug a well in a dry stream to get water, he controlled access to that well — though he was expected to shared. [Goldschmidt 1986; p.26]

Though he gives us clear interpretation, we should not beforehand in making up our

understanding that this is mere application of the Locke's idea of property to the Sabiny. It is true both of the sons of *K* and *B* mentioned about their relationships to the land, but did not reduce their actions to cultivation, mere 'labor'. Some may argue that; this is still not more than analysis based on 'person-land' relationships. Each of them refers to themselves as actors related to the land, and evaluates their action referring to the context of *ndarastit*. Even there are discourses which are not directly mentioned about the 'person-land' relationships. I conducted open-ended interviews about this dispute to know how they referred to this case. The interviewees talked about their relationships with *K* and *B*. In other words, villagers do not simply examine whether *K/B* obeyed *ndarastit* or not, but also evaluate their action to place them in their social relationships.

4-4. Discourse II : Social relationships

1) Discourse about *K*

Who is *K* in the community? Did they view him as a stranger/visitor or not? *K* came from other area and went back to that area. Some people referred to *K* as a stranger or a visitor. Elders said he visited this area only for his '*koyeyi*'. *Koyeyi* is the practice of visiting in-laws for a claim or to give cattle and goats for brideprice. Other said 'we do not know his clan. We do not have his clan members in this area'. On the other hand, those who accepted *K* as a member of their community said 'there are the graves of his wife and their children on that land. We attended their funeral rites'. Or others said '*K* is a member of us. He did his *wonshet* (circumcision) in this area', 'we did *moyket* (labor exchange) with him as others'.

All of these are very important practice among the Sabiny society. For any young man who has reached the age 15 to 20, circumcision is an inevitable rite of passage for men, after that they need cattle and goats as brideprice for their marriage, and *moyket* labor exchange was big sized labor unit for the sake of beer which compulsory need when they handle their cultivation in those years ox-ploughing was still not very popular [Shiraishi 2006]. Most importantly, both parties describe *K* as a member of their community or mere visitor in reference to their idiom of the social (*ndarastit*).

2) Discourse about *B*

The position of *B* in the community is ambivalent. When I asked ‘who is the richest?’ in the area, many people gave his name because he has the widest acreage in the area. He worked at National Hospital in the capital as a medical staff for a few years around 1975 after he completed his secondary education so many people called him by nickname ‘doctor’. He was one of the first men who realized economic value of land. When he worked in capital, he sent money to his home to buy a plough. Now he occupies more than 20 acres in total. According to *B* himself, some of his plots were inherited from his father (he was the only son of his father), and some he ‘bought’ (including direct exchange with cattle) in the 1980s. The largest portion includes the one in dispute.

There have been land encroachment issues concerning family *B*. The land of my host family neighbors *B*’s cousin’s land. Sometimes the head of my host family complained to me, saying that *B* and his cousin encroached onto his land several times while plowing their field together, taking away portions of my host family’s land. Another time, the father of *B* tried to encroach the land by threatening with his bow and arrow.

Although the land is a symbol of wealth among people in the area, their fetishization of private land tenure is incomplete. People knew well that *B* would appeal this case to the land tribunal, and that he would win the case because he had documentation for the land. Nevertheless, people are very sensitive about this case, and some interviewees were very keen to talk and to know what was going. I think, these discourse are practices of trying to keep their layered land maps modifying, putting *K* or *B* into ambiguous position in their social totalities.

5. Discussion: Negotiation/manipulation of their social relation

Though private land tenure seems to be taken hold on their society, each person supports either *K* or *B*’s claim to the land according to his/her evaluation of his/her relationships with *K* or *B*. Those evaluations are not simply based on static ‘customary law’ or ‘bundle of rights’ but on their dynamic negotiations and those

negotiations would inter-react with social totalities in each of them.

In the beginning of this paper, I put stress on the idea of plural social totalities in each actor's imagination. These totalities are imaginary, not anything like 'social system' or 'structure', which people refer and obey when they act socially. This relates the indeterminacy of their social norms (*ndarastit*) which are constructed their experience and social memories. Although each totality is not quite differ to others so that they expect what each other will act, what important is, how people evaluate their action, in other words, how do people evaluate the potential of *B* or *K*.

We can understand this point in the example of *K* because of ambiguousness of his position, whether he is the member of the community or a visitor. But also the case of *B*, when a person evaluates *B*'s action as 'the man who expanded his maize field by force' or 'the man who took a different way of life than ours', or 'he is the richest person in the area', he/she positioned *B* in their imaginary social totalities. Thus, it is possible for each person to evaluate the action of *B* or *K* differently. Therefore, people can manipulate both totalities and evaluation to some extent, and present them as if they are widely shared totalities. This is a form of multi-layered negotiation, and that is the political process of (re)construction of social value and social changes.

Lastly, let us return the point of the land dispute. If 'customary law' or 'bundle of rights' judged the proper claimant to the land, they could get clear-cut adjudication of this case. They will not get clear-cut adjudication of the disputes and they know that very well. Even if the land tribunal delivers a judgment, people still keep the fact that there was a troubled situation over the land in their mind. Doing so, they turn the judgment of government authority to the tool of creating tentative reconciliation and the case would still remain open among them.

References

Baxter, P. T. W. 1975. Some consequences of sedentarization for social relationships. In Monod. Ed. *Pastoralism in Tropical Africa*. Oxford University Press, pp.206-228.

- Fallers, Lloyd. 1969. *Law without Precedent: Legal Ideas in Action in the Courts of Colonial Busoga*. Chicago: The University of Chicago Press.
- Gluckman, Max 1955. *The Judicial Process among the Barotse of Northern Rhodesia*. Manchester University Press.
- 1965 *Politics, Law and Ritual in Tribal Society*. Basil Blackwell.
- Goldschmidt, Walter 1976. *The Culture and Behaviour of the Sebei*. University of California Press.
- 1986. *The Sebei: A Study in Adaptation*. Holt, Rinehart and Winston.
- Graeber, David 2001 *Toward an Anthropological Theory of Value: The False Coin of Our Own Dreams*. Palgrave.
- Gulliver, P. H. 1979. *Disputes and Negotiations: A Cross-cultural Perspective*. Academic Press.
- Moore, S. F. 1975. Uncertainties in situations, indeterminacies in culture. In Moore and Myerhoff eds. *Symbol and Politics in Communal Ideology*. Cornell University Press, pp. 211-239.
- 1998. Changing African Land Tenure: Reflections on the Incapacities of the State. *The European Journal of Development Research*, Vol.10, No.2, pp.33-49.
- Hann, C. M. 1998. Introduction: the embeddedness of property. In Hann ed. *Property Relation: Renewing the anthropological tradition*. Cambridge Univ. Press, pp.1-47.
- Ohta, I. 1996 Norms and negotiations: On ownership of livestock among Turkana. (in Japanese) In Tanaka et al. Eds. *Anthropologies on Subsistence Economy: Transitions in Africa*. Academia Press.
- Peters, Pauline 2002. Bewitching Land: The Role of Land Disputes in Converting Kin to Strangers and in Class Formation in Malawi. *Journal of Southern African Studies*, Vol. 28. No.1, pp. 155-178.
- Shiraishi, Soichiro 2006. From Beer to Money: Labor Exchange and Commercialization in Eastern Uganda. *African Studies Quarterly, Special Issue*. University of Florida.
- 2009. Dispute over Land? In *Newsletter No.3, Kyoto University Global COE Program "In Search of Sustainable Humanosphere in Asia and Africa"*; pp.3-4.

Verdery, Katherine 1998. Property and power in Transylvania's decollectivization. In Hann ed. *Property Relation: Renewing the anthropological tradition*. Cambridge Univ. Press, pp.160-180.