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The History of Dictatorship: Custom, Authority, and Power in Precolonial and Colonial Uganda

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Abstract

Intervening in the enduring debate on the origins of the African state, this article examines the processes of producing custom in the Ugandan societies of precolonial Bunyoro and colonial Toro to trace the development of despotism. The participatory nature of generating customary truth in Bunyoro before European domination reflects the diffusion of power in a manner that hindered absolute rule. On the contrary, in colonial Toro, the inclusive mechanisms for making custom gave way to customary law produced by the colonial government and its native chiefs. This monopoly to determine customary law disguised as custom constituted the heart of the despotism of Toro Native Authority. Derivatively, the Rwenzururu resistance against Toro domination equally assumed a despotic character because it organised itself along the logic of the authority it confronted. The study interrogates the resurgent literature that associates the contemporary African state with precolonial history.

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Keywords

Longue durée, despotism, African state, western Uganda

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What does the history of the production of custom tell us about the organisation of political power in Africa over time? This article looks at the processes of making custom and customary law in the western Uganda societies of precolonial Bunyoro and colonial Toro to highlight the circumstances in which inclusive political authority gave way to despotic and semi-despotic rule that has defined many parts of Africa, including Uganda, since the dawn of colonial domination. The participatory, diversified, and counterbalancing mechanisms for producing and contesting customary truth in the pre-colonial kingdom of Bunyoro points to the diffusion of power in a manner that prevented despotic authority. Although things are said to have changed under the nineteenth century king Kabalega who reportedly subdued contending centres of power, he actually remained far from monopolising power and far from being unrestrained in his authority. Radical change came with European colonial rule when the participatory mechanisms for producing and contesting custom gave way to unquestionable customary law determined by the colonial government and the colonial-instituted Toro Native Authority. To illustrate this change, I focus on Toro, a breakaway province of Bunyoro where the era of despotism ushered in remarkable strife exemplified in the Rwenzururu uprising.

Indirect rule, or the use of so-called native chiefs and custom to govern colonised societies, is a well-known colonial policy. Although this policy is said to have lost steam by the 1940s (Cooper, 2005; Peterson, 2012a: 254), it actually continued unabated in Uganda throughout the colonial era (Sseremba, 2019: 321). It unleashed unstrained local state power over society in what Mahmood Mamdani (1996) calls decentralised despotism. Surely, native chiefs and other colonial employees sometimes acted out of their own initiative without following colonial policy (Bolt and Gardner, 2020; Osborn, 2003). For instance, native authorities like Buganda and Toro resisted democratic reforms throughout the 1950s to protect elite privilege (Kasozi, 2013: 37; Lwanga-Lunyiigo, 2011; Sseremba, 2019). But one needs to pay attention to the circumstances in which this undemocratic native initiative comes into being. The initiative of the chiefs of Toro in dictating customary law cannot be accounted for without considering the erosion of accountability mechanisms that existed before the colonial era. The British structured the Toro government in a manner that placed it beyond public answerability. Besides these colonial appointees, there were throughout Africa other indigenous actors who imagined and reimagined tradition (Glassman, 2011; Ranger, 1993). In Toro, the Bakonzo Life History Research Society, which later in the 1960s became the Rwenzururu Movement fighting against Toro marginalisation of the Bakonzo and Bamba ethnic groups, invented a history for its peoples and authored custom (Peterson, 2012a). But the process of producing custom in the Rwenzururu likewise assumed a despotic character because the rebels organised themselves along the logic of the colonial-instituted Toro authority (Sseremba, 2019: 319–320). In the derivative fashion of anti-colonial nationalism (Chatterjee, 1986), the leaders of the Rwenzururu, especially Isaya Mukirane, suppressed internal dissent in their production of customary truth. Focusing on the ways in which the degeneration of custom into customary law transformed political power, I revive with fresh insights an old and criticised position

that identifies in the colonial era the origins of the modern African state, including its despotic and semi-despotic character (Abraham, 2003; Lange, 2009; Mamdani, 1996; Young, 1994). I reinvigorate this perspective following decade-long attempts to pour cold water on it.

The article is divided into several parts. After the foregoing introduction, I discuss my reservation about the tendency to seek in the precolonial past conditions purportedly explaining the nature of the modern African state. Then I discuss the method. Thereafter the first empirical section begins with an analysis of the production of custom before colonialism. The second empirical part proceeds to twentieth century Toro, a breakaway province of Bunyoro, to examine customary law and the incubation of despotism. I also scrutinise the ways in which the Rwenzururu resistance ended up suffering from the despotism of the authority it confronted.

The Use and Abuse of the Longue Durée

Historian Richard Reid bemoans the “demise of precolonial scholarship” and “the detachment of Africa’s turbulent present – and its recent past – from deeper patterns of both change and continuity.” To understand contemporary phenomena, Reid advises, scholars must overcome their “abiding fascination with the colonial era” and go back to “the deep past,” putting into consideration the ways in which these present conditions have been shaped over the *longue durée* (Reid, 2011: 135–136; 2017). Reid’s call is nothing new. Almost two decades earlier, Jean-Francois Bayart had breathed fresh life in what Thandika Mkandawire calls the Neopatrimonialism School, a bunch of perspectives that analyze Africa’s challenges, including despotism, in terms of the weakness of state institutions occasioned by the “bigman syndrome” purportedly traceable in Africa’s distant past. This is what Bayart (1993: 6) meant when he talked about locating the African state in “its social origins” and when he referred to the historicity of the African state/societies. Welcoming Bayart’s ideas, Christopher Clapham (1994: 434), in a piece titled, *The Longue Durée of the African State*, said that the state in Africa is “the authentic expression of a “governmentality” (or set of attitudes towards power and politics) which are deeply rooted in African historical experience” – and by African historical experience he meant the distant precolonialpast – and that “African states, in short, must be seen in their own terms, as the product of their own societies” as opposed to simply being attributed to colonial work. This line of thinking, according to Mkandawire (2015: 571), supposes that African societies encourage “strongmanism” because they are traditionally characterised by “untoward deference to authority,” which “results not only in the big man syndrome, but also in a subordinated people who are inextricably attached to clientelistic relationships, quiescent, and complicit in their own exploitation.”

Recently, American political scientist Jeffrey Herbst (2014) reinforced such deployment of the *longue durée*. Herbst trivialised the colonial era as he attempted to trace in the premodern period conditions that explain the prevalence of a whole range of governance issues in Africa, from development deficits to democratic challenges and from

“strongmanism” to weak institutions. In the past few decades, numerous scholars have emphasised in different ways the connection between various modern African problems and Africa’s precolonial past and significantly minimised, even if they have not dismissed completely, the importance of colonialism (e.g. Englebort, 2000; Glassman, 2011; Spear, 2003). I would like to engage this school on its search for extreme continuity, with particular reference to the making of political power in Africa.

Contrary to Reid’s claim, to emphasise continuity from the “distant past” is not the only way of accounting for precolonial history. Scholars such as Mahmood Mamdani who have emphatically approached Africa as a legacy of colonialism have actually reached their conclusions after consideration of the period before European colonialism (see Mamdani, 2001: chapter 2; 2009: 75–144; Usman, 2006). This essay summons historical evidence from precolonial Bunyoro to demonstrate the limits of attempting to identify in premodern Africa fodder for modern despotic rule on the continent.

After examining the production of precolonial custom, an aspect that has barely attracted scholarly attention, the essay turns to the making of colonial customary law, which has been the subject of most studies. There is abundant work documenting the manner in which the coloniser and the colonised produced and refashioned tradition (e.g. Chanock, 1985; Mamdani, 1996; Ranger, 1983; 1993; Vail, 1989). Some of these works have been criticised for exaggerating the role of the colonial state in making customary law. Frederick Cooper, for instance, says that indirect rule, or the native authority institutions through which the colonial state crafted customary law and tribalised society, was important only in the 1920s and 1930s, and that any tribalisation or production of custom taking place afterwards should be attributed to African actors, not the colonialists (Cooper, 2005: 17–18; Glassman, 2011; Peterson, 2012a). My study of customary law demonstrates that both the central colonial state and its local Toro Native Authority remained committed to making and enforcing customary law until the end of colonial rule in 1962. I have privileged cases from the latter decades of the colonial era to make this point.

To privilege colonialism in analysing despotism is by no means to deny the role of African actors. Reid, like Bayart before him, thinks that his version of the *longue durée*, which is preoccupied with searching for extreme continuity from the “distant past,” honors Africans by acknowledging their role in the making of history. This question of African history making has been discussed in a recent article (Sseremba, 2019). Suffice to note here that the scholarship that emphasises colonialism has not ignored African agency; rather, it has located the agency of the colonised within the institutional and epistemological constraints of colonialism. Instead of romanticising agency as the freedom to make history as one chooses, this scholarship has sought to examine the ways in which colonialism shaped the choices of African actors. This is what Partha Chatterjee (1986) means when he calls anti-colonial nationalism a derivative discourse. It is also Mamdani’s (1996) point in contending that the mode of rule shaped the mode of resistance. Yet, Mamdani acknowledges the possibility of the colonised to act beyond the constraints of the post/colonial structure, and it is this acknowledgment that informs his admiration for Tanzania’s Julius Nyerere as well

as his continuing search for decolonisation (Mamdani, 2012; 2020). To attribute the making of despotism to the colonial hand is therefore not to deny the initiative of local Africans. It is rather to locate this initiative in the colonial context in which this initiative materialised.

Sources

The essay draws from the Kabarole District Archive (hereafter KDA) in Fort Portal, which contains the records of the Rwenzururu Movement, Toro Kingdom, and the colonial government. Organised recently by the historian Derek Peterson and kept at Mountain of the Moon University in Fort Portal, the records include correspondence between central and district colonial officials, British and native authorities, local activists and state officials as well as colonial research documents like reports, agreements, ordinances, and tribal maps. It also contains the letters and petitions of native thinkers and activists like Isaya Mukirane. The documents are written in English and the local Rutoro language (which I speak and read). I also revisited the oral traditions of Bunyoro and the writings based on these traditions of native intellectuals like John Nyakatura, King Rukidi, and Kihumuro Apuuli. There are so many such traditions; I chose those which I found most relevant to the organisation of power. These traditions did not come into writing until the twentieth century when the European colonialists ushered in literacy. The native intellectuals involved in compiling and writing these traditions were involved in different political and social struggles, and their writing could not be innocent. Indeed, we have been warned that the writings of such African “home-spun historians” are partial and self-interested representations of the past, meant to drive particular campaigns of the time (Peterson and Macola, 2009: 24). For instance, Nyakatura’s historical work sought to justify Bunyoro’s “claim over the disputed territory” of Buyaga and Bugangaizi¹ (Peterson, 2015: 54). This, however, does not mean that these writings cannot be used as sources. Bias is not simply a problem of African activists writing history; it is a problem of history as such, at least according to Hayden White (1973: 6–7) who compares history writing to fiction. If the activist omits certain facts because of political bias, the professional historian will do the same as a result of his or her conceptual preferences that guide fact collection and interpretation. That is why Yusuf Bala Usman (2006: 3) says that the biggest problem with sources is not about the accuracy of their facts, but about the assumptions underlying these sources, or “their basic conceptual framework and the world outlook which informs them.” Usman wants us to probe the conceptual yardstick employed in the constitution of the sources, the categories used in the language of the sources, among others, instead of simply focusing on whether the facts in the sources are “partial.” The same can be said about the colonial archives.

Second, whereas it may be true that African indigenous intellectuals wrote history in order to advance certain claims that suited their campaigns, one should not overestimate the concordance between the historical evidence they summoned and the political-oriented claims they put forward. For example, whereas Nyakatura (1947:

99–100) appears to suggest that women were not supposed to be leaders in precolonial Bunyoro in his discussion of the assassination of the female monarch Mashamba, he compiles traditions revealing numerous female chiefs! The claims that these writers made to support their campaigns were not always consistent with the data they documented. Such contradictions do not in themselves make the data reliable. But they show that the data they collected cannot be reduced to their goal-oriented conclusions.

Nyakatura, whose traditions are privileged here, is one of the earliest native writers of the history of Bunyoro. He writes in *Runyoro*,² which I translate. He started collecting data in the early twentieth century and produced his book in 1947. He, like other early native writers, was a product of missionary education, and his ideas were shaped by colonial epistemology and historiography. This is exemplified in his effort to explain Bunyoro in timeless biological and cultural terms. The biggest problem of these sources is the colonial worldview that informed their missionary-trained native authors. Yet, the way forward is not to discard his work as a source of historical information, but to read it while keeping in mind the colonial influences that shaped his thought.

Most importantly, I am not reading the works of native writers as sources of facts. If Nyakatura understood these traditions literally, I am interested in their discursive significance regardless of their facticity. By discursive significance I mean the messages packaged in these traditions and imparted to the audience for certain ends. If a tradition is authored and circulated narrating how a certain leader was violently executed for grabbing power without the consent of the elders, it does not matter whether the incident in question is factual or not. What matters is the message contained in such a tradition – which can be interpreted as a warning against those who may contemplate such an action of seizing power without consulting the stakeholders. These traditions sought to define custom and condemn intolerable behaviour according to the needs of time. Such definition of custom was by no means free from the interests of power, for traditions are never created and circulated in a power vacuum.

As a way of concluding this methodological discussion, I wish to state that I acknowledge the critique that has been levelled against the sources summoned herein, especially the writings of native intellectuals and the traditions they compiled. Yet, I have indicated that the problem of bias identified in these sources is the problem of all sources – and of history and indeed of knowledge – as such. The way forward should be less to seek for objectivity than to acknowledge the limits of one's claims.

Custom-Making and Political Power in Precolonial Bunyoro

This section looks at the production of custom to shed light on the nature of political power in precolonial Bunyoro. To begin with, the essay distinguishes between custom and customary law. If society is central in the production of custom, customary law is state ordained. Second, custom is observed by society while customary law is enforced by the state. Custom, in this case, applies to the precolonial era when society lived in some form of self-regulation. Customary law, on the other hand, emerges in the modern colonial period when the state has captured society.

It is now widely acknowledged that political power in precolonial Bunyoro and neighbouring polities was diffused, with different powers coexisting (Kodesh, 2007; Schoenbrun, 2013). This diffusion of power did not always mean that the different powers checked one another to guarantee democracy and equality; they sometimes reinforced each other in reproducing rather than challenging the hegemonic order, which was oppressive to certain groups (Doyle, 2007). But how was the hegemonic order or dominant tradition constructed and negotiated and what does such negotiations reveal about the nature of power? I will discuss some *enganikiyi*, or traditions, with the first centring on the calamity that befell the famous ancient Omukama or “king” Isaza Rugambanabato. It says:

Having inherited the throne at an early age, Isaza...was so playful...he mistreated the elders and they decided to keep away from him. Surrounded by his preferred fellow young stars, he came to be known as *Rugambanabato* (one whose companions are young people). In one of his hunting expeditions...Isaza and his young fellows killed a young zebra, skinned it and he asked to be dressed in its hide...When the hide dried and contracted, it fastened his body so tightly that he started fighting for his life. He cried for help but his young companions had no clue of how to lend a hand...some companions rushed and informed his aunt Kogere and sister Nyangoma. The duo mobilized other elders...Then the elders untied the hide gently and saved his life. Since then, he abandoned the young...and took the elders as his companions. He...said: “My dear elders, thank you for saving me from the calamity arising from the misguidance of the youth. Had it not been for these women...I would be dead.” He then turned to the youth and said, “Didn’t death almost overtake me in your presence? So respect the elders.” (Nyakatura: 17–18)

Here we can identify good practices that the tradition sought to uphold and bad ones it sought to censure. The leaders are taught that they must consult the elders – Isaza’s avoidance of the elders is portrayed as naïve and dangerous, even to his own life. The tradition seems to convey a stern warning to any king who might think of usurping the authority of the elders, and the clear message is that to marginalise the elders is to embark on a mission of self-destruction. Even if we interpret the tradition to mean that the elders were too powerful to be ignored, it would still indicate that a king who monopolises power was unwelcome. I treat the very narration and transmission of these traditions as a means of defining acceptable custom. The authors and conveyors of such a message were participants in defining acceptable and unacceptable customary conduct of the leaders. Second, the usurpation of the authority of the elders is portrayed as an oddity that Isaza had attempted to invent. As soon as he realises his folly, he humbly returns to the custom of his predecessors and people – the custom of acknowledging other power holders. The third point is that the tradition includes women among the elders to whom Isaza returned in repentance and gratitude. This indicates that gender, at least in this case, was barely the basis for determining who participates in defining custom and making political decision. Nyakatura uses the Runyoro word *abagurusi*, which means elderly people. It can specifically mean male elderly people since there is another

word, *abakaikuru*, which particularly means female elderly people. Nevertheless, in common usage, a male gender-specific noun can include women to avoid many words. Consider, for instance, this Runyoro proverb on the unpredictability of death, which obviously uses *abagurusi* to include both male and female: *Batekereza abagurusi nibatekwa okubanja okufwa beiu omumazima, abasigazi nubo nibabanja* (literally: people assume that the elderly – *abagurusi* – are close to death when actually the youth die first).

The second tradition focuses on negotiations of political action and custom at the highest level. It says that the “king” Nyamiyonga of an unknown polity sent a message encoded in six riddles that Isaza and all his chiefs and elders failed to interpret. The puzzle remained until *akazana*, or maid, of Isaza’s aunt interpreted the riddles. One of the riddles stated, *akaigi akakingira enaku* (literally: the door that ends poverty). This, according to the maid, meant that Nyamiyonga is requesting to have a blood pact – *omukago* – with Isaza. The maid then proceeds to lay down the procedures that would be followed in making the pact. Two points here merit attention.

First, the tradition preaches that the process of decision making should be participatory, not the monopoly of the king. The decision to make the pact with Nyamiyonga involved the king himself, the maid who interpreted the riddles and outlined the procedures to be followed, and the chiefs and elders. This tradition does not depict a strongman who had subdued or even simply co-opted his chiefs and people. Second, decision making was neither a male nor female affair – we see both men and women sharing ideas on how to deal with the situation. Isaza’s aunt Kogere is among the chiefs and elders who fail to interpret the riddles. She then summons her maid. It can be argued that the maid was simply an interpreter as opposed to being a decision maker. Yet, the mere fact that her interpretation was needed to inform decision making is enough to demonstrate the power that she held. The tradition instructs the “correct” way of top-level decision making, which should include various players, including the king, chiefs, elders, and women.

Indeed, the kings who lacked the support of these parties reigned for short periods if they did at all. A case in point is Nyaika I whom the elders defied and eventually deposed, killed, and replaced with Bikaju because he (Nyaika) seized the throne in their absence, without their consent (Nyakatura, 1947: 101–102). The narration was an admonition of those who may think of seizing the throne without the consent of the elders and it is a condemnation of deviant behaviour.

The king Rukidi of colonial Toro acknowledges the indispensability of the elders and even the people of precolonial Bunyoro in general in deciding who ascends to the throne. “In most cases therefore success depended upon popularity, as that determined the number of people who would join a particular candidate,” says Rukidi. A reigning Omukama knew well that he or she did not have the power to determine a successor without the support of the elders. It was “unconstitutional” for the leader to nominate his or her own successor (Uzoigwe, 1973: 56). Rukidi’s narration shows that despotism, whenever it manifested, was so abhorred that it forced entire societies to secede and form new polities. Explaining why his grandfather, Prince Olimi Kaboyo, led the secession of Toro from Bunyoro, Rukidi says that the breakaway was an example of how the people rebelled against the “ruthlessness of kings” such as those who “took pleasure in having

people killed in their presence as a sign of their power.” One such king, according to Rukidi, was Isansa Olimi (1710–1730) who “would order women and children to be brought before him” and “salted, tied to posts, and eaten by vultures as their mothers watched and waited for their own turn for the same torture” (Rukidi, n.d.: 2–3). It is not necessary to argue about the facticity of such stories. They may reveal more about Rukidi’s political interests than what really transpired – he was a king of Toro who possibly wanted to justify the secession of his kingdom. But this is not the point. If we focus on the discursive significance of Rukidi’s narration, rebellion in the face of despotic cruelty is depicted as a virtuous course of action, meaning that bad rule was never accepted as a normal way of life.

Such secessions as that of Toro were easy to execute because the king had limited control over the provinces whose chiefs, according to Apuuli (1994: 65), “hardly took orders from the king.” It was during Kabalega’s time in the nineteenth century that the king exerted control and started pursuing the secessionists. Kabalega, like Muteesa in Buganda, had acquired some power. But it was never an easy task. Apuuli discusses the resistance that Kabalega faced to realise his plan of usurping the power of the chiefs and elders. When the chiefs realised that Kabalega harboured ambitions of becoming a strongman, they opposed his candidature for the throne in favour of his brother. Kabalega resorted to the royal guards to grab power by force and then stripped the chiefs and elders of their powers (Apuuli, 1994: 59–65; Adefuye, 1975). Although it is acknowledged that power in African societies was diffused in the ancient precolonial era, it is said the centuries preceding the colonial period witnessed increased monopolisation of power and despotic tendencies (Lwanga-Lunyiigo, 2011; Mamdani, 1996; Richards, 1960). The example of Kabalega, however, demonstrates that the nineteenth-century king was not as powerful and as despotic as often depicted.

Although Kabalega, for the first time, sidelined the chiefs and elders, he fell short of concentrating power in his hands. A group of Bakonzo and Bamba told a commission of inquiry into the Rwenzururu rebellion in 1962 that although Bwamba and Busongora were conquered by Kabalega in the nineteenth century, he “only exercised a very loose form of administration, leaving the local leaders to run their own areas, merely exacting tribute from them” (Government of Uganda, 1962: 5). Colonial administrators in Toro report that Bunyoro’s precolonial control in the more remote parts “was vague, ivory and salt being the occasional tribute.”³ Even if he wished, Kabalega lacked the apparatus of the modern state – rapid response police, armoured vehicles, information technology – that would have allowed him to bring all chiefs and whole populations within his fold.

Indeed, the commission of inquiry into the Rwenzururu rebellion established that although “the rule of the Omukama [i.e. king of Toro, which was part of Bunyoro] may have been ineffective” in Busongora and Bwamba in the precolonial era, evidence such as the location of royal tombs and palaces indicates that he had in fact “exercised some claim over these areas” (Uganda, 1962: 5–6). This “vague” or “ineffective” control was actually the precolonial way of governance – the Omukama never exercised significant power over his or her territories, chiefs, and population and could not have

exercised meaningful despotism or even patronage. The term “ineffective control” makes sense only in the context of the modern state, which seeks to subdue society.

Colonialism and Despotism in Toro

Toro seceded from Bunyoro in the nineteenth century. The arrival of the British enabled the breakaway province to survive Kabalega’s attempt to re-annex it. Following the expulsion of Kabalega’s forces, the colonialists installed Kasagama⁴ as the “supreme chief” of Toro. The 1900 Toro Agreement spelled out that the king and his chiefs were no more than servants of the colonial regime who must obey Her Majesty. Article 6 laid down the general principles that would guide justice in Toro. “Justice as between native and native shall be administered by the recognized chiefs of the six subdivisions.” Above these was the “Lukiko of the Kabaka of Toro” which presided over certain appeals. The Article, however, removed from the jurisdiction of Toro native courts all “cases between natives of the district of Toro and natives of other districts of the Uganda Protectorate, or between natives and foreigners.” These “shall be tried by the British magistrates in the district of Toro and shall be removed altogether from native jurisdiction” (Government, 1935: 1419–1422). Two points should be highlighted.

First, the agreement created a “supreme chief” for the first time. This was opposed by the rest of the chiefs in Toro with whom this new supreme chief had shared power before the colonialists arrived. For example, the chiefs of Mwenge and Kitagwenda “refused to submit to the supreme chief until the British subdued them” (Sseremba, 2019: 317; Steinhart, 1999: 108–110). Second, the agreement lays down two laws in Toro. One law, Toro customary law, applies to the “natives of Toro.” The other law, civil law, applies to Ugandan natives from outside of Toro and the settlers. It was a true Mamdanian bifurcated state. One can tell what kind of political power was introduced by looking at customary law making.

Making Customary Law

In November 1953, the *Omuwii W’emisango* (native judge) identified a gap in customary law and wrote to the colonial District Commissioner requesting to fill it. He proposed a law “to limit the period [in] which cases may be filed in Native Courts in Toro,”⁵ and he asked the colonialists to formulate a relevant statute. “I have observed that cases emanating from an occurrence of 10 or more years ago are almost impossible to decide satisfactorily,” wrote the native judge to the colonial Commissioner. “I understand that in British Law if a man lends money to another and does not ask payment for 10 years, he is barred from asking payment altogether. I feel sure that this law was made with good reasons. Do you think it advisable that some form of statute of limitations should be considered by Toro Council?”⁶

This humble request indicates who had the power to make the law that the native judge applied as customary law. In response, the Commissioner said that he had requested the Resident Magistrate of Fort Portal, another colonial official, to draft the law.⁷ When the

Resident Magistrate drafted the “native” law in question, the Commissioner asked the native judge to comment on the draft before it could be “checked by the Crown Law Office” and then “submitted to the Standing Committee and the Rukurato [i.e. native council or parliament]” for passing. The native judge accepted everything in the “native” law and only suggested one small amendment. Some of the clauses in the new customary law stated:

3 No person shall be permitted to file a case when the period stated in Section 4 of this Law shall have elapsed from the date when the plaintiff could first have filed the case.

4 (a) For a case of a money debt, he is allowed 6 years;

(b) For a case of return of property, he is allowed six years.⁸

In his minor suggestion for amendment, the native judge said, “It is customary in this country for the recipient of a cattle to return one of its progeny to the first giver and to do this it takes not less than six years. For other domestic animals 3 years are quite reasonable.”⁹ This minor input indicates how the native chiefs were constrained in negotiating and producing customary law with the European colonisers. Then the law was taken to the Rukurato for rubberstamping as native custom! It is said that many native authorities in colonial Africa were not despotic because the authority of the chiefs was constrained by the native councils (Bolt et al., 2021). The example of the Rukurato, however, indicates that the councils sometimes served to rubberstamp decisions coming from “above.”

The conduct of the British officials suggests that they considered themselves more knowledgeable in matters of native custom than the natives. When the Kabarole Central Native Court ruled in one 1952 case that a man could not sue on behalf of his relative, a British judge in the High Court overruled the native court and said, “If they [i.e. native judges] mean that parties must invariably appear in person, I venture to hold that that is quite contrary to native custom. As there are no advocates in the Native Courts, it must often be necessary for parties to be represented by their relatives.”¹⁰ By educating native judges on custom and by insisting that they must stick to custom to the letter, the colonial judge is defining and circumscribing custom.

Interestingly, in a different case in 1951, the British judge upheld the ruling of a native court even when he claimed that the ruling in question deviated from custom. Regarding the ruling of a native court that a divorced woman should take custody of her child “until he is 15 years of age,” the colonial judge said, “This may not be in accordance [with] custom but appears very proper and in the best interest of the child and I will not interfere.”¹¹ This ruling indicates two things. First, it reinforces the view of custom as static and devoid of reasoned change. As soon as he sensed the use of reason in the ruling of the native court, he concluded that the ruling did not conform to custom. Second, it shows that even within the realm of what was considered to be “true” custom, the colonial judge had the right to

determine what would be applicable or not. In the first case, he insisted on the observance of custom to the letter; in the second, he allowed custom to be contradicted.

Besides the High Court, the District Commissioner constituted a major source of interference. Yet, the Commissioner did not invent these powers for himself. Interference was policy, not the work of some overzealous colonial officials. In a 1962 letter to the District Commissioner, R.P. Towle of the Ministry of Legal Affairs writes, "I think it is essential to ensure, in any discussion which may take place about the future status of Toro and the other kingdoms, that nothing is done to reduce the power of the Central Government over the courts in these areas."¹² After amending the judgement of the native court in one case in 1953, Commissioner R.M. Purcell said, "I therefore exercised my powers under Section 24 of the Native Courts Ordinance to amend the sentence imposed. I assume that the effect of Section 24 (3) of the Native Courts Ordinance is that *the present petitioners have no remedy against my decision*" (emphasis added).¹³

Such forceful language may suggest that the Toro native authority was helpless in the face of the central colonial state. This was far from being the case. The chiefs had their own interests, which they pursued even if it meant offending their colonial masters. It is interesting how the Commissioner lamented when his word was ignored. Reporting to the Ministry of Legal Affairs about the failure of Toro chiefs to accept the central state's proposal for addressing the grievances of the Bakonzo and Bamba, commissioner Purcell said that the "Toro Government have decided that the best way to deal with it [i.e. Bakonzo and Bamba petition for equality] is to 'smack it down'" and that the Authority had "gone beyond the law in doing this." Even though he ordered for the release of Rwenzururu leaders arrested for allegedly violating native custom, Toro re-arrested them "on completely false grounds that they had themselves asked to be put inside for protection."¹⁴ If such actions point to the initiative of the chiefs to act on their own without following colonial instructions, this initiative needs to be located in the broader colonial context in which they acquired such powers to act in unaccountable manner toward the population.

Despotism in the Name of Custom

The colonialists nourished an extremely powerful native authority in the face of the population. Dissidents would be accused of violating custom, tried in native courts and thrown in native prisons. This is what happened to Mukirane, who would later lead the Bakonzo secessionist faction of the Rwenzururu Movement, and his fellow activists with whom he demanded that the Bakonzo and Bamba should be recognised in law as native "tribes" of Toro. "Mukirane was imprisoned by the chiefs of Bwamba because he broke native customs by using a chair which had been prepared for the Omuhikirwa of the Kingdom," said the prime minister of Toro.¹⁵ Embedded in such charges is the assumption that customary law is a reflection and preservation of ancestral custom. To preserve this custom from corruption, there is need for an authority to protect it by punishing those who may deviate from established tradition.

It was not simply the Bakonzo and Bamba Rwenzururu rebels who were fed up with the tyranny of Toro government. Long before the birth of the Rwenzururu, many natives had expressed contempt for the so-called customary justice. In 1954, a native called Kihika rejected

the judgement of the Katikiro at the Kabarole Central Native Court and accused the judge of lack of transparency, arrogance and conspiracy to grab his land. Kihika said that the Katikiro “thinks because he is a chief he can do everything which he wants to.” The petitioner stated that when the Katikiro inspected the land, he did so without the company of other chiefs and did not even speak to the neighbours. After his one-man investigation, the chief gave away the land to his nephew.¹⁶ This chief investigated the case as prosecutor, presided over the court as judge and could implement sentences as prison superintendent. This is the government that the British created in Toro. The chief’s sweeping powers were not subject to any checks by peers or members of society. Shocked by the unaccountable behaviour of the chief, Kihika ran to the District Commissioner for help. So many were the appeals against the Kabarole Central Native Court that the native judge reminded the District Commissioner that in criminal cases, the Native Courts Ordinance barred the natives from appealing the ruling of the highest native court without the permission of the High Court.¹⁷

The Resistance

This despotism in shaping custom was not limited to the colonial state and its native institutions. The Rwenzururu, which emerged to oppose the discrimination of the Bakonzo and Bamba (Doornbos, 1970; Reuss and Titeca, 2017; Syahuka-Muhindo, 1991), assumed a despotic character. Mamdani (1996) looks at the secessionist Rwenzururu government in the Rwenzori Mountain, alongside Yoweri Museveni’s National Resistance Army in the rebel-controlled Luwero Triangle in the 1980s, as examples of few African movements that went beyond the logic of colonial rule and democratised. This view of the Rwenzururu is very optimistic. At best it reflects a passing moment in the history of the movement that happened after internal dissent has been suppressed successfully and before new forms of dissent started emerging.

In its writing of the history of the Bakonzo and in its vision of their future, the dominant Rwenzururu segment entertained no difference of opinion. When the dominant Rwenzururu leaders authored a tribalised history and custom for the Bakonzo that justified their secessionist ambition to form a distinct tribal polity (Peterson, 2012b; Sseremba, 2019; 2020), they banned any contrary narrative. They insisted that the Bakonzo were naturally different and that their disagreements with the Batoro ethnic group were grounded in precolonial “ancient ideologies of hatred amongst the Batoroki against our progress.”¹⁸ But some of their peers disagreed, pointing to precolonial “friendly terms” among the Bakonzo, Bamba, and Batoro.¹⁹ Critics within the Rwenzururu accused Mukirane of trying to politicise ethnicity by crowning himself tribal leader of the Bakonzo. Cosmas Mukonzo castigates Mukirane’s despotism as follows:

Emilio Kibingo and I as lovers of peace and concerned people of the Rwenzururu Freedom Movement...tried to go and meet Isaya Mukirania...Later on, Blasio Maate, Emilio Kibingo, Daudi Muhindo (Isebiira) and others went again to meet Mukirania... They pleaded with him to change his heart and pursue the same motive for a separate district and not a separate state and kingdom. Surprisingly, Mukirania ordered these respectable men to lie down and receive a number of wracks on their buttocks. The man was already mad with his dream that he could

not imagine pieces of advice from his subjects. He was to be obeyed and his orders were final. Now this marked the split in the Rwenzururu Movement...[and increased] suffering for the Bakonzo and Bamba. they were now being hunted from two fronts; that of Isaya Mukirania's soldiers which were to terrorise them into submission and that from the Government forces who were hunting for any rebellious Bakonzo and Bamba. (Quoted in Bwambale and Kyaminyawandi, 2000: 32)

Mukirane, like the despots he confronted in Toro Kingdom, could not tolerate dissent. Far from the aspirations of his peers, Mukirane drew inspiration from the despotism of the Toro monarchy he opposed. He justified his formation of a despotic tribal kingdom on grounds that only "a kingdom fights against a kingdom" (Bwambale and Kyaminyawandi: 38–40). Both the colonial local state and the resistance against it entertained no checks to authority.

Conclusion

Toro was not an isolated case in its colonial engineered despotism. In colonial Buganda, the unrestrained power of chief minister Apollo Kagwa and his "veritable den of land thieves" in the native authority is well documented (Kasozi, 2013; Lwanga-Lunyiigo, 2007: 44; 2011). In the different chiefdoms that formed Busoga, "political centralization was attained [only] after the imposition of British rule over Busoga in 1895" (Nayenga, 1981: 487–488). This political centralisation, as witnessed from the violence with which Busoga chiefs like Munulo subdued contending centres of authority (Kasozi, 1986: 62), was accompanied by despotic power. The colonial era constituted a key turning point in the making of despotism in Africa. It is interesting to study the development of modern phenomena over the *longue durée*. But there is nothing illuminating about turning the *longue durée* into an ideological dogma determined to find ancient antecedent.

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Notes

1. The British confiscated these territories from Bunyoro and gave them to Buganda. Bunyoro would never stop demanding their return.
2. Runyoro is the language, Banyoro the people (ethnic group) and Bunyoro the region in which they live.
3. Uganda File C08822/2795 Toro District. Minutes of the Meeting involving colonial officials Lord Hailey, G.S. Fletcher [and] A.H. Cox at Fort Portal, 27 August 1947. In the Uganda National Archives, "District or Provinces Agreements."

4. Kasagama was Omukakama, or king, or Toro in the early colonial era. Previously, he was only one of the different chiefs who presided over different parts of Toro.
5. KDA Box 18 “(no cover) prisons admin. and correspondence” file. Omucwi W’Emisango to Toro District Commissioner, 8 May 1954.
6. KDA Box 69 “Native courts civil and crim. cases, returns, appeals, warrants, jurisdiction” file. Omucwi W’emisango to District Commissioner, Toro, 25 November 1953.
7. KDA Box 69 “Native courts civil and crim. cases, returns, appeals, warrants, jurisdiction” file. District Commissioner, Toro to Omucwi W’emisango, 9 December 1953.
8. KDA 46 “Native Courts Appeals: admin. Correspondence” file. Toro District Commissioner to Omucwi W’emisango, 3 May 1954.
9. KDA Box 18 “(no cover) prisons admin. and correspondence” file. Omucwi W’Emisango to Toro District Commissioner, 8 May 1954.
10. KDA Box 18 “(no cover) prisons admin. and correspondence” file. In Her Majesty’s High Court of Uganda at Kampala Civil Revision 42 of 1952.
11. KDA Box 18 “(no cover) prisons admin. and correspondence” file. In Her Majesty’s High Court of Uganda at Kampala Civil Revision No. 54 of 1951.
12. KDA 104 “B/B Secession Mov’t: letters, reports, meetings, inquiry, etc.” file. R.P. Towle to Toro District Commissioner, 5 April 1962.
13. KDA Box 69 “Native courts civil and crim. cases, returns, appeals, warrants, jurisdiction” file. District Commissioner, Toro to H. M. High Court, 18 August 1953.
14. KDA Box 104 “B/B Secession Mov’t: letters, reports, meetings, inquiry, etc.” Toro District Commissioner to Senior Courts Advisor, Ministry of Legal Affairs.
15. KDA Box 103 “B/B Secession Mov’t: correspondence, meetings, admin., comm. of inquiry, letters” file. Omuhikirwa to Henry Mbirika, 12 February 1962.
16. KDA Box 46 “Native Courts Appeals: admin. Correspondence” file. Kihika to Toro District Commissioner, 5 March 1954.
17. KDA Box 18 “native cases: appeals, judgements, correspondence, etc.” file. Omucwi W’emisango to Toro District Commissioner, 8 September 1953.
18. Archival collection of David Pasteur: Kawamara and Mupalya to the chairman, Commission of Inquiry, 16 September 1962: 10.
19. KDA Box 104 “B Secession Mov’t: letters, reports, meetings, inquiry, etc.” file. S. B. Mutooro et al. to the Governor, 28 May 1962.

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Die Geschichte einer Diktatur: Brauch, Autorität und Macht im vorkolonialen und kolonialen Uganda

Zusammenfassung

In diesem Artikel wird die anhaltende Debatte über die Ursprünge des afrikanischen Staates aufgenommen und die Entstehung von Bräuchen in den ugandischen Gesellschaften des vorkolonialen Bunyoro sowie des kolonialen Toro untersucht, um die Entwicklung des Despotismus nachzuzeichnen. Der partizipative Charakter der traditionellen Wahrheitsfindung in Bunyoro in der Zeit vor europäischer Herrschaft spiegelt die Machtverteilung wider, die eine uneingeschränkte Herrschaft verhinderte. Im Gegensatz dazu wichen im kolonialen Toro die inklusiven Mechanismen zur Schaffung von Gewohnheiten dem Gewohnheitsrecht, das von der Kolonialregierung und den einheimischen Chiefs geschaffen wurde. Dieses als Tradition getarnte Monopol zur Festlegung des Gewohnheitsrechts bildete den Kern der Willkür der Toro Native Authority. Der Widerstand der Rwenzururu gegen die Toro-Herrschaft nahm ebenfalls einen despotischen Charakter an, weil er sich nach der Logik der Autorität organisierte, der er gegenüberstand. Der Artikel hinterfragt die wiederauflebende Literatur, die den heutigen afrikanischen Staat mit der vorkolonialen Geschichte in Verbindung bringt.

Schlagwörter

Longue durée, Despotismus, afrikanischer Staat, Westuganda