

FUTURE DEVELOPMENT OF THE KIPSIGIS WITH SPECIAL REFERENCE TO LAND TENURE.

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INTRODUCTION.

I hope this subject will not lack interest because I am treating it from a local point of view. It is a problem which will arise or is arising all over East Africa.

One of my reasons for treating it from the local standpoint is that I believe that there is no one general solution for all the tribes of East Africa but that the treatment will require to be different according to the various native laws and customs on the subject.

Another reason is that if one undertakes to propose solutions of other people's problems it is as well to know something about those people. No one man can know all the different East African tribes so that contributions from those who have local knowledge of particular tribes may be of some value in treating the general problem.

Since the Kipsigis recently attained notoriety on account of certain serious crimes and the removal of a clan which subsisted by the organisation of crime, perhaps most of you think of the Kipsigis as a very "lawless" tribe. I wish to begin by saying that this lawlessness of a minority has in no way lessened the high opinion I have of the character of the people as a whole. Because crime and dishonesty occur in New York or London we do not damn the whole population as "lawless," but rather sympathise with the law-abiding who suffer from the presence of the criminal and dishonest.

Furthermore we must remember that we came uninvited, took over the government of these people by force. Having made war upon them, we are surprised nevertheless that they do not understand at once that they must not do so.

Mind you, I do not assert that we are wrong necessarily in assuming rule over others, but we ought not to be surprised if some of our unwilling subjects do not at once appreciate our point of view.

By imposing the *Pax Britannica* we have taken away their chief occupations and a large part of their livelihood and amusement, for not only did we stop their wars but also took government and the administration of justice out of their hands. The first step was right and necessary though a little illogical to them perhaps. The second step was surely unwise, but if we decided that we were right in taking every kind of local administration out of their hands we

surely ought to have seen that having taken away most of their occupations we must find them new ones of which we could approve. In the early days of British rule, however, it was considered sufficient to say "go out and work for a wage so that you can pay tax."

Fortunately we are now waking up to the fact that we cannot expect people to be contented law-abiding tax-paying citizens unless we teach them how to become so, under the new conditions.

We are now seeking remunerative occupations for them. But let us keep in mind two things.

- (1) That the occupations must be ones that they like.
- (2) That tastes differ and we cannot force all to one pattern and even if we could it is not desirable either for economic or other reasons.

For example it is not sound policy to say "Maize is a simple crop, with an unlimited market; all of you go and plant maize." For it is not everyone who wishes to or can dig all day with a jembe, and it is not every one who has oxen and can afford a plough. And again, when too many grow maize the price falls locally to say Shs. 2/- a bag. Furthermore, before large quantities of maize can be grown, transport, market and milling must be organised.

We must teach them to grow other crops than maize and incidentally learn to appreciate ourselves some of the valuable qualities of the *wimbe* we so despise.

Then again, why try to force all to agriculture when the Kipsigis are a pastoral people loving their herds and flocks and valuing them quite as much (and for similar seasons) as we do our bank accounts, investments, or landed property.

Surely one of our first cares should be to help them to improve their livestock, improve their grazing, and then make more use of their products.

Leaving aside, then, other educational matters, as well as games, sports, etc., which are all necessary to the making of happy law-abiding citizens, let us try and look into the future and see what precautions we must take whilst making the people good agriculturists and pastoralists.

Remembering that the laws of the Kipsigis have developed to suit a primarily pastoral people, it is obvious that as we teach them to put more land under cultivation, to improve grazing and stock a new set of conditions will arise and at the same time as they learn better hygiene and receive medical attention, an increase of population and of livestock will take place. Their laws will have to adapt themselves to these new conditions. But as these changes are imposed

from without they will occur with greater rapidity than if they were the result of slow self development from within. Hence difficulties will arise over the law and we shall be inclined to alter their laws to the European pattern.

Before doing so hastily I suggest that we ought to consider their own laws and see what is good in them, from their point of view rather than ours, and retain as much as possible of them. Again we must examine our own laws and admit what is not satisfactory in them and avoid producing amongst these people conditions which have proved unsatisfactory in Europe.

Remember that we are unconsciously prejudiced in favour of our own laws, and many of us know no others and are apt to despise or condemn the forms of society which other nations have developed especially if they are not so far advanced as we are in the arts and sciences. Even if our laws and forms of society are indeed those best suited to ourselves in our present state of development, it by no means follows that they are best for others, who have a different environment and background as well as differing from us mentally and morally.

Let us consider the Kipsigis idea of property. A man's property (or a woman's) is that upon which he has done work, which he has acquired by his own effort, e.g. the tree he has felled for firewood or honey boxes, the house he has built, the grain he has planted, the cattle he has raided or bought with his own property.

That which occurs naturally is given by God to all equally, the earth, the grass, the trees, the salt lick, the wild animals. These only become a man's property when he has done work upon them.

The land never becomes the property of an individual: it is the property of the tribe. But so long as a man keeps a piece of land in cultivation he has the right to use it, but as soon as he leaves it to go back to bush or grass it becomes public property again.

When he dies a man's personal property is inherited by his sons equally (with a few trivial exceptions). But this is not really the personal property of the sons now but the entailed property of all his descendants. The sons have the right only to the use of this inherited property. They may not dispose of it out of the family, except as the marriage gift.

The chief form of property is of course cattle, sheep, and goats, for there is no property in land.

One of the important results of this community of land is that everyone has the means of subsistence; there are no landless and little disparity between rich and poor, no classes. Every one has land to cultivate, land to graze, land to build a house upon and the material

for building, fencing, and making most of the essentials of their simple life.

In fact they are truly a free people.

Now consider the corresponding situation amongst Europeans. We have allowed the land to fall into the hands of a few, so that we have classes of landed and landless, rich and poor, those who must work every day for someone else or starve, who have no house of their own. Nine out of ten of us are at the mercy of a landlord and an employer. In fact we have lost that freedom we are so fond of talking about. We have sacrificed it to what we call progress.

In our anxiety for Africans to progress, that is to produce, let us try to avoid robbing them of freedom or allowing them in ignorance to barter it away for some less valuable form of wealth.

Most of us Europeans are so accustomed to the unjust concentration of the land in the hands of a few that we regard it almost as a natural phenomenon like the procession of the seasons. We have, however, rebellions and revolutions of the past and the Bolshevik experiment of to-day to remind us that human nature sometimes protests strongly against the injustice which has arisen largely as a result of the development of landed and landless classes.

Now is it possible to retain the equal right of all to the land and at the same time to develop the agriculture and pastoral industry of the Kipsigis so that they may acquire sufficient wealth to obtain such of the benefits of civilization as may contribute to their happiness.

The desire for the maximum of freedom is doubtless a matter of temperament. Personally I would not sacrifice freedom or advise others to do so for the sake of accumulating wealth, more especially when one considers that the apparent wealth of a nation usually accumulates in the hands of a minority leaving the rest with neither wealth nor freedom.

So long as only annual crops were cultivated and that on the small scale possible by the hand labour of each family, the community of land was undoubtedly the best possible arrangement. But with the growth of ambition, inspired by European example, the employment of more efficient instruments of cultivation, and the introduction of perennial crops such as trees for fuel and building, wattle for bark, fruit trees, etc, this arrangement may no longer be possible at any rate in its simplest form.

If this most valuable of human assets is not to be lost we must take special precautions to retain it.

The common ownership of land does not prevent a man from extending the area that he cultivates, neither does it apparently in

practice prevent him from planting more or less permanent products such as trees. But as the scale of agriculture increases it becomes more and more difficult to fence. The Kipsigis law at present is that a man must fence his field or he cannot complain of the trespass of livestock, a very natural law amongst a people who are primarily pastoral. Not only would such fencing on a large scale become burdensome to the man with large fields, but if it were enforced so that permanent fences were put up it would probably lead to the cultivator asserting his permanent right to that land; in fact private ownership of land would be inaugurated and the more progressive and aggressive would rob the remainder of their land much as happened in England at the time of the "enclosure of lands."

The same thing would happen where a man improved the grazing or planted grasses or other fodder, and introducing better stock, fenced them in against the approach of tick carrying stock or rinderpest from other areas.

However if agriculture is to increase and stock be improved it is certain that fencing will be introduced. Foreseeing this, what we have to do is to make laws that will prevent the land falling into the hands of a few and thus producing a class of poor landless people at the mercy of a fluctuating labour market where the wages are only sufficient for those with their own homes and food supplies.

Incidentally those employers who have visions of excess of cheap labour under such conditions must realise that the wages of labour would rise enormously for the present rate of wages is made possible by the fact that nearly every labourer has his free home and his source of food so that his wage is only to pay his tax, to add to his property, or tide him over a period of shortage of food in his home. It is not a wage upon which he could live if he had not a free home and land.

As we teach a primarily pastoral people to put larger and larger areas under cultivation not only does it become more and more impossible for the owners of fields or stock to fence their individual fields or flocks but other new difficulties arise.

For example under the old method of hand cultivation and retaining a field in cultivation only one or two years, there was little erosion or impoverishment of the soil. But when ploughs and harrows are used erosion at once begins to occur as I have found to my cost. Further, when large areas are cultivated one cannot break up new areas every year or two years. If one continues to crop a field year after year without manuring, a time arrives when the land is too impoverished to produce remunerative crops and when the land is abandoned it will not even produce grazing and takes many years

to recover and on some soils seems not to recover during a lifetime. I have frequently noticed how old native shambas leave the land in much better condition than European cultivation.

Precautions will evidently have to be taken to prevent the impoverishment of the land by these novice attempts at larger scale agriculture.

As the area of good grazing is already insufficient for the stock it may be necessary in certain districts to prohibit the ploughing up of grazing. (This by the way is often a clause in the lease of English farms.) Another thing they must learn is to put all the manure on to the land instead of selling it for 50 cents a cart load to be taken out of the Reserve. This is one way of delaying the deterioration of the land. It is more difficult however to find a suitable and remunerative rotation of crops for this purpose.

In helping these people to new occupations and greater wealth there are three methods open to us.

(1) The *laissez faire* or wait and see method so attractive to some because it is so easy at the present and leaves all the troubles to our successors.

(2) The introduction of some form of individual land tenure because we Europeans have no experience of any other.

(3) Some *via media* which while retaining the community of land will permit the extension of agriculture and the improvement of stock and grazing.

Let us consider each of these in turn:—

(1) If events were allowed to take their own course under the present native laws, viz. :—

(a) Community of land.

(b) Compulsory individual fencing of fields against stock.

(c) The right of any individual to cultivate as much land as he likes and to graze as many head of stock as he likes, provided that he cannot claim the land as his own but as soon as he ceases to cultivate it, it becomes public property.

What would be the probable results?

If the laws were upheld—

(a) It would become too burdensome and costly to fence large areas with temporary fences as I have found myself. In many districts it would be impossible owing to lack of poles and sticks.

Therefore crops would be continually destroyed, quarrels arise, fines be imposed, and so on.

(b) In self defence the man who wanted to cultivate large areas would have to erect permanent wire fences or hedges. In time this would lead to individuals claiming the land they had fenced and finally when they did not require it all or had ruined it to lease it out to others. Thus starting the system of land owners and landless, rich and poor.

Similarly a man might so allow his stock to increase as to usurp more than his fair share of land. He too might improve the grazing or have better stock and fence them in with wire fences and so lay claim to the land. In fact there would be nothing to stop the land falling into the hands of a few.

(2) If the second course were adopted and some form of individual land tenure deliberately introduced—

(1) How could one obtain even an initial equitable distribution of the land? Not only would survey be very costly but the apportionment of agricultural land, grazing, and water would be an impossible feat.

(2) If each selected his own, the greedy or stronger would rob the milder and more unselfish.

(3) Even were an ideal sub-division possible, what would happen in the future? In the case of a man who had many sons the land would be divided up amongst them and be inadequate for each. Whereas the land of a childless man would go to his brother (say) and so swell his holding. So that the land would gradually accumulate in the hands of a few, leaving others with insufficient or none.

(3) In the third course we should attempt *now* to devise a scheme whereby the community of land can be retained so that none may be impoverished or lose their freedom whilst yet protecting the energetic agriculturist or stock owner.

In attempting to cater for the new conditions which will arise we must take into consideration the number of people and of livestock and the total area and quality of land available for them.

At the last estimate there were some 70,000 people of which 17,000 were registered adult males. If we take the number of widows as balancing the number of unmarried men this means 17,000 households for which is available 500,000 acres, i.e. 30 acres each. Some of this is agricultural land, bush with grazing for small stock but

almost useless for cattle. Some is grazing land, hilly and rocky, unfit for agriculture, steep river valleys and forest, largely thorn.

The number of livestock is not known but every dry season there is an outcry of shortage of grazing and often considerable migrations.

Evidently if 30 acres is the average area of all qualities available for the cultivation and grazing of each household a limit must be put to the area which any individual has a right to use. It need not necessarily be the 30 acre average for many will not require the whole of this. But on the other hand if the limit to area per individual household is put much higher there is no allowance for the inevitable increase of population under better hygiene and greater wealth.

I do not know what would be the average number of head of cattle per acre but suppose it is in the neighbourhood of three acres to one beast and that six sheep or goats are equivalent to one cow, then the limit would be 10 head of cattle or 60 head of sheep and goats if a household merely cultivated by hand the usual half acre or acre. Whereas if a man had no stock he could plough 30 acres.

Probably one should allow a larger area for stock than for agriculture, at least double, making 20 acres the maximum for agriculture and 40 for grazing, i.e. say, 14 head of cattle or 80 sheep and goats.

Beyond this number of livestock a man must take the profits, i.e. sell the surplus stock just as a European farmer does. In this way improvement of stock would be helped by keeping the better beasts and overstocking would be prevented. The agriculturist being similarly limited would be encouraged to keep his land in better condition. It is almost impossible even for experienced farmers to keep large areas in good condition for long without manure.

(Should it occur that some ambitious ones wish to exceed these limits I see nothing for it but that they acquire land from Government elsewhere, for it is better that an individual be put to inconvenience than that he rob his neighbours of their undoubted rights or livelihood.)

Having decided upon the most equitable limits one must then consider fencing.

It is on the one hand too onerous, too expensive, for the individual to fence; on the other it is dangerous to allow the erection of permanent private fences. But one must afford the agriculturist and the man who would go in for improved stock protection. Therefore one must have communal fences.

This sounds a very difficult proposition. It is difficult, but not so difficult I fancy as might be thought, for the following reason.

The basis of Kipsigis government before European government displaced it was the social unit called "Kokwet." It comprised the inhabitants of a compact area (there being no villages) of say one or

two square miles according to the density of population and natural features. The members of the Kokwet council, which all adult males could attend as members, tried all cases, adjusted all matters pertaining to the Kokwet. It called in judges from outside when necessary. All administration was free; even the judges received no pay.

These Kokwet have now lost all their functions except mutual help at cultivation, harvest and purely domestic matters for all authority was taken by the Central European Government, for we did not even know that they existed nor could have understood such a form of government. Yet one must admit that it had some efficiency to allow a handful of people to come into hostile country and develop into a considerable tribe at the expense of the Masai, Kisii, and Sirikwek (whoever they may have been).

These social units still exist and it should not be impossible to restore some of their functions and responsibilities.

Without some such arrangement it is difficult to see how agricultural and pastoral progress can take place.

In the particular matter in question (namely fencing) every Kokwet knows the land, its capacity, its suitability for agriculture, cattle, sheep or goats. It knows its water supplies, and so on, as no one else can know these things. It knows all about its individual members and could control them, as it used to do, for it had the power of expelling undesirables, or incompatibles.

If each Kokwet were to decide upon an area for agriculture and another for grazing in conjunction with the neighbouring Kokwotinkwek it would be unnecessary to enclose fields, but a line of fence at very much less cost could be run between the agricultural and grazing areas.

Each member of the Kokwet would contribute to the cost of the fence in proportion to the area he cultivated and the number of head of stock he owned. For example thus:—

200 yards.	(Not fenced)	1 mile.
70 acres agriculture, e.g. maize at 5/- = 3,500/- p.a.		640 acres grazing. 200 cattle or 1,200 sheep and goats say produce 2,000/- p.a. Contribution to 1 mile fence:
5/- per acre, Shs. 350/-		1/- per head of cattle. 1/- per 6 head of sheep and goats.
		Total: Shs. 200/-

This would pay for the fence in a year or it could be spread over two years at half the cess.

The ends of the fields could have temporary bush fences till the permanent fence extended to join that of the next Kokwet.

It is difficult, I admit, but what else is better? If Government would restore the authority of the Kokwet and allow it to elect its own Kiptayat or leader and then back up its authority, nay more, urge it to action, I feel sure the results in the long run will be far better than if matters are allowed to drift or if any attempt is made to introduce individual ownership. The very idea of the latter course rouses the people's wrath more than any other suggestion I know of. Left to themselves they will, of course, drift in ignorance of the troubles ahead.

The reviving of the Kokwet system would, I believe, have a very beneficial effect on the general morale of the Kipsigis. How often does one hear Europeans in private and in public deplore the lack of a sense of responsibility amongst natives of Kenya in general. It is too true and doubtless it is partly due to their simple life, for they have little to lose. But do we not ourselves increase this lack of responsibility by taking the management of all their local affairs out of their hands. If each Kokwet managed its own affairs as of old with, of course, the aid of outside judges or appeal to Government where necessary, surely its members would be bound to regain an interest in their local affairs, and act together for the benefit of their social unit and so acquire a sense of responsibility.

LAWs.

I suggest that it would be a wise precaution to put in writing the present laws which are deemed suitable and to alter and add to them as seems necessary; recording the whole in the District Commissioner's office, e.g.

1. Community of land as at present.
2. Private fencing of a temporary nature permitted.
3. Permanent fences or hedges only permissible if Kokwet refuses to build a common fence. And that then these fences give no permanent right to the land but only the right to the produce. As soon as the land is no longer beneficently utilised it becomes public property.
4. Kokwet to assign areas for cultivation and grazing and no one to infringe these boundaries.
5. Kokwet must make communal fences where the need arises and it is empowered to levy contribution to the fence from all its members in proportion to their cultivation and stock (in some such way as suggested above).

6. Kokwet to have jurisdiction in all these matters with right of appeal on either side to higher authority.

7. The contributions of each Kokwet should be applied only to the fences of that Kokwet, and not go to a general fund, so that the people may at once see the result of their contribution and not regard it as an increase in taxation.

As the Local Native Council contains men who do not represent the public and some who are the kind of men who would be inclined to benefit themselves at the expense of the people, great care will have to be exercised in ascertaining (1) native laws, (2) altering laws and passing new ones for the protection of the rights of the people.

Finally I would add that in the case of the Kipsigis the teaching of new remunerative occupation is particularly urgent because they are now prohibited from going out to seek work outside their district and there is no work for very many of them in the neighbourhood of the Reserve. They will therefore find it even more difficult than before to pay hut and poll tax.

For many months now scarcely a day passes without many applying for work, mostly very young men from 16 to 20 years old.

If we do not find interesting work for them, they will surely take to illicit occupations again if only to obtain their hut and poll tax and marriage cattle.

A NOTE ON MAIZE AS SOLE CROP.

A rough calculation will show the amount of grain each family has to produce at present prices to supply its own needs and pay taxes, if it has no other source of income.

We have estimated the population at 70,000 and taxpayers at 17,000, i.e. four to a family, man, wife, and two others (whether children or widow or aged).

The usual ration on estates is $1\frac{1}{2}$ to 2 lbs. of posho a day. Thus each such family of four will require at least 5 lbs. of grain per day or 10 bags a year (exclusive of ceremonial beer or beer for payment for work done, also seed and reserve). The tax of Shs. 13/- with maize as at present at Shs. 2/- per bag is equivalent to six bags of maize.

Each such family therefore must produce 16 bags of grain at least. The average European maize crop is perhaps eight bags per acre. The native crop is hardly likely to be more, especially as they will not learn to plant early in the year.

Therefore each family of four must cultivate two acres and not suffer from locusts, drought, hail or cutworm. To do this by hand cultivation is a very considerable task.

Evidently some other sources of income are required.