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Public health, witchcraft and the Law in Kyela, Tanzania

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**Keeping Magical Harm Invisible. Public Health, Witchcraft and the Law in Kyela, Tanzania.**

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**Introduction**

As Harper, Kelly and Khanna argue in the introduction to this book, an important function of both medicine and the law is that they make harm visible, although they do so in different ways.<sup>1</sup> One of the corollaries of this process of making harm visible, and “legible” is that it enables the associated suffering to be given moral and social meaning, frequently through the attribution of causality. However, when it comes to the harm caused by witchcraft in African countries, both the law and (bio)medicine have struggled because for them the causal link between witchcraft and harm that is put forward by its victims does not exist, indeed practices of magical harm do not exist. For both the law and medicine, it is those who believe in witchcraft who cause harm, and this is where an impasse has developed – between those who consider themselves to be the victims of magical harm, and the state authorities who have a mandate to protect them from harm.

As far as the law is concerned, those who believe themselves to be the victims of witchcraft can cause harm, because they at best slander those who they believe to be witches through practices of accusation and divination, and at worst cause accused witches physical harm or even kill them. The law seems to protect those who are accused of witchcraft instead of the victims of witchcraft. In East Africa the responsibility to protect people from the potentially fatal sickness and misfortune caused by witchcraft has fallen to an indigenous public health (Feierman 1985, 1999, 2010, Last 1999, Marsland 2014, Waite 1992). Practitioners of biomedicine in Africa

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<sup>1</sup> The fieldwork for this research was funded by the ESRC (Award no R00429934295) between 2000 and 2002, the Hayter Fund and the Munro Fund in 2007 and 2009, and the Carnegie Trust in 2009. Many thanks to Toby Kelly and Ian Harper for their comments on early drafts, and to Yuda Maninga and Coseman Busi Nnwafu for research assistance. Timothy Mwakasekele has provided essential support for this research throughout.

are generally unsympathetic to belief in witchcraft, arguing that the belief is a threat to public health. From this perspective, people who think they are victims of witchcraft are a threat to themselves because they visit traditional healers whose medicines may cause harm, or who may delay patients from seeking help at a hospital or local health centre. Some nurses and doctors however, recognize the problem and may believe in witchcraft themselves or refer patients who they cannot treat to traditional healers (Langwick 2011, 2008).

In this chapter, an attempt to solve this problem will be examined. In Kyela District in the south west of Tanzania, some local bylaws were proposed against what were described as the “misleading traditions of the Nyakyusa”. These bylaws appear to solve a problem of indigenous public health – a form of witchcraft, that is in itself part of a system of indigenous law – by drawing on the official law of the state, and on the formal public health system. By officially dealing with the spread of infectious disease at Nyakyusa funerals, the bylaws conceal their widely perceived purpose of preventing witchcraft. Their efficacy lies in their ability to keep magical harm invisible within a state statute, whilst simultaneously being open to an alternative reading by the local population as being explicitly concerned with a local form of witchcraft and solve a matter that is of concern to both indigenous and official forms of public health.

### **Witchcraft and the Law**

Colonial and post-colonial legal regimes have a restricted ability to make magical harm visible. This is an ontological matter because it is concerned with the nature of reality. The law rarely accepts that witchcraft might be real, but when it does, as we will see below, matters become messy and complicated. In Tanzania, where many people are troubled by what is for them a very real risk of magical harm, members of the population wish that the law could protect them from witches. In their view, the law does the very opposite. Since the implementation of the witchcraft ordinances during the colonial period, those who accuse people of witchcraft are liable to be prosecuted, whilst suspected witches are left alone. It is well documented in the

study of witchcraft in Africa that the law will persecute those who are victims of witchcraft, but not witches themselves.

State officials are essentially faced with an ontological problem when deciding how to deal with witchcraft accusations (Langwick 2011). To generalize, many citizens regard witchcraft as real, whereas a modern state cannot. There is a contradiction – a modern state apparatus cannot recognize witchcraft without either undermining its claim to rationality or appearing to be publically taking part in the nefarious world of witchcraft. However, it must also protect its citizens, who see witchcraft as real, and it faces criticism, or worse, when citizens take matters into their own hands through forms of vigilantism. It is important to distinguish what activities can be seen in public from those that cannot: a state cannot publically recognize witchcraft. Yet, at the same time, it must publically be seen to be doing something about it.

The ethnographic record tells of a wide variety of ways in which people try to control or prevent witchcraft in African countries. In the precolonial period poison oracles were widely used to identify witches (Evans-Pritchard 1976, Langwick 2011: 43). However, colonial and post-colonial legal regimes have widely cracked down on such practices. Poison oracles were banned during the colonial period when the witchcraft ordinances were introduced, which in turn led to changes in the nature of antiwitchcraft activity. Likewise, traditional healers were no longer permitted to practice divination in order to identify and accuse witches. In response antiwitchcraft activities have taken new forms: mass movements, such as witch cleansing in Kenya and Tanzania (Abrahams 1994, Green 1994, 1997, Green and Mesaki 2005, Smith 2005, 2008), witch finding in Zambia (Auslander 1993), violent witch hunts in South Africa (Niehaus 2001) and Tanzania (Abrahams 1987, Mesaki 1994). Traditional healers sell protective medicines, which often work by turning back magical harm onto the perpetrator (West 2005). Pentecostal Churches (Meyer 1999) and the Independent African Churches (Ashforth 2005: 182-92) are also major players in the fight against witchcraft.

The main documentary source for information on antiwitchcraft procedures during the colonial and precolonial period in Bunyakyusa,<sup>2</sup> is based on the fieldwork of Monica and Godfrey Wilson published in four monographs (1951, 1957, 1959 and 1977) and the Wilson archives at the University of Capetown. Monica described three important kinds of magical harm, all of which are relevant in modified form to the contemporary situation. *Ubulosi* referred to an innate power to cause harm, enabled by the presence of a python in the stomach, and *ubutege* was the use of medicines to trap and hurt a victim (1951b). *Ubulosi* and *ubtege* roughly correspond to the classic distinctions drawn between witchcraft and sorcery by Evans-Pritchard (1976). Monica also wrote of another kind of magical harm called *imbepo sya bandu* – which she translated as the “breath of men”. The angry words of members of the community produced this breath when they “muttered” or “murmured” about a person who had committed an offence against them (1951a: 91-108).

“The defenders” or *abamanga*, were responsible for protecting the local population at night and would watch for witches in their dreams (ibid: 96-108). The *abamanga* were often village headmen (*amafumu*). Like witches, the source of their power came from pythons in their stomachs. The day after they identified witches in their dreams, they would make their accusations in public. Once a witch had been accused, he or she would be expected to confess and expel any anger by blowing water from their mouth (ibid: 99). Alternatively, they could take the *umwafi* poison ordeal – if they vomited they were innocent, if they did not they were guilty (ibid: 115-6). When a suspected witch died, a doctor would be called to carry out an autopsy and search for a python in their stomach (ibid: 116:-7).

A witch who was identified but did not confess, was most often banished from their home to another chiefdom. The banished witch’s property was often confiscated by the chief. These measures were considered to be mild - as Chief Mwakilema told Godfrey Wilson in 1935, punishment for witchcraft was much less severe than for sorcery:

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<sup>2</sup> Bunyakyusa – the “country of the Nyakyusa” was known as Rungwe District during the colonial period. It was divided into Rungwe and Kyela Districts some time after independence.

“In the old days ... If we caught a man as a sorcerer we used to dig a hole and bury his head downwards in it with his buttocks on top, alive, and then take a stake and drive it through him from the anus – so we did also with thieves – not with those caught as *abalosi* [witches], no, then we used sometimes to kill but only with a spear; normally we just took all their goods and cows and burnt their houses and drove them to another country.”

Under the colonial antiwitchcraft ordinances it was made illegal to divine for or accuse someone of witchcraft, and heavy fines and prison sentences could be used to enforce this, especially if a victim of witchcraft resorted to violence (Fields 1982). In Tanganyika, the 1922 ordinance allowed fines of up to £200 and imprisonment for up to 5 years (Niehaus 2001: 221, n2). At the time some British commentators were critical. Roberts (1935) and Orde Browne (1935) both presented papers at the International Congress of Anthropological and Ethnological Sciences in London and complained that the laws did not distinguish between “witchdoctors”, who were supposed to protect people against witchcraft, and actual witches and sorcerers who intended to do harm. Some colonial administrators such as Frank Melland and Cullen Young thought it would be preferable to work with “witchdoctors” (Rutherford 1999: 99) so that the colonial judge would not be seen as the “ally of the witch” (Fisiy 1998: 149). One of the difficulties with these ordinances is that they did not (could not) recognize the reality of witchcraft, and so punished the “witchdoctors” who the local population believed could protect them, and protected the “witches” from accusations.<sup>3</sup>

The witchcraft ordinances meant that people could not accuse an individual of witchcraft. As one man complained to the Wilsons “The defenders see the witches but cannot name them to anyone.” (Wilson 1951a: 132). The *umwafi* ordeal was

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<sup>3</sup> Stacey Langwick (2011) has written extensively on how the anti-witchcraft ordinances worked primarily to discipline healers in colonial Tanganyika. During the *maji-maji* rebellion (1905-1907) healers gave medicines which reputedly turned bullets into water to rebels who were fighting the German colonial authorities. The first 1922 Antiwitchcraft Ordinance was introduced by the British as a direct reaction to this. Healers were suspect dissidents whose practices were to be shaped by law into the innocuous dispensing of herbal, non-magical medicines.

illegal, and whilst the Wilsons thought it might sometimes have been administered in secret, as far as they were aware, the very last time it was used was in 1932 (ibid: 116). They wrote that witchcraft accusations were still frequently heard in the Native Courts, but they were not documented, and that autopsies were also becoming rare.

These changes meant that people had to adapt the ways that they protected themselves against witchcraft. It was now illegal to identify a witch through divination, and so healers developed a new form of intervention – the community witchcraft eradication campaigns, most notably those of the itinerate healer and witchfinder *Mchapi*, who claimed to protect whole communities (Marwick 1950, Richards 1935, Willis 1968, 1970). Other healers turned to providing medicines that protected individuals against witchcraft, or turned magical harm back on a witch. In Bunyakyusa, instead of directly accusing someone of witchcraft people would anonymously place thorns around the door of their house as a strong hint that they should move on (Wilson 1951a: 114, 132). Alternatively, a suspected witch would be socially ostracized, and their life made a misery until they fled (ibid: 132). The British administration no longer permitted chiefs to seize the property of an accused witch (ibid: 119). Increasingly, it was the victims of witchcraft who feared for their lives and had to leave for another village, and so Europeans were widely “condemned for protecting witches” (ibid: 132). In practice, the British colonial administration appeared to be punishing the belief in witchcraft. The result was that people widely felt abandoned by the state, which was unwilling and unable to protect them from witchcraft.

After independence in 1961, the new socialist government maintained the antiwitchcraft ordinances, which were in line with their modernist views on belief and superstition (Niehaus 2001: 190). This meant that courts continued to prosecute anyone who accused witches. In Sukumaland caused the local population to resent the state for abandoning them, and in many cases lead to violent acts of

retribution.<sup>4</sup> Between 1970 and 1988, 3,072 Sukuma who were suspected of being witches were killed by vigilante (*sungusungu*) groups. Only seven people were prosecuted for these killings, indicating the extent to which local state representatives were compromised by their position (Abrahams 1987, Bukurura 1994, Mesaki 1994).

Across postcolonial Africa, states have faced similar difficulties: they are unwilling to recognize the reality of witches in people's lives, and yet are under considerable pressure to take the issue seriously (Ciekawy and Geschiere 1998, Geschiere 2006, Niehaus 2001). Some countries have succumbed to the pressure to prosecute witchcraft, either due to fears over public order, or because state officials themselves felt persecuted by witchcraft. Peter Geschiere and Cyprian Fisiy have written extensively about the witchcraft trials in 1980s Cameroon, where state officials were themselves afraid of witches, who either appeared to undermine rural development projects or who directly threatened the officials themselves. In this context, witches were tried in court and were subject to sentences of up to ten years, on the basis of evidence brought by traditional healers (Fisiy 1998, 1990; Fisiy and Geschiere 1990; Fisiy and Rowlands 1989; Geschiere 2006, 1997: chapter 6; Geschiere and Fisiy 1994). In South Africa, the extensive and extreme violence by young ANC activists against suspected witches in the 1990s endangered stability in post apartheid townships. In response to this the Ralushai Commission of Inquiry into Witchcraft of 1996 proposed to simultaneously punish those who practice witchcraft, as well as those who accuse another person of being a witch, and attempted to resolve this contradiction by recommending new authorities to regulate the traditional healers and their expertise in identifying witches (Ashworth 2005, Geschiere 2006, Niehaus 2001). Sometimes witchcraft prosecutions have been for narrow political goals. Diane Ciekawy (1997, 1998, 2006), for example, has described how the Kenyan state used the antiwitchcraft ordinance, which in 1966 made the practice of witchcraft a crime against the state, to discipline political dissidents.

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<sup>4</sup> Sukumaland is a region in the Northwest of Tanzania near Lake Victoria, and is named after the main ethnic group who live there – the Sukuma.



Speaking more broadly, any law that attempts to deal directly with witchcraft faces an intractable problem. If a legal framework is to operate within the frame of reference of a “reasonable man”, reasonableness is usually defined within modernist terms, which cannot acknowledge witchcraft as a reality. If the state cannot see something then it does not exist, and therefore cannot be dealt with in courts. Anyone who believes in witchcraft risks being seen by the state as holding an erroneous view of the world (West 2007: 38), or worse – as insane (Comaroff and Comaroff 2004: 194). This slur on their grasp of reality makes them liable to legal discipline if their beliefs lead them to harm a suspected witch in any way. As a result, witchcraft is visible only as an incorrect belief, and in the eyes of the law it is the victim of the belief – the so-called witch – who suffers harm.

If the state acts as if witchcraft is real, and makes visible in the courts the harm caused by actual witches, a new problem emerges. The courts become implicated in the reputations of suspicious characters – the “healers” who can supply the proof that someone is a witch. These same healers however depend on the very knowledge that makes them suspicious – if they know enough about witchcraft to identify a witch, they could you must be witches themselves. Peter Geschiere (2006) has argued that this has the effect of associating the courts with nefarious occult activities. In addition to this, he adds, the very fact that the courts take the reality of witchcraft so seriously exaggerates the scale of the problem in the eyes of the local population.<sup>5</sup> Geschiere then adds the final blow to the advisability of state recognition of the reality of witchcraft – it is doomed to failure, by recognizing witchcraft it must act against it, by acting against it the public perception of the scale of the problem is increased ultimately weakening the state when it fails to contain witchcraft.

Acknowledging the existence of witchcraft – making it visible in the eyes in the law thus seems to be inadvisable. Likewise, failure to act also leads to discontent on the

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<sup>5</sup> See also Maia Green’s 2005 argument that state tolerance of witch cleansing in southern Tanzania “entrenches” beliefs in witchcraft.

part of populations who feel that governments should be doing something to protect them against magical harm. I will argue that something different is being tried out in Kyela. In the rest of this chapter I want to make the case that in Kyela public health, which can be “seen” with considerably less controversy, acts as a proxy for witchcraft. A set of bylaws which were officially proposed in the name of public hygiene, but that are widely regarded to be an antiwitchcraft measure make use of a kind of doubling that the Comaroffs (2006: 34) have argued is characteristic of the layers of state-like processes and organisations that produce and enact law in the postcolonial context. They describe a “palimpsest of images” through which the operation of legal processes can only be opaque. These bylaws in Kyela work in this way – through the surface layer of public health, can be seen another set of concerns to do with a very particular kind of magical harm, which has its origins in a form of indigenous law.

### **The Bylaws and Public Health**

In 1998 some key leaders of Kyela District government held a consultation to identify what they described as ‘misleading traditions’ (*mila potovu*) of the Nyakyusa. Figures such as the Chairman of the District Committee (*Halmashauri wa Wilaya*) and the District Medical Officer (DMO) called a meeting to discuss traditions that were felt to be a danger to public health and community development. A meeting of each Ward’s Development Committee, brought together the Village Chairs, Ward Councillors and other officers to debate local tradition, and the matter was then cascaded down to village level – to canvas opinion of the local community. Once their reports had been returned to the District Offices, they were analysed, and the recommendations were collated into a proposal for some new District By-Laws, legislating against these ‘misleading traditions of the Nyakyusa’. The DMO then left to study for his Masters in Public Health in the UK, where he wrote his dissertation on the funeral practices of the Nyakyusa and their relation to the spread of disease. He returned in 2002 when I was in the field.

The bylaws set out to ban a range of practices – mostly relating to funerals and mourning, focusing on the provision of various feasts at different stages of the

mourning process, hygiene associated with crowds, matters of inheritance, particularly concerning the welfare of widows, but also onerous responsibilities that can be placed on a son who must inherit from his father. They also stipulated that a man should be able to build himself a brick house, without having to build one first for his father. Anyone found to be breaking these new bylaws could be fined 10,000 Tanzanian shillings or given a prison sentence of between six months and a year.

The bylaws themselves offer no explanation given of why these traditions were 'misleading' other than that they had fallen 'out of date', and had 'caused the community to lose their way'. However, a document produced by the National Malaria Control Programme (1999), commended them as a community initiative intended to stem the transmission of malaria. When I asked employees of Kyela District Hospital, and later the DMO himself, about them, I was told that the traditions identified were associated with the spread of infectious diseases at funerals, including malaria, diarrhoeal diseases (including cholera), meningitis, and sexually transmitted infections including HIV.

Across Africa, funerals are major events (Jindra and Noret 2011) and Nyakyusa funerals are especially renowned in Tanzania for their scale and extravagance. Funerals take place in people's homes, and people are buried in family plots around the side of the house. They can be attended by hundreds of people, require considerable expense on food and beer, and can last for weeks (in the past they would last for months). When I asked about funerals, people would often tell me in disgust about the recent past when women and other key mourners were required to neglect bodily hygiene and wear dirty clothes, walk barefoot, not wash and leave their hair to grow uncombed (leading to infestations with head lice). The home is also neglected – mourners do not sweep the usually meticulously kept ground around a house until the mourning period is over.

Obviously such an event that can take place over a period of weeks or even months, cannot require the attendance of hundreds *every day* – but there are key dates at which 'everybody' (the village, family, friends) must attend – most importantly the

burial, which takes place as soon as the corpse and the key mourners have arrived; the side shoot 'funerals' which develop when a set of mourners 'carry' the mourning 'home', thus attracting their own friends and neighbours; the day on which an heir is appointed and matters of inheritance are discussed, and finally the day of the "sweeping of the ground", which is accompanied by a ritual washing and shaving of the hair of the key women mourners. On these occasions, more people must come to offer comfort and 'help' with grieving. The rest of the time, the 'mourning' is maintained by a key group of the bereaved, their relatives, close friends and neighbours, particularly centering around a group of women some of whom will sleep over at the funeral ground.

It was these crowds of (mainly) women and children that the DMO told me in an interview in 2002 that were such a danger to public health. The very proximity of so many unwashed bodies, defaecating in the surrounding bushes, sleeping together – often outside and not under a mosquito net, coughing and breathing on each other, and taking the opportunity to meet their lovers at night, was in his view a hazard. This was the ideal situation for the transmission of infectious diseases, and to make matters worse he told me, mothers often delayed taking sick infants to the hospital or village clinic – because they were both enjoying themselves, and obligated to stay there and mourn. For him, the rationale behind the bylaws was quite simple. By curtailing the scale of funerals – cutting them down to a three day event, reducing crowds by stipulating who is entitled to be present, and insisting that basic hygiene measures be followed – washing, wearing shoes and clean clothes, and sleeping under mosquito nets, then the less of a public health risk these events would be (Marsland 2014).

Public health professionals are familiar with the use of the law as a tool to promote health and prevent disease. There are sanitation regulations, reportable diseases, health and safety laws. These are not always only about public health. During the colonial period public health regulations were used to justify racial segregation. In Dar es Salaam, the mile long road *Nazi Mmoja* that separates off the African-inhabited Kariakoo from the downtown business area inhabited by East African

Asians, and the wealthy suburbs which were the domain of the white colonial officers and settlers, was originally intended as a *cordon sanitaire* to stop the African population from infecting the white population with diseases such as malaria, and by a criminalized 'underclass' of young African men (Burton 2005).<sup>6</sup>

In postcolonial Tanzania there are the annual health inspections known as *Operation Safi* (*safi* means 'clean' in Kiswahili). Villages are toured by health officers and infringements are met with fines. The inspection is countered by small acts which signify the irrelevance of such exercises – such as boiling water and putting it in a bottle solely to serve the inspector just on that one day of the year. The bylaws dealing with the 'misleading' traditions of the Nykayusa could easily be seen as falling into the category of a disciplining postcolonial public health law.

I was not however convinced that the bylaws were a straightforward instance of public health law, or would even be very effective as a tool to prevent the spread of infectious disease. There seemed to be more efficient ways of achieving that goal. For example, whilst the stipulation that everyone should sleep under a mosquito net at funerals, certainly engaged with a key message that was being promoted vigorously by the National Malaria Control Programme from the late 1990s onwards, it was no more than a partial measure. Most nights of the year, people do not sleep at funerals, and yet, the bylaws failed to consider everyday use of mosquito nets. Often in households that own just one net, the male head of the household would sleep in the only bed with a mosquito net, and his wife and children – the members of the family most vulnerable to severe malaria – would usually sleep without a net together on a mat on the floor. Surely, if the DMO was serious about controlling malaria, he would consider how the most vulnerable members of the population slept at home, not only how they sleep on special occasions? This did not seem to be the case: instead the focus was clearly on the "irrational" and traditional behaviour of the local population at funerals.

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<sup>6</sup> For more on public health and colonial segregation see Curtin 1992, Frenkel and Western 1988, and Goerg 1998.

Blaming the spread of disease on tradition and superstition is a common phenomena in public health and conveniently obscures structural reasons for the spread of disease (Yoder 1997). Examples include the absence of clean water in many parts of Kyela District, and the high water table which made it difficult for people to build latrines that do not collapse, or the apathy in giving out public health messages, perhaps best exemplified by the boxes of booklets about HIV that languished for months in an office at the District Hospital in seeming disregard of the fact that the District faced one of the highest rates of HIV in the country. A focus on superstition also serves to distinguish differences in social status and expertise (Pigg 1996). Many medical professionals in Kyela District saw the crowds at funerals as ‘unsanitary subjects’, and blamed them for the diseases from which they suffered (Briggs and Briggs 2003). On the face of it the rationale behind the bylaws has much in common with colonial public health in that it gains its authority from its own representation of an African population as “backward”.

However, to understand these bylaws as some kind of postcolonial control which seeks to draw colonial-style distinctions between the “civilized” and the “backward” or between the government and the governed is too simplistic. The ‘experts’ and ‘leaders’ pushing forward the bylaws were also Nyakyusa – and whilst their status might have led them to wish to distance and differentiate themselves from the majority of the population of peasant farmers in Kyela District, to some extent they would also be expected to participate in the very practices that they criticized. It was not only the more elite members of the community who wished to see these traditions disappear. The DMO made it clear to me that the consultation exercise had revealed strong opinions about tradition in the District. He told me that people did not wish to stop at supporting bylaws that were concerned with the spread of infectious diseases – in fact he said that the Ward Development Committees were ‘very aggressive’ in their desire to add to the list of undesirable traditions. His observation can be backed up by my own numerous interviews and conversations between 2000 and 2009 which almost reproduced word for word strong objections against ‘traditions’ which were ‘bad for development’. It is worth noting at this point, that magical harm is associated with an anti-development stance.

The Ward Development Committees added bylaws that were less clearly related to infectious disease control. They banned certain 'feasts' that punctuate the life cycle – *ukupanja ubufyele* – the food cooked for a mother after her first baby is born; *ipijilo* and *kande* – food cooked on the day of a burial and on the days of mourning thereafter; *nendengepo* and *twangalepo* – feasts prepared at inheritance, when a woman returns from 'resting' with her parents to her husband's home – either after a conflict, or his death; and *ukujola imindu* the food given to the wives of a dead man's brothers after they have swept the burial ground. The only feasts that are not included in the bylaws are those that are concerned with marriage and weddings. All of these meals involved obligatory gift exchanges between classes of relatives, neighbours and friends, and it is argued that they place an unnecessary burden of expectation on the poor. It was also stipulated that young men should be able to build themselves brick houses, before building one for their fathers; and corrections were made to traditions that acted to exclude and dispossess widows of their own and their husband's property. These additions seemed at first to have more to do with economy or what is commonly referred to as 'development' (*maendeleo*) in Tanzania, than they had anything to do with public health.

Just to confuse matters, it seemed that higher up the political ladder, legislating *against* tradition, was indeed unpopular. I had expected this from the majority of people in Kyela – not from the Regional Office and Ministries. Higher level officials seemed instead to share my initial romanticizing of the sharing of feasts and exchange of gifts as somehow 'community building' – developing a sense of '*umoja*' (unity) as the District Law Officer suggested in an interview in 2009. In 2002, I heard that the Regional Commissioner (RC) had not approved the bylaws, and that they had stalled somewhere in the parliament in Dodoma, but I was assured by local leaders at the time that they had eventually been signed, and were now fully in operation. The DMO had then explained to me the RC's objection in terms of the difference between physicians and politicians – he told me that 'you would have to be a doctor to understand that these traditions are bad, and they are good for politicians – when they go to funerals it is a venue – a good venue – they can talk

about many issues when they go there to sympathise – it is very political there.’ So, I was not completely surprised to learn when I returned in 2009 and discussed the bylaws with the District law officer (*bwana sheria*) that the bylaws had *never been passed*. They had been ‘sent back’ because, as she told me, ‘it is an African tradition for people to gather and offer comfort and support at a funeral, and to ban this is a very bad thing to do’. She told me that the District Court was powerless to implement the bylaws, they were not able to impose fines – if someone ‘broke’ the bylaws, nothing could be done. And yet, there seemed to be very little awareness of this ‘fact’, that there really were *no* bylaws against the ‘misleading traditions of the Nyakyusa’ at all. Indeed, the vast majority of people who I knew were operating on the understanding that the bylaws were official and firmly established. Perhaps the only hint was that although there was a lot of talk about how necessary the bylaws were, and although their “existence” had brought about certain changes to funerals, I never succeeding in tracking down an actual case where a person had been fined for infringing them. I heard of cases like this, but once I followed them, inevitably they disappeared into nothing.

To summarize, these bylaws – designed to stop certain traditions were initially designed as a public health measure to prevent the spread of infectious disease. However, they did not seem to be fit for purpose – there are more effective ways of controlling disease than changing the shape of funerals. One could take from this that the bylaws, are about more than controlling disease – perhaps they are about controlling and regulating a population, or an exercise in victim-blaming. But all of these explanations and analyses imply a top-down intervention, and it is clear that those at the very top did not wish to have anything to do with changing or destroying Nyakyusa tradition. Instead, as we will see, the agenda was being set ‘lower down’ by community leaders, economically-ambitious young men, and traditional healers. What was it that they wanted to change that was not immediately visible to myself, or to the national government?

### **Indigenous law and witchcraft**



The first clue to the popularity of the bylaws came from members of the Society for Traditional Healers, who to my surprise were strongly in favour of the bylaws: they told me, the traditions of the Nyakyusa were “very bad indeed”. Somehow I had expected traditional healers to be in favour of tradition (Marsland 2007). They slowly persuaded me however, that feasting, and the exchange of gifts was not always the source of unity, reciprocity and mutual support that I had imagined.

It took me a long time to appreciate the potentially negative side of all the feasts and reciprocal relationships based on giving. Conventionally reciprocity is considered to be a positive thing. Mauss classically demonstrated in 1923 how contracts and relationships are made by gifts that are given and returned, and this is echoed by Monica Wilson who described ‘the enjoyment of good company’ and the ‘mutual aid and sympathy’ that come from ‘eating and drinking together’ in Nyakyusa villages. She argued that the giving of feasts ‘tends to enhance the solidarity of kin groups and villages’ (1951a: 71). Giving ‘makes’ and repairs relationships. Initially it seemed odd to me that this kind of giving should be so strongly discouraged.

I encountered two main criticisms of these feasts. The first is that they are expensive and a waste of money – if not an opportunity for parasitism of the greedy who wish to free-load resources that could better be used for a household’s ‘development’ (school fees, building a brick house, investment in small business or agricultural inputs). The second resonates with less idealistic views of the gift in the anthropological literature (Mauss 1924, Bourdieu 1997, Derrida 1992, Schrift 1997), which see a darker side to gift relations – a poison, a violence, an obligation that cannot be met, a relation based on inequality, an impossibility. In this view of gift exchange, reciprocity can be dangerous.

What drives many people in Kyela to take part in practices that they themselves view as ‘excessive’ consumption? Perhaps here, in the context of the theme of this book, we can remind ourselves that for anthropologists reciprocity (contract and exchange) can be included under the rubric of law (Malinowski 1926 cited in Nader 2002: 85 and Merry 2006: 101). Furthermore, if reciprocity can be understood as

within the domain of law, then a failure to respect its rule can presumably be punished. And indeed, according to popular opinion in Kyela it is. Marcel Mauss drew our attention to the double meaning of the gift as both gift and poison. The bond that it creates

‘between master and servant, creditor and debtor is a magical and ambiguous thing. It is at the same time good and dangerous; it is thrown at the feet of the contracting party in a gesture that is at the same time one of confidence and one of prudence, of distrust and defiance’ (1997 [1924]: 30).

The gifts given and received at funerals are presented in this spirit (even if the embodied practice of giving and receiving is carried out with grace.) If the amount of food given towards a feast does not translate into a satisfying meal for those who receive it, guests may complain among themselves, and for the Nyakyusa this is a very dangerous moment indeed. The danger is increased by the intimacy of the kinship group. Marshal Sahlins (2013) has written of the “mutuality of being” that brings family members together. The conditions of “intimacy and trust” (Geschiere 2013) set up the conditions of vulnerability that witchcraft requires. In Kyela, the complaints of kin, supported by neighbours, ‘murmuring’ as Monica Wilson described it, about an inadequate return for a funeral gift – can constitute a form of witchcraft known as *imbepo sya bandu* – the ‘breath of men’ (Wilson 1951a), or the ‘words of the people’ as one of my informants put it.<sup>7</sup> Such displeasure and murmuring can make a person ill, and if they do not recognize that its source is an insult to certain members of the community and take steps to remedy their error, then the illness will eventually lead to death. As Mauss put it a gift “is always liable to turn against one of them if he would fail to honor the law” (1997 [1924]: 30).

Almost all of the ‘misleading traditions’ listed in the bylaws are those that, if not observed, can lead to anger, and potentially *imbepo sya bandu*. These words of magical harm can be construed as a form of indigenous law, which could be viewed

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<sup>7</sup> Favret-Saada 1980, Tambiah 1968, and West 2007 have all written about the power of words to cause magical harm.

as a kind of unofficial ‘community court’ (*makama ya jamii*),<sup>8</sup> in which antisocial behaviour is ‘discussed’ and *imbepo sya bandu* are used to “bring legitimate punishment on evil doers” (Wilson 1951a: 102). As one old man confided in me: “if someone has done something bad that’s it. He will go. He will leave.”

These days this indigenous law exists in an uneasy parallel with state law. It operates in a space where the state cannot – in the realm of sociability and obligation, and the punishment that it metes out – magical harm is one that the state can neither tolerate, or even recognize as real. Whilst the *mafumu* (headmen), *abamanga* (defenders) and other influential men with “ability” would have once managed this system on the behalf of a chief, since independence the traditional roles of chief and headmen have been abolished, and all that is left are the descendants of headmen and defenders who are rumoured to still hold this power. Their status is ambiguous. On the one hand, they are feared and respected for upholding customary values on the one hand, on the other they are hated for going too far in an unregulated and unofficial magical sphere of indigenous law. One can no longer say, as Monica Wilson once wrote that a “clear distinction is made by the Nyakyusa between the legal and illegal use of power derived from pythons” (ibid). These days many people say that *imbepo sya bandu* has gone too far. To these critics this indigenous law has become twisted – it allows greedy witches, hungry for food and beer, to use their strength to force others to feed them at times when they are at their most vulnerable (when they are bereaved). In 2002, the general opinion seemed to be that there had been a veritable explosion of deaths related to unsatisfied and unsated witches after funeral feasts. ‘Too many people are dying’ one informant after another told me – and there were even cases of mini-epidemics of deaths caused by *imbepo sya bandu* in some villages. *Imbepo sya bandu* and funeral feasts had become a public health problem.

The reason why the bylaws are so popular in Kyela is because people hope that they will reduce the extent and power of *imbepo sya bandu*. By making antisocial acts of

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<sup>8</sup> Conversation with Yuda Maninga and Nico, 15<sup>th</sup> June 2009.

sociability such as bringing gifts and taking part in feasts at funerals illegal, they create an environment in which complaints and murmurings are no longer sanctioned, and thus limit the remit of this particular form of indigenous law which is seen to have gone too far. Indeed, by the time of my return to the field in 2009, people were saying that witchcraft – or *imbepo* – was not so prevalent as it had once been.

The bylaws against the ‘misleading traditions of the Nyakyusa’ then, seem to be an ingenious kind of anti-witchcraft measure. The ‘official’ legal stance in the Witchcraft Ordinance inherited from the colonial period is that witchcraft is nonexistent. The bylaws themselves do not reference witchcraft or *imbepo sya bandu* at all. Instead they allude to “misleading tradition”. It seems fitting then, that the bylaws do not officially exist. And just like witchcraft – which is invisible or transparent – the bylaws do not make their purpose visible in their written form, and yet ‘everyone’ knows that combating this particular form of witchcraft is part of their purpose.

### **Conclusion**

To conclude, the bylaws against the “misleading traditions of the Nyakyusa” solve a problem for both the state and the victims of witchcraft. The state is damned if it makes use of the law to intervene against witchcraft, and it is damned if it does not. If it chooses to make visible the harm caused when people accuse individuals of witchcraft then it fails to protect the victims of witchcraft. If it makes the harm caused by witches to their victims visible, by attempting to prosecute witches, the inevitable failure to reduce witchcraft will undermine the public’s perception of its strength. If it ignores the problem, then its citizens will perceive that the state does not care for their well being. The difficulty here is that two incompatible visions of reality are being brought to bear on a problem. At the risk of oversimplifying, we can say that for the state, witchcraft cannot exist, for the citizen it does.

The bylaws solve this problem because like they operate at different ontological levels. On the surface they are a tool of public health. They are a straightforward intervention in the unhygienic practices that take place at funerals. At this level the

magical harm caused by witchcraft is not visible. From the point of view of the local population however, they are more than that. The reference to the “misleading traditions” that take place at funerals and other feasts makes very visible the fact that they are an intervention against a particular form of magical harm – *imbepo sya bandu*. The bylaws do not persecute those who speak these words of harm, and they do not persecute those who accuse others of *imbepo sya bandu*. Instead they target practices carried out by the whole community – and by doing so make it almost impossible for this particular form of magical harm to take place.

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