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CLANSHIP AND CONTRACT IN NORTHERN SOMALILAND¹

I. M. LEWIS

IN this article I analyse Somali political institutions in terms of clanship (*tol*) and contract (*heer*). By the latter term I mean the explicit contracts, or treaties of government, which are the foundation of all formal political units among the northern pastoral Somali. In conclusion, I examine the significance of Somali political structure in the light of Maine's celebrated dictum that the 'movement of the progressive societies has hitherto been a movement from Status to Contract'.

I

As I have already given a preliminary description of the Somali lineage system² I sum up here only those features which are relevant to the present discussion. Clanship among the northern pastoral nomads is all-pervasive. Most social activities are contingent upon it; in the veneration of local lineage saints Islam is tied to it, and politics stem from it.

Everyone is born into a patrilineage, indeed into a system of highly segmented patrilineal descent-groups which ultimately divide the total Somali population of some 3 million people into seven great 'clan-families'. The seven 'clan-families' are the Dir, the Ishaaq, the Daarood, the Hawiye, the 'Pre-Hawiye'; the Digil, and the Rahanwiin.³ The two last, settled as mainly sedentary cultivators in southern Somalia, have a mixed clan constitution very different from that of the Northern Somali pastoralists. They have a hierarchical political structure with ranked offices and considerable degree of administrative stratification. This is entirely lacking among the northern nomads who have generally no positions of instituted authority. The northern pastoralists, who are the concern of this paper, differ again from the cultivating Digil and Rahanwiin of the south in that genealogical fictions are rare in their lineage structure. Men may sometimes be attached to agnatic groups other than their own, but only rarely are they fully adopted into a foreign lineage.

The clan-families are the largest agnatic units. They range in size from the Dir, some half million in number⁴ and widely scattered today, with little or no sense of corporate identity, to the Daarood, over a million strong. The latter also extend over a great area; from British Somaliland and northern Somalia through the Ethiopian Ogaden, then, interrupted by the Hawiye, Rahanwiin, and Digil, they finally extend

¹ This paper is based on fieldwork carried out in the Somalilands between 1955 and 1957 under the auspices of the Colonial Social Science Research Council, London, to whose generosity I am greatly indebted. I acknowledge with gratitude the advice of my friend Mr. B. W. Andrzejewski of the School of Oriental and African Studies, London, with whom I have discussed many of the linguistic points. Colleagues at the University College of Rhodesia and Nyasaland have also supplied useful criticism.

² See my *The Somali Lineage System and the Total Genealogy*, Hargeisa (British Somaliland), and Crown Agents for Colonies, London, 1957.

³ In the orthography adopted in this paper, long vowels are indicated by doubling, as, e.g. *aa*, *oo*, &c. The Arabic and Cushitic aspirate *h* is represented by *h*; the voiced pharyngeal fricative by ' ; the glottal stop by ' ; and the Cushitic post-alveolar plosive by *d*.

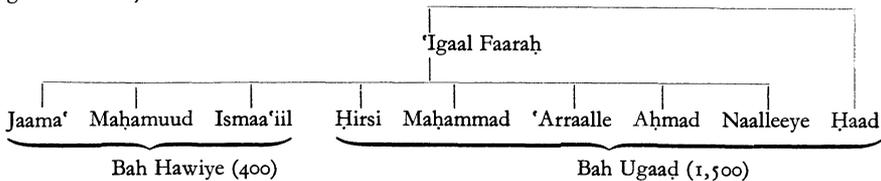
⁴ The Ishaaq are included in this estimate.

Levels of Segmentation

Daarood	Ismaa'iil	<i>Clan-family</i>
Kablallah	Daarood	
Koombe	Kablallah	
Harti	Koombe	
Si'iid	Harti (Dulbahante) ¹	<i>Clan</i>
Muuse	Si'iid	
'Abdalla	Muuse	
Habarwaa	'Abdalla	
Shirshorreh	Habarwaa	
Faarah	Shirshorreh (Faarah Garaad)	
Ahmad	Faarah	
Aadan	Ahmad	
Hagar	Aadan	<i>Primary lineage-group</i>
Faarah	Hagar	
'Igaal	Faarah	
Mahammad	'Igaal ²	<i>Dia-paying group</i>
'Ali Mahammad		
Aadan	'Ali	
Nuur	Aadan	
'Abdi	Nuur	<i>Individual elder</i>

¹ The Dulbahante clan comprises some 15 primary lineage-groups and some 50 Dia-paying groups. In a few cases, small primary lineage-groups which are not highly segmented act as Dia-paying groups. This is true of, e.g. the Hayaag, Yahya, Haamud Ugaas, &c.

² From 'Igaal Faarah's eight sons stem the lineages shown. They are divided into two uterine groups, the Bah Hawiye and Bah Ugaad, and the latter are joined by a very small group, the Reer Haad Faarah, descended from 'Igaal's brother, Haad.



The first three descendants of 'Igaal Faarah by the same mother form one Dia-paying group. The remaining five from another wife comprise three Dia-paying groups. These are the Hirsi 'Igaal (400); Mahammad 'Igaal (600); and the 'Arraalle 'Igaal with the Haad Faarah (400). The Ahmad 'Igaal and Naalleeye 'Igaal, together only some 50 strong, act jointly with all the Bah Ugaad but are not particularly identified with any group within it. The population figures shown are only approximate estimates and refer solely to male strength.

across the borders of Somalia into the Northern Province of Kenya. Although thus often widely distributed, and with no central political organization to enable them to act as firm political units, the majority of the clan-families have nevertheless a strong sense of identity. This is particularly evident in the structure of modern political movements in Somalia.¹ To the eponym of his clan-family a man counts from twenty to thirty ancestors according to the degree of segmentation within it.²

Within the clan-family the largest most clearly defined units are 'clans'. The main clans in the British Protectorate are the 'Iise (55,000) and the Gadabuursi (45,000), both Dir; the Habar Awal (130,000), Arab (20,000),³ 'Idagalle (40,000), Habar Yuunis (130,000), and Habar Tol Ja'lo (100,000), all Ishaaq but regarded by other Somali as Dir; and the Dulbahante (100,000) and the Warsangeli (20,000), both Daarood. Although the clan-family can never act as a single political unit, the clan often does. Most, but not all clans, have titular heads, 'Sultans' (called variously *Suldaan*, *Boqor*, *Garaad*, *Ugaas*, &c.). The Sultan is merely a *primus inter pares* in the *ad hoc* councils formed by the elders of a clan in which every adult male has the right to voice his opinion. He has no formal court and generally no constitutional authority. A Sultan has, of course, a certain prestige, especially in negotiations between clans and as a figurehead for clan solidarity. He is often spoken of with reverence and respect but is not always accorded these in practice. Through personal powers of leadership, Sultans have sometimes succeeded in investing their rather empty titles with a degree of power. But this does not lead to the creation of a stable office of clan leadership where succeeding holders of the title enjoy the same powers and authority as their predecessors.

To his clan ancestor, a man may count between fifteen and twenty generations; and within his clan the next most sharply-defined unit is a large, highly segmented lineage which it is convenient to call a 'primary lineage-group'. This is the group of which, within his clan, a person normally describes himself as a member. In some cases, groups of primary lineages have sufficient unity within the clan to form larger genealogical units which may be called sub-clans. But this does not apply in every case. The primary lineage-group has no formal office of leadership and is again controlled by the elders of its constituent lineages through informal councils (*shir*). With size and strength the genealogical span varies from some six to ten generations. This lineage is generally exogamous and outside it affinal links are forged to supplement the attenuated ties of extended agnation. Feud and stock-theft most characteristically take place between primary lineages, and fission into new equivalent units is marked by a cessation of the marriage prohibitions (which are not ritual) among their constituent units.

Finally, within his primary lineage-group a man acts as a member of a Dia-paying group. This is a collection of small lineage segments of from four to eight generations' span and containing from a few hundred to a few thousand men. In the British Protectorate alone there were in 1958 over 360 Dia-paying groups. This lineage, or alliance of lineage segments, has again no formal leader in the traditional organization.

¹ See *Africa*, July 1958, pp. 244-61.

² At all levels of segmentation there is a general correlation between the size and strength of a lineage-group and its genealogical span.

³ This is a Somali clan, known officially as 'Arap' to distinguish it from 'Arab (an Arabian)', which expatriate officials often find difficulty in pronouncing.

During their short period of administration (1875-85) of the Somali coast, however, the Egyptians adopted, if they did not originate, a system of indirect rule through lineage headmen (*'aaqils*). But this apparently amounted to little more than the recognition of official spokesmen for the different lineage-groups. The *'aaqils* (Akils) system¹ has been continued under modern administration in all the Somali territories, and elders have been selected to act as stipended headmen. In conformity with recent developments in British colonial policy, some of these representatives have been appointed in the British Protectorate as 'Local Authorities', with powers defined under the Local Authorities Ordinance of 1950. Their effective authority, however, remains more theoretical than real, for, in practice, they are rarely able to act as leaders of groups except at Government instigation and with direct Government backing. The principle followed is to appoint at least one stipended Akil or Local Authority for each large Dia-paying group. The system is useful, but Akils and Local Authorities are in effect little more than go-betweens between Government and people. They usually spend much of their time in District headquarters watching over the interests of their kinsmen, and negotiating the settlement of outstanding blood-debts with the elders of other Dia-paying groups and with the Administration. Their assistance is frequently required in investigating cases of homicide and stock-theft in which their groups are involved, and they are expected to bring defaulters to justice, and generally to act as the spokesmen of Government among their kinsmen.

The name 'Dia-paying group' refers to the solidarity of the group's members in collective payment of blood-wealth (Somali, *mag*; Ar. d-y-t).² Men of the same group share a common responsibility in the settlement of blood-debts incurred by one of their number and in receiving compensation when offences are committed against them. Although the title 'Dia-paying group' suggests a greater rigidity than the group in fact possesses, it is retained here for convenience. In a system of shifting agnatic attachment and allegiance, these are the most stable political units. Since their members are bound by specific contractual obligations in addition to the implicit bonds of agnation, there may be said to be a rule of law within them. They are, in fact, the basic jural and political units of Somali society. In general, homicide and other delicts are settled between lineages of every order of segmentation by payment of compensation, particularly under administrative pressure or, failing that, by direct recourse to self-help, usually in the form of the blood-feud. I shall have more to say later of the variations in compensation with structural distance and other factors. At this stage it is sufficient to record that generally a man's life is worth a hundred camels and a woman's fifty. The Dia-paying group is in practice the minimum unit capable of meeting such responsibilities independently.

II

The orders of political action thus distinguished suggest a more stable hierarchy of segmentation than in fact exists. Like the classical lineage systems of the Nuer³

¹ The Indian loan-word *jawaabdaar* which was current during the administration of the coast by the Indian Government (1885-98) is still sometimes used today. *Jawaab* means an answer, and *Jawaabdaar* someone who answers for, or is responsible for.

² The Arabic expression is rarely used in Northern Somaliland, but the Government has adopted it in naming the Dia-paying groups.

³ E. E. Evans-Pritchard, *The Nuer*, London, Oxford University Press, 1940.

and Tallensi,¹ what is most characteristic of the Somali system is its relativity and its flexibility. Within his clan-family a man belongs to a wide range of segments of different orders. But the points of unity and division at which political solidarity emerges most frequently are those of clan, primary lineage-group, and Dia-paying group. In conformity with this shifting system of political attachment there are no words in Somali to designate specific orders of segmentation. The four terms *qabiil*,² *qolo*, *jilib*,³ and *reer*, which are commonly used relatively to refer to different orders of grouping, can legitimately all be applied to the same genealogical and political unit in different contexts.

Generally speaking, apart from its restricted use to designate the descendants of a living man, *reer* means lineage in an extended sense. Thus, the Dulbahante clan is a lineage (*reer*) of the Daarood clan-family, and smaller units within the Dulbahante are *reers* of the Dulbahante clan, and so on down to the minimal *reer* which consists of a man and his children. The use of the Arabic loan-word *qabiil* is generally restricted to the larger units such as clans, sub-clans, and primary lineage-groups. But here again its use is entirely relative. What is referred to as a *qabiil*, in relation to a smaller unit, is spoken of as a *qolo* or *jilib* in relation to a larger group. If, for example, a man of the Dulbahante, thinking of his relations with other Dulbahante, describes his *qabiil* as Dulbahante, his *qolo* as Hagar Aadan (a primary lineage-group), and his *jilib* as a segment of the Hagar Aadan, he may in another situation refer to Daarood as his *qabiil*, his *qolo* as Harti (a genealogical sub-group of clans within the Daarood), and his *jilib* as Dulbahante.⁴ Thus, none of these terms can be assigned any precise and fixed significance in a hierarchy of segmentation based on agnatic connexion. Nor, indeed, is there any need for an abstract terminology of segmentation: all political relations between agnates can be described exactly in terms of descent from a specific, named ancestor. The word *reer*, prefixed to an eponym, indicates all his agnatic descendants. And this is the formula most generally used in designating lineages by reference to their founding ancestors.

None of these are territorial units, nor are they all defined by permanent corporate rights in grazing or water. Ecological forces, particularly the general scarcity of water and grazing, impel irregular movement and militate against the formation of definite ties to locality. There is no mystical attachment to the land, which, to the nomad, is mainly of interest in furnishing grazing. For rain and the grass which springs up after it are not the results of man's labours but of God's munificence.

In general, all rights—particularly those vague attachments to territory created by customary usage, and those more specific titles to wells where water is scarce and only obtained at considerable expenditure of effort—depend upon the ability of established groups to repel other competitors. The rule that might is right, even under modern administrative conditions, is explicitly formulated and ultimately controls all Somali political relations. At the level of the clan, however, there is a degree of localization such that in normal seasons, in the north at least, most clans have a fairly regular pattern of movement between home-wells in the dry seasons and far-grazing

¹ M. Fortes, *The Dynamics of Clanship among the Tallensi*, London, Oxford University Press, 1945.

² Cf. Arabic, q-b-y-l-t; in Somali *qabiila* also occurs.

³ In distinction to the other terms, all meaning

'group' in a general sense and particularly agnatic group, *jilib* means literally a joint or part, as, e.g., a knee.

⁴ See the genealogy above, p. 275.

in the wet seasons. But even here, such spheres of movement are not defined by strict boundaries and can only be maintained by force when challenged by hostile groups. Within the clan, lineage segments are not distributed as corporate units over the pastures according to the genealogical proximity of their founding ancestors. The idea that they could, or should, be is entirely foreign to Somali thought. Except in time of war, wherever there is grazing and water men and stock congregate, mingle, and interpenetrate in the pastures. But hostilities, which often, but by no means always, relate to competition for water and grazing, cause groups to draw apart. In these circumstances genealogical divisions acquire a transient, geographical reality.

In northern Somali pastoralism there are two basic moving units: the nomadic hamlet which is essentially a sheep- and goat-herding unit, and the camel-camp which contains only camels. This division of stock husbandry is in response to the different water requirements and powers of endurance of sheep and goats on the one hand, and of camels on the other. In the dry seasons, sheep and goats need regular watering every few days and must move within a short radius of wells, while camels, which can subsist on dry pasture without watering for from ten days to a fortnight, have a much wider range of movement from the wells. The nomadic hamlet (*guri*)¹ consists of a group of closely related nuclear families with their flocks, burden camels to transport their collapsible huts and effects, and occasionally a few milch camels. A hamlet may be no more than the domestic group of a man and wife, or wives, and their small children with the livestock necessary for their support. Frequently, however, it consists of several nuclear families of brothers, or of an extended family or, more commonly, of close agnates of the same Dia-paying group.² Only rarely do families whose male heads are not agnates of the same Dia-paying group or of the same primary lineage-group move together as a nomadic hamlet.

Camel-camps (sg. *geelher*) contain the camels of close agnates—almost exclusively of men of the same Dia-paying group—in the charge of boys and youths, whose existence, as herders without huts to shelter them, without means of cooking, and mainly dependent upon camels' milk, is often extremely arduous. The agnatic character of the camel-camp is more marked than that of the nomadic hamlet and relates to joint agnatic rights in camels. For while, like sheep and goats, camels are individually owned, they are pre-eminently regarded as the common stock wealth of a lineage.

In relation to their different needs these two distinct herding units move separately and often quite independently of each other. They tend to be closest together in the wet seasons when stock need no watering and sheep and goats have greater mobility. In the dry seasons, when the grazing movements of the flocks are most restricted, the camel-camps are often far from the nomadic hamlets.

These domestic groups, which are the basic units of movement, have no permanent composition. Their structure changes constantly as men detach their families and flocks from one hamlet and join another, and similar changes take place in the camel-camps. It is important to stress that for every hamlet there is not a corresponding

¹ The word *reer* is also generally applied to a hamlet, referring particularly to its composition as a group of people of the same lineage rather than simply a physical structure of huts arranged within a common fence.

² In a sample of 58 hamlets containing 182 nuclear families the median hamlet contained 2.6 huts and nuclear families. The commonest size is between two and four nuclear families, although in time of war larger hamlets often occur.

camel-camp. A man may move with his family in one hamlet with one group of kin, while his camels move with other kinsmen, but the latter are always, except in exceptional cases, in the charge of close agnates. Where pasturage is sufficient, however, groups of hamlets or of camel-camps congregate to form temporary encampments (*degmo*). In these ephemeral settlements, whose permanence depends very much upon the local abundance of water and grazing, men of the same primary lineage-group usually camp close together. But such transient settlements have no unity as local groups. Nor do their members co-operate because they reside in the same place. Co-operation is governed by agnation, and is invoked in rendering assistance to kinsmen at the arduous watering of camels from deep wells in the dry seasons, and in time of war, when, as I have indicated, lineage-groups tend to assume territorial formations.

From this brief outline of the northern pastoral system it will be evident that there are no firm local groups and no strong ties to locality either through political or ritual values. Agnation and lineage relationships are thus not simply a reflection of territorial relations. Indeed, agnatic kinship as a principle of corporate action has a primacy which it does not possess in other segmentary lineage societies where political relations are territorially defined. In this system of shifting nomadic movements, where kinsmen are often widely deployed in the pastures with their livestock, the lineage system can be seen to provide a flexible security organization in a country which is almost impossible to police effectively.

III

In principle, politics are a function of genealogical proximity. Genealogical distance—the number of ancestors counted apart, as Somali say¹—defines the social relations of one man or group with another. The term for genealogy, *abtirsinyo*,² means literally reckoning of ancestors in the male line, or of agnation. To determine a man's agnatic and political affiliation one asks, 'What is your agnatic kin-group?' (*Tol maad tahay*).³ This question is then followed up by a series of inquiries to reach a lineage unit socially significant to the inquirer. Agnation may either be traced through the smaller units to the larger, or from the larger to the smaller. In the former case one asks, 'Who are your agnates?', and is given in answer some small lineage, such, for example, as Reer Faarah Hagar. Then one says 'And after Hagar?', following the genealogy up. In the reverse direction, once given a larger group such as, say, Daarood, one then asks, 'Of the Daarood who are you?' (*Daarood yaad ka tahay*), receiving, for example, the reply, 'Dulbahante'. The same question is then repeated until the socially significant group is reached. Normally when a person is asked his lineage, for all units are lineages, he gives in reply the lineage structurally equivalent to that of the questioner. Thus, if a man of the Dulbahante clan, while on a visit to a town of the Ishaq clan-family, is asked his lineage he may say 'Dulbahante' or even 'Daarood'. There would be little point in giving in reply to a questioner of another clan or clan-family his minimal political unit, for it would be unknown and not structurally equivalent. When, however, the same question is asked

¹ *Immisaawow yey kala tirsinayaan*, from *awow*, generation or grandfather, and by extension, ancestor.

² From *ab* or *aabbe*, father, *tiri*, to count, and *sii*,

to give.

³ The expression *Qolomaad tahay* is also used, from *qolo*, see above, p. 278.

among the Dulbahante, a man gives his primary lineage-group, for example, Reer Hagar or Barkad. And within the primary lineage-group he gives the minimal political unit, the Dia-paying group.

This procedure illustrates the relativity of affiliation. Agnation is a given element in Somali politics. A man is born into a lineage. In principle he cannot ever completely sever his ties with it, or change his genealogy, which represents his political affiliation and the range of kin towards whom he has obligations and upon whom he depends by the mere fact of agnatic connexion. The concept of agnation (*tol*) centres on all that is binding and absolute. The verb *tol* means to bind or sew together, and Somali ideas of the force of agnation are expressed in sayings such as that 'Agnates are bound together' (*tol waa tolane*). Various proverbs contrast the strength of agnation with that of affinal and matrilineal relationships. Agnation is like iron, like the testicles it cannot be severed or cut off voluntarily, whereas ties through women are compared to those of a rope or the hair which can, if necessary, be broken.¹ A well-known proverb says 'A limb is broken when the advice of agnatic kinsmen is disputed' (*talo tol oo la diidaa tagoog jabay leedahay*). Another often-quoted saying attributed to a man of the Dulbahante who had been offered a gift of horses, the most prized of Somali stock, to deny support to his kinsmen, says 'Of agnates and wealth, I chose (to support) my kin' (*tol iyo fardo, tol baan doortay*).

Tol means, then, agnates in an extended sense, the range varying with the social context. Close agnates within the extended sphere of *tol* are often distinguished as *higto*² or *higaal* and these terms have again the sense of binding and holding together.

Every ancestor is generally a point of bifurcation, and therefore of unity and division in the lineage system, for usually only the names of those who bear several sons, the apical ancestors of opposed descent-groups, are remembered. Frequently uterine cleavages are the basis of fission and fusion in the lineage system. Two or more lineages unite against a stronger collateral group in terms of descent from a real or a putative common mother. This takes place within the framework of agnation and is modelled upon the divisions within the polygynous family following uterine descent.

When action sets at any level, and an ancestor becomes a point of unity or division in the crystallization of political action, the flexible and implicit bonds of agnation are supplemented by contractual treaties. Contract cements and temporarily stabilizes fission and fusion in the lineage system. Generalized agnation is, as it were, particularized by treaty. Somali refer to agnation so supplemented as *tol heerleh*, literally 'agnation (strengthened by) treaty'. The level at which these contractual bonds most frequently operate is that of the relatively stable Dia-paying groups. As will be shown, however, contract is invoked at all levels as occasion demands.

IV

I begin my discussion of the way in which contract is superimposed upon agnation with some consideration of the general notion of Somali contract. The word *heer*,

¹ Thus the expression *hayn iyo hiniin*, literally the cloth worn by women round their limbs and the testicle, means 'relatives through women and agnates'.

² These words are from *hig*, to be near. There is a noun *hig* which means a species of aloe (*Sansevieria abyssinica*), and also the second milking of livestock.

I was not able to discover any connexion between these. *Hig* occurs in the expression *higsiisan*, for a wife's sister or other close agnate married by a man after his wife's death. The expression means 'the one given next'. The sororate, is not now, however, extensively practised.

usually translated 'custom', has more specific meanings.¹ Its closest equivalents are compact, contract, or treaty in an egalitarian sense. Two men or parties are said to be of the same *heer* (*waa is ku heer*)² when their relations are regulated by a common treaty, either specifically entered into by them or inherited from their ancestors and accepted by them. Such compacts can be contracted into and contracted out of, they bind all those concerned. The majority of *heer* agreements relate to collective defence and security and to political cohesion in general. By extension, *heer* means customary procedure founded upon contractual agreement. In its widest sense as, for example, in describing general cultural features of Somali life such as habits of dress or food, custom is usually called '*aado* (cf. Ar. '-a-d-t). But traditionally *heer* is also used in this sense.³

There are several other uses of the word which serve to elucidate its meaning. The rope placed over the top of the nomadic hut (*aqal*) to give it stability, and either fastened to the ground on each side or secured by stones, is called *heer*. Similarly the verbal form means 'to surround' as, for example, in the phrase 'we are surrounded by an enemy party' (*'ol baa innagu heeran*). Thus the implication of binding, fastening, and of securing, underlies each use. And in this respect its meaning is similar to that of the word *tol*. Both notions have the same implications of security and cohesion. The difference is that in the one case solidarity derives from agnatic status in the lineage system, and in the other from an egalitarian contract.

Heer, then, denotes a body of explicitly formulated obligations, rights, and duties. It binds people of the same treaty together in relation to internal delicts and defines their collective responsibility in external relations with other similar groups. The most important delicts are those of homicide (*dil*), wounding (*qoon*), and insult (*dallil*). The latter embraces a wide range of infringements of rights, from adultery to defamation. The corresponding compensations are *mag* (or the Ar. d-y-t), *qoomaal*, and *haal* (cf. Ar. h-a-l). The Arabic expression *haq* is used specifically of wound compensation (*qoomaal*) and of right, justice, and equity in general.

Compensation for physical injuries and homicide is based on the Shariah, being assessed by sheikhs and Government *Qaaddis* (Kadis) according to standard Shāfi'ite authorities.⁴ The Shariah tariffs apply generally, with local variations,⁵ and the

¹ The agnatic framework of nomadic Somali society, if not fully understood in its segmentary implications, has long been appreciated. One of the earliest writers to stress the lineage character was G. Ciarrarra, *Camera dei Deputati Doce XXXVIII, Relazione sulla Somalia Italiana*, allegato B., Rome, 1911. Much has similarly been written on Somali 'custom'. The most notable contributions are E. Cerulli, 'Il diritto consuetudinario della Somalia Italiana settentrionale', *Bollettino della Società Africana d'Italia*, anno xxxviii, Naples, 1919; M. Colucci, *Principi di diritto consuetudinario della Somalia Italiana meridionale*, Florence, 1924; A. C. A. Wright, 'The Interaction of Various Systems of Law and Custom in British Somaliland and their Relation with Social Life', *Journal of the East African Natural History Society*, xvii, 1-2, 1943, pp. 66-102. The first indication, however, as far as I am aware, in the literature of the true nature of Somali *heer* is a paper by J. G. S.

Drysdale of the Protectorate Administration. ('Some Aspects of Somali rural society today', *Somaliland Journal*, Hargeisa [British Somaliland], i, 2, 1955.) Most writers, and there have been many, have failed to appreciate the fundamentally contractual nature of *heer* and its interaction with agnation.

² 'There is an agreement between us', *Heer baa innagu deheeya*, is a common way of stating this position.

³ The Arabic loan-word *qaynuun* (Ar. q-a-n-w-n) is used generally for custom or law, especially civil law, as applied in a Government court.

⁴ The most often used work is Al-Nawawii's *Minhaaj at-Taalibiin*; for other Shariah sources see *Bulletin of the School of Oriental and African Studies*, 1956, xviii/1, p. 150.

⁵ Although the rates most generally current today in Northern Somaliland are for the homicide of a man 100 camels and for a woman 50 camels (or

specific compensation rates embodied in the treaties of different groups are based upon them.

As has been indicated, settlement can be effected by payment of compensation between lineages of every order of segmentation, either when the parties themselves wish to make peace or when they are forced to do so by Government intervention. The sanctions which control the payment of compensation, however, differ according to whether the lineages concerned (all delicts involve corporate groups¹)—are or are not bound by a common treaty. Leaving aside for the moment the effect of administrative intervention, unsettled disputes are taken before an *ad hoc* panel of arbitrators (*guddi*).² Between groups not bound by a common contract this informal court of arbitration has no means of enforcing its findings (*gar*). Settlement ultimately depends upon the willingness of the lineages concerned to make peace, as also to no small degree on the skill of the arbitrators, who are chosen for their knowledge of custom (*heer*) and their ability as mediators. Within the confines of contract, however, the solidarity and common treaty obligations of those concerned oblige the disputants to settle. The elders of a Dia-paying group may order a member who neglects or refuses to fulfil his duties to be tied to a tree. Livestock belonging to the culprit are then brought before him and slaughtered by young men of the group until he agrees to meet his obligations as defined by contract. The final sanction invoked is expulsion from the group. Where, within a contractual group, a man refuses to settle and is supported by his close kinsmen the group usually splits, one party seceding from the contract and often paying money to do so.³ But it is the enforcement of sanctions within the Dia-paying group which marks it off as a distinct political and jural unit.

The procedure briefly described above, with self-help remaining ultimately the final arbiter, persists within the modern judicial organization. I write now of the British Protectorate. Here cases of assault or homicide which come to the notice of the Government are examined in the first place according to the terms of the Indian Penal Code.⁴ If, under this code, a prosecution for homicide results in a conviction and the accused is hanged or sentenced to imprisonment for a period in excess of ten years, no blood-wealth is awarded or usually claimed. But if, as often happens, mainly through the difficulty in obtaining evidence from kinsmen, the case for the Crown fails, blood-compensation is claimed by the injured group. The case then becomes what the Administration rightly terms a 'Political Case', since it concerns not individuals but lineage-groups. 'Political Cases' are the bane of District Officers' lives and much time is spent in attempting to settle them. Those claiming compensation may require members of the accused group chosen for their probity and good

their equivalent in other currency), in parts of French Somaliland and Northern Somalia local agreements have established lower values of blood-wealth. An additional amount may be added to the basic rate where an important and generally well-known and respected man has been killed, or where a murder disturbs a long-standing pact of friendship, bringing dishonour to the offending group.

¹ Except between kinsmen of the nuclear or extended family.

² Those appointed as arbitrators are known as *heerbeeg*, lit. those expert in custom (*heer*); *gar* means

award, decision, justice, understanding, &c. The Arabic *hukm* is generally used rather of sanctioned judgement as administered by a *qaaddi*'s or other government court.

³ Thus, for example, when the Reer Kooshin and the Reer Mahamuud 'Ali (two Dulbahante lineages) renounced their treaty, the seceding Reer Mahamuud 'Ali paid the Reer Kooshin a sum of over £70 sterling.

⁴ Applied under the terms of the Somaliland Principal Order in Council, 1929.

character to swear fifty oaths to the effect that no member of their lineage is implicated in the case. The latter are then left with the choice either of swearing the oaths, paying the blood-wealth required, or of returning the oaths to their adversaries. If the latter testify by fifty oaths to the truth of their allegation they are entitled to payment.¹ Sometimes the swearing of the divorce oath is similarly employed.

In cases of assault tried by the Indian Penal Code, when a fine is imposed by the court a proportion may be paid as compensation to the aggrieved party. The latter are then able to file a suit claiming additional compensation in a Subordinate Court. Here the plaintiff has resort first to a Government *Qaaddi's* Court, where the extent of the damages is assessed according to the Shariah.² A claim for this amount is then laid before a Subordinate Court, but the judges are not bound to adhere strictly to the *qaaddi's* Shariah evaluation. They often tend to reduce the amount of the award if the damages assessed relate to technical rather than to serious injuries. Here the Court Assessors are guided by their knowledge of Somali custom with which they temper the strict interpretation of the Shariah. In cases of theft, where the thief is apprehended or a charge of theft proved, the provisions of the Indian Penal Code are also generally followed.³ Even when a conviction is obtained, the plaintiff usually seeks restitution by filing a civil case against the culprit and against his lineage-group, particularly where livestock are involved.

V

The foreign courts, however strange their procedures, are now part and parcel of the nomadic life and accepted as such. Government has in fact become a *tertium quid* in the system of relations between rival parties. Within this system contractual agreements for offence and defence remain basic principles in the organization of Somali politics. They are typified in the structure of the Dia-paying groups. As has been indicated, individual Dia-paying groups vary enormously in the details of their arrangements for paying blood-compensation collectively. Usually the full blood-price is divided into two portions. The larger (*mag deer*)⁴ is paid and received by all the male members of the group as a whole.⁵ The smaller (*jiffo*), rated frequently at

¹ This procedure is the local version of the well-known Shafi'i *qasaama*. See J. N. D. Anderson, *Islamic Law in Africa*, H.M.S.O., 1954, p. 372.

² The injuries have to be examined by a Government doctor who sends the claimant to a *qaaddi* with a note of their nature. The latter then assess damages, referring to Shafi'i textbooks.

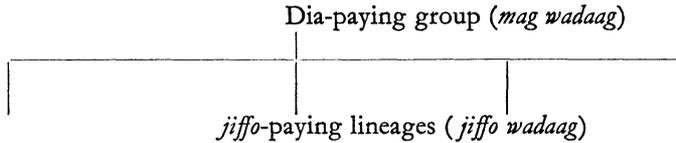
³ About 1920, when the normal Somali practice of requiring an apprehended thief to return the article stolen (sometimes twice over) proved ineffective, the Government was asked to apply the Indian Penal Code.

⁴ Lit. the greater blood-wealth. In the north-west the expression *qubane* is current.

⁵ Women are not fully members of the Dia-paying groups of their husbands. The responsibility for their safety and for injuries committed by them lies partly with their own agnates. To some extent the practice varies from clan-family to clan-family. Among the Ishaq of the Protectorate generally, if a married woman is killed, whether or not she has borne chil-

dren, her agnatic kin and her husband's agnates divide her blood-wealth equally between them. Similarly, where a married woman kills someone, her husband's agnates and her own agnates contribute equally to the blood-wealth due. The husband is, however, with his kin, solely responsible for small delicts committed by his wife. Among the Daarood and 'Iise, on the other hand, a married woman's agnates are solely responsible when she kills someone, and reciprocally receive her blood-wealth if she is killed. But if a murdered woman leaves behind children, these are entitled to share in her blood-wealth with her own agnates. In small amounts of compensation for which a married woman is responsible, payment is made out of her personal dower (*meher*), or paid by her children if they are adult, or in some cases paid by the husband. Generally, among both the Ishaq and Daarood, I believe, if a wife kills her husband his blood-wealth is paid by her agnatic kin to his agnates and the children of the deceased usually receive the amount

33½ camels, is paid and received by the immediate kin up to male agnates descended from ancestors of the second and third generation (and sometimes in wider range) of the party responsible for homicide. This twofold distribution of responsibility corresponds to the internal segmentation of the Dia-paying group. The small internal 'jiffo-paying groups' meet all compensation due from or to them independently of each other up to the amount of the *jiffo*, and the members of each unit are described as



of the same *jiffo* (*jiffo wadaag*). *Jiffo* is literally the metal ferrule at the base of the shaft of a spear and has the sense of pin-pointing the responsibility for homicide. Within the Dia-paying group it indicates the small lineage directly concerned. In payment of full blood-wealth (*mag*) the *jiffo*-groups combine as *mag-wadaag*. This is one way of designating those who pay blood-wealth in concert and thus form a Dia-paying group. Its members are said to be of the same treaty (*heer*), or of the same blood-wealth (*mag*), or again of the same compensation (*haq*). The members of a Dia-paying group may also describe their collective solidarity in terms of 'being of the same division' (*waa is ku meel*). What forms one 'place'¹ in the distribution and contribution of compensation above the value of the *jiffo* splits up into internal divisions (*meelo*, lit. 'places') in payment and receipt of amounts below the *jiffo*. This terminology corresponds exactly to the division of the unit as a whole—those who are *mag wadaag* into the sub-units whose members are *jiffo wadaag*.

Within the Dia-paying group, homicide is regarded as particularly dishonourable (although not accompanied by specific ritual sanctions) and the rates of compensation payable are adjusted to reflect the unity of the group and dastardly character of the action. There are generally two ways in which this is effected. Either the amount of full blood-wealth within the group is lowered in relation to that paid externally (diminished that is, from the standard Shariah rate of 100 camels in the case of a man), or else it is increased above it. Where the unity of the members of a Dia-paying group is reflected in a lower evaluation, the amount paid is often that of the *jiffo*.

In addition to the variations in the terms of *heer* binding the members of different Dia-paying groups, there are different methods of collecting and distributing compensation. Among the north-eastern Somali pastoral clans, who are generally rich in livestock, the contribution and distribution of compensation is based on the male strength of the *jiffo*-paying units. For the purposes of this system male children are counted as well as adult males. Each unit pays according to the number of males in it, it being assumed in effect that male strength and stock-wealth correspond. This procedure is known as 'penis-counting' (*qoora tiris*). In the case of those clans and lineages in the north-west who are partly agricultural and have less stock (e.g. the Jibriil Abokor, Gadabuursi, &c.) payment is generally assessed on the basis of family

of the *jiffo*. When a man kills his wife, full blood-wealth is paid by his agnates to his wife's kin. Cases of this kind are rare, although I have come across

examples.

¹ *Meel* means literally 'place'.

or *jiffo*-group stock-wealth. This method is called 'wealth-reckoning' (*hoola tiris, baaho, qabno, &c.*).

In an individual case of payment of compensation, whether for homicide or assault, the amounts actually contributed (and in the opposite direction received) by the members of the Dia-paying group, including the person most concerned, vary with the size of the group. The larger the group, the less the individual member has usually to pay. Thus, for example, in the event of a homicide committed by an individual member of a large Dia-paying group consisting of a few thousand men, if joint responsibility is accepted, each member including the murderer may pay only a few shillings. On the other hand, in the receipt of blood-wealth the offended family (*raas*) usually receives the largest single portion of the blood-wealth, often as much as from twenty to thirty camels or their equivalent in other stock, goods, or money. Where larger lineages are temporarily united in payment of compensation the amounts paid by individual members are infinitesimal. It will thus be seen that, while payment of blood-wealth is an effective means often of removing immediate enmity between lineages, it provides little economic deterrent to continued strife.

VI

I give now some typical examples of *heer* treaties for Dia-paying groups. *Heer* codes are submitted in the form of petitions to the local District Commissioners, and at least in the British Protectorate, District Offices maintain a file of local clan and lineage-group treaties. *Heer* thus becomes a source of law, since the collective responsibility recognized by the Government is that defined in *heer* agreements. The petitions are generally written in Arabic, or the local Somali version of it ('*wadaad's* writing'),¹ or perhaps more commonly nowadays in English. They bear the signatures or thumb-prints of the chief elders of the parties to the agreements and are often couched in ambiguous language, so that, whether by design or accident, they are frequently difficult to interpret and give rise to much casuistry and counter-petitioning. Dia-paying treaties are often also directly recorded by District Officers to guide them in their interpretation of 'political cases' and to ensure that the agreements are up to date. Generally, however, as soon as an existing agreement is rescinded and a new one ratified, the latter is communicated to the local District headquarters.

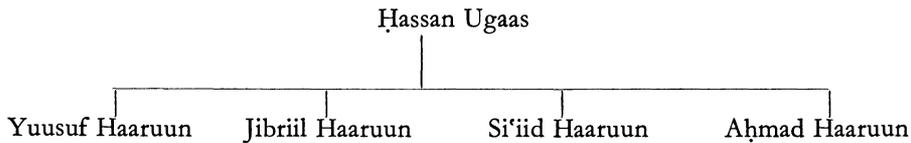
It will readily be appreciated that *heer* is not static and that it is constantly being revised in the light of new conditions. Some of these relate to the fission of groups which have become too large and unwieldy to continue as manageable units. Others derive from segmentation following quarrels and disputes, rivalry for political control among leading elders, and new and more advantageous attachments. Others again stem from incessant fighting involving directly only one section of a group, when other sections object to sharing constantly in blood-dues for actions in which they had no direct part. I give an example of a case of this kind below.

In every instance *heer* agreements are made at lineage-group councils (*shir*) summoned for the occasion. In these, all adult males have the right to speak. The heads of all the families concerned or their representatives assemble and promulgate a common treaty by whose terms they bind themselves to abide. They lay down in detail

¹ See my 'The Gadabuursi Somali Script', *Bulletin of the School of Oriental and African Studies*, 1958, xxi/1, pp. 135-40.

the delicts and compensations which they will recognize among themselves and the way in which they will act externally as a collective political unit. They decide the proportions in which they will pay and receive blood-compensation for external actions and the amounts payable in internal disputes. This gives them, in effect, both a legal and a political constitution, and establishes them as an independent juridical and political unit. As far as I am aware, treaties were not recorded in writing before the advent of foreign administration.¹

My first example refers to the Ḥassan Ugaas lineage of the Ḍulbahante clan of Las Anod District in the British Protectorate. The Ḥassan Ugaas are currently estimated to have a male strength of some 1,500. They comprise four main segments (*jilibs*) which act as *jiffo*-paying groups.



A petition delivered to the District Commissioner and dated the 8th of March 1950 states their *ḥeer* as follows:

1. When a man of the Ḥassan Ugaas is murdered by an external group 20 camels of his blood-wealth (100) will be taken by his 'next of kin' [i.e. his sons, brothers, father, and possibly uncles] and the remaining 80 camels shared amongst all the Ḥassan Ugaas.
2. If a man of the Ḥassan Ugaas is wounded by an outsider and his injuries are valued at thirty-three-and-a-third camels [a standard rate for non-fatal but quite serious injuries], 10 camels will be given to him and the remainder to his *jiffo*-group.²
3. Homicide amongst members of the Ḥassan Ugaas is subject to compensation at the rate of thirty-three-and-a-third camels, payable only to the deceased's next of kin. If the culprit is unable to pay all or part, he will be assisted by his lineage.
4. In cases of assault within the Ḥassan Ugaas for which compensation up to the value of thirty-three-and-a-third camels is payable, only two-thirds will be paid.
5. *Ḥaal* of 150 shillings [East African] is payable by a man of the Ḥassan Ugaas joining another to fight with a third member of the Ḥassan Ugaas to the person attacked.³
6. If one man of the Ḥassan Ugaas insults another at a Ḥassan Ugaas council (*shir*) he shall pay 150 Shs. to the offended party.
7. If a man of the Ḥassan Ugaas marries a girl who is already betrothed to another man of the group, or a widow whom it is the customary right of another to marry, he shall pay *ḥaal* of five camels to the aggrieved party.⁴

¹ A remark in a paper by Cruttenden ('Memoir of the Western or Edoor tribes, inhabiting the Somali coast of North-East Africa', *Journal of the Royal Geographical Society*, xix, 1849, pp. 49-76) suggests that peace was sometimes made at a prominent saint's shrine and treaties of friendship lodged with the custodians of the shrine. But, on the whole, the evidence is not very satisfactory.

² This is known as *jaa'ifo* (as distinct from *jiffo*) and is any non-fatal but fairly serious wound for which compensation is of the order of thirty-three-

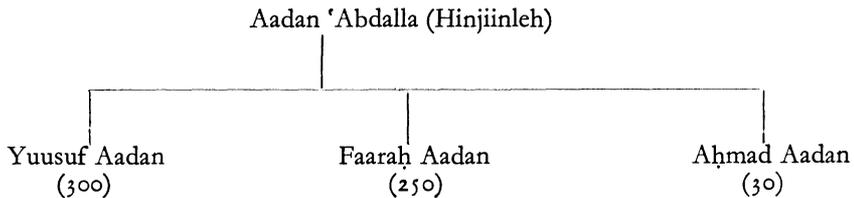
and-a-third camels, but may be more.

³ When two men attack another of the same group this is known as *hiil* or *tunto* and insult compensation is regularly payable. This is a common provision in *Dia*-paying treaties.

⁴ This refers to the Somali practice of widow inheritance (*dumaal*), where the children belong to the new husband and not to the deceased brother or close agnate (it is not the true levirate). A reduced bride-wealth is normally paid.

8. If the Ḥassan Ugaas kill a man of another group they will pay his blood-wealth in equal shares (amongst the four lineages) by 'penis-counting' (*qoora tiris*).¹
9. Compensation for serious wounds valued at thirty-three-and-a-third camels or more, owing to a person of another group, will be paid collectively by all the Ḥassan Ugaas by 'penis-counting'.
10. This *heer* cancels all previous agreements of the Ḥassan Ugaas.²

My next example is of the Hinjiinleh, a Dia-paying group of the Ḍulbahante, having an estimated male strength of some 580. There are three segments:



A statement lodged in the District Office at Las Anod and dated the 8th of September 1954 records their treaty as follows:

1. If a man of our group is killed by another group his next-of-kin will receive 15 camels as *jiffo* and the rest of the blood-wealth will be shared amongst the Hinjiinleh.
2. When a Hinjiinleh woman is killed by an outsider seven and a half camels of her blood-wealth will be taken by her next-of-kin, and the rest shared amongst the Hinjiinleh.
3. Where homicide occurs within the Hinjiinleh the following procedure shall operate.³ The murderer is liable to *barigooyo*;⁴ all his property will be handed over to the next-of-kin of the deceased. If the murderer's property amounts to less than thirty-three-and-a-third camels, the difference will be paid by all the Hinjiinleh in concert. If the killer or killers have no stock, a *jiffo* of thirty-three-and-a-third camels is to be paid by the Hinjiinleh collectively to the next-of-kin of the deceased. The same *heer* applies in the case of a woman, except that here the amount is half that for a man, i.e. sixteen-and-two-thirds camels.
4. If one of the Hinjiinleh kills a man of another group, he and his next-of-kin shall pay ten camels as *jiffo* and the remainder of the blood-wealth shall be paid by all the Hinjiinleh.
5. Where a woman of another group is killed, five camels as *jiffo* will be paid by the murderer's immediate kin and the balance (forty-five camels) by all the Hinjiinleh.

Finally, I cite the settlement of a case of homicide to show how the terms of treaties such as those described are applied. The case concerns the Bah Ogaadeen, one of the Dia-paying groups into which the Reer Hagar Aadan primary lineage-group of the Ḍulbahante clan is divided. The group, which is a uterine (*bah*) alliance of six *jiffo*-paying groups, has a male strength of some 1,000 and is led by an unpaid 'aaqil'. A man called Du'aale 'England', of the Ugaadyahaan, Naaleeye Aḥmad lineage of the

¹ See above, p. 285.

² For information on these treaties I am much indebted to the courtesy of Mr. H. Y. W. S. Dickson, District Commissioner at Las Anod, in allowing me access to the District Office files.

³ Here, as in other places, I have paraphrased the actual wording in the interests of clarity in

consultation with informants.

⁴ In north-western Somali, the pronunciation is *badigooyo*. Amongst the eastern Ḍulbahante the Cushitic post-alveolar *d* has been modified to *r*, see M. M. Moreno, *Il Somalo della Somalia*, Rome, 1955, p. 11. The word literally means 'cutting off the entire property'.

Dulbahante, was killed by a man of the Bah Ogaadeen. The latter paid a blood-wealth of 100 camels by 'penis-counting'. The proportions paid by the six *jiffo*-groups were decided by six representatives. One group paid about twelve camels, four men each paying one camel, and other members contributing proportions in other stock up to the total of twelve. Another segment paid about 22 camels, no man paying a full camel, or its equivalent in other currency. Another small segment paid eight camels, no individual contributing a whole camel. The fourth *jiffo*-group contributed 18 camels. The fifth, who were responsible for the killing, paid 34 camels, of which the murderer and his family contributed only six since they were poor in livestock. Finally, the sixth segment made up the remainder.

VII

Among the northern pastoral Somali, rights in livestock are tied to agnation and collective security is provided by clanship¹ and contractual agreement. Everyone is at once a member of a widely ramifying series of lineages and of a contractual group, with which he pays and receives blood-wealth, and which guarantees the security of his life and property. An individual or group may live temporarily, but rarely permanently, with a foreign lineage and Dia-paying group. This sometimes happens when, for example, a man begins married life with his wife's people.² Such individuals or groups, loosely attached affinally, or merely as guests, to a lineage and treaty-group other than their own, normally leave their camels behind in the custody of their own agnates, to whom they are bound by contractual obligations and duties. Among their foreign hosts they are assigned a protected status generally described as *magan*.³ The protecting group does not accept full responsibility for the blood-wealth of those assigned this status, but gives only general sanctuary, infringements of which bring dishonour ('*eeb*') on the protectors. When protected persons are molested, the patrons are obliged to vindicate their 'name' by seeking vengeance or the payment of compensation. This is due not to them, but to the lineage and Dia-paying group of the guest. In practice there is usually joint retaliatory action by the *magan*'s protectors and by his own kin. In these circumstances the hosts are entitled to claim insult compensation (*haal*) for the affront to their honour.

This patron-protegé relationship is also the bond, formerly more important than it is today, struck by caravan traders passing through country occupied by foreign lineage-groups. Here a protector was selected for his own good character and for the strength of his lineage, and was paid a fee for his work. The protector and his group are generally referred to as *abbaan*. The institution still operates, particularly in the case of foreign Asian traders settled in Somaliland, who, though they stand outside Somali politics as far as participation in blood-wealth payment is concerned, appoint a salaried *abbaan* to represent them and to protect their general interests. The *abbaan* spends most of his time in the merchant's shop or place of business, acting often as a caretaker or porter.

In a similar position are the Midgaans, Tumaals, and Yibirs,⁴ traditionally bonds-

¹ I use this term to mean agnation in general, at every level of lineage (and clan) affiliation.

² Marriage is mainly virilocal, and most marriages begin virilocally.

³ The whole question of adoption and assimilated

status is complex and I can here indicate the position only in a very general way. The subject will be examined more fully in a forthcoming publication.

⁴ Collectively called *sab*.

men of the northern pastoralists and practising various skilled and despised trades such as shoemaking, ironwork, and hairdressing. Today they are few in numbers and probably do not amount to more than some 12,500 in the whole of Northern Somaliland. These bondsmen are organized into small lineage-groups on the Somali pattern but have relations with noble Somali only through the noble lineage to which they are attached. Their patrons (*abbaans*) protect them in their relations with other Somali and accept responsibility for their blood-wealth. The *sab* bondsmen do not thus generally have their own Dia-paying groups of equivalent status to those of independent Somali.¹ Sometimes they are described as being bound in contract to the Dia-paying groups of their patrons, and I have myself come across cases where they were party to a Somali political treaty (*heer*).

In a few cases alien individuals or groups, too small themselves to pay blood-wealth independently, and too far removed from their natal lineages to maintain effective relations with them, enter into contractual agreements with their hosts. Lack of strength, and therefore of political viability, drives such weak groups into alliances which betray their insecurity and attract little honour. This is more common among the northern cultivators of the west of the British Protectorate and Harar Province of Ethiopia than it is among the northern pastoralists, although even among the latter there are many small scattered groups, often apparently the remains of stronger lineages whose numbers and strength have dwindled, forced to accept this dependent status.

Such arrangements, where alliance is achieved by contractual treaty alone or by treaty in addition to weak kinship ties, are generally known as *gaashaanbuur*, meaning literally 'pile of shields'. The expression refers to collective fighting strength, as in the proverb 'Either to be a mountain or attach yourself to one',² which reflects the paramountcy of force in pastoral Somali politics.

The preceding discussion indicates the importance of contract as a political principle. It is possible to have treaty obligations and political solidarity without agnation. Yet, in general, Somali regard the two principles of clanship and contract as accompanying each other, and agnation is viewed as the primary, all-pervasive force ordering social relations. Most commonly, contract operates within the field of clanship. The ideals of agnatic solidarity embodied in genealogies, extend throughout the whole field of agnation within which an individual belongs to a great number of different segments, each represented by an ancestor in the genealogies. Collective action at one level in the system creates temporary divisions and alliances which, as it were, crystallize the genealogical range of clanship. But the genealogies are permanent, they 'cannot be cut, even by iron', and their continuity allows political solidarity to be mobilized at another level on a different occasion. In its most general sense, common agreement (*heer dulnimo*)³ or common custom, not based on specific contracts, is distinguished from the formal codes (*heer do'nimo*) which regulate the affairs of a Dia-paying group. But, as different orbits of agnation are recognized in different situations, resulting in the formation of political groups at various levels in

¹ There are a few exceptions where *sab* groups have achieved recognition by the Administrations as independent Dia-paying units. There is today a general movement in this direction, the *sab* seeking to emancipate themselves from their traditional

bonds to their patrons.

² *Buur ahaw ama buur ku tirso.*

³ Literally, 'common or general *heer*'; *Heer do'nimo* means literally local, or specific, *heer*.

the lineage system, so new specific contracts are made binding the groups concerned. Thus, although collective payment of blood-wealth is most frequently at the level of the small units here called Dia-paying groups, larger lineages form treaties of collective solidarity as occasion demands. These then become Dia-paying groups at a higher level of segmentation.

When two whole clans are engaged in total war, they are often united against each other as two opposed Dia-paying groups whose members are bound by temporary treaties exactly comparable to those we have considered. Thus, for example, in one phase of the recent war in the British Protectorate between the Dulbahante (100,000) and Habar Tol Ja'lo (100,000) clans, temporary *heer* agreements were made binding all the members of each clan in collective responsibility for homicide against those of the other. When hostilities reached such a pitch that there were many deaths and many of the component segments were involved in payment of compensation for actions with which they had nothing to do, the Dulbahante contract was rescinded. In such situations of general clan hostility, collective responsibility is sometimes recognized by a treaty after an occasion of bloodshed. During a riot in 1957 in Hargeisa (the capital of the British Protectorate) between members of the Arab (20,000) clan and Sa'ad Muuse (100,000) section of the Habar Awal clan, one man of the Arab was killed. Since the affray had the character of a general mêlée, all the Sa'ad Muuse accepted collective responsibility for the homicide. A blood-wealth of a hundred camels was paid by them in 50 portions corresponding to the 50 Dia-paying groups into which the Sa'ad Muuse are segmented. Individuals paid negligible amounts.

These examples have been cited to show how contractual agreements are struck at different levels in the lineage system as occasion requires. Like agnation, *heer* is not a static principle, but dynamic within the framework of the lineage system. The range of agnation acknowledged and marshalled by treaty is constantly shifting as the direction of hostility changes. Though I have not the space to show it here, this structural relativity is founded in the dynamics of the nomadic life, where competition for sparse grazing and water continually arises at different levels of grouping.

It thus seems appropriate to regard the Somali political contract as a mechanism for, as it were, knotting the diffuse ties of agnation as political unity is required at different levels of segmentation. The general field of clanship is particularized where political solidarity has to be strengthened and the implicit obligations of clanship called into effect. It is for this reason that the smallest political units, the Dia-paying groups, can be said to have only relative stability. Clanship, then, provides the framework upon which contractual agreement as a political principle operates. What in agnation is diffuse and manifold, is made definite and specific by contract.

VIII

The political institutions described in this paper are clearly of some theoretical interest, for, as far as I am aware, no political system combining the two principles of contract and clanship as they work in the pastoral Somali system has yet been described.¹ Both clanship and contract are irreducible principles and of the two, while

¹ Professor Gluckman has kindly drawn my attention to R. F. Barton's accounts of the Ifugao and

Kalingas (*Ifugao Law*, University of California Publications in American Archaeology and Ethnology,

clanship is desirable, contract is absolutely essential. Contract may override agnation, upsetting strict genealogical principles of lineage segmentation, and political and legal solidarity may exist through contract where no agnatic relationship holds. It is, moreover, the presence of contract which makes it impossible to say of the Somali as Professor Gluckman says of the Lozi that their law is the law of status.¹ For Somali legal relationships are a compound of kinship status and of contract and it is the latter which determines the extent to which agnation is recognized as legally and politically binding.

If it be accepted that what Maine meant by 'Status' is equivalent to our use of clanship and that his use of 'Contract' corresponds to Somali *heer*, then there is no evidence in Somaliland of that movement from 'Status' to 'Contract' which he postulated.² Among the Somali clanship and contract are not opposed principles each characteristic of a different stage in social evolution. Shahaab ad-Diin's *Futuuh al-Habasha* (1540/50)³ indicates that lineage status and contract were in the 16th century as much part and parcel of Somali society as they are today. It is, moreover, precisely the way in which the two principles are complementary that is characteristic of the Somali system. And it is contract rather than clanship which modern nationalist politicians seek to overcome in their search for national unity.⁴

The Somali political constitution is also of interest for the light which it throws on the generally discredited notion of the 'Social Contract' of the political philosophers. The facts of Somali political organization part company with the theory of 'Social Contract' inasmuch as there is no 'state of nature' in which men live without obligations and duties and without kinship affiliation.⁵ Nevertheless it is through contract that men unite as members of a determinate egalitarian jural and political unit. What is latent in agnation is given explicit expression through contract at different levels of the segmentary system. It is indeed only by formal contracts of government that political and legal units such as the Dia-paying group are created. Men thus surrender some of their individual and manifold agnatic loyalties to the 'Sovereign will' of the Dia-paying group as a political and jural community. They accept collective responsibility for each other's actions in terms of payment and receipt of compensation and damages for injuries and homicide, and they place their interests in the hands of the elders of the group. In terms of its contract, the elders of a Dia-paying group are empowered to enforce the common code which binds individual kinsmen together as a corporate group. Within the Dia-paying group there is law by agreement and contract. But between Dia-paying groups, while there is common acceptance that the compensation payable for a man's life is a hundred

vol. xv, pp. 1-127, 1919; *The Kalingas*, Chicago, 1949). But the treaties or 'pacts' of the Kalingas establish relations between existing political groups: they do not, as among the Somali, create political units; nor do they determine the political and jural status of the individual. More closely analogous to the Somali system are the *asaba* blood-compensation groups of the nomads of the Spanish Sahara. For here, as among the Somali, Dia-paying groups are established by verbal treaties among agnates. Yet *asaba* does not appear to have the pervasive character of Somali *heer*. See Julio Caro Baroja, *Estudios Saharianos*, Madrid, 1955, pp. 17-22.

¹ M. Gluckman, *The Judicial Process among the Barotse of Northern Rhodesia*, Manchester University Press, 1955, p. 28.

² *Ancient Law* (World's Classics edition), 1954, p. 141.

³ Edited and translated by R. Basset, Paris, 1897-1909.

⁴ See my 'Modern Political Movements in Somaliland', *Africa*, July and October 1958.

⁵ For a convenient historical discussion of contractual theories, see J. W. Gough, *The Social Contract*, Oxford, 1957.

camels, feud and force are the primary sanctions which, even under modern administration, order political relations. To meet new threats new contracts are made uniting individual groups as larger, more inclusive *Dia*-paying units. For at every level of lineage segmentation, politics and legal relationships are a matter of contractual agreement. And, by extension, contract comes to mean custom in its widest sense, where the sanctions for conformity lie mainly in usage and convention.

Résumé

LE CLAN ET LE CONTRAT DANS LE SOMALILAND DU NORD

LA structure politique des Somali pasteurs du Nord du Horn d'Afrique se base sur deux principes distincts, le clan (*tol*) et le contrat (*heer*). Tous les groupes sociaux de Somali pasteurs qui participent du même esprit de corps, le font parce que leurs membres sont affins, et parce que leurs obligations communes sont définies par traité ou par contrat.

C'est dans la structure des groupes de *dia*-règlement, qui sont les unités juridiques et politiques de base de la société pastorale Somali, qu'apparaissent le plus clairement cette action réciproque des deux principes et leur caractère complémentaire. Ces unités, dont il existe plus de 360 dans le Protectorat Britannique (sur une population de 640.000), ont reçu leur nom du fait que leurs membres reconnaissent l'obligation de payer et de recevoir en commun l'impôt du sang (arabique *diya*) et autres dommages. Ainsi, si un homme d'un groupe tue un membre d'un autre groupe, la compensation de 100 chameaux est payé en commun par le groupe de *dia*-règlement de l'assassin. Les proportions dans lesquelles les individus d'un groupe de *dia*-règlement paient et reçoivent compensation, varient selon les traités de chaque groupe. Actuellement ceux-ci sont consignés par écrit (souvent en anglais) et déposés dans les Bureaux du district, ils deviennent ainsi une source de droit, car les Administrations appliquent les termes des traités pour régler les conflits.

Ce n'est que par son appartenance à un groupe de *dia*-règlement qu'un individu a un statut juridique et politique dans la société. Mais le caractère exclusif et distinctif de ces unités de base n'empêche pas leur alliance *ad hoc* en unités politiques plus grandes et plus étendues, également liées par un traité.

Donc, en général, le contrat joue un rôle, à l'intérieur du cadre de lignage segmentaire, dans l'établissement des corps politiques et juridiques. De plus, c'est le contrat qui anime et exprime les valeurs et les obligations implicites du clan. Les deux sont des principes irréductibles de la société pastorale Somali du Nord.

Rien ne paraît suggérer que le contrat soit un développement qui éloigne du statut du lignage. L'intérêt de ce système se trouve donc dans la manière spéciale où la forme Somali du 'Contrat Social' des philosophes politiques se mélange avec le système de parenté agnate pour créer des unités politiques. Car, à chaque niveau de la segmentation du lignage, la politique et les relations juridiques sont matière à accords contractuels. Par extension, le contrat (*heer*) a pris la signification de coutume dans son sens le plus large, où les sanctions de conformité se trouvent surtout dans l'usage et la convention.