

Chapter 2

Creating Mutual Recognition and Respect in Property Relations: Negotiation Regarding Livestock Ownership and Usufruct in East African Pastoral Societies

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1. Introduction

This chapter examines the complex property relations involving livestock held by East African pastoralists and discusses how they constantly reconstruct social relations through conversation and negotiation with others regarding what rights one may have over livestock. When their livestock rights are called into question, these peoples strive to defend their rights through ardent negotiation and to persuade other people of the legitimacy of those rights. They are persistent negotiators. I have argued that African people are preeminent in talking to, listening to and negotiating with others (Ohta 2017). This chapter expands that discussion by exploring how East African pastoralists negotiate and settle conflicts over their livestock rights by persevering in negotiations. In some sense, their property rights are not firmly established by laws such as those in developed countries. However, I point out that such uncertainty over one's rights is not a problem but, rather, a strength in that mutual recognition and respect are continuously recreated between one person and the other through negotiations over livestock ownership and usufruct, a process, I would argue, that serves as a manifestation of African Potentials.

In East African pastoral societies, livestock not only provide food such as milk and meat for the pastoralists but are also sold to purchase daily necessities or pay medical bills and school fees.

Livestock are also a crucial medium for creating and maintaining social relationships through gifting and exchange. In a marriage, livestock are given to the bride's family by the bridegroom's family as bridewealth, a process involving many actors (Ohta 2007). Important rituals call for livestock as an offering. This is to say that livestock are not only an economic resource but also of crucial social and religious significance as well.

In this chapter, I will analyse how the Turkana pastoralists in northern Kenya, whom I studied first-hand, deal with property issues involving livestock and discuss these issues in Rendille and Gabra societies based on rich existing ethnographic literature.

The Turkana have a word meaning livestock, *e-bar-asit* (sing.; pl. *ngi-bar-en*), that is also used to mean 'property'. Strictly speaking, this word does not apply to cats and dogs; *e-bar-asit* includes five kinds of livestock: cattle, camels, donkeys, goats and sheep. A verb that shares the same root, *aki-bar*, means 'to multiply livestock', which is 'to become rich'. Similarly, *eka-bar-an* (pl. *ngika-bar-ak*) denotes 'a rich man', the owner of many head of livestock. Thus, for the Turkana, livestock means property. The importance of livestock is thus succinctly expressed through their vocabulary.

2. How Can We Deal with Property Relations?

2-1. Four Layers of Property Relations

Property issues have been investigated in various social science disciplines including law, economics, sociology, anthropology and others. One of the most widely respected frameworks, that of Benda-Beckmann et al. (2006: 15), posits that property should be analysed in four layers:

- (1) cultural ideals and ideologies;
- (2) legal institutions;
- (3) actual social relationships; and
- (4) social practices.

According to Benda-Beckmann et al. (2006: 15), although each layer is closely related to the others, they each cover different kinds of social phenomena, ‘just as marriage ideologies and legal rules about marriage are different from the actual relations between two married people and their daily interactions’.

The first layer is ideological, and it supplies property with its cultural status. The second layer (legal institutions) provides a legitimate scheme for property relationships. Benda-Beckmann et al. (2006: 16) called property relationships at this layer ‘categorical’ because property holders, property objects and the rights and obligations attached to these are specified as legal-institutional categories.

At the third layer, property relationships are more ‘concretised’ (Benda-Beckmann et al. 2006: 19). At this layer, we can explore actual social relationships between property-right holders with respect to certain concrete valuables. At the fourth layer, that of social practices, people use, transfer and inherit concrete property in the form of objects or enter into disputes over their property rights. People might also discuss the appropriateness of property rules and these social practices, in turn, cause changes at the first, second and third layers of property relationships, again showing that these four layers are closely interrelated (Benda-Beckmann et al. 2006).

In the areas of legal anthropology and the anthropology of law, considerable research has accumulated dealing with the rules and authority that bind people’s actions based on case studies in various societies. Discussions about ownership and usufruct rights over property comprise a part of this literature. Researchers have pointed out the pitfalls of unwittingly applying to different societies the modern, West European paradigm of the law as a set of coercive rules. Turner (2017: 31) states that the ‘most convincing framework’ for analysing property relations is to differentiate the four analytical layers of property relations advanced by Benda-Beckmann et al. (2006).

Comaroff and Roberts (1981) analysed the ways in which the

Tswana people are bound by normative rules and do follow them, yet at the same time, use the rules to assert their own rights in negotiation with another. In disputes and negotiations among the Tswana, specific rules are invoked and become tools for political manoeuvring. The rules take on meaning and value in each individual setting during the negotiations and the dispute (Hayden 1984). In line with the four layers of property relations, Comaroff and Roberts (1981) identified and emphasised the importance of exploring daily practices, giving close attention to the interactions among the four layers.

2-2. Multiple Property Rights in Livestock in Africa

In the introduction to the book titled *Who Owns the Stock? Collective and Multiple Property Rights in Animals*, Khazanov and Schlee (2012: 7) stated, 'most complicated, multiple and overlapping rights in stock are characteristic of African pastoralists'. They classified property rights in livestock into the following five basic types:

- (1) Full rights of ownership, which implies the ultimate rights of allocation, disposal and sale of animals.
- (2) Nominal rights of ownership, where rights of control or even disposal belong to another person.
- (3) Shared ownership (co-ownership, joint ownership), which implies different degrees of rights and even different percentages of ownership in individual animals.
- (4) Usufruct rights, such as the right to milking or transportation, which are often temporary.
- (5) The right to the offspring or a defined portion of the offspring of an animal. Often calves are promised to hired cowherds for their services.

In the above-mentioned book, five chapters focused on African societies, and all of them described and analysed complicated livestock rights. For example, according to Pelican (2012: 219), among the Fulbe (Mbororo) of northwestern Cameroon, sons are

given livestock by their fathers, but the son has only ‘nominal ownership’ and ‘cannot legitimately make use of his ownership rights’ until his father agrees that the son may build his own family based on his independent herd. Before this, the father has ‘the ultimate rights of allocation and alienation’ of livestock. He may even sell his son’s animals. Furthermore, although the father is ‘morally required to at least inform the [son] and replace the animal as soon as possible, this obligation is often overlooked’. Women have ‘usufruct rights’ to their own animals, but ‘the final right’ lies with the household head. Schlee (2012: 260) also stated that pastoral people may have ‘shared rights’ in an animal. For example, when an animal is given as a loan, both the holder and the owner have their own rights in the ‘shared’ animal.

In terms of the four-layer framework of property relations presented by Benda-Beckmann et al. (2006), to which layers do these statements refer? It is evident that the above-mentioned proposal by Khazanov and Schlee (2012), classifying various livestock rights into five basic types (‘categories’), belongs to the first and second layers. Although this approach, i.e., classifying the multiple rights to animals into several categories, seems to make complicated ownership of livestock clearly understandable, it has a significant drawback in that these rights are wrongly construed as definite legal ones which have strong binding force.

Among African pastoral societies, it is not significant to distinguish between the above-mentioned first and second layers, namely, ideologies and legal institutions. People mutually concede that there are proper ways of obtaining, utilising, and disposing of livestock. Such forms of consent can be termed cultural ideologies, beliefs, norms or rules. However, because local rules and norms are not put into statutory form, it is difficult to clearly differentiate among ideologies, laws and legal institutions.

For example, pastoral people may declare their rights in livestock, stating, ‘I am the owner of this animal’ or ‘my wife utilises milk of this cow’. However, it is sometimes not clear whether these statements imply rigid rules, refer to moral requirements or are mere

descriptions of actual practices. There are also ethical norms, such as ‘those who live together must all share ample milk to drink, especially with the children when there is a shortage’. Furthermore, there are value-neutral rules, such as ‘the offspring of my livestock are also mine’. Some norms may have an accompanying and direct sanction in case of violation, but many others do not.

Among pastoral societies, wider social networks should be considered when trying to understand concretised property relationships, as people have many other social ties, such as kinship relations. In such cases, these rights are often subject to dispute and negotiation (in the fourth layer) when people demand their own rights in reference to diverse forms of normative legitimation. Thus, people make various claims and counterclaims on the contested livestock.

Previous studies of property relationships with regard to livestock in African pastoral societies have mainly focused on the first and second layers, that is, cultural ideas and legal-institutional structures. However, in the descriptions of these studies, we find many ethnographic descriptions dealing with the third and fourth layers. For example, Schlee (2012: 263) stated, referring to Spencer’s (1973) research, that livestock ownership is always contested and negotiated among the Samburu. A Samburu bridegroom should transfer eight cattle as a bridewealth payment but, after the marriage, the family members of the bride continue to demand gifts from the bridegroom and his patrilineal family members on various occasions. When they feel that their claims are refused unreasonably, they may place a curse on the other party. Also, a Samburu man cannot sell his own livestock freely because members of a clan are morally obliged to assist one another (Spencer 1973 in Schlee 2012: 263).

Dahl (1987) explored women’s status and roles in pastoral societies. She emphasised that, although ideologies or cultural models in pastoral societies grant broad authority to males, and females tend to be located by their behavioural norms as inferior to males, these norms belong only to the sphere of ideas and ideologies. She states

that wives sometimes resist the suggestions of their husbands, abiding instead by their own convictions, and that their informal influence plays an important role in managing livestock herds and building/maintaining social relations. That is, she maintained that we should pay attention to the third and fourth layers of property relationships.

2-3. 'Bundle of Rights'

When several persons have overlapping rights in an animal, as pointed out by Khazanov and Schlee (2012), their property relationships may be analysed using the metaphor of a 'bundle of rights'. Baxter (1975: 212) coined the term 'mobile' bundle of rights in a study of African pastoral societies. Pelican (2012: 213) also indicated that property rights could be understood as a bundle of rights.

Benda-Beckmann et al. (2006: 16–21) argued the 'bundle of rights metaphor' is effective when we examine property relationships in the second (legal institutions) and third (actual social relationships) layers mentioned above. For example, a man may be the owner of a specific farm, but he may have conferred the right of its management to another person. The latter may have leased the farm to a tenant, who may have contracted a share cropping arrangement with several persons. In this case, the 'sticks' (or 'sub-bundles') of property rights that constitute the 'bundle of rights' to the farm are widely shared among different actors.

In this example, each actor's property right seems to be clearly defined, because each right is exclusively specified by relevant laws in the society. However, this state of affairs cannot be applied unconditionally to other societies, as people in those societies engage in various negotiations corresponding to their specific social context. Max Gluckman (1965a, 1965b) used the 'bundle (cluster) of rights' metaphor in the field of social anthropology. He argued that all property relations are ultimately social and political relations. He rejected the commonplace view in which property is conceived in

terms of the relationship of persons to things. A person's right over a specific thing is better understood by examining his/her relationships with other persons. As Gluckman (1965a: 36) stated, 'What is owned in fact is a *claim* to have power to do certain things with the land or property, to possess immunities against the encroachment of others on one's rights in them, and to exercise certain privileges in respect of them'. Thus, '*ownership cannot be absolute*, for the critical thing about property is the role that it plays in a nexus of specific relationships' (1965b: 45, emphasis mine).

The 'bundle of rights' does not exist as a solid and unchanging entity. It always emerges 'performatively' in the process of a negotiation at a specific time and place, and it undergoes metamorphosis as members and their social relationships change among the parties concerned. I use this term 'performatively' to emphasise that a specific 'bundle of rights' emerges in a process of specific interactions at a specific time and place and that this 'bundle of rights' is a temporal one. East African pastoralists do not place absolute trust in it.¹

3. Owning Livestock in Turkana Society

The Turkana, whom I have studied over the years since 1978, live in arid north-western Kenya. Their population is roughly 1,016,000 (KNBS 2019: 424), and most of them live in Turkana County. The annual average rainfall in Lodwar, the administrative centre of Turkana County, is no more than 200 millimetres. The people raise five types of livestock: cattle, camels, goats, sheep, and donkeys. They speak an Eastern Nilotic language (Gregersen 1977) and reckon descent patrilineally.

3-1. Possession and Use of Livestock by the 'Basic Family'

I have studied and discussed in detail how the Turkana own and utilise livestock (Ohta 2019). Below is a discussion based on this study of the property rights the Turkana hold over each head of their

livestock.

First, we will look at a family group consisting of an adult man, considered the head of the family, his wife and children. The family head may have multiple wives, the grown son(s) may have wives and children and these, along with unwed daughters with children, may all cohabit as a family group. I will call this group ‘the basic family’ for convenience.² We should note here that, because the Turkana generally keep their livestock in multiple camps according to the ecological and physiological needs of each animal type, members of a basic family reside separately in different camps, and they often live with members of other basic families, managing their livestock together (Ohta 1980). The wives and unwed daughters with children may have their own huts at their residence and conduct separate lives.

If the Turkana are asked, ‘Who owns the livestock you are raising?’ they will say that all the livestock belong to the family head.³ However, it is too simplistic to think that the family head alone has ownership rights to the livestock. One reason is that all of the livestock are, in fact, allotted among the women, i.e., the wives and the unwed daughters with children.

It is not difficult to understand the practicality of the above arrangement if one stops to think that female livestock will eventually reproduce and give milk, and milking is labour assigned to women and children. Each mother will thus have milk from her allotted livestock as food for herself and her children. Secondly, when an individual animal is consumed for meat, it is slaughtered by the woman to whom the livestock had been allotted, and she distributes its meat to family members.⁴ In other words, the protocol for consuming what was produced by livestock, including milk, is determined for each head of livestock according to which woman has the central stake. I will call this woman ‘the main charge’ below.

Each new livestock offspring is allotted to the woman who is the main charge of the mother animal. Sometimes the Turkana exchange a male head of livestock for a female animal with a kin or friend (Ohta 2001). The new female animal is allotted to the woman who

was the main charge of the original male animal. The allotment of livestock is thus automatically determined and agreed upon.

The Turkana use the cash gained through the sale of livestock to buy foodstuffs such as grain, clothes or cooking utensils, or to pay medical bills or school fees. They also slaughter the livestock for various rituals. When these necessities arise, a woman and her children use the livestock allotted to her. If a head of livestock is injured or falls ill, people try to cure it, with the main charge playing the central role. Upon the death of the family head, the main charge and her children inherit the livestock allotted to her.

Within the basic family, each head of livestock has a main charge. This raises the question of how we should understand livestock 'ownership' in Turkana society. For example, can the head of the family, who is said to be the 'owner of all livestock within a family', sell any head of livestock as he pleases to gain cash to buy his clothes? If a Turkana is asked such a question, the answer will be that the family head must first consult with the main charge. However, I have heard from some Turkana that if the family head is not a good person, he may sell an animal without consultation.

Nevertheless, the family head is expected to negotiate with the main charge of an animal that he wants to sell. If he ignores this process, the main charge and other family members are likely to protest his actions. Some family members may physically try to block the family head's attempt to take the animal to sell, although how vigorous the protest becomes will depend on the composition of the family, that is, whether the main charge has a grown-up son, etc. Thus, the family head's discretion is strictly regulated by other members of his family.

In Turkana society, gender differences are emphasised in many situations. For example, only men can negotiate bridewealth in public (Ohta 2007). The division of labour in terms of the family's livelihood is also markedly gender-based. However, my impression from living among the Turkana is that women have considerable power to dictate day-to-day activities. I witnessed first-hand the

slaughter or sale of livestock for which the family head always consulted with the main charge; moreover, sometimes an animal other than the one selected by the family head was chosen for the occasion. At other times, the consultation turned into a long discussion that was not settled overnight. There were also times when I felt that the family head truly had power, but even so, his final decision was never despotic.

The children of the main charge sometimes partake in such consultations. The children's say over livestock increases as they mature (Ohta 2019). The sons will eventually inherit the livestock allotted to their mother, and the daughters will have milked and taken care of the animals over time. For these reasons, sons and daughters may well feel strongly about the disposal of specific animals, whether by selling, slaughtering or gifting them. Moreover, if the sons already have wives, those wives would have assumed the main charge of the animals, and the family head must think twice about disposing of such animals himself.

The reality that the livestock held by a basic family are in fact allotted to the women in the family and that the children's say in their disposal will increase as they grow older complicates any decision about livestock. Some livestock were gained by the family head as bridewealth and gifting, and he would have allotted these to his wives, and others were gained by the wives and the children themselves in similar processes. The history of how each head of livestock was gained determines how much power a given individual has over the animal. It would be quite misleading to think that, in this situation, the family head has 'ownership' of all livestock and that the other members of the family only have usufruct rights over them. Rather, one must realise that the situation is affected by various factors, and the members of the family must repeatedly negotiate any decision.

Gulliver (1955), who studied the Turkana before I did, has described the rights held over livestock. He wrote that the family head 'legally owns the stock' (1955: 125). The sons growing up increasingly demand ownership over livestock allotted to their mothers, but '(t)his

factor lies rather at the level of moral attitudes and sentiments than at the level of legal rights and relations' (Gulliver 1955: 135). In other words, Gulliver observed that the family head had 'legal' ownership over the livestock, yet this was, in effect, in the realm of a cultural idea and the legal institutions of the Turkana.

3-2. Daily Practice of Livestock Management and the Rights over Livestock

I wrote above that the women of the basic family are the main charges of each head of livestock and that they, together with their children, take care of the animals in health, sickness and injury, playing an important role in livestock management. When the need arises for them to assert their rights over a specific head of livestock, they recount how they toiled over the animal.

The livestock of the basic family's main charges are taken to day-trip herding every day. The herder must control the livestock, ensuring that they graze well, planning a good watering spot on the way to and from the grazing grounds. This continues from early morning to late evening. I acquired, by purchase and gifting, a few head of livestock that were being cared for by the family with whom I was staying. The young man of the family who acted as the herder would often come to me and say, 'I graze your livestock for you. Do you have something to give me?' This is one expression of how, at times, the herder would assert his rights over the livestock, sometimes very petulantly.

The Turkana sometimes dig very deep wells to provide water for their livestock. They must repeatedly lower a container to the bottom of the well to fetch water, which must be gathered into a larger container from which the livestock can drink. This is very hard labour, especially in the dry season. One basic family may jointly create a grazing camp along with one or more other families, and all livestock from the multiple families sometimes graze together. In such cases, members from the families work together to secure water for the animals. When an animal goes astray during grazing or is stolen, the

families managing the livestock cooperate to rectify the matter. The youths and grown men organise a search party, and they may return home with the stray or stolen animal after covering several tens of kilometres. The village neighbours will also join and cooperate in such an expedition.

The members of a Turkana basic family not only co-manage their livestock but they also cooperate with other families to maintain the grazing camps and are helped by their neighbours when some problem arises. These cooperative activities do not at all blur the livestock ownership rights of the basic family. The rights held over the livestock owned by each basic family are quite clear. However, since cooperation is a matter of daily life, it is not hard to imagine that the ownership rights pertaining to livestock held by the basic family are neither completely exclusive nor monopolistic.

This delicate mutuality is quite visible when a head of cattle or a camel is slaughtered for meat. Feasting on goat or sheep occurs within the family or with cohabiting individuals, but this is not the case for cattle or camel meat. People from outside the village gather for the occasion; they join in the feast, and the women receive a share to take back to their village from the women of the hosting family. The right to participation in such events is given to neighbouring villagers. When the neighbours feel that they are not being treated well, they are likely to assert their rights, focusing on their roles in livestock management.

4. Trust and Ownership of Camels in the Rendille and Gabra Societies

Here, we will see how livestock are owned and used among the pastoralist Rendille and Gabra in northern Kenya. The Rendille, a comparatively minor group, have a population of roughly 96,000 (KNBS 2019: 423). The annual rainfall on the Kaist Desert, the Rendille central residential area, is only about 200 millimetres. The Gabra, who live in northern Kenya and southern Ethiopia, include

about 141,000 people in Kenya (KNBS 2019: 423) and several tens of thousands in Ethiopia.

The Rendille and the Gabra are neighbours and speak related Eastern Cushitic languages (Greenberg 1966). They intermarry, form friendships and share considerable culture. Both groups reckon descent on the father's side. They raise and live on camels, cattle, goats and sheep, of which the most important is camels. As they live in a rather arid semi-desert, camels are physiologically and ecologically well adapted to the environment. The camel is the most important provider of food for both societies. Bridewealth must be in camels, and camel sacrifice is also necessary for any ritual of importance. The value of the camel is supreme, both socially and religiously.

4-1. Camel Trust

Both the Rendille and the Gabra have a unique strategy for lending out a camel to others indefinitely. In the discussion below, I will call this system 'camel trust', and at times refer to detailed studies by Sato (1991, 1992a, 1992b), Soga (1997a, 1997b, 1998) and Schlee (2012). I will add here that when a family does not have enough camels giving milk to provide for family members, they can rent a lactating camel from another family for a defined period.⁵ This type of limited lending of a camel is differentiated from the camel trust, and there are separate vocabularies for each. I will refer to the lender in the camel trust as the 'depositor' and to the renter in this system as the 'trustee'.

The camel trust is practised with a unique set of rules. The first pertains to the social relationship between the depositor and trustee. If someone wishes to rent a camel, he goes to and pleads with a person who has camels. For the Gabra, such target persons would include the 'in-laws (for example, the mother's brothers, brothers-in-law through the wife or sisters), same-clan members, an acquaintance formerly living in the same village whose camel one had cared for, or a fellow herder and friend who once worked together at the grazing

camp, or the biological father' (Soga 1998: 38). For the Rendille, such persons are the father, brothers, in-laws (the father and brothers of the wife, the husbands of the sisters), mother's brothers and their clan members, or members of the same clan (Figure 4 in Sato 1992b: 116). In either case, the trust relation is limited to people who already have close social ties. It is possible for two men to mutually lend and rent camels.

The camel used in tying the trust must be a heifer but, in a rare instance, it may be a parous female (Sato 1992b: 144). When a trust relation is successfully tied, all subsequent female offspring of this camel belong to the original depositor, along with the original heifer. In other words, any female camel produced in the trust becomes a trust camel. The male offspring belong to the trustee, who is free to dispose of these animals in any way, whether by sale, slaughter or gift. The trustee can also use the milk from the female camels. The relation tied in a camel trust continues as long as female offspring from the original heifer continue to exist, and the depositor's and trustee's sons inherit and assume their roles in the dyadic relation if the first generation dies. Thus, the camel trust can cover a long span of time.

The interesting point of this trust mechanism is that the trustee can become the depositor of a female offspring from the original camel, lending it to someone else. Such double and triple trust relations can be repeated to form a long chain of trust dyads: W with X, X with Y, Y with Z, etc. Here, the depositor of the original heifer will be termed the 'owner'. All female camels belong to the original owner, W, at the top of the chain of trust, and all male camels belong to the trustees.

If a need arises, W may ask X to return to him one or several trust camels. If X does not have a suitable animal on hand, he can go to Y and ask that a camel be returned to W. However, W cannot go directly to Y for an animal. In this chain of trust, only the members in the depositor–trustee dyadic relationship are beholden to each other to arrange the return of an animal.

4-2. Negotiations for the Return of a Trust Camel

As noted above, W, the original depositor, has ownership of all female camels (trust camels) in the trust chain, whereas X, Y, Z and others in the trust chain can be described as having only the usufruct, or the usage right of female camels (Sato 1991: 277, 1992b: 144). However, contrary to general thinking, ownership does not entail free use and disposal of what is owned, as explained below.

First, the return of a trust camel cannot be demanded at just any time. Sato (1991: 287) wrote that if brothers became tied in a camel trust, they themselves would refrain from demanding the return of the trusted camels until their sons inherited the trust. If someone other than close patrilineal kin should demand the return of a camel in a trust, the first return may wait until the renter has three to four female offspring from the heifer, and then another may be returned after his son has inherited the trust. In other words, in the absence of a very pressing circumstance, the other female camels need not be returned.

The depositor must also have his demand for the return of the trust camel recognised as legitimate by the society. Such legitimate occasions are limited to the imminent need for payment of bridewealth, a funeral requiring that an animal be slaughtered or when most of the livestock are lost due to a drought or raid, resulting in a catastrophic food shortage. Another occasion may be when the depositor deems that the trustee's care of the animal is poor (Sato 1991: 277–278; Soga 1998: 38). The above occasions illustrate how it is not possible for a depositor to demand a return of the trust camel at just any time. Furthermore, among the Rendille, no more than one heifer needs to be returned by the trustee (Sato 1991: 286). The depositor who repeatedly and without legitimate reason demands the return of a trust camel will become a nuisance and may even have the camel trust terminated by the trustee (Sato 1991: 288).

On the other hand, even if a depositor in legitimate need asks for the return of a trust camel, his wish may not be fulfilled at an opportune time. The trustee may try to postpone the demand,

arguing that there are not enough female camels in his herd or that he is in a dire circumstance at the moment. He might also ask the depositor to check back with him after several years. Schlee (2012: 252–253) wrote that, although the camel trust was a loan, the trusted camel ‘would normally never be recovered’ by the depositor. In this sense, the ownership held by the depositor is ‘nominal’. For the depositor to have a trust camel returned to him, he must endure a long period of negotiation, argue for the legitimacy of the demand, and finally persuade the trustee. In the camel trust, the scope of the depositor’s ownership is thus quite limited.

However, if the depositor comes to believe that the trustee is not properly managing the camel or if the social relations between the dyad deteriorate for some reason, he may forcefully take back the trust camel. The fact that such incidents do occur seems to indicate that the Rendille and Gabra societies recognise a kind of ‘absolute ownership’, i.e., the right of the owner to freely claim and dispose of what belongs to him. However, a close look into people’s actions in reality indicates that the right of the owner is usually more mired in the complex social relations among the people than such a conclusion suggests. Consider the three interesting cases below.

[Case 1] (Soga 1998: 43)

X, a Gabra, trusted a heifer to Y in 1962.⁶ In 1973, having lost his livestock to the drought, X went to Y and demanded a lactating camel, a cargo male camel and some goats and sheep. To this, Y said, ‘Everybody is suffering from this drought, and it is not possible to meet your demand.’ But X was not persuaded and demanded his share of the camel trust by force. To this, Y said, ‘If you insist on your demand, first have the elders agree with you.’ The matter was brought to the meeting of elders, and they all tried to dissuade X from his excessive demand. However, X gave no heed, and took away his share of camels.

This case raises three points of interest. First, X’s demand to Y

included a cargo camel as well as goats and sheep, which exceeded X's rightful share of the camel trust, but Y was not totally unwilling to comply with such a demand. This indicates that the Gabra mutually recognise each other's livestock rights, which are not rigidly limited to the ownership and usufruct right to specific animals. The ownership of the depositor and the usufruct of the trustee are seemingly well defined in the rules of camel trust but, in fact, more complex factors must be considered beyond ownership and usufruct that defy simplistic understanding. The second point is that the legitimacy of recovering one's share from the trust was viewed as an issue worthy of convening an elders' meeting. In other words, ownership is far from an absolute right to be exercised at any time. The third point is that some people act as if ownership were always at their command, enabling them to recover their share of camels.

The forceful taking back of trust camels is referred to in Gabra society as 'dirty evil of digging muck' (Soga 1998: 43). This act is viewed with the utmost disgust. To engage in such an act is to unilaterally cut off social relations, sending enormous shock waves throughout the society. It is believed that the person who commits such an act will die by the roadside, or the retrieved camels will all die off from a disease or cease to produce milk. A tragic fate will certainly befall the person who exerts his ownership at any cost.

In at least one reported case, the person who forcefully retrieved camels had to 'compensate' for his action later when his deed was judged inappropriate.

[Case 2] (Schlee 2012: 253)

X, an elder among the Rendille, retrieved his camels in a camel trust with Y, and Y was indignant. Sometime afterwards, X proposed to a family to marry their daughter as his second wife. The girl's family belonged to the same clan as Y, and X ended up having to appease Y and his clan members by paying a 'penalty' so that he could marry the girl.

The camel that X forcefully retrieved was indeed his, but the way he exerted his right was illegitimate, and this had to be rectified when he was in a weakened position of seeking a wife.

The next case demonstrates how each trust relation is intertwined with other trust relations, which are themselves social relations that, at times, must be reconciled.

[Case 3] (Sato 1991: 284, 1992a: 77)

Two Rendille men, X and Y, had a fight and charged at each other with big clubs. The next morning, X went to Y's livestock enclosure and forcibly retrieved two female camels that Y got in trust from Z, a parallel cousin of X. The elders convened a meeting to discuss the matter. It took them two days to refer the matter to Z, who decided not to side with his cousin X, but with Y, and had the retrieved camels brought back to Y. He feared that, had he done otherwise, the camels trusted to him by a close relative of Y would be taken away from him.

The above three cases demonstrate the ideas and beliefs pertaining to the camel trust in two societies and the associated day-to-day social interactions and negotiations. There is no doubt that the Rendille and the Gabra think of the original depositor as having ownership of the camels. But it is also their thinking that the ownership rights may not be freely exerted at any time. Realising the return of the camels requires legitimate reasons, and grave misfortune may befall if one retrieves camels without consent from the trustee. In this sense, the right of ownership in the camel trust is far from absolute but is, rather, 'nominal', as Schlee (2012: 253) has pointed out, and crucially open to negotiation at all times.

Categorising the rights involved in the camel trust into ownership and usufruct is seemingly clear cut, yet this is only because we think of private ownership as an absolute right. For us to understand Rendille and Gabra rights pertaining to livestock, we must consider not only who can demand what of whom but also under which circumstance and with which conditions. This is why people spend

days in lengthy discussions and negotiations seeking a mutually satisfactory solution.

4-3. Various Negotiations over Livestock Ownership

The Rendille and the Gabra conduct various negotiations over livestock besides the camel trust. Here, I will describe an impressive case where a demand to have a livestock exchange from the past annulled was granted after much negotiation.

[Case 4] (Sato 1991: 278, 1992a: 77)

X exchanged a young heifer camel for a castrated camel with Y of the same clan. The original heifer and its offspring reproduced well and, 16 years later, Y had nine female camels. X saw this and demanded that the previous exchange be cancelled. X argued that because the original heifer reproduced so well, the exchange in the past was no longer fair and that Y should return the nine female camels to X because they were 'his'. The matter called for many meetings held among many men, and Y eventually returned eight of the nine female camels to X.⁷

The Rendille think of a mature castrated camel as equal in value to a young heifer, and the two are often exchanged (Sato 1991: 280). As this was an exchange, the heifer that Y obtained was not a trust camel. It is easier for us to think that, because the animal was obtained in a balanced exchange, Y would have the ownership once the exchange was complete, and with it, the total of nine female camels. But X made a stunning demand for the animals, saying the exchange made in the past was imbalanced, so Y should return to him not only the original heifer but all of its descendants. It might be true that the original heifer reproduced extremely well. But reproduction itself was expected at the time of the exchange, and X's demand seems improbable to us. Furthermore, X referred to all descendants of the original heifer as belonging to him, and the immediate society's acceptance of this demand as legitimate indicates

how X continued to hold a certain property right over the original heifer after the exchange. The original exchange of the heifer with a castrated camel was not what we would think of as ‘balanced exchange’. We are familiar with exchanging goods where good balance and equal value are taken for granted. But it is indeed wrong for us to naively apply the concept of ‘equal value’ (Ohta 2001) to the Rendille and the Gabra.

Below, we examine how the Rendille and the Gabra handle the rights pertaining to livestock within a family.⁸ The ultimate right over livestock, or the right to their disposal, is deemed to rest with the father, the head of the family (Sato 1992a; Soga 1997b). Both the Rendille and the Gabra practice primogeniture, where the eldest son of the first wife (the ‘eldest son’ in the following paragraphs for simplicity) inherits most of the livestock held by the father. These people emphasise the ideal oneness of the father and eldest son in narratives, and they value this in daily life as well. The father’s livestock is never gifted to his eldest son before he dies. On the other hand, the father may gift female camels to his second and younger sons for occasions such as a circumcision or wedding that would mark a passage in an individual’s life stages.

Soga (1996) has described in detail the rights of the Gabra father and sons over livestock and how they assert these rights. The Gabra sons must live with the father after they marry, and all livestock raised by the family group, which consists of the father, his wives and married sons, belong to the father. However, in the case of the second or younger sons, Soga (1996) reports a conflicting narrative. That is, when female livestock are given to the second or younger sons, these animals and their female offspring belong to the sons. Their male offspring belong to the father before the sons get married but, after they marry, the sons acquire ownership of these animals. However, the right to dispose of any individual animal is said to be held by the father. The second or younger sons may be given a heifer by someone from outside the family group, and such an animal is likewise said to fall under the disposal right of the father. In other

words, livestock ownership on the part of the sons is strongly restricted, whereas the father is free to dispose of the livestock held by the sons.

However, in real life, the father does not take livestock away from his second and younger sons except under extreme circumstances (Soga 1996). When the father must take away the animal, he does his best to find a suitable replacement. If he does not, it is said that the livestock held by the father may die off, stop giving milk or cease to reproduce. As I mentioned, similar misfortune is said to befall the Gabra man who forcibly retrieves his camels in a trust relation. Yet, such retrieval does happen. Thus, we can assume that the father who disposes of his son's livestock may not always compensate his son, presenting the sons with the need to sternly assert their rights. But Soga (1996) wrote that these conflicts between a father and his second or younger sons almost never occur.

In contrast, the father and his eldest son are often in conflict (Soga 1996). As Gabra society is based upon primogeniture, oneness of the father and the eldest son is desirable, and the son does not have any livestock of his own. Although they believe that all livestock belong to the father and that children must obey the father, there coexists a conflicting idea that the father must have the eldest son's consent to dispose of any head of livestock. The father has his own economic or social necessities and may try to give away or sell the livestock, but the eldest son's wish may not coincide with the father's. If the two happen to disagree, and the quarrel is not resolved, the matter must be brought before a meeting of the elders, where the two argue their stance and seek a compromise.

Not all fathers and eldest sons reach the point of conflict, and Soga (1996) reported that their relationship is more likely to be very close. He analysed the reasons for this and found that the first was the social maturation of the eldest son. Before marrying, Gabra men lead a highly mobile lifestyle as they move away from the father's village to graze the livestock in outlying camps. After they marry, they return to the father's village with a wife, and rather than grazing the

livestock themselves, they direct their children and younger men in the task. As eldest sons mature in their social status, they may or may not have reason to oppose the father's wishes pertaining to livestock.

The second reason given by Soga (1996) is closely related to the first: the father in fact transfers more and more patriarchal rights to the eldest son as the son matures. The father may let the eldest son distribute foodstuffs, including meat, to family members or let him allot the lactating camels to the women of the family so that there is a balance in the amount of milk available to feed the children. The Gabra do not have a prescribed protocol on these matters. Rather, these changes are realised through daily discussion and negotiation between the father and the eldest son. This is to say that, even though the Gabra hold that all livestock belong to the father, as realistic adjustments are made in tandem with the emerging social maturity of the eldest son, the father's rights over his livestock are affected and change over time. This is also true in the Turkana society in that members of the 'basic family' must repeatedly negotiate any decision, as I explained in Section 3 of this chapter.

5. Conclusion: The Self That Is Open to the Other

In the ideology of East African pastoralist societies, livestock most often belong to the head of the family. These groups have ideas and rules relating to livestock ownership and usufruct. Multi-layered rights of multiple people exist, all intertwined, for each head of livestock, which can be described as a 'bundle of rights'. However, in this chapter, I did not try to comprehensively describe and list these rules because, even if they were neatly categorised into ownership and usufruct, or practical ownership rights and nominal ownership rights, we would still be far from understanding people's practices related to their ownership of livestock. It is misleading to regard the 'bundle of rights' as something tangible that dictates the actions of the stakeholders for each individual animal. The rights held by the people exist in a flux, perpetually renewed and recreated through

people's negotiations with 'the other'.⁹

Here lies the thematic conundrum, 'What is ownership?' as well as the question of, 'Who is "the other"?' with whom the negotiation must be conducted. What kind of an existence is 'the other' for the Turkana? Kitamura (2019: 29) pointed out that, for the Turkana faced with a negotiation, '[t]here always will be room for mutual interaction that ensures the facility and desirability of the continued negotiation'. He also wrote that the 'positivist rule that people will cooperate ... is unerringly applied in all social interactions' (Kitamura 2002: 104).¹⁰ This is to say that, for the Turkana, 'the other' is a counterpart whose action directed to oneself must be taken seriously and acted upon, never neglected.

For us in Japan, 'the other's' existence is often conveniently presumed absent, and interactions with such others are more likely to be discontinued. Thus, the way the Turkana deal with the other is quite striking. What follows is an episode from the period during which I was conducting fieldwork among the Turkana. In an outing to buy necessities in town with some friends, I was approached by an old woman who said, 'Give me some money.' She may have thought that I was some kind of rich white man, willing to part with cash for her. My friends at first told her, 'Leave our friend alone.' However, the old woman replied, 'What's wrong with my begging him for money?' My friends grimaced and laughed, saying, 'All right, all right.' I had secretly hoped that my friends would shoo the burdensome old woman away, but for the Turkana, she, whoever she was, had a legitimate right to approach anybody in the way she did.

Now, this does not mean that my friends were sympathetic to the old woman, nor did they feel kind-hearted toward her. For them, 'the other' is never a being who gently understands 'the self' without engaging in verbal communication, nor a being who will imagine a convenient circumstance of the self. The other is an existence and a counterpart whose relationship with the self must be constantly renewed through direct mutual interaction.

Another impressive incident occurred after the livestock being

raised by the family with whom I was staying were looted by a neighbouring people. The head of the family subsequently visited relatives and friends to solicit livestock. One day, he declared he was visiting a friend living very far away. I happened to know this friend and was secretly convinced that he would offer help, but asked aloud, 'Would he offer you some livestock?' To this, the family head replied, 'He was a good friend of mine in the past, but I cannot say this is still the case with us now' (Ohta 1986: 209). For the Turkana, 'the other' is an unknowable, inviolable entity that exists beyond one's manoeuvring or management. They take this as a given and delve into negotiations on the principle that people must cooperate, which at the same time means that room for communication must always be secure. 'The other' and 'the self' are just such open entities for the Turkana (Ohta 2017).

Let us compare our property relations and our image of 'the other' with those of East African pastoralists. The pastoralists, who continuously engage in negotiations with the other over livestock ownership, strike us as mercenary, each simply interested in maximising their own advantage. For us in Japan, they are very calculating, and all parties seem to end up either a winner or a loser after negotiations. However, we are completely mistaken to think that the pastoralists are self-centred and constantly asserting their desires just because they repeatedly engage in negotiations over livestock. This is because we have projected our view of private ownership and the profit motive onto their society.

Because private ownership is taken for granted in the capitalist market economy, to own something is a state that exists regardless of whether there is an 'other' or not. Yet for the pastoralists, their rights over their livestock cannot be separated from perpetual acknowledgement from 'the other'. Without 'the other', there is no property or ownership. Their rights over livestock can only mean something when there is an 'other' with whom one must negotiate.

The title of the volume by Benda-Beckmann et al. (eds) (2006) introduced in the beginning of this chapter is *Changing Properties of*

Property. There are two meanings of property/properties here. One is ownership and the objects owned. The second involves the characteristics, qualities, specificities and uniqueness that are attributed to what is owned. Washida (2000) argued that the two meanings of the word ‘property’ are in opposition to each other. The reason for this, he wrote, is that to own something signifies the possibility of giving or trading that something away, whereas the attribute of specificity signifies that it is not exchangeable with anything else. When used to refer to people, the term denotes the uniqueness (i.e. singularity) of a person.

Washida (2000) used the two Japanese words *sho-yuu* (to own) and *ko-yuu* (specific to), used in translating the duality of the French word *propriété*, to discuss the characteristics of modern society. The institutionalisation of private ownership was the necessary condition to guarantee the civic freedom of individuals in modern times. We usually take this for granted and never doubt whether we are free to dispose of what we own as we please. At the same time, we extrapolate our understanding of ownership to all aspects of life and believe that our specificity (individuality) and identity are based on a similar, inherent rule. It is as if we are obsessed with seeking the *raison d’être* of our individual, singular existence in the attributes of ourselves, independent of ‘the other’. Washida (2000) pointed out that we continue to discuss property using the vocabulary of control over and disposal of things, where the other is absent. He proposed that it might be necessary for us to employ the vocabulary of communication in reconsidering the problematic idea of ownership because communication and interaction presume the existence of ‘the other’.

As Gluckman (1965a) illustrated, in thinking about property rights, we should focus on relationships between people rather than the relationship between people and things. Generally, ownership exists only in relation to ‘the other’. However, because it is assumed that private ownership exists unconditionally in the capitalist market economy and because we have yielded to law any decision as to where

specific ownership rests in our society, we have negated the existence of ‘the other’. In contrast, the East African pastoralists perpetually hold their property rights in negotiation with the other. The self and the other are always in a direct face-off with each other because the other is an uncertainty, an inviolable being, and an existence beyond one’s manipulation or management. Such a relationship between the self and the other may seem extremely harsh and stringent to us yet, for the pastoralists, this is their domain, one that constantly regenerates mutual recognition and respect.

I was always impressed with their way of conducting face-to-face interaction, through which they establish and vitalise their social relationships, and I am confident that it is a superb manifestation of African Potentials. Their property relationships seem not to be legally formalised to a high degree, which, one might think, causes uncertainties with regard to property rights. However, as Nyamnjoh (2017) argues, incompleteness is the normal order of things. African people do not place their trust in hard logic and/or rigid rules. ‘It is one’s interest and the interest of others to acknowledge that being and becoming is an eternal process of incompleteness’ (Nyamnjoh 2017: 259). Recognition of being incomplete leads us to convivial conversations and interactions with others.

Endnotes

¹ See, Bourdieu’s (1990) argument for a theory of practice and Butler’s (1990) theory of performativity.

² Gulliver (1955: 124) called this unit ‘a nuclear family’.

³ Only outsiders, including anthropologists, ask these questions. The Turkana can identify not only the individual animals that they own but also each head of livestock owned by their neighbours. A visitor from a village far away may ask, ‘Who owns the livestock?’ when he sees some livestock grazing in front of him. If the person asked happens to be the herder, he will reply, ‘They are mine.’ This is to say that the Turkana would never ask

the question independently of a context. This is comparable to the situation where we may ask someone, ‘Who owns the house we are standing near?’ and someone else replies with the name of the head of the family living there. It is not necessarily the case that the head of the family residing there actually owns the house.

⁴ Livestock meat consumed within a family would be slaughtered and skinned at this woman’s hut, and she would distribute the meat symbolically, as each family has a predetermined way of sharing meat among its members.

⁵ These short-term loans of lactating camels are called *kharasime* in Rendille (Sato 1992a) or *karashime* in Gabra (Soga 1997).

⁶ Both the Rendille and the Gabra use an intricate lunar calendar system to mark the day, week, month and year. This is observed in conducting rituals and daily activities. The calendar year is denoted by the names of the days of the week, with the name repeated every seven years (Sato 1992b).

⁷ Sato (1991, 1992a) did not report whether X returned the original castrated camel to Y, but my guess is that he did not. It is my guess that the very fact that X could demand that Y annul the camel loan was probably influenced by the two men’s belonging to the same clan, but Sato (1991, 1992a) did not speak to this either.

⁸ The definition of ‘family’ among the Rendille and Gabra will not be discussed in detail here.

⁹ I stress the importance of negotiation here but do not negate the importance of ideology nor the importance of the different rights and obligations allotted to various subsets of people, for example, men and women, husband and wife or father and son.

¹⁰ For Kitamura’s papers written in English, see, Kitamura (1990, 1997).

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