

THE USE OF LAW IN THE PROCESS OF COLONIZATION

An Historical and Comparative Study with
Particular Reference to
Tanzania (Mainland) and New Zealand

by

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ABSTRACT

This thesis is an historical and comparative study of the role of the state and law in the process of colonization. The two colonial social formations studied are New Zealand and Tanzania Mainland (then known as Tanganyika).

The first chapter outlines the purposes of the research and contains a statement of the presuppositions and hypotheses which were formulated at the outset of the research. Previous articles and papers written by the author are quoted. As is made clear in the final chapter, not all of the hypotheses were borne out by the research material or by the author's present perceptions of that material.

Chapter 2 is a detailed study of the means by which British rule and English law were imposed upon New Zealand and Tanzania. The historical context of the commencement of British rule is examined and the various legal devices resorted to in order to justify the methods and practices of imperialism are carefully considered. In particular there is a discussion of Blackstonian common law doctrines on the acquisition of colonial territories, an examination of the Treaty of Waitangi, 1840 and various Proclamations made in and with respect to New Zealand, and a study of the Foreign Jurisdiction Acts, 1843 to 1890 upon which the Tanganyika Order in Council, 1920 purported to be based.

The subordination of Maori social formations in New Zealand is dealt with in Chapter 3. Attention is focussed on the Native Land Purchase Ordinance, 1846 in the early period of British rule, upon the confiscations of Maori land pursuant to the New Zealand Settlements Act, 1863 during the war years of the 1860's, and upon the workings of the Native Land Court in the concluding period of the study up to 1894. Significant legislation is subjected to careful scrutiny and there is an assessment of the impact of these laws in the destruction of the independent material existence of Maori peoples and in pushing the Maori population into a marginal existence on the edges of a British settler dominated capitalist social formation.

In Chapter 4 the patterns of colonial capitalism in Tanganyika during the years 1920 to 1945 are reviewed. The Native Authority is seen as the lynch-pin of British rule and the Ordinances relating to the Authorities and the Native Courts are fully considered. Statistical information is presented to emphasize the significance of laws relating to peasants' economic production in the workings of the Authorities. Specific topics that are dealt with include famine relief and the Native Foodstuffs Ordinance, 1924; the policy of "concentrations" in tsetse fly areas; the role of hut and poll taxation to induce participation in commodity exchange transactions and in plantation wage-labouring; the penal sanctions of the Master and Native Servants Ordinance, 1923; and state interventions to control and regulate the marketing of peasant grown produce.

The concluding remarks of Chapter 5 attempt to find theoretical concepts which might explain the use of law in the process of colonization. The categories of conventional jurisprudence are found to be unhelpful, as is the orthodox Marxist theorizing on law as a superstructure reflecting economic conditions. It is suggested that the focus should be on the role of law in the extraction of surplus-value under conditions of capitalist accumulation. It is concluded that the subordination of the Maori in New Zealand was an example of plundering akin to the plundering carried out by European powers during the era of primitive accumulation. In the case of colonial Tanganyika, capitalist accumulation depended upon extracting absolute surplus-value, with a lengthening of the working year for peasant households, and there was a continuation of formal subsumption of labour under capital without peasant households being entirely dispossessed of their land or means of reproduction.

A bibliography, table of legislation, and table of reported cases completes the thesis.