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ABSTRACT

PART ONE: THEORY

This part is concerned with two issues only, namely, the definition of the research problem, and a discussion of the theoretical framework within which that problem is analysed. Both of these are treated in Chapter One.

i) The Research Problem: The study is an attempt to define and explain how the political and economic processes of European settlement in Kenya shaped the evolution of land law and how that law has influenced political and economic choices in the post-colonial era. A Project Manual describing the major hypotheses, operational procedures, and data collected are reproduced as Appendix I to this study.

ii) The Argument: The argument that runs through the essay is that the legal organisation of the colonial economy had one important objective, namely, to enable the European sector to develop by under-developing the African sector. Further, it is argued that the persistence after independence of colonial economic relations and the legal regime complimentary to it has aggravated rather than reversed that situation.
iii) Theoretical Framework: After an examination of the nature and concerns of the existing land use literature, it is suggested that a fruitful way of analysing the research problem is to avoid conceptualism altogether and instead take a sequential approach which takes the investigation through five analytical stages. These are:

firstly; an examination of the colonial factor in so far as it was relevant to the continued viability of indigenous political and social institutions,

secondly, an examination of the nature of the colonial economy and the development of the legal regime that was necessary to stabilise it,

thirdly, an examination of political and economic relationships between the African and settler sectors of colonial society,

fourthly, an examination of the reaction of the political machinery of the independent state to the transfer of power particularly in relation to land distribution and agricultural policy, and

fifthly, an examination of the system of land use administration in the post-colonial era.

This has the advantage of integrating legal with social history such that the former can be seen more definitely as an organic pattern of normative and institutional response to specific problems in colonial and post-colonial society.

PART TWO: EVOLUTION OF LAND LAW

This part is concerned with the substantive question of how colonialism shaped the evolution of property and agrarian laws. Chapter Two examines the nature of colonialism as a factor influencing legislative action. It is contended that although British administration was based on the theory of "the dual mandate", this referred to the structural trappings
of colonial administration only. In almost every other respect, and certainly in respect of land policy, systematic attempts were made right from the beginning to mould the norms and values of African society to suit the needs of the colonial economy. The thrust of early legislative policy, therefore, was to provide a framework which would enable colonial administrators to do this within existing institutions of the African peoples.

Chapter Three carries that argument into the area of property law. It is maintained that apart from settler belief that only the institution of private property was consistent with a viable agricultural enterprise, it was also thought, at first, that that system of land holding was sufficient security against any claims that anybody might make upon any land expropriated by the settlers. Subsequent developments show that this was to overestimate African political and economic adaptation to colonialism, particularly to the "native reserves" system that had been set up to make way for European settlement and facilitate the recruitment of plantation labour. Political unrest and agitation within the reserves, led to the realisation that security of settler property depended ultimately on the stability of the reserves. This realisation led to rapid changes in land policy during the latter half of the colonial period leading, firstly, to firm legislative guarantees for "reserve" boundaries and, secondly, to a comprehensive programme of tenure reform.
that was designed to incorporate African peasants fully into colonial economic relations. It was hoped that by putting African agriculture "efficiently on Western lines," a sizeable group of contented peasantry would emerge that would act as a buffer between the settlers and political mavericks hankering for land distribution.

Chapter Four looks more closely at colonial economic relations, particularly the legal organisation of crop and animal development, labour, credit, marketing, and land management—all of which are referred to collectively as agrarian law. It is argued that the settlers saw the role of government in terms of providing an environment within which their individual or collective initiative would have its freest expression. That being so, the thrust of agrarian law was to provide an institutional framework within which producers could control the administration of the agricultural industry as a whole. Thus when colonial policy towards African agriculture changed, as is indicated above, the settlers were nonetheless able to ensure that this did not affect their hold on the system. Thus the political and legislative changes that took place in the 1950s and early 1960s, while admitting a limited range of African participation in the cash economy, were largely concerned with the perpetuation of colonial economic relations. This is the situation that existed at independence in 1963.
PART THREE: CONTINUITY OF LAND LAW

This part deals with the question of independence and the continuity of land law. Chapter Five deals with two things. Firstly, it examines the basic characteristics that made colonial land law especially appropriate as a framework for the underdevelopment of the peasant sector. The most important of these are, that in scope, the regime was highly sectoral and fragmentary, and in content it was extremely authoritarian and almost totally inaccessible to the African peasantry whose behaviour it was intended to influence. The question that arises from this is why no attempt was made to overhaul this regime when it was so clearly inappropriate for the execution of an integrated agricultural policy — a declared goal of the post-colonial state. We have answered this question in terms of the emergence of an African political and economic elite converted to the view that the continuity of colonial economic relations was crucial to the survival of independence. It follows that the continuity of the legal and institutional paraphernalia of the status quo became equally necessary. As Africans began to accede to positions of dominance within that economy, however, colonial land law became more and more accepted as part of an optimum institutional framework for rural development. Secondly, this Chapter examines
the structural changes that occurred in the system of land administration between 1963-1974, and suggests that the general trend was towards centralisation of control and the expansion of administrative power in agriculture. What seems to have happened in effect is that the structural framework that had been used to control the "reserves" throughout the colonial era, was slowly being extended to cover the whole economy. But whereas this implies a decrease in producer control over the economy as a whole, it is suggested that in fact these changes strengthened the position of the large-farm areas, and further weakened that of the small-farm areas. In particular, it is argued that the small farm sector continued to be denied access to adequate credit and infrastructure, and efficient marketing facilities with the consequence that this sector continued to operate essentially as a periphery of the large farm-sector.

Chapter Six and Seven examine the implications of this argument in terms of the actual style of land use administration and farm-level decision-making in the small-farm sector. Chapter Eight is a summary of the basic arguments of the dissertation and an indication of what we consider to be the major unfinished policy and research tasks in this area of legal scholarship.