Administrative Law and Legitimacy in Anglophonic Africa

A Problem in the Reception of Foreign Law

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Lawrence Friedman (1969: 29) has written that "many basic questions of the relationship of law to social change and to cultural development have been completely neglected. . . . How does law brighten or darken the road to political . . . stability. . . . What happens when laws are borrowed from more advanced countries?" This paper examines the reception of English administrative law in Anglophonic Africa in an effort to discover some general propositions to answer Professor Friedman's questions.

Hans Kelsen demonstrated that the legal order embodies two forms of norms. One form is directed at role-occupants, prescribing their behavior. Another, in the form of hypothetical judgment, is directed at judges, instructing them in the event of a breach of the norm by the role-occupant to impose a stated sanction. Kelsen's analysis takes as a paradigm of a rule of law the generalized prescriptions of "lawyer's law." It can usefully be expanded. The normative structure of law always involves some

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norm directed to the role-occupant, and another set of related norms directed at law-appliers and law-enforcers—the bureaucracy, including the judicial system—prescribing activity on their part designed to bolster norm-prescribed activity in the role-occupant.

How the role-occupant responds to the norms directed at him is a function not only of the normative system of the law, but of the entire social matrix as it presses upon him—the political, economic, ecological, social, psychological, ideological, and other pressures within whose compass he exists. Included in these forces are the sanctioning activities of the bureaucracy. How the bureaucracy itself acts, of course, is a function not only of the norms directed to it, but also of the societal matrix in which it operates.

So much is trivial. The implication of these trivial propositions, however, may answer one of the questions posed by Professor Friedman. Insofar as the societal matrices of the role-occupant and of bureaucracy change, the behavior of the role-occupant in response to a given norm must be expected to change. When laws are borrowed from more advanced countries and imposed upon role-occupants in an underdeveloped country, it is to be expected, therefore, that the activity induced will be different from that induced by the same rules of law in their places of origin.

Professor Friedman also asks, "How does law brighten or darken the road to political wisdom or stability?" Political stability is, in part at least, a function of legitimacy. In Africa, legitimacy at independence was mainly based on the charisma of the first-generation political leaders—Nkrumah, Kenyatta, Asikiwe, Nyerere, Obote, Kaunda. Now Nkrumah is in exile, Azikiwe no longer is in power, Kenyatta grows old. The others find, as Weber (1947: 363 ff.) long ago predicted, that charisma must be routinized. African governments must legitimize themselves by other means. They are too young to clothe themselves in traditional sanctity. They must try to swathe their operations in the cloak of legal-rational legitimacy.

The body of rules subsumed under the phrase administrative law is, in England, among the most important institutions for the maintenance of legal-rational legitimacy. These rules were received in Africa under the general reception statutes, by which the British imperial overlords imposed the common law on their new African territories. If our earlier hypothesis is correct, it is to be expected

that the behavior induced by the received rules of administrative law in Africa would induce other sorts of activity there than they induced in England.

We can test this proposition by examining administrative law and the activity induced by it in two periods: briefly, in England, and in colonial Africa. Before undertaking that examination, however, it may be useful to show how the rules of administrative law prescribe activity which, if followed, tends to result in legal-rational legitimacy.

LEGAL-RATIONAL LEGITIMACY AND ADMINISTRATIVE LAW

A government is perceived by a public as legitimate when it is believed to act in a way consonant with that public's value acceptances. It must satisfy the requirements of both substantive and formal rationality (Gross, 1964: 152). Substantive rationality requires that the basic needs of the people be met; formal rationality, that bureaucratic means be rationally adapted to the substantive ends.

The general requirements of a formally rational bureaucracy have been frequently defined. It must, in the first place, be instrumental to the various political institutions of society (La Palombara, 1965: 34, 51). To accomplish these objectives, Weber held inter alia that there must be a clear-cut division of labor through the distribution of official duties in a fixed way; offices organized in a hierarchical order; operations governed by a consistent system of abstract rules, and consisting of the application of these rules to particular cases, the conduct of the office "in a spirit of formalistic impersonality, *'sine ira et studio,'* without hatred or passion, and hence without affection or enthusiasm" (Weber, 1947: 240).

If a system of administrative law is to guarantee these characteristics, its rules must insure five objectives. First, the bureaucracy must be subordinate to a policy-making body. Second, in order to insure that the bureaucracy substantively serves the values of the public, and at the same time is seen by the public to be acting rationally in its interests, there must be communication channels up and down. Third, in order to insure a division of labor with cases decided by rule, and not by whim,

administrative roles must be defined as narrowly as the nature of the case will admit. Without precise assignment of responsibility, there is no assurance that desired decisions will be taken; unless the role is defined narrowly, there is the overhanging threat that private considerations will substitute for the official goals of the organization. Fourth, there must be norms of procedure that contain built-in assurances that decisions will be taken in as securalized a way as possible, *sine ira et studio*. There must be procedures apt to insure that the decision maker receives all the appropriate information; conversion processes that direct the decision maker to the relevant considerations and away from the irrelevant ones, and check-up devices that insure feedback. Finally, there must be control institutions to supervise the application of the norms of administrative law and to sanction their breach.

The received administrative law in independent Anglophonic sub-Saharan Africa is two-plied. Formally, the English rulers imposed the common law—including a substantial body of administrative law—upon their African territories. In fact, however, what was inherited by the new states at independence was that received law, overlaid by an additional ply of rules and practice engrafted during the colonial period. In order to understand how the rules in fact work, we must examine first the rules and the practice—the law-in-the-books and the law-in-action—as they operated in England; second, how they operated and changed during the colonial period; and finally, how this legacy matched the demands of independence.

THE ENGLISH LEGACY

Administrative law in England nicely matched the four requirements of legal-rational legitimacy. It arose in the context of the burgeoning welfare state of the late nineteenth and twentieth centuries (see Maitland, 1908: 501, 505). Administrators came to engage in two sorts of activities. First, they met emergent societal tensions by ad hoc laws devised to relieve them. The Factory Acts, for example, were introduced incrementally, affecting specific industries and specific categories of employees. Second, they had to apply the manifold rules of the welfare state to particular cases. Typically, these were applied to entrepreneurs, the limitation of

whose activities was in large part the thrust of the regulations of the welfare state.

This expansion of administrative law took place in a country with an unwritten constitution, absolute parliamentary supremacy, and a ministerial system of administration. Courts were well developed and had traditionally been the loci for the resolution of conflict between individuals. They had procedural devices available in the great prerogative writs—mandamus, certiorari, prohibition, and habeas corpus—which had served to control the activities of the Justices of the Peace, the principal administrators of an earlier era.

In this context, a set of norms of administrative law developed which reasonably met the five requirements of legal-rational legitimacy which we have identified. First, parliamentary supremacy insured that, in the final analysis, the administration was instrumental. Second, communications were provided formally through the electoral system, and informally in many ways through which the most powerful public—the middle classes—could influence administrative activity. Third, division of labor, clear-cut allocation of responsibility, and narrow grants of discretion were accomplished by Parliamentary practice in rarely making undefined grants, courts that were quick to cut down too broad a grant by construction (Wade, 1967: 42, 64; see Associated Provincial Picture Houses v. Wednesbury Corporation, 1948), and the ultra vires and subdelegation rules (Entick v. Carington, 1760).

Fourth, norms insuring procedures likely to result in rational decision-making controlled both rule-making and rule-applying decisions. Deeply entrenched traditions of the civil service required at least the consultation of affected interests before delegated legislation was enacted. Rules were frequently subject to Parliamentary inspection and control through the device of laying on the table. With respect to "quasi-judicial" decisions, court-enforced rules of administrative law were available. Natural justice served much the same function as the American concept of due process in insuring that quasi-judicial decisions were made only after a fair hearing (The King v. University of Cambridge, 1723; Davis v. Grand Function Canal, 1852). Although usually phrased in the rhetoric of "the rights of the individual," a fair hearing tends to insure that the decision maker will receive inputs of relevant facts and theories, for the parties most intimately

concerned have opportunity to call them to his attention. A whole panoply of rules controlled the conversion process, in an effort to insure that only the appropriate considerations were taken into account in coming to a decision (GMC v. U.K. Dental Board, 1936; Bernard v. National Dock Labour Board, 1953; Vine v. National Dock Labour Board, 1957; Scrims Motor Units Ltd. v. Minister of Labour and National Service, 1946; Rex v. Meredeth JJ., 1814; Berkdale District Electricity Supply Co. v. Southport Corporation, 1926: 364; Gard v. Commissioner of Service for the City of London, 1885; see de Smith, 1959: 194 ff.). Criteria determining the minimum quantum of evidence helped to insure that decisions were reached on empirical data, not whim (American Thread Co. v. Joyce, 1913; Smith v. General Motor Co., 1911; Doggett v. Waterloo Taxi-cab Co., 1910; Cababe v. Walton-on-Thomas UDC, 1914; Porvell v. Minister of Pensions, 1946).

Finally, institutions existed to sanction these norms. Internal bureaucratic controls, based upon the informal organization of civil service society, its esprit de corps, and public school homogeneity, were the most potent sanctions against corruption and manifest irregularity. Parliamentary control over ministerial rule-making was achieved through the Parliamentary question and the device of laying on the table of proposed delegated legislation. Judicial review was available at the instance of the private individual whose toes had been pinched by the bureaucratic machinery. The most powerful public, and the public most likely to feel the pinch—the middle classes—had lawyers at hand and courts available. The rules themselves were phrased in a rhetoric responsive to middle-class claims, for they purported to strike a balance between "private rights" and the "public interest."

Thus, the five requirements of an adequate system of administrative law to insure legal-rational legitimacy were present in England: instrumental character, channels of communication, narrow role-definitions, rational procedures for both rule-making and rule-applying, and sanctioning institutions. Of these institutions, only the formal, court-enforced norms of administrative law made the long trip to Africa. How did they function in their new tropical home?

COLONIAL AFRICA: PLURAL SOCIETY AND LEGITIMATION

The rules of administrative law were imposed upon colonial Africa through the general reception statutes. Our model suggests that the activity they induced there should differ from the activity they induced in England, given the wide difference between the English and the African societal matrices.

In fact, however, the British Colonial Service did acquire a considerable degree of legitimacy. To explain how this happened, and the institutions which brought it about, we must examine first the demands made and the constraints laid upon the colonial governments; second, the decision-making processes of colonial government; third, the function of the rules of administrative law in their new environment; and fourth, the institutions which in fact preserved legal-rational legitimacy.

The colonial administration was faced by a variety of concerned publics: the British Parliament, and the public opinion in England, led by do-good moral entrepreneurs; English settlers, entrepreneurs and officials in the colonies; educated African elites, traditional rulers and the great mass of Africans in the subsistence sector. British rule had to be perceived as legitimate by all of them.

Of these, the colonial administration perceived its reference groups as white, not African. The claims of the several white publics met nicely in the dogmas of the dual mandate and of indirect rule. English law and government in the colonial enclave facilitated economic exploitation; traditional government and customary law, controlled by English administrators, provided the instrument for England's civilizing mission and for the maintenance of law and order. The same white reference groups, of course, demanded legal-rational legitimacy in the operations of the colonial government insofar as it affected them.

The English perception of the requirements of legitimacy vis-à-vis Africans was, until the last gasp of Empire, altogether different. Paternalism, the visible expression of the English overlords' sense of inherent superiority, was, they believed, a sufficient legitimation in the eyes of the Africans. It had two faces. On one hand, the British believed that they had brought the "glories of British justice" to wild tribes that until then had known nothing but terror. Bradley (1966: 45) wrote that

> none of them doubted our right to be there [i.e., in Northern Rhodesia in 1926] and none of the Africans questioned it. We knew that the British had rescued the people from great evil and that we were giving them a new and better life which already held the seeds of a future civilization. . . . Most of the tribes had not been conquered by the British but had themselves sought their protection and had not learned to regret it.

The other face of imperial rule was brute force. When available resources did not permit its actuality, its illusion acted as surrogate. The lonely British Resident in Northern Nigeria had to maintain his position by constant reminders of the mailed fist behind his back. Pomp and circumstance—grandly accoutred governors, fife and drum corps, the deliberate creation of a vast gulf between the cantonments and the African town—played surrogate to legal-rational legitimacy. Bradley (1966: 45) wrote of the Angoni of Northern Rhodesia in 1926 that they "had never disputed the rights of conquest. 'You conquered us,' they said, 'We are your men.' "

THE TASKS OF GOVERNMENT

The agenda of decisions to which the norms of administrative law were directed, too, differed vastly from Africa to England; and in Africa, they differed markedly between the long night of indirect rule and the false dawn of colonial development.

Indirect rule. During the period of indirect rule, a classically liberal laissez faire policy dominated the economy in the colonialist enclave. Lugard (1964: 5, 6) held that the exploitation of the tropics "is for the most part undertaken with avidity by private enterprise." To achieve that exploitation required infrastructural support and a framework for conflict resolution, but little more. The limits imposed by the welfare state did not begin to reach Africa until very late in the Imperial game (see Seidman, 1969a: 76).

In the subsistence sector, governments' goals were, of course, completely different. In every case the overriding considerations were the maintenance of law and order and the collection of taxes. Bradley, a colonial officer of great experience, writes that in 1926 in Northern Rhodesia, where he was first posted, "the Government had no money and as yet was doing very little except to

keep law and order and collect enough hut tax to balance the budget" (1966: 44). In 1914 it was said of British East and Central Africa that, if one asked of officials, "What is administration?" the response would be, "To hear cases and get revenue for the government" (Stigand, 1914: 6).

In addition, there were important tasks with respect to labor supply, land, and political control over the "natural rulers." With respect to labor for government, Stigland (1914: 187) put it bluntly enough: "It is not always realized that in many places the very existence of a Government and its officials is dependent upon a certain amount of forced labor." Settlers, too, depended upon a supply of African labor. Hut and poll taxes were designed not to raise money, but to drive the African into European employment in order to raise cash with which to pay the tax (see Woddis, 1960: 48 ff.; Aaronovitch and Aaronovitch, 1947: 99). Master and servant laws were enacted, making many of the ordinary breaches of employment contracts the bases not merely for civil suits, but crimes as well. For example, it was a crime to leave a contract of service, once undertaken (see The Employment of Servants Ordinance, 1937[1] and Rex v. Kalawa, 1948); it was a crime to entice another's servant out of his employment (see The Employment of Servants Ordinance, 1937[2] and Rex v. Ben, 1942); it was a crime for a servant to do less work than was assigned to him in the course of the day (see The Employment of Servants Ordinance, 1937[3] and Rex v. Anreya Kalawa, 1948); and it was a crime for a servant to deal with his master's goods negligently (see The Employment of Servants Ordinance, 1937[4]). Conversely, it was criminal for an employer not to pay the wages stipulated, to fail to give adequate housing, to fail to give medical service, to fail to give sufficient food (see Rex v. Uberle, 1938).

At the base of the Colonial Labor Policy was the requirement that the price of labor be kept low. Stigand (1914: 191-192), again, was brutally frank:

> Lastly, as to rates of pay. It is important that the wage-rate of the native be kept as low as possible. It is only the low wage-rate now prevailing in tropical countries that enables them to supply produce at a price within the purchasing power of the great mass of white people. It is this low wage-rate that admits of such articles as tea and sugar being consumed in every household, and it is the same rate that enables raw material, such as cotton, to be imported on terms ensuring a large market.

Stigand merely reflected the policies of the Colonial officials. Lugard (1926: 404) said that

> it is an economic disadvantage to any country if the wage-rate for unskilled labour is unduly high, for it arrests development.... If, however, labour is really "free," the wage rate must be determined by natural laws, and not by any arbitrary standard. Employers have, of course, a perfect right to settle among themselves what is the highest wage the industry can afford to offer—as the mine managers did in Nigeria—and the lower the rate the better, so long as it will attract voluntary labour.

In addition, the administration had to allocate land for the benefit of British interests. In East and Central Africa, the best land was sold to settlers without very much regard to the interests of Africans (Munro, 1966; Ross, 1927; Woddis, 1960). In West Africa, on the contrary, peasant farming in cocoa, palm oil, and groundnuts developed very early, and the climate was relatively hostile to white settlement (Szereszewski, 1965). There, Englishmen were discouraged and even prohibited from acquiring land. The indigenous production of tropical crops was a sufficient economic advantage to British mercantile interests (Padmore, 1953: 202).

Finally, the British, under the mantle of indirect rule, everywhere manipulated chieftaincy, in order to insure that the "natural rulers" conformed to British expectations (Padmore, 1953: 30).

Colonial development. Indirect rule in the countryside and laissez faire in the colonialist sector gave way in time to new dimensions of social and economic policy. The first movement was in the colonialist enclave, where a new policy of protectionism arose out of the Depression of the 1930s. The East African governments instituted a wide network of quasi-independent boards to regulate industry and agriculture. Coffee boards, maize boards, wheat boards, copra boards, tea boards, and a host of others dominated the economic scene. In most of these, the boards themselves had a majority appointed by the relevant association of European growers. In Tanganyika, for example, the Sisal Board was composed of two official members, two members appointed by the governor, one of whom was to be representative

of the employees, and a chairman and nine members appointed by the Sisal Growers Association (Sisal Industry Ordinance, 1945[5]). In Kenya, the same tendency was evident. The Pyrethrum Board, for example, had two members appointed by the governor, and a majority elected by the European growers (Pyrethrum Ordinance, 1939[6]).

Those boards were usually given wide powers to regulate their industries. In Tanganyika, most frequently the governor could make very broad-ranging regulations concerning the industry involved, on the advice of the relevant board (e.g., Wheat [sale] Ordinance, 1940). In Kenya, the governor in council could make rules for any of the following purposes (among others):

> improving the cultural conditions of any crop, also the methods of its production . . . improving the quality of any agricultural produce; specifying any particular kind of crop, tree or plant or variety thereof, as the kind or kinds which may or may not be grown. . . . The regulation, licensing and control of trading in any agricultural produce or crop . . . for the fixing and collecting of fees and charges. . . . [Crop Production and Livestock Ordinance, 1953[7]].

What these boards established, of course, was what has in other countries been called the corporate state. The dominant members of each branch of productive activity became a managing committee for the industry, backed by state power. It was to be expected that they would come into conflict with those outside the inner circle—in East Africa, primarily the Asian business population, which was aggressive and expanding its activities.

At the same time the East African version of the corporate state was being developed, new notions were afoot in England concerning the role of imperial government with respect to the traditional sector in the Colonies. "Development" became the watchword, and Lord Hailey was its prophet. The objective of colonial government officially became "to prepare the African populations for self-government." Hailey's program was that economic and social reform preceded constitutional reform, and local government reform preceded reform of the central government (Lee, 1967: 17). Sir Arthur Creech-Jones (1949: 3, 4), then Secretary of State for the Colonies, said that

> the essence [of indirect rule] was the continuance of the old way of life insofar as it was not contrary to British conceptions of natural justice. Apart from the desire to eliminate certain objectionable practices it was, broadly speaking, a static policy, or one which moved only at the speed of the societies for which it was developed. . . . We are now called upon to apply a new yardstick to an awakening African society. We use the word development to describe the new process. Development or progress, planned and inter-related change, and improvement in all fields, economic, social, and political are the keynotes of our present policy.

The Colonial Development and Welfare Acts of 1940 marked the start of the new era. They "represented the conversion of the official classes to the doctrines of a managed economy which were laid down by the National Government during the years 1931-1935, after the abandonment of the gold standard" (Lee, 1967: 39). After its enactment, the development of the corporate state in the settler colonies moved forward at an increased pace.

At the same time, however, the tasks of the district commissioner in the bush changed radically as well. Projects for improving peasant farming, medicine, and education were pushed forward. The points of contact between the administration and the peasant increased immeasurably.

STRUCTURE AND PROCESS IN THE COLONIAL BUREAUCRACY

There was very little about the formal structure of colonial government that matched the demands of legal-rational legitimacy. For a variety of reasons, however, the received rules of administrative law were largely incompetent to correct abuses. Nevertheless, the English colonial governments in Africa did, paradoxically, achieve a high degree of legitimacy with their white publics, and with at least some African elites. To explain this paradox, in this section we examine the colonial bureaucratic decision-making and the operation of the received rules of administrative law in that context. Finally, we shall examine informal organization which was the real source of the legitimacy actually achieved.

THE FORMS OF COLONIAL GOVERNMENT

The proposition upon which legal-rational legitimacy must rest is that the bureaucracy is instrumental. In England, this proposition based itself upon the constitutional position of Parliament,

responsive itself to the people, and to which the government was in turn at least nominally responsible.

In Africa, all was topsy-turvey. Evans (1950: 9, 13) has written:

> Two perennial preoccupations kept the coloured empire within the purview of the watchdogs of Whitehall; firstly, the maintenance of conditions of internal security so as to give economic enterprise a permanent right of way and assured elbow room; and secondly, the avoidance of expenditure which might lead to demands on the British tax-payer. Continuous invigilation rather than continuous interference was the main concern of the home government while economic development progressed, stagnated or retrogressed in accordance with the prevailing practice of *laissez faire.*
>
> Such conditions, on the face of it, were not propitious for anything but an authoritarian form of government. In the coloured empire representative government of the Crown Colony variety was only authoritarian government in disguise. It involved no surrender of imperial control.

The Colonial Service, far from being merely a policy-executing instrument, was in fact as well a policy-creating institution. In England, the administration was at least formally responsible to the governed; in Africa, it was not.

The requirements of legitimation with its English publics and authoritarian rule in fact evoked a nice combination of forms that seemingly met English values of responsible governments, while maintaining perfect authoritarianism. The forms of government were a parody of English democracy. Legislative councils were seemingly representative of at least local white populations, but were in fact powerless. Executive councils seemed analogous to the cabinet "back home," but in Africa were composed not of politicians but of bureaucrats. Heads of departments seemingly corresponded to ministers, but were appointed civil servants, not elected members of Parliament. At every point, behind the forms of responsible government, was the reality of authoritarian government. Its authoritarian mode was aptly conveyed by the ruling doctrine of the colonial service: to rely upon "the man on the spot."

The illusion of democratic government—for whites— was bolstered by the judicial system. English courts existed, available to non-Africans nominally to serve the same functions they did in England, including sanctioning the breach of norms of administrative law (see, for example, Masud Abdul Aziz v. Ninji Kanji,

n.d.; Fornica v. Anisolia, 1957; Gulamhusein Faedhon and Sons v. House Tax Committee, 1953; Ross v. Municipal Council of Dar es Salaam, 1953; Stevens v. Moshi Water Board, 1927; Matter of Land Control Ordinance, 1944; Newdga v. President and members of Nairobi Liquor Licensing Court, 1957; In the matter of the Milling Ordinance, 1952; Nutting v. Director of Lands and Mines, 1937). For Africans, on the other hand, a system of courts was constructed in which the local administrative officer, usually the District Commissioner, was also the magistrate, thus wiping out in a blow the traditional judical devices to control the administration. Riggs' (1965: 120, 154) generalization about the entire colonial world was largely true as well in Africa: "By and large, judicial structures . . . protected the interests of Westerners. Under colonial rule the connection between imperialism and legal controls was apparent."

DECISION-MAKING INSTITUTIONS IN COLONIAL AFRICA

The authoritarian principle of colonial government was matched by its dominant theory of the exercise of power. The colonial service, said Lee (1967: 39) was dominated by a conviction that affairs of state were

> handled in a more efficient manner if standards of administration were set by the collective wisdom of those responsible, not by a legal code or a court of judges. The kind of men who were recruited from Britain for service in the colonies appeared to believe that the official classes constituted the state. . . . The official classes performed both political and administrative functions.

It was a theory altogether antipathetic to the received administrative law which nominally controlled its activities. At the center, decision-making processes were functional to the problems of indirect rule, but were incapable of meeting the demands of colonial development. Within the colonial enclave, the received administrative law operated somewhat imperfectly for the benefit of a few Asian businessmen. In the subsistence sector, formal controls over the activity of the "man on the spot" were practically nonexistent.

Decision-making at the center: norms and controls. The power and decision-making procedures of the government at the center

were largely beyond judicial control, both because the grants of power to the governor were so broad as to confound the *ultra vires* rule, and because the sorts of decisions with which he was charged were largely "executive" rather than "quasi-judicial." Conventional (and sometimes statutory) norms of decision-making, however, provided some structural assurance of the rationality of decision-making processes at the center.

The norms granting power to the governors were, of course, extremely broad. For example, the East African Order in Council in 1902 gave the commissioner power to "make Ordinances for the administration of justice, the raising of revenue, and generally for the peace, order and good government of all persons in East Africa." The governors themselves made ordinances which delegated similarly sweeping powers to subordinate officials.

Nevertheless, despite so broad a grant of power, the colonial service largely repeated in Africa the secretariat mode of decision-making which had proved successful in earlier colonies. Its principal virtue was that in its several forms it insured a fairly broad consultation of the interested white parties, thus satisfying the most important requirement of rational decision-making–i.e., insuring adequate information. There were three important devices: the minute-paper system, the Commission of Enquiry, and, in the later colonial period, the use of boards which themselves were composed of interested parties.

The political principle that underpinned colonial administration lodged all authority in the governor, with power radiating downward from him through the colonial secretary, and thence outwards to administration officers like regional and district officers, and to the departments–public works, health, agriculture, and so on. The corollary to this centralization of authority was that all approaches to the governor were centralized in the colonial secretary. Only the Chief Justice ordinarily was supposed to approach the governor directly (Bertram, 1930: 55).

The system of decision-making at the center which evolved from this power structure was adapted to it. Anything which required a decision of the governor because a "minute paper," which was in fact "the actual instrument by which policy of the Government is considered and orders of the Government are made" (Bertram, 1930: 52).

A minute paper might be started in many sorts of ways: from letters or petitions or suggestions from below, or from above, by the governor or by a dispatch from the secretary of state. Once endorsed as a minute paper, an assistant colonial secretary in the secretariat at the center would start it on its long journey through the bureaucracy: to a department head for comment and perhaps factual information, to a district officer if the matter concerned his own district, to the attorney general for legal advice or for drafting a statute. In due course it would return to the secretariat with supporting documents annexed, sometimes an enormous bulky file, the result of many hours of work by a wide variety of interested bureaucrats. Another minute would be written by the assistant secretary, stating the alternatives and the pros and cons, together with a recommendation. It would be forwarded to the colonial secretary, who would add his endorsement; and finally the matter would go to the governor for decision.

In addition to the consultation built into the minute paper system the colonial government sometimes used a commission of enquiry to develop policy in a particular area. The history of colonial Africa is replete with such commissions: on constitutional change, on the investigation of specific riots and social disorders, on land policy, on labor, and on prisons. In Tanganyika in 1952, for example, in the face of great settler pressure to evict the Meru from desirable highlands in northern Tanganyika, the governor appointed a commission (the Wilson Commission) to report on the problem and to make recommendations (see The Meru Land Problem, 1952).

Finally, a third system of institutionalized consultation existed in the various boards administering the several industries in East Africa, and the marketing boards of West Africa. There, of course, consultation was made permanent and pervasive. The consultees were in many cases given de jure power to make the decisions themselves.

These three methods of decision-making at the center had two significant consequences. First, it is a commonplace of management theory that the persons consulted on a decision frequently in fact make the decision. The staff position frequently is de facto the decision maker. The consultation system, by carefully taking into account all the various shades of opinion within the English colonial official classes, insured that decisions would match their

values—but not, save by coincidence, the values of the African population.

In the second place, all three patterns of decision-making lend themselves nicely to the resolution of emergent tensions, but not to overall planning, direction, and control. The minute paper and commissions of enquiry were all directed at narrow problems as they manifested themselves. The various boards were limited to single-industry problems. None of them could do more than make incremental changes in response to felt pressures.

Inevitably, therefore, the value-sets of the official classes supplied the objectives of policy. That value set, with its goal of law and order, was inherently conservative.

> The administrators had no theories, but they did try to maintain all that was obviously best in the tribal societies and way of life, particularly the authority of the Chiefs and elders, and to see that the people were free to lead peaceful lives and were as contented as they could hope to be in a land where half the children die before they could walk and vengeful spirits lurked in every tree [Bradley, 1966: 46].

The socioeconomic pressures of the postwar era in Africa demanded more than incremental changes. The new tasks of government which Creech-Jones had defined in 1949 for colonial development called for structural innovation, and decision-making processes adapted to overall planning and implementation. But the administrative system forged in the era of indirect rule, proved a rock upon which was shattered the postwar rhetoric broadcast from London. It shattered for two reasons: the antipathy of colonial governors coupled with their broad grants of power (Lee, 1967: 114, 118-120), and the dysfunction of the processes of decision-making at the center. They were incapable of taking an overall view of the problems of the polity (see Crocker, 1947: 135; Niculescu, 1958: 185). Despite the demands of colonial development, bureaucratic decision-making did not change significantly from the pattern we have already described.

RECEIVED ADMINISTRATIVE LAW AND COLONIAL GOVERNMENT

On this authoritarian government, in the African context, the received rules of administrative law had very small impact. We can

examine the problem in three areas: the control exercised by courts over decisions taken at the center, control over subordinate agencies in the colonialist enclave, and control over official activity as it affected the vast majority of the population in the hinterland.

CONTROLS OVER THE CENTER

The received rules of administrative law were useless in controlling decisions taken by the governor. Given his broad grant of power, and the fact that the overwhelming mass of decisions were "executive" or "legislative," rather than "quasi-judicial," the received rules of administrative law were simply inappropriate. Very occasionally, a court might set aside a specific rule made by a governor as *ultra vires.* For example, in Mbui v. Rex (1951) the enabling ordinance gave the governor the power to limit coffee-growing by areas. The regulation made under the ordinance limited it by ethnic classifications. It was held ultra vires. In Rex v. Jumba bin Mwalimu (1916), the accused was convicted of refusing to give the name of a taxpayer to a collector, in violation of a rule made by the governor under the Native Hut and Poll Tax Ordinance of 1910. The ordinance gave him the power to define the duties of chiefs and headmen; the rule purported to impose a duty upon the taxpayers themselves. It was held to be ultra vires.

These invocations of the received English law to curb the power of the governor were the exception, not the rule. In most areas, the governor's decision-making powers were beyond reach of judicial process, on a variety of technical grounds. Administrative decisions with respect to chieftaincy, land and deportation, and the detention of Africans were all insulated from challenge (see, for example, Native Administration Ordinance, Gold Coast;[8] Kweku Baa v. Nyaiku Kweku V, 1955; Osan Dadzie VI v. The Hon. The Attorney-General, 1933; Chief Maili v. Chief Mjumba, 1961; Olyumi v. Lieutenant-Governor, 1954; Ole Njogo v. The Attorney-General, 1913; Wainairu wa Cathoma v. Mwita wa Ludagar, 1921). Two examples must suffice.

In English administrative law, the justification for judicial abstention in the broad area labelled "administrative" is that Parliament exercises political control over the administration, and hence complaints about acts involving "general policy" ought to

be addressed to it. Since Africans were in general unrepresented even in the politically impotent legislative councils for most of the colonial era, the assertion of such controls rang hollowly indeed.

In Olyumi v. Lieutenant-Governor (1954) the plaintiffs, the sons of the reigning Bale, objected to a rule made by a native authority and approved by the governor changing the customary law of succession so that not only sons but grandsons of the Bale could be elected to the succession. The statute gave the administration power to approve such proposals by the native authority if the governor "is satisfied that such declaration accurately records the native law and custom . . . or that such modification is expedient" and not repugnant to justice, equity, or good conscience. The court denied the action, saying:

> The legislation by its nature presumes that the Lieutenant-Governor will act in good faith. . . . [He] must satisfy himself that the modification is expedient. In doing so he necessarily weights up all matters that he considers relevant and he is guided by public policy. But in so doing he is not exercising a judical or quasi-judicial function for at no stage is there anything in the nature of *lis inter pares* before him. An order made under the section therefore is not . . . impeachable in court on the grounds on which a judicial or quasi-judicial decision might be impeached. . . .
>
> The important thing is that in carrying out an order under the section the first defendant exercises administrative functions as an executive officer of government. He, alone, is the judge of the circumstances in which his powers will be exercised. He is responsible to the Administration and his decision cannot be controlled by the Court. . . .

To support its decision, the court cited two English cases. In one of them (Miller v. Minister of Health, 1946) the English court said: "The Minister acting in his administrative capacity is governed by considerations of expediency only. He has to decide—ultimately, I suppose, subject to the review and governance of Parliament—what in his view is best for the community." In England the administration was responsible to Parliament. In Africa, it was responsible to the administration. Judicial abdication of control of "executive" decisions in England was justified on the grounds that alternative, Parliamentary controls existed. The use of the same norm of administrative law in Africa freed the Administration from any formal control whatsoever.

A second example concerns administrative control over land. As we have seen, there was a marked difference between the East

African and the West African positions. In West Africa, settler pressure for land did not exist, or else was beaten off early in the imperial era. The English rulers were content to let land be controlled by local land law. Appeals lay from local courts which might ultimately proceed as far as the Privy Council. Administrative discretion played a relatively slight role in land allocation. In East Africa, however, precisely the opposite result obtained. Settler pressure for land implied that the customary rules had to be abrogated. They were. In doing so, however, the administration acted almost completely free of judicial control.

A variety of conceptual devices was used to reach this result. One of these was the doctrine of Act of State. In the Masai Case (Ole Njogo v. The Attorney-General, 1913), for example, plaintiffs in a class action sued the government for breach of a 1904 treaty between the government and the Masai. In that treaty, the Masai agreed that part of the tribe would be resettled on a reserve at Laikipia, as "definite and final reserves for the good of our race," which the Masai asked "be enduring so long as the Masai as a race shall exist, and the European and other settlers shall not be allowed to take up the settlements." The 1911 agreement was made by certain Masai leaders (it was alleged under duress), and provided for the resettlement of the Laikipia Masai into a new settlement to the south, in order that white settlers could take up the Laikipia land. Plaintiffs did not sign the 1911 agreement and denied the authority of the chiefs who did sign to bind them.

The courts made short shrift of the argument. The Protectorate, it said, was still a Protectorate. The Masai are not British subjects, but a foreign people, with capacity to make treaties. A treaty is an Act of State behind which the courts may not inquire. It is intriguing that thus the government had the best of both worlds. Under the Foreign Jurisdiction Acts, the government was held to have as much power and jurisdiction in a Protectorate as it had in a Crown Colony. Under the Masai case, however, it could still negotiate with the "foreign people" living in the Protectorate, and be protected against examination of the propriety of its acts under the Act of State doctrine.[9]

THE ADMINISTRATION AND THE COLONIAL ENCLAVE: NORMS AND CONTROLS

The activities of the administrators in applying rules to entrepreneurs and others in the colonialist enclave were, in

principle, not very different from the activities of their counterparts "back home." In Africa, however, the received administrative law did not supply a significant body of rules to control the administrators.

It is notable that there are practically no administrative law cases involving the colonial sector in West Africa. In East Africa, practically all the reported cases concern Asians, not Englishmen. The former reflects the absence of settler in West Africa. The latter is a more complex phenomenon. The English settlers by the 1940s were largely integrated into government in the various boards that we have mentioned. Asians were practically never included. Moreover, as we shall see, the informal organization which actually governed included the English nonofficial elites. Informal channels of communication existed through which they could influence government far more efficiently than at law. The formal processes of administrative law were of service only to the sole class which was affected, that had access to lawyers, and yet was outside both formal and informal hierarchies—the Asian businessmen.

The utility of administrative law even to that class was, however, largely negated by the absence of narrow grants of discretion. So broad were many of the grants that it was difficult for a court to invoke the ultra vires doctrine. In Attorney General of Kenya v. M. R. Shah trading as Tanga Trading Company (1959), for example, the Minister denied an application for permission to put additional machinery in his mill under Section 9 of the Wheat Industry Ordinance of 1952. That section provided that upon such an application, "the Minister . . . after obtaining the advice of the Wheat Board, shall in his discretion either grant or refuse permission." The wheat board was composed of the minister and six others appointed by the minister, of whom not less then four had to be wheat growers, and not less than four were selected from panels of names submitted by the Board of Agriculture, the Board of Commerce and Industry, and the Kenya National Farmers' Union. The court observed in passing that under Section 9:

> The Court is called upon to entertain appeals from an administrative authority upon questions with which it is that authority's particular province to be familiar. This, of itself, presents the court with a difficult task. It is rendered none the less difficult by the absence of

> guidance as to procedure, of any intimation of the matters to be considered and of any specific limitation on the scope of the appeal. The matter is further complicated by the fact that decisions to be taken under some of the sections from which appeal lies are to be taken at the Minister's discretion, which he must exercise after receiving the advice of the Wheat Board and, no doubt, in the light of economic circumstances affecting the three major East African territories. Finally, there is no indication of the powers to be exercised by the court on appeal. . . . This section, in my opinion, merits further consideration either by the legislature or by the provision of specific rules [Attorney-General of Kenya v. M. R. Shah trading as Tanga Trading Company, 1959: 377].

Defeated on the merits by broad grants of discretion, what small success Asian businessmen had in curbing arbitrary action by the administration lay in invoking judicial aid to insure procedural propriety. The requirements of natural justice that a quasi-judicial officer hear both sides, and not be judge in his own cause, were occasionally successfully invoked to set aside administrative determinations (see, for example, Colonial Boot Co. v. D. Byramjee and Sons, 1952; Margan and Sons v. Transport Appeal Tribunal, 1959; La Souza v. Chairman, 1961; Newdga v. President and members of Nairobi Liquor Licensing Court, 1957). The received administrative law, in this narrow area, proved a weak, if not completely useless, tool for serving the purposes that it did in England.

ADMINISTRATIVE LAW AND GOVERNMENT IN THE SUBSISTENCE SECTOR

Whatever the limited utility of the received administrative law in providing a set of norms for the guidance and control of administrators in the colonialist enclave, they were all but impotent to control the lonely district officer in the remote bush. We shall examine three areas of activity: law and order, land allocations, and labor law. We shall then examine the rather narrow range of surrogate controls forged by courts to provide a very limited set of judically enforced rules over the local administrators.

Law and order. Preserving order in the bush at the outside required vast discretion in the officer on the spot. Minimal resources were available to him. The center and its bureaucrats and

judges with their rules and regulations and general orders were remote. Stigand (1914: 45) insisted that

> in first taking over a new district the official should be allowed the broadest hand possible. A single white official has often to get the country in hand and the natives under control with miserably inadequate means at his disposal. Such summary judiciary methods as may be employed would not for a moment be passed by legal men, but the ends accomplished fully justify the means.

The "civilizing" function of the dual mandate, however, required that control be exercised in conformity to the rational-legal processes of law and courts. Lugard (1926: 135) said that the test of a district officer's work in bringing "progress and civilization" to his district "is the absence of crime and the efficiency of the chiefs and native courts." It was a function carried out primarily through the use of the criminal code.

An early chief justice in the East African Protectorate put it bluntly in a circular to magistrates (who were also "collectors," i.e., district commissioners). The collector at a bush station had asked whether, in case of homicide among Africans, there should be a criminal trial by the Indian Penal Law then nominally in force, or a claim for blood money pursuant to customary law. The chief justice said:

> When the old order changes giving place to the new, and especially where civilized forms of thought and of government are imposed upon the traditional ideas of rough justice common among African natives, it is necessary to proceed slowly and with care. The idea of blood-money being paid as a compensation to the relatives of a man who has been killed is very old, and exists today pretty nearly everywhere among uncivilized or semi-civilized natives. But as soon as a Government on an ordered basis assumes control, and is able to maintain the peace and punish breaches of it, the matter assumes a somewhat different aspect. It is no longer a question of compensation to a private family that has been weakened by the loss of one of its members, but it is a question of the Government making life and property secure and maintaining "the King's Peace." The wrong done ceases to be merely a private wrong and becomes a public wrong, for the prevention of which the Government makes laws, and when these laws are broken it is the Government that prosecutes. So long as Government has not the power to enforce its laws it is bound, in order to maintain some semblance of order, to countenance and enforce the native systems of punishment; but this is only until it is in a position to exact obedience to its own laws.

> In practice it comes to this, that the payment of blood-money will be allowed and enforced in districts out of reach of direct Government control, but the Penal Code should be put in force in these places where the Government exercises a direct administration and can enforce its orders [Circular to Magistrates, No. 4 of 1907[10]].

The criminal process at common law is the paradigm of legal-rational legitimacy. In Africa, it suffered from two serious defects which made it unlikely to match in action the common law model. The legitimacy of the common law criminal process turns, in the final analysis, upon the availability of an adversary process before an independent judge. The essence of the system is that no man should be punished on the suspicion of an official. The trial in open court serves to verify the facts which ought to serve as predicate for punishment before a judge who is, presumably, independent of the administration.

These two requirements never existed in Africa. Lawyers were not available in the bush. Without them, especially in the case of Africans in the rural areas confronted with an exotic process, to expect that the accused could engage in the adversary process meaningfully was to whistle with the shrimps.

More important, perhaps, the district commissioner was the magistrate. This identity occurred for a variety of reasons. In the first place, the doctrine of indirect rule suggested that the basic system of control of the population would be exercised in the first instance by native authorities. The function of the English administration became not the making of original decisions, but the control over those who did make these decisions. "It is one of the first preoccupations of a British Administration in newly-occupied territories," said Lugard (1926: 537), "to check with a strong hand the exercise of arbitrary powers, whether by Europeans, official or unofficial, or by native chiefs without the authority and safe-guards provided by the courts of law."

In the second place, the very size of the African colonies and the scarcity of staff made it "unavoidable that judicial and executive powers should be exercised by the same officer, and that some of the officers who exercise small legal powers should not possess recognized legal qualification" (Lugard, 1926: 539). Lugard insists that this combination of executive and judicial powers in a single official seemed natural to Africans, unused to such offices being occupied by different persons. Moreover, he

asserts, "in a country recently brought under administration, and in times of political difficulty, occasions may arise when the strictly legal aspect must give way to expediency" (Lugard, 1926: 539).

What was fashioned in both East and West Africa was a system of courts for Africans in which the court of first instance was a customary court, applying in the main customary law, with an appeal system at whose effective apex in East Africa stood the district commissioner, sitting either as D.C. or as magistrate. In addition, the D.C. was usually the magistrate with original jurisdiction over serious crime. In West Africa, as we have seen, however, there was further appeal into the "English" courts.

The institutional structure of the criminal law in the countryside of Africa thus converted it from what it was in England to its precise opposite, i.e., into a system for the *administrative* determination of guilt. To that administrative process, the received rules of administrative law bore little relevance. The ordinary rules of the criminal law were of very little additional help, for they simply did not fit the new institutions of African administration.

In Application of Middle (1937), for example, the accused was charged under the Master and Servants Ordinance with failing to provide servants with proper medical attention during illness. The magistrate, in his administrative capacity, had investigated the matter and preferred the charge. Moreover, the district commissioner, the magistrate's administrative superior, had told the accused that he had no hope for acquittal. The High Court judge responded that

> I hesitate to believe without further proof and in the absence of a reply (for, the Attorney-General having chosen to withdraw from the proceedings, there is no one to answer for the District Officer) that any responsible officer who himself exercises magisterial powers would make such an improper remark during the pendency of a criminal trial. But even if it has been made, I would be reluctant to believe that any officer acting in a magisterial capacity would be in any way influenced by such a statement by his superior even if he were aware of it—and in this case there is no suggestion that he was [Application of Middle, 1937: 130].

It was an insoluble problem in role conflict. In Rex v. Mohamed Eman (1945), for example, the magistrate in his capacity as D.C. investigated the charges against the accused with respect to

corrupt practices, preferred the charge, and then in his capacity as magistrate tried the case. Upon appeal, the High Court admitted that, in general, no man can be a judge in his own cause. The legislature, however, is free to deviate from this rule, and here it had decided that the higher courts could not interfere unless actual bias was shown; "possible" bias was insufficient. The court continued, however, to say:

> Magistrates' decisions are open to appeal and revision and in certain cases to confirmation by this Court, and we think Administrative Officers are too well aware of the possibility of any unfairness to accuse persons whose cases they have investigated as prosecutors.

It was, however, precisely the district commissioner's alternative role as magistrate which opened the door for a limited control by the higher judiciary, apparently the only legal device to enforce norms of legal-rational legitimacy upon the local administration. Two devices were principally employed: revision of criminal cases, and directives from the chief magistrate.

As a matter of course, all criminal cases tried by magistrates were reviewed monthly on revision by higher judges. Since revision was automatic, it did not suffer from the defect that it depended upon the individual initiative of Africans, who more frequently than not had neither the money nor the sophistication to pursue an appeal.

The second control device was by the use of general circulars addressed to the district officers in their capacity as magistrates. The ever-present danger to the bureaucratic structure was that the D.C. would be co-opted by the local settlers, to the destruction of the trusteeship footing of the dual mandate. Circulars to magistrates were used to try to correct too obvious failings by the D.C.'s. For example, the Chief Justice in Kenya took the D.C.'s to task repeatedly for too-frequent use of flogging as punishment. In 1905 (Circular to Magistrates, No. 1 of 1905[11]) he complained that "offenders are not infrequently flogged for comparatively trivial offenses which could be suitably punished by fine or imprisonment." In 1911 (Circular to Magistrates, No. 6 of 1911[12]) he repeated a warning from no less a person than the Secretary of State in far-off London, that the magistrates "must not regard flogging as an everyday occurrence to be freely administered." It was a warning that had to be repeated as recently as 1948 (Circular to Magistrates, No. 1 of 1948[13]).

The Chief Justice also used his appellate and revisionary powers to correct improper use of punishment by district officers and commissioners. Apparently, the local officers responded by imposing punishment altogether illegally. In 1907, the Chief Justice discovered that collectors on many stations in Kenya kept "Shauri Books" with records of dispositions of property or sentences of flogging, imprisonment, or fines which had not arisen in regular cases. These did not in the regular course of things come to the attention of the High Court. The Chief Justice warned therefore that the court, "which is responsible for the administration of justice throughout the country," could not "exercise any supervision over these matters which are by this method effectively withdrawn from appeal or revision." The Chief Justice continued:

> While the High Court fully realizes the difficulties experienced by Collectors in dealing with wild natives in outlying stations, and is unwilling to interfere in any way with purely administrative matters, it cannot lend its sanction to a system which in practice permits the Collector to disregard the laws or procedure in the Protectorate for the hearing and recording of judicial cases, which laws have been devised to ensure publicity and supervision for all cases dealt with by Magistrates, and also that all fees and fines should be properly credited to Government.

He concluded that there is no power to impose fines or sanctions "administratively." "The Collector," he said, "as a Magistrate can only impose a fine as the result of a conviction after judicial proceedings," of which a return must be made to the High Court (Circular to Magistrates, No. 6 of 1907[14]). Again, in a circular to magistrates in 1913, the Chief Justice complained that in many hut tax cases, magistrates—i.e., the D.C.'s—had fallen into the habit of making but a single file and charging any number of Africans together in one proceeding. This was improper; "it may, in a crowd of twenty accused natives, act to the prejudice of one or two who may have good reasons to urge in their defense" (Circular to Magistrates, No. 5 of 1913[15]).

It was a position in some ways reminicent of eighteenth-century England. The local administration operated through administrators who were simultaneously magistrates. In Africa, as in an earlier day in England, the higher courts developed forms by which to control the magistrates, and thereby to control the administration. The forms of control differed primarily in that in England they

developed through private initiative, by way of adversary proceedings and prerogative writs. In Africa, however, they operated through the revision process, which was independent of the individual initiative of the person affected. What legality was maintained in the criminal process, however, arose through this peculiarly African institution, rather than through either the administrative law or the writs of the criminal process as received from the home country.

Land. Land law in West Africa remained controlled by the norms of customary law. In East Africa, however, it was at administrative discretion. This difference led to a vastly different system of controls in the two areas.

In West Africa, absent settler demands, land was governed by "native law and custom" administered by Africans operating through a variety of local courts. Over these the D.C. and the provincial commissioner exercised authority by way of appeal, and above them, the higher courts existed to control the administrators themselves. In time, rules developed requiring deference to the discretion of the native tribunal, upon theories not different from those which protect the discretion of administrative tribunals from judicial interference generally. The Privy Council said in 1952 that:

> By Colonial Legislation all suits relating to the ownership of land held under native tenure are placed within the exclusive original jurisdiction of native tribunals, unless satisfactory reason to the contrary is shown. It appeared to their Lordships that decisions of the native tribunal on such matters which are peculiarly within their knowledge, arrived at after a fair hearing on relevant evidence, should not be disturbed, without very clear proof that they are wrong [Nathah v. Bennich, 1932].

Moreover, in West Africa, as in Uganda, many peasants entered the cash economy through the cultivation of cash crops—cocoa in the Gold Coast, cotton in Uganda, oil palm and kola in Nigeria, and so on. Land, especially in the Gold Coast, became extremely valuable very early. With so much at issue, in colonies which early developed an African bar (the first Ghanaian lawyer, Mensah Sarbah, was admitted in 1893), the adversary system adequately served (see Asante, 1965). In West Africa, land was effectively

taken out of the discretion of the administration. By committing its allocation to the legal system, legal-rational legitimacy in regard to the most important asset of indigenous society was readily attained.

In East Africa, vastly different settler pressures produced a vastly different result. There, land cases ended with the administration. Africans were not apt to try their luck at arcane writs to test the validity of administrative action in the courts, and, when they did, they were met by doctrines which effectively removed administrative action from any sort of judicial control, through the doctrines of Act of State and of the nonreviewability of "executive" or "administrative" action.

In Kenya, during the later 1950s, development goals of increasing African agricultural productivity (Clayton, 1959) were married happily to political objectives of creating a stable African landed peasantry in order to undercut Mau Mau (Sorenson, 1967) to produce a major land tenure revolution. The thrust was to consolidate and register individual titles to land. Under that legislation Africans holding land under customary tenures must be registered; after registration, an extensive swapping procedure takes place in order to consolidate land; the consolidated land holding is then registered as a freehold title (Sorenson, 1967: ch. 11). All the decisions were ultimately made by a colonial administrative official, from whose decision there was no appeal (District Commissioner Kiambu v. Rex ex parte Ethan Hjau, 1960).

The extent of administrative discretion with respect to African lands in East Africa is exemplified by two notorious cases, one in Kenya and the other in Tanganyika. In Kenya, in an effort to allay African fears of uncertainty about their land, the Native Lands Trust Ordinance of 1930[16] declared that the established native reserves were "reserved and set aside for the use and benefit of the native tribes of the Colony for ever," under the protection of a Native Lands Trust Board. If mineral resources were found in a native reserve, a mining lease could be made, on notice to the local native council, provided that equivalent lands were granted to replace the lands covered by the lease. When, however, there was a gold strike in the Kavirindo Reserve, an amendment was immediately enacted (Native Lands Trust [Amendment] Ordinance, 1932[17]). That amendment removed both of the essential protections of the Native Lands Trust Ordinance. It was thereafter no

longer necessary to bring the proposed exclusion of land from the native reserve for mining purposes to the attention of the local native council prior to mining the lease, and it was no longer necessary to provide equivalent land. Administrative discretion at the center substituted for the predictability of law.

The same kind of administrative discretion operated in Tanganyika in the notorious Meru Land Case. There, certain Meru families had bought fertile and desirable land formerly held by German settlers. Later, in 1951, pressure developed from the settlers to evict the Meru to make the land available for alienation. A commission was created, the Arusha-Moshi Lands Commission, to examine the question. It decided that it was "administratively desirable" to avoid the intermixture of African and settler lands, and recommended that in order to preserve the contiguity of settler lands, the Meru be evicted. An ordinance was enacted carrying out these recommendations (The Arusha-Moshi Lands Commission [Wilson Report] [Facilitation of Implementation] Ordinance, 1951). The Meru were duly evicted by force (see Chidzero, 1961; see also Japhet and Seaton, 1967).

Labor. In East Africa (but not in West Africa) there was a persistent settler demand for cheap labor, a demand which the administration was under constant pressure to supply. With respect to some aspects of the employment contract, as we have seen, criminal sanctions were invoked. With respect to others, however, no rules were precisely defined, so that the matter was left almost completely to the discretion of the "man on the spot."

Perhaps in no place in the entire administration of the colonies did the lack of norms of behavior and control devices result so clearly in a loss of control from the center, and a complete absence of the ordinary characteristics of bureaucracy. The Master and Servants Ordinances required minimal welfare provisions to be made by the employers in favor of their servants. For example, in Kenya the Master and Servants Ordinance of 1910 required the employer to supply proper food and clothing to the worker. However, this was observed so little by employers, and there was so little enforcement either by the Labour Department or by the local district commissioners, that in 1919 the chief labour commissioner informed the legislative council that if things were to "go on much longer in this irresponsible manner" there would

soon "be no labour," and there would be "no natives left to work" (Buell, 1928: 351). Inspection was nominally authorized by the Master and Servants Ordinance of 1919. By 1928 there were four inspectors for all Kenya; each had the job of inspecting 2,000 farms (Buell, 1928: 352). Exactly one century after England had adopted similar legislation, Kenya prohibited the employment of children under sixteen for specified work. Nevertheless, as recently as 1926, the labor inspectors had to stop children eight or nine years of age from breaking rock for European employers—the allotted task was seventeen cubic feet per day (Buell, 1928: 352). In Tanganyika, regulations were issued forbidding the employment of children, but the rules did not have force of law, and they were ignored by the employers (Buell, 1928: 498). Everywhere the illegal beating of employees by employers was common (see, for example, Orde-Brown, 1946).

The lack of norms gave the local D.C.'s complete discretion over their activities. As a result, it was exceedingly rare that settlers were prosecuted for illegal treatment of labor—a prosecution that ordinarily would have to be brought by the D.C.'s.

Gray v. Rex (1907) was a rare exception. There the defendant, with two other Europeans, cleared a space in front of the Town Magistrate's Court, Nairobi, and thrashed an African with a kiboko, a brutal hide strap. An English police officer was forcibly removed from the scene. The accused was tried—not for beating the African, but for unlawful assembly. (The conviction was upset on appeal for procedural reasons.) In Harries v. Rex (1920) the accused's "boy" badly beat a pig. The next day the accused seized the servant and beat him so severely that he was hospitalized for six months. He was charged with causing grievious bodily harm, but was convicted (by a settler jury) of causing simple hurt, with the jury's addendum, "under intense provocation." (On appeal from sentence, the ground urged was that others under the same circumstance had merely been fined, instead of being sentenced to jail!)

The failure of the D.C.'s to control the settler population in the interests of Africans was a major breakdown of the bureaucratic structure, for at least on paper they had a duty to prevent law-breaking. The same breakdown occurred with respect to labor recruiting in Kenya during the 1920s. To deal with a labor shortage in 1919, the governor of the colony issued a circular that

the shortage was due to a "reluctance" to work on the part of Africans, and that "as it is the wish of the Government that they should do so," the government hoped that provincial and district commissioners would help by "an insistent advocacy of the Government's wishes" so that an "increasing supply of labour will result" (Dilley, 1966: 224). Officials were instructed to exercise "every possible lawful influence" to get people to work, to remind chiefs and elders that they "must . . . render all possible lawful assistance" and to make a report of the cooperation received from each chief. Since the chiefs, as we shall see, held their offices on government sufferage, the threat was only barely veiled.

The circular had the approval of the settlers, but raised a storm in other circles. The Bishops of East Africa, in a memorandum, asserted that the circular practically established a system of compulsory labor, since Africans were not apt to make a fine distinction between an order and "an insistent advocacy" by a district commissioner. (They might have added that since apparently a D.C.'s chance for promotion might hinge on his success in "persistent advocacy," he might himself fail to make the necessary distinction.) The matter blew up a small hurricane in London, where Government was hard put to defend the circular. It had to take refuge in weasel words. Mr. Amery, the Undersecretary, assured the Commons that "there is nothing in . . . the actual wording [of the circular] that necessarily involved anything beyond advice and encouragement to work or discouragement to be idle." In the end, Churchill, as Secretary of State for the Colonies in 1921, sent instructions to the government in Kenya to modify the policy. Henceforth,

> beyond taking steps to place at the disposal of natives any information which they may possess as to where labor is required, and at the disposal of employers information as to sources of labour available for voluntary recruitment, the Government officials will in future take no part in recruiting labor for private employment.

The situation was still left altogether vague. The settlers continued to press for official help. The government position all along had been that they never did more than "encourage" labor to work. The actual practice did not change (Dilley, 1966: 234). In fact, the character of administrative "encouragemement" remained a matter of individual discretion. As a result, the practice

varied widely from district to district. Wide discretion and absence of controls implied that the response of the bureaucracy would be a function of the pressures upon it.

Summary. The goals of colonial policy demanded authoritarian government. The noninstrumental character of the government that resulted was embodied in the unlimited power granted officials by the norms defining their position. The fact alone sufficiently explains the inapplicability of the received rules of administrative law. In addition, that their enforcement depended upon private initiative through an adversary system effectively debarred most Africans from employing them. Only a few Asian businessmen even tried to invoke them, usually being defeated by the authoritarian nature of the governing rules.

THE INFORMAL ORGANIZATION

Goal displacement by bureaucrats is an ever-present threat in any organization. It would seem especially dangerous in an organization of scattered individuals, strewn across the face of an enormous continent, possessed of enormous authority and far removed, in many cases, from the restraining influence of family, friends, church, and their accustomed society. The usual bureaucratic answer to the threat of goal displacement is to increase the rules and the control devices. Of these, the Colonial Service was singularly free.

An official Colonial Service bulletin (1950: 24) said:

> The Service imposes its own discipline on its members through the very qualities which the life and work demand. . . . There are few detailed regulations. . . . You are not fettered in the detail of your conduct, either at work or in your private life. All the discipline of that kind is implicit and based on the assumption that you are proud of the Service and its traditions and will not betray them. . . . You will very soon discover that you are subject to the finest, most demanding and, on that account, the most ruthless of disciplines, self-discipline.

An occasional deviant may have been sent home in disgrace, but there were none of the scandals that sometimes rock the administration in England, and, more frequently, in the United States. One consequence was that the colonial service, despite its

absence of relevant formal institutions to preserve legal-rational legitimacy, did achieve legitimacy in the eyes of its white publics, and, to a degree, among educated Africans as well.

Goal displacement and its threat did exist. In the early days, corruption was always an overhanging peril. In 1900, the Commissioner of Uganda issued the Acquisition of Land by Public Servants Order which forbade any officer of the government to be the owner of more than his own house and garden plot, to engage in commercial pursuits, or to purchase shares in any local land company.

Rather than by rule, control over corruption and goal displacement was accomplished by a unique system of recruitment, which gave rise to a common set of values and a ubiquitous informal organization. Simultaneously, however, the recruitment system insured that the Colonial Service could not, in the final analysis, achieve the ideal of completely legal, completely rational bureaucracy.

The heart of the selection system lay in its distinct class bias. Lugard (1926: 131-132) said with some pride:

> The District Officer comes of the class which has made and maintained the British Empire. That Britain has never lacked a superabundance of such men is in part due to national character, in part perhaps to our law of primogeniture, which compels the younger son to carve out his career. His assets are usually a public school, and probably a university, education, neither of which have hitherto furnished him with an appreciable amount of positive knowledge especially adapted to his work. But they have produced an English gentleman with an almost passionate conception of fair play, of protection of the weak, and of "playing the game." They have taught him personal initiative and resource, and how to command and obey. There is no danger of such men falling prey to the subtle moral deterioration which the exercise of power over inferior races produces in men of a different type, and which finds expression in cruelty.

It was a service built upon recruitment from the public school, and it was their ethic which dominated it. Bradley (1966: 31), himself long a member of the service and at the end of his career its chief publicity officer, writes:

> The public schools, created by the middle class a hundred years ago, more than made their contribution to our country. They succeeded in equipping England with several generations of men who, if no cleverer

> than the general run of people, were fortified by the moral certainties of the "code" and an easy assumption of authority. Many of them thought of their lives in terms of service, and a pension rather than profit. They . . . played a very great part in helping to build the old Empire and to create a modern Commonwealth out of it.

The selection system was one which insured that practically every member of the colonial service would come from a public school-Oxbridge background, usually with an impeccable family tree as well. It was accomplished through the agency of Sir Ralph Furse, who for more than thirty of the fifty years of the life of the colonial service personally hand-picked every recruit—there were no examinations (Heussler, 1963). He developed "a secret list of Oxford and Cambridge tutors in order of reliability of their reports on undergraduates, and a close connection with head-masters of [public] schools. . . . Our methods were mole-like—quiet, persistent and indirect" (Furse, 1962: 223). Family, public school, university, and a "cut of the jib" that Furse liked; these were the central requirements for employment in the colonial service.

The rigid selection system had a dual effect. In the first place, it produced a set of officials who had internalized the public school ethic to a remarkable degree. Authoritarian, paternalistic, formally incorruptible, with an underlying spirit of duty coupled with a calm assumption of superiority, it was an ethos which was a kind of surrogate for detailed rules. It was a remarkable demonstration of two hypotheses advanced by Etzioni: the more effective the selection, the less need for socialization, and the more effective the socialization, the less need for supervision (Etzioni, 1965: 650, 657).

In the second place, the homogeneity of the service produced a remarkable amount of in-service camaraderie. When Lugard arrived in Lagos to assume the governor-generalship of Nigeria an official held aloft a hand-painted sign "floreat Rosalli" (Lugard was an Old Boy of Rosall). Heussler (1963: 102-103) writes that for the new recruit to the colonial service,

> there would be no jarring surprises in learning what one was expected to do. One's superiors from the Governor down to the D.C. were all alike, like oneself, products of the same system. By the age of 21 the basic assumptions were so deeply ingrained that everyone knew what to expect. Few written rules were necessary. Everyone was an Old

> Boy. . . . The level of consensus among officials was an essential ingredient of stability in the colonies and of such uniformity as there was.

He tells of seeing "private secretaries in their twenties enjoying an intimate, unaffected social and intellectual comradeship with governors old enough to be their father. The fact of common social background . . . is relevant. The easy assurance that comes from membership in the same class obviates a highly formalized official ranking" (Heussler, 1963: 111).

It was an ethos strongly supported by the romantic conditions of the service, a "thin red line" holding together the far-flung reaches of Empire. In every organization, "functionaries have a sense of a common destiny. . . . They share the same interests, especially since there is relatively little competition insofar as promotion is in terms of seniority" (Merton, 1957: 195-206). Every circumstance of organization, common class background, common education, and common ethos served to insure that the functionaries of the colonial service would form an informal organization that ultimately became far more important than formal rules and bureaucracy.

Every modern study of bureaucracy emphasizes the significance of parallel, informal organizations in the operations of the formal bureaucratic structure. As Selznick (1948: 24) says,

> ties of sentiment and self-interest are evolved as unacknowledged but effective mechanisms of adjustment of individuals and sub-groups to the conditions of life within the organization. These ties represent a cementing of relationships which sustains the formal authority in day-to-day operations and widens opportunities for effective communication.

In the colonial service, so careful was the selection and socialization process that in time there was a complete interpenetration of the formal and informal organizations. Explicit role-defining rules were unnecessary, for the informal ethos served as surrogate. Rules setting out rational decision-making procedures and explicitly setting forth guides to discretion were not required where appropriate considerations in ruling "backward races" were deeply internalized. Well might a colonial undersecretary, the Duke of Devonshire, say in 1923: "The code which must guide the administrator is to be found in no book of regulations. It demands

that in every circumstance and under all conditions, he shall act in accordance with the traditions of an English gentleman" (Heussler, 1963: 60).

It was an informal organization, however, which reached out beyond the service. The whole idea of colonial government was based upon an easy assumption of racial superiority, leavened by notions of paternalism and service. As a result, to a degree all whites in the colonies were included, more or less, in the informal organization which in fact governed. The official classes were defined by the closely allied normative reference groups accepted in the social psychology of "white society."

> Each individual takes his standards from a normative reference group. British people in the colonies were allotted a status according to local conventions, all of which tended to follow the hierarchy of ranks recognized by the Colonial Service [Lee, 1967: 2].

These white, official classes had no difficulty in finding informal channels of communication with officials, which in most cases served in the stead of formal control devices. Only when they failed, however, did they surface. For example, in Stevens v. Moshi Water Board (1927), the board had powers to make orders concerning the distribution of water for irrigation and other purposes. It gave A and B the right to run a water ditch across Stevens' land. Stevens then asked the board to revoke the order, which it did. Instead of appealing the revocation, A's brother interviewed the governor, and "as the result of that interview," according to the report of the case, a new board again reconsidered the matter, decided that A and B had "not had a fair deal," and without taking evidence, gave them fifty percent of the water in the stream and permitted them to reopen the furrow across Stevens' land. Again, instead of taking an appeal, Stevens went directly and informally to the governor, who at that point threw up his hands and advised that the matter be taken to court.

Similar informality existed with respect to the great English firms with subsidiaries or branches in Africa. Lugard (1926: 116) complained that

> though the local representatives of commerce are assured of a sympathetic hearing and a full investigation of any suggestions which they have to offer, the methods of Crown Colony Government as

> applied to the African dependencies enable the principals of firms in England to carry their proposals direct to the Colonial Office, and thus to be somewhat indifferent to local representation.

He complained bitterly that the Colonial Office in London not infrequently overruled officials on the spot—presumably as a result of informal intervention by commercial interests (1926: 159 ff.). With such informal methods of control available, it is not to be wondered, perhaps, that English interests so rarely had to test the validity of administrative action in the courts.

In time, the solidarity between the officials and the white unofficials become formalized, as we have seen. In East Africa, the crucial boards which controlled the economy were dominated by settler and expatriate entrepreneurs. In West Africa, the great English factors dominated the marketing boards that arose during and after World War II. The informal and the formal bureaucratic structure again so far supported and reinforced each other that finally the formal organization took its pattern from the informal.

The very system of selection which acted as surrogate for control through rules and institutions, however, insured that the colonial service could never achieve the bureaucratic ideal. That ideal, according to Weber, demands rigidly impersonal standards of judgment, sine ira et studio. The colonial service, on the other hand, despite the absence of corruption, was shot through with ascriptive standards. Christians were preferred before pagans, whites before blacks, Englishmen before others, public school boys before grammar school boys, and the Old School tie before all else. So ascriptive a method of selection, based on criteria so irrelevant to the solution of the enormously complex and difficult problems of development, insured not only that development would be frustrated by the innate conservatism of the class from which colonial officials were selected, but also because competence, intelligence, and initiative were relatively low in the scale of criteria by which recruits were selected. An Oxford Blue may indicate that the recipient is physically fit, but it will not do as touchstone of intelligence.

Moreover, it may be doubted that the code of the English gentleman in fact resulted in the kind paternalism which Lugard asserted that it did. The very existence of the numerous circulars

concerning flogging in Kenya suggest that at least excessive corporal punishment was not restrained by the public school code. Numerous examples of even greater ferocity were charged to Colonial officials during the Mau Mau emergency in Kenya. It would be intriguing to discover to what extent these were committed by settlers without the benefit of public school and Oxbridge—and to what extent they were connived at, or even committed, by the flower of upper-class British youth.

Summary. The paradox of the legitimacy of the colonial service can now be explained. It did not have—it did not purport to have—a set of formal institutions relevant to the maintenance of bureaucratic regularity. Instead, it developed, through careful recruitment, an underlying morality of formal honesty, and a strong informal organization to support that ethos. That same system of selection, however, insured that officials dedicated to development, and technically competent to accomplish it, would *not* be selected.

The legacy of imperial rule was therefore not one of good government or democracy. "The gift of England to her former dependencies was a mixture of authoritarian spirit and machinery plus democratic ideals—not, as is sometimes imagined, a set of democratic ideals and institutions" (Heussler, 1963: 202).

And yet, despite the seeming legitimation of the colonial government, it failed in achieving its ostensible objectives. If the "British ideal" so carefully inculcated in the aristocratic family, the public school, and the university means anything, it must include the notion of the rule of law, the unceasing effort to govern by law, not by man alone. What the colonial service bequeathed to Africa was its precise opposite: a tradition that good government was made by good men, and a set of authoritarian institutions which were designed to give the widest possible scope to individual discretion, rather than an instrumental system with easy communication with the governed, narrowly defined roles, institutions for rational decision-making, and sanctioning devices to enforce the rules. The colonial system achieved legal-rational legitimacy in the eyes of the British reference group by ignoring the institutional context and glorifying the cultural input. It was a mix towards whose structuring the received rules of administrative law bore only a miniscule relevance.

CONCLUSION

Corruption and rumors of corruption hang heavy over Africa. In every capital one can hear stories galore of arbitrary action by government. Legitimacy, and, as a result, stability, has fallen correspondingly low, as the wave of coups, riots, and rebellions testifies.

Why this sharp reversal from the seeming stability of the colonial era? The formal rules of law which serve to help induce legal-rational bureaucratic activity in England existed in colonial Africa, and obtain today. Why are they so ineffective?

On independence, the new African governments inherited legal and governmental institutions for which the formal rules of administrative law had long since failed to perform any significant function. Rather, the institutions which served to induce legality in administration came from a system of recruitment and an informal organization that was wholly a function of English upper-class culture—and those informal institutions disappeared upon independence. Absent institutions, formal or informal, tending towards legal-rational bureaucratic behavior, that government officials might act in defiance of its requirements was no doubt to be expected. That the independent African government would develop new institutions designed to induce behavior compatible with legal-rational legitimacy was also to be expected (see Seidman, 1969b; Ghai, 1967; Report of Presidential Commission on the Establishment of a Democratic One-Party State, 1966; Grove, 1963; Seidman, 1965; Ghai, 1969).

We can now offer two hypotheses in answer, perhaps, to Professor Friedman's two questions. He asks, "How does law brighten or darken the road to political stability?" Our hypothesis must be phrased in the negative: law cannot help induce conduct appropriate to achieve the ideal of legal-rational legitimacy by rules of administrative law which are not addressed to the specific problems faced by government, and the specific enforcement institutions available in the particular country.

Professor Friedman's second question was, "What happens when laws are borrowed from more advanced countries?" That question can be answered by a set of propositions which we can call the Law of the Nontransferability of Law:

(1) How a role-occupant acts in response to the norms of law is a function of the rules laid down, their sanctions, activity of enforcement institutions, and the entire complex of social, political, economic, and other forces affecting him.

(2) The activity induced by existing rules is specific to any given situation.

(3) The invocation of the same rules of law and their sanctions in different times and places, with different sanctioning institutions and a different complex of social, political, economic, and other forces affecting the role-occupant, cannot be expected to induce the same sort of role-performance as it did in the place of the origin of the norms.

If this latter theory is true, it may explain rather more phenomena than the problem of administrative behavior in Anglophonic Africa. The reception of foreign law has been the common experience of the developing world. In fact, in no place has it led to a replication of the conditions of the country from which it was exported. The metropolitan countries developed; the colonies did not. As we have seen with respect to administrative law, the reason must lie in the fact that law always operates not *in vacuo*, but in a given social and institutional context—and that context is never the same in the metropolitan country and in the former colonial territory. Far from wondering why the received law does not produce the same activity in the host country as it did in its country of origin, one ought to wonder why anyone ever thought that it would.

NOTES

1. Sec. 58 (b).
2. Sec. 31
3. Sec. 58 (d).
4. Sec. 59 (a).
5. See Cap. 143 (Tang.)
6. See Cap. 195, Sec. 3 (1) (Kenya).
7. See Cap. 205, Sec. 4.
8. Sec. 24
9. The same result was reached in Kenya with respect to all African lands. In Wainairu wa Cathoma v. Mwita wa Ludagar (1921), it was held that under the relevant orders-in-council and statutes, "all native rights in [land reserved to the crown . . . i.e., all

the land in Kenya] whatever they were . . . disappeared, and natives in occupation of such Crown Land became tenants at will of the Crown of the Lands actually occupied."

10. 2 E.A.P.L.R. 160.
11. 1 E.A.P.L.R. 156.
12. 4 E.A.P.L.R. xvi.
13. 23 (2) K.L.R. 113
14. 2 E.A.P.L.R. 138.
15. 7 E.A.P.L.R. 172.
16. No. 9 of 1930.
17. No. 51 of 1932.

CASES

AMERICAN THREAD CO. v. JOYCE (1913) 108 LT 353 (HL).
APPLICATION OF MIDDLE (1937) 1 TLR (R) 129.
ASSOCIATED PROVINCIAL PICTURE HOUSES v. WEDNESBURY CORPORATION (1948) 1 K.B. 223.
ATTORNEY GENERAL OF KENYA v. M. R. SHAH TRADING AS TANGA TRADING CO. (1959) EA 375.
BERKDALE DISTRICT ELECTRICITY SUPPLY CO. v. SOUTHPORT CORPORATION (1926) AC 355 (fettering discretion).

BERNARD v. NATIONAL DOCK LABOUR BOARD (1953) 2 QB 18.
CABABE v. WALTON-ON-THOMAS UDC (1914) AC 102.
CHIEF MAILI v. CHIEF MJUMBA (1961) R & NLR 472 (F.S.).
COLONIAL BOOT CO. v. D. BYRAMJEE AND SONS (1952) 19 EACA 125.
DAVIS v. GRAND FUNCTIONAL CANAL (1852) 3 HCL 759.

DISTRICT COMMISSIONER KIAMBU v. REX ex parte ETHAN HJAU (1960) EA 109.
DOGGETT v. WATERLOO TAXI-CAB CO. (1910) 2 KB 336.
ENTRICK v. CARINGTON (1760) 19 St. Tr. 1030.
FORNICA v. ANISOLIA (1957) EACA 263 (T).
GMC v. U.K. DENTAL BOARD (1936) Ch. 41.
GARD v. COMMISSIONER OF SERVICE FOR THE CITY OF LONDON (1885) 28 Ch.D 486 (illicit objectives).

GRAY v. REX (1907) 2 EAPLR 40.
GULAMHUSEIN FAEDHON AND SONS v. HOUSE TAX COMMITTEE (1953) LONDI 2 TLR (R) 255.
HARRIES v. REX (1920) REX 8 EAPLR 186.
In the matter of Sec. 24 of the Milling Ordinance (1952) 2 TLR (R) 205.
THE KING v. UNIVERSITY OF CAMBRIDGE (1723) 1 STR. 557.

KWEKU BAA v. NYAIKU KWEKU (1955) V 2 W.A.C.A. 40.
LA SOUZA v. CHAIRMAN (1961) EA 377.
MARGAN AND SONS v. TRANSPORT APPEAL TRIBUNAL (1959) EA 1 (K).
MASUD ABDUL AZIZ v. NINJI KANJI (n.d.) 2 TLR (R) 265.
MATTER OF LAND CONTROL ORDINANCE (1944) 20 KLR 15.
MBUI v. REX (1951) 24 (1) KLR 130.

MILLER v. MINISTER OF HEALTH (1946) KB 626.
NEWDGA v. PRESIDENT AND MEMBERS OF NAIROBI LIQUOR LICENSING COURT (1957) EA 709 (K).
NTHAH v. BENNICH (1932) AC 72.
NUTTING v. DIRECTOR OF LANDS & MINES (1937) 4 TLR 100.

OLE NJOGO v. THE ATTORNEY-GENERAL (1913) 5 EAPLR 70.
OLYUMI v. LIEUTENANT-GOVERNOR WESTERN REGION (1954) 14 WACA 624 (Nigeria).
OSAN DADZIE VI v. THE HON. THE ATTORNEY-GENERAL (1933) 1 WACA 271 (Gold Coast).
PATEL v. PLATEAU LICENSING COURT (1954) 27 KLR 147.
PORVELL v. MINISTER OF PENSIONS (1946) 1 A11 ER 664.
REX v. ANREYA KALAWA (1948) LRNR 218.

REX v. BEN (1942) SR 154.
REX v. JUMBA BIN MWALIMU (1916) 6 EALR 175.
REX v. KALAWA (1948) LRNR 218.
REX v. MEREDETH JJ. (1844) 6 QB 153.
REX v. MOHAMED EMAN (1945) 21 (2) KLR 47.

REX v. UBERLE (1938) ITLR (R) 672 (EACA).
ROSS v. MUNICIPAL COUNCIL OF DAR ES SALAAM (1953) 2 TLR (R) 172.
SCRIMS MOTOR UNITS LTD. v. MINISTER OF LABOUR AND NATIONAL SERVICE (1946) 2 A11 ER 201 (sub-delegation.)
SIKUBUZA v. DIRECTOR OF LAND AND SURVEYS (1960) EA 808 (U).
SMITH v. GENERAL MOTOR CO. (1911) AAC 188.

STEVENS v. MOSHI WATER BOARD (1927) 1 TLR (R) 48.
VINE v. NATIONAL DOCK LABOUR BOARD (1957) AC 488.
WAINAIRU WA CATHOMA v. MWITA WA LUDAGAR (1921) 9 KLR 102.

REFERENCES

AARONOVITCH, S. and K. AARONOVITCH (1947) Crisis in Kenya. London: Lawrence & Wishart.
ASANTI, S. K. B. (1965) "Interests in land and in the customary law of Ghana–a new approach." Yale Law J. 74 (April): 848-885.
BERTRAM, A. (1930) The Colonial Service. Cambridge: Cambridge Univ. Press.
BRADLEY, K. (1966) Once a District Officer. London: Macmillan.
BUELL, A. L. (1928) The Native Problem in Africa. New York: Macmillan.
CHIDZERO, B. T. G. (1961) Tanganyika and International Trusteeship. London: Oxford Univ. Press.
CLAYTON, E. S. (1959) "Safeguarding agrarian development in Kenya." J. of African Administration 11 (July): 144-150.
Colonial Service (1950) The Colonial Service as a Career. London: H.M. Stationery Office.
CREECH-JONES, A. (1949) "The place of African local administration in colonial policy." J. of African Administration 1 (January): 3-6.
CROCKER, W. R. (1947) On Governing Colonies. London: George Allen & Unwin.
DILLEY, M. R. (1966) British Policy in Kenya Colony. London: Frank Cass.
ETZIONI, A. (1965) "Organizational control and structure," pp. 650-677 in J. G. March (ed.) Handbook for Organizations. Chicago: Rand McNally.
EVANS, E. W. (1950) "Principles and methods of administration in the British Colonial Empire," pp. 9-19 in Principles and Methods of Colonial Administration. London: Buttersworth Scientific Pubns.
FRIEDMAN, L. (1969) "Legal culture and social development." Law & Society Rev. 4 (August): 29-44.

FURSE, R. (1962) Aucuparius: Recollections of a Recruiting Officer. London: Oxford Univ. Press.
GHAI, Y. P. (1969) "Ombudsmen and others." East African J. 6 (August): 30-36.
--- (1967) "Independence and safeguards in Kenya." East African Law J. 3 (September).
GROSS, B. M. (1964) The Managing of Organizations. New York: Free Press.
GROVE, D. L. (1963) " 'The "sentinels" of liberty': the Nigerian judiciary and fundamental rights." J. of African Law 7 (Autumn): 152-171.
HEUSSLER, R. (1963) Yesterday's Rulers: The Making of the British Colonial Service. London: Oxford Univ. Press.
JAPHET, K. and E. SEATON (1967) The Meru Land Case. Nairobi: East Africa Publishing House.
LA PALOMBARA, J. (1965) "Bureaucracy and political development: notes, queries, and dilemmas," pp. 34-61 in J. La Palombara (ed.) Bureaucracy and Political Development. Princeton: Princeton Univ. Press.
LEE, R. (1967) Colonial Government and Good Government. Oxford: London Press.
LUGARD, F. D. (1964) "The white man's task in tropical Africa," pp. 5-18 in P. W. Quigg (ed.) Africa: A Foreign Affairs Reader. New York: Frederick A. Praeger.
--- (1926) The Dual Mandate in British Tropical Africa. London: Blackwood.
MAITLAND, F. W. (1908) Constitutional History of England. Cambridge: Cambridge Univ. Press.
MERTON, R. K. (1957) Social Theory and Social Structure. New York: Free Press.
The Meru Land Problem. (1952) Dar es Salaam: Government Printer.
MUNRO, A. (1966) "Land law in Kenya." Wisc. Law Rev. 1966 (Fall): 1071-1095.
NICULESCU, B. (1958) Colonial Planning: A Comparative Study. London: George Allen & Unwin.
ORDE-BROWN, G. S. J. (1946) Labor Conditions in East Africa. London: H.M. Stationery Office.
PADMORE, G. (1953) The Gold Coast Revolution. London: Dennis Dobson.
Report of the Presidential Commission on the Establishment of a Democratic One-Party State (1966) Dar es Salaam: Government Printer.
RIGGS, F. W. (1965) "Bureaucrats and political development: a paradoxical view," pp. 120-167 in J. La Palombara (ed.) Bureaucracy and Political Development. Princeton: Princeton Univ. Press.
ROSS, W. M. (1927) Kenya from Within: A Short Political History. London: George Allen & Urwin.
SEIDMAN, R. B. (1969a) "The reception of English law in colonial Africa revisited." Eastern African Law Rev. 2 (April): 47-85.
--- (1969b) "Constitutions in independent, Anglo-phonic, Sub-Saharan Africa: form and legitimacy." Wisc. Law Rev. 1969, 1: 83-127.
--- (1965) "Constitutional limitations on the judicial review of administrative decisions in Nigeria." Nigerian Law J. 2 (Winter): 232-256.
SELZNICK, P. (1948) "Foundations of the theory of organizations." Amer. Soc. Rev. 13 (February): 28-35.
deSMITH, S. A. (1959) Judicial Review of Administrative Action. London: Stevens.
SORENSON, M. P. K. (1967) Land Reform in the Kikuyu Country. Nairobi: Oxford Univ. Press.
STIGAND, C. H. (1914) Administration in Tropical Africa. London: Constable.
SZERESZEWSKI, R. (1965) Structural Changes in the Economy of Ghana, 1891-1911. London: Weidenfeld & Nicholson.
WADE, H. W. R. (1967) Administrative Law. Oxford: Clarendon Press.
WEBER, M. (1947) The Theory of Social and Economic Organization. New York: Oxford Univ. Press.
WODDIS, J. (1960) Africa: The Roots of Revolt. New York: Citadel Press.