

## Review Article

MANUEL GOTTLIEB\*

Rude W. James, *Land Tenure and Policy in Tanzania* (Nairobi: East African Literature Bureau, 1971).

This work is of extraordinary value for students of Tanzania. It provides a relatively up-to-date review of land tenure arrangements, laws and policies in mainland Tanzania up to April 1970. The author does not treat developments on Zanzibar which have taken an autonomous course and have been unaffected by mainland legislation or judicial action. Later publications by the same author on the same subject should be consulted, especially the suggestive essay, "Land Tenure Reform in Retrospect"<sup>1</sup> which extends the treatment of many of the themes of the book through to the early summer months of 1971.

Readers should realize this book is addressed to two quite distinct audiences as is indicated in the Preface. It is in part a law school text on the law of real property, showing in detail (a) the various forms and instruments by which rights thereto are alienated, transferred or taken by public authorities and (b) the chain of reasoning and its conceptual frame by which lawyers and judges (some of them with a long history in English law) have developed the law of real property. More or less clearly in this category are Chapter 2 on "Received Laws", Chapter 5 on "The Manner in which Public Land is Normally Alienated under the Land Ordinance", "Condominium Urban Property" (pp. 247-260), "Compensation for Unexhausted Improvements" (pp. 288-298), and "Mortgages", pp. 303-360.

On the other hand the book is a set of essays on land tenure and land policy problems addressed to social science students and Government officials or, as the Attorney-General noted in his "Foreword", to "students of politics as a starting point for discussions on the development of Socialism in Tanzania". More or less clearly under this heading is much of the material dealing with customary land tenure in rural society (see especially "Some Considerations of Customary Law" pp. 61-66), the description of the few pockets of traditional feudal tenure (*nyarubanja*) chiefly around Lake Victoria, the efforts of public policy both under the British and post-independence authorities to achieve reform (pp. 67-99), and the description of urban squatters (pp. 100-107), the semi-official designation for people who provide for their housing needs by erecting huts in unoccupied and neglected tracts in the vicinity of growing towns but who run afoul of local planning and town authorities.

Under the same heading is the historical account of the ways in which

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<sup>1</sup> R. W. James, *East African Law Review* (UDS), December 1971, pp. 27-41.



some 3.8 million acres of pastoral and agricultural land were alienated or granted in freehold or lease chiefly to European settlers or Corporations to operate plantation estates. Of this some 2.5 million acres were in estate agriculture of which the chief product was sisal (pp. 11-31). Professor James tells the interesting story of how in 1963, some 1.3 million acres of freehold estates, granted by the Germans and reaffirmed by the British colonial authorities, were converted from freehold into leasehold property. Apart from payment of a nominal annual land rent and the elimination of the miniscule present value of rights to the property after expiration of the leasehold term of 99 years, the principal effect of the conversion was to regulate the right to transfer, to exclude site value from any claim for reimbursement if the property were ever nationalized and to impose controls on modes of land utilization. The substitution of a limited-term 'right of occupancy' for freehold was hardly a revolutionary action since the British colonial administration had itself turned away from freehold grants and had created the system of 'rights of occupancy' (pp. 16-18 and Chapter 5, "Rights of Occupancy System II", and "Land Security and Land Use: Evolution of a Basic Pattern", pp. 171-186).

A law text treatment will in itself be of interest to students of social science for the law evolves out of a social process and is sustained by class or group interest. Similarly, land problems once identified as such usually become the target for corrective legislation which in turn generates legal problems for which a law text becomes suitable. The primary focus of the law school and its pedagogic needs are important to Professor James. This probably accounts for the disproportionate emphasis given in the book to the limited fraction of Tanzania (mainland) land which has been the subject of formal legislation. Here land rights are created, regulated and extinguished as compared with the rural lands, on which the bulk of the Tanzanian population lives, which are still governed by so-called customary law. The nature of this law, the size and types of holdings to which the law is adjusted, the ways in which land controversies are adjudicated, the economic effects on livelihood and improvement of those land rights, patterns of inheritance—all these are treated only in certain limited respects. There is a very brief though illuminating presentation of basic principles of Customary Law (pp. 61-66) and of "Agricultural Development and Customary Holdings" (pp. 184-6). Professor James shows how judicial authorities (both before and after independence) have reshaped traditional land law by giving formalized emphasis in cases of contest as to the true ownership of land to the evidential nature of long possession, thus in effect creating some kind of statute of limitations and right of prescription for pleading claims (Chapter 11, "Possession As Conferring Land Rights"). There is also a valuable treatment of the "Customary Law of Mortgages" (pp. 338-357) confined in the main, it appears, to Buhaya and Uchagga, and a short but helpful treatment of "Neglect and Non-Utilization" as abridging rights to control land under traditional control (pp. 278-287).

A more complete presentation was ruled out "in a work of this nature" presumably because of the diversity of the over one hundred and twenty tribal units (p. 61). As an alternative Professor James suggested recourse to a

parallel study which he authored, *Customary Land Tenure in Tanzania—A Source Book*.<sup>2</sup> But a collection of cases and readings, however valuable, cannot take the place of systematic presentation which would draw of course upon the *Source Book* and other materials including contemporary investigation of land dealings and transactions. Contemporary investigation is handicapped by the attitude of Tanzanian peasant freeholders who have, since the colonial period, learned to be secretive and suspicious of Government; so far as their land holdings are concerned, an attitude of mind reinforced since the recent ujamaa policy has been intensified.

Professor James deprecates the policy of the Government toward the "traditional sector" as "unduly cautious" (p. 21). It did not intervene with legislation though new patterns of private ownership had evolved due to growing pressure on land settlement, population migration and the introduction of permanent commercial crops. He notes that the Government did not attempt to issue a customary law code as it did with family, succession and other topics though a customary law draft on land tenure had been prepared and had been approved by over 90 per cent of the District Councils in the country (p. 22). But I am not sure that 'caution' describes this policy. The Government wanted to reverse the course of development which was converting communally-oriented subsistence farming into commercial farming enterprises. It was not possible to reverse this development by issuance of a law code hostile to it nor could a new mode of production be achieved by the issuance of a new set of legal principles. First it would be necessary to create a new mode of agricultural production—with new class and social relationships—and then an appropriate legal code could be issued. But this does not mean that law had no role to play in agricultural transformation. The withholding from the ujamaa revolution of any legal codification deprived the peasantry of any sense of right or legal protection, gave wide power to local officials and helped to make possible the abuses of which the rifle shot in Iringa was the predictable outcome. Since the policy of ujamaa development was already underway when the book was being written, Professor James was aware of the tension areas where lawful resolution could prove helpful in establishing basic rights of members, in fixing principles of compensation for assets taken or utilized or for withdrawals (see pp. 240-247).

Professor James notes in his book that "there has been constant pressure from ujamaa villagers for some form of incorporation" (p. 243) which would require determination of duties of officers and legal capacities. But the Central Government policy-makers in the Ujamaa Villages Division of *Maendeleo* (Community Development) opposed legal crystallization, and their view won out in a "recent Cabinet meeting to discuss *inter alia* a Cabinet Paper concerned with the promulgation of legislation providing for incorporation and regulation of ujamaa villages" (p. 244). Professor James in his book formally dissented from the "negative attitude toward ujamaa legislation" of *Maendeleo*.

<sup>2</sup> Mimeographed, 1970, a Faculty of Law publication (UDS).



In a later paper, "Arusha Declaration and the Rule of Law"<sup>3</sup> Professor James traced some of the consequences of the failure to put the ujamaa movement under the guidance of the rule of law.

## Review Article

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E. A. Brett, *Colonialism and Underdevelopment in East Africa: The Politics of Economic Change 1919-1939* (London: Heinemann, 1972).

The post-war crisis of capitalism in the underdeveloped world shattered the hegemony of bourgeois social science over the explanation of underdevelopment in the third world. As would be expected, social science ideology was first challenged where the crisis was most acute—in Latin America. In place of an empirical and a historical *description* of underdevelopment there developed, through the efforts of Frank, Steinhilber, and Laclau, an analysis of underdevelopment as a system, with its historical origin in the *relations* between the capitalist and the pre-capitalist modes of production and with its own laws of motion that enable the system to reproduce these same relations and thus itself.

In Africa, as the euphoric dust surrounding the independence years settled down and the UN 'Decade of Development' remained at the level of a pious proclamation, grotesque against the ongoing reality of underdevelopment, the material base for a hegemonic bourgeois ideology began to disintegrate. Walter Rodney's *How Europe Underdeveloped Africa*<sup>1</sup> sought to establish the general movement in the historical relation between the capitalist economies of Europe and the pre-capitalist economies of Africa. E. A. Brett's *Colonialism and Underdevelopment in East Africa: The Politics of Economic Change 1919-1939* is an attempt to reinterpret the colonial relation and delineate its consequences for the process of underdevelopment in East Africa. The preface introduces the book as "part history, part economics and part political science"; more importantly, Brett presents it as a "contribution to the old tradition of political economy and more especially to its Marxist variant". What Brett lays claim to is not just a set of conclusions different from what bourgeois social science has given us, but another method of analysis, i.e., historical materialism. What he does present, unfortunately, is an eclectic combination of structuralism at the level of the economy, and pluralist analysis (or pressure group analysis) at the level of politics, with a liberal sprinkling of the *terminology* of class analysis in the introduction and conclusion. It is important to establish the specificity of Brett's method and its distance from both traditional bourgeois idealism and historical materialism, for it is his method of analysis that explains the shortcomings as well as the strengths of his book.

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<sup>1</sup> Walter Rodney, *How Europe Underdeveloped Africa* (London: Bogle-L'Ouverture Publications, Dar es Salaam: Tanzania Publishing House, 1972).

<sup>3</sup> Presented at a seminar at the University of Dar es Salaam in March 1973, under the auspices of the Economic Research Bureau.