

The Bureaucratic Manipulation of Indigenous Business: A Comparative Study in Legal Imposition from Colonial Africa

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Business-government relations can have many origins, forms, and consequences throughout the world and across time. In colonial Africa the ties between indigenous businesses and their European rulers often partook of force. The European partition of much of Africa, worked out during the 1880s and 1890s, originated in force, took hold by force, and inaugurated a formal colonial period dominated by force. While the origins and implementation of partition had an overwhelming military ethos, the evolution of colonial administration also was predicated on imported law.

This imported law was not uniform across the colonial spectrum. The British enacted legislation based on Anglo-Saxon common law in east and west Africa and on Roman-Dutch law in southern Africa. The French, who controlled colonies in huge portions of west and central Africa, used their own Gallicized versions of Roman law. But all colonial pronouncements rested on the continuous underwriting of physical force. In this context imported law became imposed law. Manipulation of the subject peoples and their businesses by imported law furnishes numerous examples of a process known as legal imposition. In its core meaning legal imposition refers to situations in which people have to deal with rules that they themselves did not originate. Colonial environments offer some of the most overt and harmful types of legal imposition, but the notion can apply to a variety of situations [4].

The concept of legal imposition offers a compelling rubric to analyze business-government relations in colonial Africa and elsewhere. In support of this assertion I offer the following three-part analysis, which attempts a preliminary contribution to a longer project. The first part introduces the elements of legal imposition in an African colonial context. The second sketches the impact of legal imposition with examples from various African situations. The third features one case study that shows how mixed the consequences of legal imposition can be. This vignette involves the Chagga people of Tanzania and the earlier history of their famous cooperative society, the Kilimanjaro Native Cooperative Union (KNCU).

Legal Imposition: The ABCs

In the aftermath of the formal partition of Africa the conquering European powers established their own bureaucracies to administer their spheres of influence. Each colonial government then set up official local courts within its territory. Many administrations created "native courts." The jurisdiction of these courts was entirely local, sometimes covering only part of what an administration perceived as a distinct ethnic group or, in colonial parlance, "tribe." The sources on which these courts drew were imposed law, customary law, and sometimes intriguing blends of both [13, pp. 80-81]. Native Courts, while receiving directives from above, usually offered no right to appeal in that direction [2].

In British Africa there were High or Supreme Courts in each territory. In British East Africa there was an Appeals Court for the region from which aggrieved claimants who had lost in a High Court could seek redress. These courts illustrate the determination of Great Britain to operate on a "rule of law" independent of governmental administration even in colonial situations.

The mechanisms of legal imposition--the police, military, courts, fines, prison or some other forced labor--are straightforward and were there for indigenous residents to notice. Not so easy to discern are the evolving sources and types of legal imposition. As the colonial period unfolded, alien imported law on more occasions combined with indigenous customary law in local legal deliberations. This law, like imported law, was not the same across the colonial spectrum and varied considerably between and within ethnic groups [1]. What complicates the interaction between alien imported law and customary law is that the latter might also sometimes be regarded as imposed. For instance, a given generation in a particular ethnic group might have to accept customary law governing land allocation and use. Members wishing another approach might regard the rules concerning land as imposed.

The interaction of all types of law intensified as the colonial period proceeded. Various colonial administrations which drew up and utilized formal codes of African law contributed to an enmeshing of alien and customary law. In both French West Africa and the Belgian Congo (but not in French Equatorial Africa) colonial bureaucracies sought to authenticate their legal foundations by producing these codes. For some groups or for entire colonies, government bureaucrats drew up written codes based on traditional law, on decisions made in the Native Courts, and on the needs of the colonial state. The goals were to strengthen Native Courts, to base decisions on a formal code, and to reduce the number of cases going before courts of French or Belgian law [11, pp. 83-84]. British colonial bureaucracies, often with the assistance of academically trained anthropologists, worked to gather and codify information about indigenous laws. Collection and codification promoted the interpenetration of alien and customary law. In this process western concepts of legality and organization manipulated, and were affected by, indigenous ones.

The types of legal imposition become more intricate as their sources intertwine. While some kinds remain predominantly alien or indigenous, the

category of hybrids increases. This phenomenon partakes of what happened to colonial bureaucracies the more they remained in Africa. No longer exclusively alien, they achieved a sort of semi-indigenous status in key respects, including legal imposition [15].

The elements of legal imposition--its mechanisms, sources, and types--receive further illumination when one examines the impact of legal imposition on indigenous business.

Legal Imposition: Impact on Indigenous Business

The impact of legal imposition on indigenous business was extensive. Colonial bureaucracies enacted laws that dealt with most aspects of business behavior. For example, ordinances aimed to define legal tender, credit, and acceptable trading and marketing activities. They also dealt with a crucial basis of business behavior: property. To appreciate the constraints attached to doing business under colonialism one should first note how colonial bureaucracies treated the land.

All land became public property under alien-imposed law. Each colonial bureaucracy usually asserted its claim to hold land in trust for all its inhabitants. As the representative of the crown or imperial state, the colonial administration was the ultimate on-the-spot owner of territorial land with the concomitant capacity to define what public and private property meant. Over time bureaucracies did refine their land policies to admit varieties of freehold and leasehold for expatriates and to acknowledge the existence of "native land tenure." This process was marked by considerable confusion, as exemplified by the efforts to define "native land tenure" in Tanganyika [7]. Even when modified, this administrative arrogation of power over the land remained sweeping and had important implications for business behavior.

With this legal weapon colonial governments could greatly affect the siting of business activity. They used a number of techniques in this regard. The right of occupancy authorized the holder to use public land but only on a temporary basis. Traders sometimes obtained rights of occupancy to conduct business in a particular location. Governments, aiming to consolidate market activity in official centers or worrying about an individual's "agitating the natives," did revoke the rights of occupancy of some traders.

Besides the right of occupancy, there were other categories designating legal land possession that affected business. This nomenclature was not identical in the land laws of every colony, but the Sierra Leone experience provides an intriguing example of how legislation aimed at "non-natives" could affect African business as well. The 1922 Protectorate Lands Ordinance of this British West African colony addressed the presence of "non-natives". This group included long-settled Lebanese traders, whose businesses had become practically indigenous as African producers and middlepeople had worked so closely with them over the years. The ordinance distinguished three forms of settlement: tenancy at will, a term of years, and a lease. The first provided little safeguard for settlers, while the third consisted of an official document supported by a house sketch

plan. In later colonial years more Lebanese traders took out leases, but in the early period the majority were tenants at will: "so they had no great stake in the town or village where they operated and were free to move elsewhere if they desired" [19, p. 248]. Leases were not invulnerable to administrative revocation. African business people, relying on Lebanese commercial intermediaries, were thus likely to face service disruptions, especially in the early colonial period.

All these forms of land possession--rights of occupancy, tenancies, terms of years, and leases--worked to magnify the uncertainties businesses can confront with respect to stability of location. They entrenched an impermanence which hampered but did not totally prevent the emergence of long-term business relations. This uncertainty also clouded the endeavors of colonial bureaucracies to concentrate trade in official market centers, where business activities were more easily taxed and policed [15, pp. 115-16].

At first glance the colonial definition of territorial land as "public property" does not seem to collide totally with approaches to land tenure embodied in customary or "native" law. Most African societies reposed the ultimate ownership and disposition of their land in their chiefs. So, from a colonial vantage point, official land law transferred this function to the "chief" of the territory, the colonial governor. But there were crucial distinctions between alien and customary definitions of public and private not only with respect to the land itself but also concerning what existed on or came from the land. The distinctions involving the latter--residences and appurtenant structures as well as the usufruct of the land--also had crucial implications for indigenous business behavior.

Alien imposed law imparted a legal impermanence to the possession of the land, what was on it, and what came from it. While most customary law acknowledged ultimate chiefly guardianship of the land itself, most embodied strong private property rights with respect to structures and usufruct. The latter included crops and the plants and trees that produced them. The utter dissonance between alien and customary law in relation to structures and usufruct severely constricted what indigenous business people could present as legal collateral in transactions. This was a very disadvantageous situation for them.

If narrow definitions of collateral were not enough, indigenous business people faced numerous government legal endeavors to limit or even deny them access to credit. These attempts rested on many rationales. But some common themes were that most Africans were commercially immature and thus needed protection from their more advanced competitors. Colonial land law provided another rationale: Africans owned few if any assets upon which a creditor could distrain. Ironically, what would have helped many African businesses compete more effectively--access to credit in a timely and substantive manner--was enveloped in bureaucratic obstacles.

The nature and impact of government constraints on credit vary according to local conditions. But the approach followed by the Belgian administration in what is now Zaire graphically illustrates what constraint can mean in a particular environment. "It was very difficult," Janet MacGaffey notes, "for Africans to obtain credit because they could not own land under individual tenure, a necessary collateral for loans" [12, p. 39].

The records of one bureaucratic agency in the Belgian Congo strikingly make this point. By 1959 the *Société de Crédit aux Classes Moyennes*, a government loan association for small- and medium-scale enterprises, had given out only 118 out of 2,493 loans to Africans, 0.5 % of the total value of loans [10, p. 100].

The impact of imposed alien law on indigenous business was pervasive. The previous analysis of land, usufruct, collateral, credit, trading, and marketing activities begins to suggest how wide-ranging that outcome was. The following case study, which focuses on British attempts to organize the Chagga coffee-growing industry in colonial Tanganyika, shows how complex the process and impact of legal imposition can be.

Legal Imposition: Mandating A Cooperative Society

Cooperatives of various kinds have proved beneficial to their members in different circumstances. Usually these organizations work best when the legal environment ratifies their essence, which is voluntary cooperation. But cooperatives also have made coerced appearances in situations less favorable to the legal rights of individual members. Cooperatives already have received useful analysis under the rubric of legal imposition in Eastern Europe. Professor Sajo, taking as a theme "compulsory prosperity," examined the transplanting of a Soviet model in Hungary after World War II [4, pp. 223-35]. Our aim here is to analyze the fastening of a cooperative mode of organization based on Anglo-Saxon common law upon the intricate patterns of kinship, local politics, and business activity that characterize the Chagga people of Tanzania.

The Chagga coffee-growing industry has attracted wide attention as one of the classic examples of successful indigenous group enterprise. The Chagga, who live in the environs of Mount Kilimanjaro in northern Tanzania, began growing arabica coffee, the "richer tasting, mountain-grown" variety, in the late nineteenth century. Their industry took off after World War I and created major control problems for the British.

In the 1920s Charles C. F. Dundas, a British colonial officer with extraordinarily close personal ties to many Chagga, worked assiduously to help them establish cultivators' associations in each chiefdom [6, pp. 124-25]. These associations joined to form the Kilimanjaro Native Planters Association (KNPA) in 1925. A number of problems befell the KNPA. These included allegations of misconduct leveled at high-ranking officials, both British and African, involved with the organization. The KNPA also was victimized by mistakes made by a British firm which the Tanganyika bureaucracy had brought in to supervise the marketing of coffee. The KNPA also was serving as a springboard for the political rise of Joseph Merinyo, a Chagga entrepreneur of considerable ability. Unnerved at the prospects of this man uniting so many of his people in a unitary organization, the British administration decided to trash the KNPA and try again. The undoing of the KNPA constitutes one of the seamiest episodes in colonial rule anywhere. The allegations of misconduct were politically motivated and the removal of Merinyo as president of the KNPA was fraudulently stage-managed by British bureaucrats on the spot [14, pp. 94-97, 133-34].

The Tanganyika administration claimed it was not abolishing the KNPA but rather transforming it. By whatever name, its actions produced the Kilimanjaro Native Cooperative Union (KNCU). Key phases of this process illustrate some aspects of legal imposition mentioned earlier. The administrative search for alternatives to the KNPA involved basic legal forms and concepts from Anglo-Saxon common law. During 1928 and 1929, as problems in the north escalated, Tanganyika bureaucrats found deficient all available devices for incorporating the KNPA. The KNPA could not be registered under Ordinance 7 of 1927, nor under the Companies Act. The association's nature disqualified it from the purview of Ordinance 7. And "were the Association composed of intelligent people," the Tanganyika Attorney General argued, "to effect their object it is most likely they would become incorporated under the Companies Act, but I cannot contemplate the natives being able to work such a system." He wanted a special act of incorporation, but Governor Cameron ruled that out "under existing conditions and in the present state of their development." Secretary Philip E. Mitchell favored a general ordinance for such associations as the KNPA, and that view prevailed [18].

The general ordinance was the Co-operative Societies Ordinance of 1932. Its drafting reflects the imperial matrix of modified Anglo-Saxon common law upon which leaders of a particular territorial bureaucracy could draw. The terms of the Tanganyika Ordinance came mainly from similar legislation in Ceylon and Malaya, but some elements drew from Burma, Bombay, Jamaica, and Queensland. As such the ordinance provided for both primary and secondary societies. A primary society is one whose members are all individuals; a secondary society consists exclusively of other societies. Primary societies usually were registered with unlimited liability and secondary societies with limited liability [5, pp. 233-34]. The KNCU was a union of many primary societies. By 1936 these numbered twenty-seven, with a total membership of 21,000 people who controlled 21,737 plots [8]. It was this union with its confederal structure that Tanganyika bureaucrats superimposed on a complex tapestry of local Chagga law, politics, and business.

This legal imposition both collided and meshed with local realities. Conflict occurred in a number of areas and included divergent perceptions of basic concepts in business law. R. C. Northcote, a British administrator who was the registrar of cooperative societies in Tanganyika, suggested in 1937 that "the Chagga have neither the conception of shares, in the European sense of the word, nor of a dividend on shares, nor do they appreciate that shares serve as security for outsiders' claims." He noted that "there has been no encouragement to make them take up additional shares in the past, nor has any demand arisen for a dividend." The explanation for this behavior, Northcote argued, resided in radically different conceptions of appropriate ways to illustrate the relation of an individual to a group. The Chagga members, he emphasized, "regard their [primary] society as a group formation with the communal outlook of the African, a totally different concept from the European's. They feel they have a right or part in the society as a group, and not a share valued in terms of money" [17, pp. 25-26].

Many Chagga in the 1930s apparently did view shares as more than money. But they were not growing coffee for philanthropical purposes. They clearly appreciated the monetary meanings and functions of shares and dividends. Their actions during the unrest of the 1930s substantiated this fact. This unrest unfolded in several dimensions: it involved riots as well as law suits. The riots occurred in 1937, after the Tanganyika High Court dismissed law suits filed by some Chagga. In its own analysis of the coffee riots the Tanganyika administration underscored the reality of dividends for the Chagga. An unknown author asserted that "the disappointment engendered by the non-payment of a final dividend was exploited by a number of agitators, mostly ex-officials of the old KNPA, who had their own grievances against the Union" [3, p. 5].

To be fair to Northcote, dividend has a number of meanings. He may have construed it more narrowly as "a sum of money paid to shareholders out of earnings" and not more generally as "a pro rata share in an amount to be distributed." It is the latter meaning that figures in the 1937 memorandum cited above. The KNCU was then paying coffee growers in two installments, an advance when they delivered coffee to their primary society and *mabaki*, a second payment based on the revenue from the crop when it was sold at auction. In the mid-1930s crisis the KNCU was not able to pay *mabaki*. It could not even cover the payments already advanced. Management decided to meet the existing debt out of the return from the 1936-1937 crops. This situation had "the Chagga in an uproar" [16, p. 125].

It was this mid-1930s crisis that prompted five Chagga to file five law suits in the Tanganyika High Court against both the Native Authorities and the KNCU. These legal proceedings, which lasted several years, show how complex and ironic the process of legal imposition could become. The way in which the Tanganyika administration had implemented the 1934 "Chagga Rule," which made the KNCU a compulsory monopsony vis-a-vis local coffee growers, ironically set it up for this challenge. The administration, advised by its law officers that the Co-operative Societies Ordinance of 1932 was not a suitable vehicle for mandating compulsory sales, fell back on the Native Authority Ordinance of 1923. This ordinance would underpin the creation of numerous local Native Administrations or Authorities as bureaucrats implemented the indirect rule approach to "native" governance pushed by Donald Cameron during his tenure as Governor of Tanganyika from 1924 to 1931 [9, pp. 76-86]. The essence of indirect rule was to establish those micro-bureaucracies, run by "natives" from the same "tribe" but supervised by British district officers. Section 15 of the Native Authority Ordinance gave those agencies the power, subject to the governor's approval, to make rules concerning peace, order, and welfare. It was a foundation for the "Chagga Rule", as well as for the earlier Coffee Industry (Registration and Improvement) Ordinance of 1928 [14, pp. 97-98].

This mode of legal imposition placed the Native Administrations in the position of agencies of government, or at least gave them power to act as such on occasion. It also created grave vulnerabilities. In September 1937 the Tanganyika High Court dismissed the "Chagga Rule" suits on the ground that the plaintiffs did not have the legal right to file. The basis of this rejection was the doctrine of sovereign immunity, which holds that one

can not sue the state, or any agency of it, without the consent of government itself. The Tanganyika High Court was treating Native Administrations as in some way partaking of the legal status of a department of state. The High Court's action, far from delighting the Tanganyika bureaucracy, caused it considerable consternation, especially when plaintiffs appealed the decision to the Appeals Court for East Africa. After much internal discussion the Tanganyika administration decided not to contest the appeal. Its reasoning proceeded directly from its own conceptions of stability. Had it contested the appeal, it would have accepted *ipso facto* the High Court's treatment of Native Administrations as having some integral relation to the state itself. This position would have clashed with the Realpolitik of indirect rule: to rule the Africans through their own rulers in Native Authorities which are insulated from one another and kept at a distance from the actual power structures of the Tanganyika bureaucracy itself.

Realizing belatedly the pitfalls involved in this mode of legal imposition, the Tanganyika bureaucracy switched tactics. In 1937 it enacted the Native Coffee (Control and Marketing) Ordinance and moved with dispatch to create a Native Coffee Board in the Moshi district. This board, stage-managed from within, in November 1937 asked the governor and Legislative Council to sanction the KNCU as the sole marketing agent of the Board. The administration was taking a legally safer route to monopsony this time [14, pp. 99-109].

This legal episode has not received the attention it deserves. The Tanganyika bureaucracy won in the short run, as it suppressed the riots, deported their leaders, and redeployed the administrative control apparatus in a less risky way. But a British administration lost in a British court. These cases show strikingly what can happen when legal imposition is implemented in ways that open up vulnerabilities within a system that can be exploited in its own terms. Indeed, Great Britain had provided the legal apparatus for demonstrating just how shaky the long-term foundations of its colonial rule were.

The collisions between the legal imposition of the KNCU and some local Chagga realities are only part of the story. The structures of the KNCU also meshed with and even created new local realities. Here I am greatly indebted to the work of anthropologist Sally Falk Moore on Chagga customary law from 1880 to 1980. Our work is complementary. She reconstructs the northern unrest, but relies excessively on printed government documents. As such she misses some of the underlying power realities, which our utilization of declassified material has conveyed. She, however, presents detailed evidence on the ways in which the KNCU intersected with kinship and other political realities, themes barely sketched in our work.

The structures of the KNCU lent themselves well to this process of local meshing. The KNPA, readers will recall, had been a unitary organization, which helped Joseph Merinyo build an economic and political power base independent of the chiefs. The Tanganyika bureaucracy, as it transformed the KNPA into the KNCU, knew that it had to construct the new organization around the chiefs, because they, not autonomous

entrepreneurs, were the sanctioned instruments of indirect rule. The administration chose a confederal option, with a headquarters directing the activities of many local primary cooperatives. The idea was to graft the primary societies onto the numerous units of local power. The bureaucracy's goal was not to promote the eventual political unity of the Chagga as an ethnic group, but to strengthen a decentralization of power that resided in levels of Chagga localism and so constituted little territorial threat.

Primary societies so positioned were apt vehicles for duplicating and refining local realities. In Mwika West the first chairman of the local primary society was Ngao Lengaki Mariki. He was the son of Lengaki Mariki, who had been *mangi* (chief) of Msae until the early 1920s; Msae was the area where the Mwika West Primary Society was located. Ngao Mariki served as chairman from 1934 to 1936. His son, Wilson Ngao Mariki, was chairman from 1960 to at least 1969. In the interval between the Marikis there were two chairmen. One of these was also a member of a once chiefly lineage from another *mtaa* (district). The governing committee of the Mwika West society consisted of an elected representative from each *submtaa*. Offices in this as well as other primary societies never became invariably hereditary. But kinship often played a major role, and local politics was always interwoven with the operation of the primary societies [16, pp. 124-25].

Thus, while the KNCU was legally imposed on the Chagga, the outcome is a complicated portrait of harm and benefit which the previous section has addressed. The harms consisted of delimited and abolished freedoms as well as instances of significant mismanagement and financial losses. The benefits proceed from the fact that the Chagga eventually took over the KNCU and made it distinctively their own. In at least one major case, then, the internal strengths of an ethnic group enabled it to adapt imposed structures for its own ends.

This case study of cooperative imposition, with its mixed results, contrasts with our earlier vignettes on land law, credit, collateral, trade, and markets. In these instances the consequences of imposition entailed much more harm than benefit. The net impact of legal imposition on government-business relations in colonial Africa was thus overwhelmingly negative in the colonial short-term. But future research on all aspects of this topic, particularly in the area of cooperative imposition, may produce evidence to refine this assessment.

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