

26. Tarp, op. cit., p. 10.
27. Republic of Zimbabwe, *Five Years of Achievement, a proud Record of Public Service, 1980-1985*, Government Printer, Harare, April 1985, p. 1.
28. Commercial Farmers Union op. cit., p. 14.
29. Idem, p. 15.
30. Mhina, op. cit., p. 12.
31. Lenin, op. cit., p. 82.
32. Shivji, I.G., *Class Struggles in Tanzania*, TPH, 1975; Freyhold, op. cit.
33. Lenin, V.I., "The right of nations to self-determination", in *Selected Works*, Vol. 1, Progress Publishers, Moscow, 1976.
34. Lenin, 1976, op. cit., p. 571.
35. CCM, *Mbinu na Mikakati za kuanzisha Ushirika wa Uzalishaji Mali, 1985*.

Indigenous Responses to the Imposition of Colonial Law: The Case of the Kuria People of Tanzania*

B.A. Rwezaura**

Introduction

This paper aims at contributing to the discussion and research on the imposition of an alien legal system upon an indigenous population in a third world country. Colonial state law as opposed to traditional law was by its nature an imposition aimed at regulating the social relations of a particular population over which that state exercised power. Although state law is often necessary in order to bring about rapid social change, its effectiveness depends upon many factors. For example, it depends upon the particular sphere of social relations which state law seeks to regulate, whether that sphere touches on a matter considered vital by the population and whether economic factors operate to hinder or facilitate the effective operation of specific legal rule. Thus, whenever state law seeks to prohibit or regulate behaviour which is deeply internalized and based on many generations of habitual compliance the impact of such imposed law is likely to be very small. As noted by Moore, although new legislation is often passed with the intention of altering the going social arrangements in specified ways, those social arrangements are often effectively stronger than the new laws.¹

Yet colonial state law, broadly defined, has a good chance of success because it did not aim at small scale interventions; rather, it aimed at completely altering the socio-economic conditions under which various traditional laws operated. This function of the law, as Fitzpatrick has argued, aimed at integrating the overall colonial social formation into the wider economy of the metropolitan state.²

The discussion of the Kuria response to the imposition of colonial state law will start from this broad function of the law. Moreover, colonial state law will be broadly defined as constituting the positive laws made by the imperial legislature, administrative regulations, judicial pronouncements and other forms of regulatory mechanisms devised to facilitate effective colonial administration.³

The paper discusses the attempts by the colonial state to regulate Kuria marriage payments and how the Kuria responded to this measure. In order to place the reasons underlying this response in their proper context, the first part of this paper provides an outline of the Kuria traditional social and economic system. The second and third parts describe the colonial occupation of Tarime district, the measures devised to regulate marriage payments and the response of the Kuria people to these measures. The fourth part discusses the reasons underlying the specific Kuria

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**Associate Professor of Law, University of Dar es Salaam.

response. Finally, some general conclusions are drawn from the paper and areas from further works are suggested.

The Social and Economic Organization of the Kuria

Field research among the Kuria people between August 1979 and February 1980 provided the following information. The Tanzania section of the Kuria people resides in the Tarime district located in the North-Eastern tip of mainland Tanzania, east of Lake Victoria. They number about 100 thousand and their main economic activity is agriculture and animal husbandry. The Kuria were traditionally a male dominated society. A typical pre-colonial Kuria household was headed by a man – an elder – who had under his control a number of dependents of which the majority were wives and children. He had control over the allocation and use of land and livestock and represented his household at higher levels of the clan. The leadership of the clans was also dominated by men and elders. Generally, from the level of the clan to that of the household, men and elders played a leading role in directing the economic, social and religious affairs of the Kuria people. This dominance of the men accounts, as will be shown later, for the leading role men played in initiating and directing the Kuria response to the imposition of colonial law.

The maintenance of junior-elder relations was buttressed by a strong pre-capitalist ideology which translated as well as masked every form of economic and social relation into kinship relations. Through various forms of economic exchange, kinship relations were created and maintained by continued reciprocal transfer of property and services. Kinship relations also provided a framework through which production and economic exchange was realized. Specific to the Kuria people was the elders' monopolistic control over livestock. The control of cattle enabled the elders to determine the circulation of marriageable women enabled the elders to keep the junior men bound to them. Both sides were well aware that relative economic autonomy could be realized through marriage and having children. Marriage enabled the juniors to detach themselves from the control of elders and, later, to become elders themselves.

Women were vital for the survival of the Kuria social order. For women, and livestock, were the means by which the strategies of men were realized. The Kuria social system was organized in such a way that women were obliged to attach themselves to men through whom they gained access to land and to legal and ritual protection. A woman in Kuria society had status only as a married woman and, if widowed, she was expected to submit to the protection of her sons or her deceased husband's kinsmen under a system of levirate. There was no room, therefore, for an independent woman or a spinster.

Imposition of Colonial Rule

Following the signing of the Anglo-German agreement of 1890, Tanganyika, then known as German East Africa, came under German rule. During the next two decades, German colonial government proceeded to consolidate its rule throughout the colony. A number of military expeditions were sent to break resistance by the local people to German occupation. Hence, German soldiers set out "methodically

round the country dealing with African leaders in turn".⁴ Ruel gives a vivid account of how the Germans conquered the Kuria clans, on their arrival in Kuria country. He narrates how the German army attacked and raided the Basweta, Batimbaru, Banyabasi, Bakira, Barenchoka and Basuba clans.⁵ After conquering the district, the Germans appointed auxiliary staff to assist in the recruitment of local labour, the levying of tax and the imposition of fines on those who disobeyed their law. Chiefs and headmen were appointed to perform these functions. Thus, although the Kuria people did not recognize chieftaincy, chiefs were nonetheless imposed on them. The appointees were mainly people who had co-operated with the Germans in a variety of ways such as offering their canoes to be used by the Germans, or otherwise offering their services.

The German colonial period lasted for two decades during which the Germans had to put up with considerable resistance from the local people. Even some of the chiefs failed to implement German directives and were severely punished. Indeed, some, such as the chief of the Butimbaru, were summarily executed in the presence of their people.⁶

The Germans lost control over German East Africa at the end of the Second World War. When the news of their defeat reached Kurialand, the first step the people took was to depose the chiefs who had been imposed on them and to reinstate the traditional leaders who had been operating underground since their deposition. Unfortunately, when the British assumed power in the district they reinstated the chiefs, but again there was stiff resistance from the Kuria people. Finally, an understanding was reached whereby the newly appointed chiefs would share power with the traditional leaders and this calmed down the situation.

Between 1917 and 1921, the Kuria people were ruled by a British appointed Paramount Chief, an ex-sergeant major of the King's African Rifles, named Mageta of Busweta. The office of the Paramount Chief was later abolished following a rising of the Batimbaru clan who opposed Mageta's attempts to give their lands away to another clan; thereafter, each chief was allowed to rule his own people, until 1925, when the Kuria Federation was formed. The latter was a more flexible and looser structure which permitted each chief to govern his area but was expected to sit on a Federated Native Court. In 1929, when the policy of Indirect Rule was introduced formally, Tarime district had a total of 23 chiefs divided into three federations.⁷

All the chiefs sat on the Native Council which had power to pass Orders and Rules under the Native Authority Ordinance of 1926. The chiefs also exercised judicial powers as magistrates in their own chiefdoms. They presided over Chief's Baraza Courts, established under the Native Courts Ordinance of 1929. Chief's Courts had jurisdiction over all Africans residing within the chiefdom and were empowered to apply local customary laws. Their criminal jurisdiction included power to hear cases involving infringements of Orders and Rules made by the Native Councils. Appeals from Chief's Courts went straight to the Federation Court, The North Mara (later Tarime) Federation Court fell under the direct supervision of the British District Commissioner, while individual Chief's Courts were subject to periodic inspection by the District Officer. Except for informal settlement of disputes undertaken by clan heads and other elders, Chief's Courts were the only bodies

recognized by the colonial government as having judicial power within the Chiefdom. The chiefs were assisted in the judicial work by assessors while headmen were involved in village administration. As will be show shortly, a number of orders designed to control marriage payments were enforced through the above structure.

Regulation of Kuria Marriage Payments

One of the first steps taken by the British colonial administration towards the regulation of Kuria family relations was to limit the amount of marriage payments. This measure was, however, successfully resisted by the Kuria people. Kuria bridewealth was not seen as a problem of the colonial state until the mid-1920s when marriage payments went up to an average of 15 head of cattle. This was a result of a rise in the population of cattle resulting from a number of initiatives taken by the Kuria to rebuild their herds after the ravaging rinderpest outbreak of the 1890s. As noted by Baker, "bridewealth in pre-European days is said to have consisted of one food bin of grain or one goat and rose as the number of cattle in the district increased, to eleven, fifteen and even twenty head until 1920 when the chiefs agreed to reduce it to three head".⁸

Apart from the negative views which the colonial administration had on bridewealth,⁹ the specific Kuria situation was viewed in colonial circles as one which called for tough action intended to control the rise in the population of cattle in order to relate it to the carrying power of the land.¹⁰ In pursuance of this policy, a decision was made to promote the conservation of soil fertility and to encourage agricultural production (as opposed to pastoralism) in the Kuria highlands. Secondly, breaches of the peace and the Masai pastoralists were blamed on the rising marriage payments. It was believed that demand for bridewealth encouraged the unmarried Kuria men to steal livestock from their neighbours.

It was in the light of these considerations that, in 1929, the British colonial government ordered chiefs to pass a regulation reducing the amount of bridewealth from up to twenty head to only three head of cattle and to prescribe stiff punishments in cases on non-compliance. Breach of the regulations was a criminal offence carrying a maximum penalty of three months imprisonment and a heavy fine of one hundred shillings.¹¹ Both the giver and the receiver were liable to the same punishment and all cattle given in excess of the prescribed number were forfeited to the Kuria Federation Treasury.¹²

Apart from the new regulations, veterinary rules, originally intended to reduce the risk of cattle infection in cases of an epidemic outbreak and the control of cattle thefts generally, were used to regulate the movement of bridewealth cattle. These rules prohibited the transfer of livestock from one area to another without the permission of the headman. Furthermore, receiving such cattle without reporting to the headman was also an offence. After 1930, the procedure for transferring marriage cattle was to drive the relevant animals to the chief's court where they were handed over to the prospective father-in-law before witnesses. Each animal was registered individually by name and sex in a special *Mahari Book* kept at the court.

Although harsh penalties were imposed on the offenders, the limitation rules were mostly ignored. Ruel, whose study covered the operation of similar rules

among the Kenyan section of the Kuria, notes that, in the Butende location, "the law was accepted and enforced for a few years but then broken down and by 1950 had become as it was everywhere else in Kuria country in both territories (i.e. Tanganyika and Kenya) a dead letter."¹³ Indeed, in the Tarime district, the 1929 Regulation fixing the maximum number of cattle to three was amended because no one complied with it and a new maximum figure of ten was substituted. Despite this adjustment in the number, evasion continued. This evasion took many forms. Ruel¹⁴ and Chacha¹⁵ describe a system of transferring the excess cattle to relatives or friends appointed by the prospective father-in-law which was popularly used to evade the rules. A second tactic involved transfer of cows with young calves or those which were about to calf. For cows with calves, queries by the authorities were easily explained, i.e. that the young could not be separated from their mothers. The authorities were made to believe that calves would be returned to the owner but in actual fact both parties knew that they were never to be returned.

In order to have an idea of the extent to which the second evasion tactic was used, a total of 175 marriages registered at the Nyamwaga court were examined and it was found that 48% of the prospective husbands had tendered cattle which included a number of calves. Table I provides the details. The last column of Table I shows that in one case eight out of ten cows given had calves and in the second case, all the ten cows had calves. It must be pointed out traditionally bridewealth cattle consisted of a healthy mixture of cows and heifers as well as bulls and oxen but not just pregnant cows or cows with calves.¹⁶

Table I:

Number of cattle given	10	11-12	13-14	18-20
Number of marriages with % in brackets	91(52%)	31(18%)	38(7%)	2(1%)

Source: Nyamwigura Chief's Court Register for 1955

A third tactic devised was that fathers decided to take the unusual step of giving their daughters to be married to distant husbands residing in places where the limitation rules did not exist or were less restrictive. For example, in neighbouring Kenya, the maximum was fixed at fifteen head of cattle and the difference between the two sections of the Kuria people acted as an incentive for some fathers to offer wives to their Kenyan neighbours.¹⁷ This practice was not considered illegal or harmful to anyone, until 1949, when the Chief of Utimbaru decided to forbid it claiming that too many women in his chiefdom were being lost to the Kenyans. He decided to enlist the support of his fellow chiefs within the Kuria Federation and an order prohibiting the marriage of daughters to Kenyan husbands was given formal legal status by the Chief's Council. Its breach was made a punishable criminal offence.

This regulation, like these before it, was widely breached. One of the early criminal prosecutions arising from the violation of the order was that of one Wataigo

Sinyo who was found guilty of having married his daughter to a Kenyan.¹⁸ In another criminal trial, one Gake admitted to having given two of his daughters to Kenyan husbands.¹⁹

Although it is difficult to estimate the extent of the resistance to the bridewealth limitation rules, Kuria elders agree that these rules were regularly contravened. An examination of case registers at Nyamwigura showed that many convictions relating to the breach of these rules were entered. Interviews with elders also revealed that there were many more people who evaded prosecution through 'bribing' headmen and chiefs. As a result, the chiefs and headmen became wealthy through their power to enforce unpopular colonial legislation.²⁰

In 1945, Cory wrote: "Rules restricting the amount of bridewealth payable have been issued under the Native Authority Ordinance. These rules are not followed and there are very few cases in which legal bridewealth is (not exceeded)."²¹ Chacha who is himself a Kuria summarized the overall Kuria response to these rules in the following words:

For twenty-five years the colonial government had unsuccessfully tried to limit bridewealth rates in Kuria society but there was not a single year in which the proscribed number was observed. Consequently, so many people were fined and others imprisoned and their cattle, given in excess of the limit, confiscated and handed to the local treasury but nonetheless contravention of these rules remained.²²

It seems appropriate to analyze why the colonial state's attempts to control the amount of bridewealth failed. For not only did these attempts fail in Kuria country but almost in all places throughout East Africa wherever they were introduced. In the next part, the reasons why these rules were resisted and why the resistance was effective will be considered.

Reasons for the Kuria People's Response

The questions of why the Kuria people put up resistance to the imposed law and why they succeeded are closely related. Therefore, they will be discussed together. Moore's analysis of the limits of imposed law provides a useful approach to the study of these two questions. She argues that "between the body politic and the individual, there are interposed various smaller organised social fields to which the individual 'belongs'. These social fields have their own customs and rules and the means of coercing or inducing compliance".²³ According to Moore, "the semi-autonomous social field is defined and its boundaries identified not by its organisation (it may be corporate group, it may not) but by a processual characteristic, the fact that it can generate rules and coerce or induce compliance to them".²⁴

Yet, the semi-autonomous social field, which might be an extended family, a clan, a lineage-neighbourhood complex or a religious community, is not isolated from the larger polity, i.e. the state. Hence, the legal order of the semi-autonomous field co-exists with the wider legal order of the state, and the two do influence one another. Although, admittedly, the larger polity which surrounds the semi-autonomous social field is more powerful, it does not follow that its rules and decisions which invade the semi-autonomous social field will necessarily take over the smaller social field. Although it may be theoretically possible that state law can legislate out of existence some traditions or customs which a given ethnic group considers impor-

tant, this does not mean that such customs will instantly cease to exist. A more realistic picture is one in which there exists neither total autonomy of a smaller social field nor complete domination of it by the state.

The Kuria resistance to the colonial law which aimed at limiting marriage payments provides us with a good example of a semi-autonomous social field at work. The system of bridewealth, as noted earlier, was already deeply entrenched in the Kuria socio-economic system at the eve of colonial rule and could not be easily done away with. Bridewealth transfer was and still is essential for the validity of a Kuria marriage and determines the status of children. It is taken very seriously by the Kuria because it is central to their social organization. The Kuria system of upward mobility which necessarily involved the circulation of women and cattle between agnatic relatives depended on the system of bridewealth. Although the Kuria people are not endogamous, an examination of their pattern of spouse selection indicates that many couples marry from neighbouring villages. For example, available figures for 1955 show that out of 100 marriages registered at the Nyamwigura Chief's Court, 99 marriages were contracted between spouses residing in the same chiefdom and most probably belonging to the same sub-tribe. Moreover, 50% of these marriages were contracted between close neighbours and distant relatives. This pattern of spouse selection indicates that marriage in such a group was one among a number of close relationships which existed within the group. Traditionally, each village or cluster of villages performed a number of activities in common. Apart from the fact that the majority of the inhabitants in the village would have a common ancestor - possibly a founder of the village - the economic, political and religious life of such a group was integrated. For example, agriculture was performed with the help of village workteams which in turn, cultivated, weeded and harvested each other's produce. Cattle herding was also done jointly by village members. The Kuria have yet another form of organization which cuts across family, lineage and clan boundaries, i.e. the circumcision sets.²⁵ These groups were also used as a membership criterion for a number of co-operative economic activities and were in their own right a semi-autonomous social field. Such groups were nonetheless part of the lineage neighbourhood complex.²⁶ Defence duties were performed jointly and through a respected Council of elders.

The Kuria neighbourhood lineage complex was thus able to generate its own internal rules and had the means to induce compliance. Ruel reports a rule which was laid down in Renchoka area "that if cattle were stolen at night people of the neighbourhood must all turn up to help track the thieves; otherwise questions would be asked".²⁷ These questions which members of a neighbourhood-lineage complex might ask are important to a member who depends on his fellow members for assistance when his own cattle are raided; when his child is sick; when he needs assistance to erect a hut or to bury his dead. With such interdependence, the semi-autonomous social field is capable of exerting considerable pressure on its members to act in a particular way. Hence, as noted by Moore concerning a similar social field among the Chagga of Kilimanjaro, "no man can hope to keep his head above water if he does not have the approval of his neighbours and kinsmen". She argues that "unless the lineage and neighbourhood support him through illness, through financial crises, through disputes, he is in deep trouble".²⁸ The Kuria people say that:

if one needs a character reference one should go to the people of that man's neighbourhood: it is they who will remember, for example, the rather suspect incident of the chickens or cattle of two years ago; who will be watching farming manoeuvres that seem intended to extend the man's land-holding; who will know generally his attitude to others, or co-operates with them.²⁹

A further example which sheds light on the capacity of the Kuria semi-autonomous social field to generate rules internally and to induce compliance to them concerns the Kuria procedure for the settlement of disputes. A typical dispute in Kuria society could arise out of a debt, *issire*. A debt owed may be in the form of cattle held by someone who is refusing to hand them over. It may be a result of unpaid compensation or an outstanding amount over a past bridewealth transaction.

The aggrieved party starts the first stage of dispute by initiating a meeting between himself and the debtor whereby all the essentials of the claim are communicated to the other side and some time is given to enable the debtor to respond. When the claimant is convinced that the debtor is determined not to pay or is unlikely to discharge the obligation, he sets in motion the second stage of the dispute. This stage begins by the claimant talking to the neighbours and relatives about the debt and trying to seek their support. The claimant uses every opportunity available to him at public gatherings, private meetings, work-team gatherings, weddings etc., to inform people that so and so owes him something and that he is refusing to pay up. Through this incessant talking, his claims become public and in due course indirect pressure is applied on the debtor to settle. As noted by Ruel, once the details of the dispute were well known to the neighbours and relatives, the debtor felt the obligation to defend his name.³⁰ Thus, except in very serious cases such as homicide or cattle thefts within the group (where ritual cursing, ostracism or even death was invoked as punishment), ordinary debts were enforced through informal pressure.

It is in this social context of the lineage-neighbourhood complex that the colonial state introduced its bridewealth limitation rules. The negative response to these regulations was to a large extent influenced by the central place occupied by bridewealth in Kuria social life, together with the fact that members of this social field were prepared to co-operate with one another to render the rules ineffective. The tactics of resistance deployed drew from existing social ties. This also suggests the existence of a high degree of co-operation between the members of the group.

There is also another factor which must be discussed. This concerns the question why bridewealth went up to a very high level during the colonial rule and has continued to rise ever since. The reasons appear to be economic in nature. It has been noted that during the rinderpest outbreak Kuria herds were decimated. Given the central importance of bridewealth it is not surprising that the depletion of cattle during that time only affected the quantity but did not affect the legal importance of such payments as a pre-condition for a valid marriage. Hence, when the cattle population increased (and because Kuria men were not prepared to sell their livestock, but were instead busy trying to acquire more) the social exchange value of cattle went down and marriage payments wet up. His point has been stressed by Ruel who argued:

Since cattle are needed for marriage and are an index of wealth the desire for them is limitless; and where changing conditions make increased herds possible, the increase in

numbers – the greater 'economic surplus' – is taken up in the same way. As herds increase, the social value of cattle (their value in social exchange) decreases and bridewealth goes up. No outlet has been given to cattle as wealth: the economy remains the same.³¹

It is interesting to note that while the colonial administration worked tirelessly to limit the bridewealth rates, it scarcely realized that colonial state intervention had set in motion a number of economic and social forces which not only enabled the Kuria to increase their livestock but also transformed marriage payment from a pre-capitalist economic exchange into an item of individual consumption. This had the effect of pushing up bridewealth rates while at the same time undermining its pre-capitalist content, i.e. its traditional social value.

Thus, whereas the specific colonial law limiting the amount of marriage payment was clearly ineffective in altering Kuria practices, the broader aspects of colonial law which facilitated the integration of the Kuria pre-capitalist social formation into a wider economic system substantially transformed Kuria bridewealth. This transformation was part of a general transformation which affected the traditional economy and social relations generally.

This explanation, therefore, goes beyond that of Ruel in accounting for the rise of marriage payment in the later period colonial rule. This is mainly because livestock economy of the later period cannot be described as 'closed'. Although it is true that, in general terms, contemporary Kuria elders still consider cattle as a basic object of bridewealth, they are nonetheless not unaware of the wider economic value of cattle. The author's research among the Kuria people shows that one of the more recent causes of high bridewealth is the disruption in the junior-senior relations. For example, cattle, over which elders exercised monopoly control became commercialized and were released into the open market. Young men who had served in the colonial armed forces, worked in the mines or were otherwise generating an income from the non-traditional economic sector, purchased cattle and hence were able to reduce their dependence on the seniors. These juniors who now aspired to become a category of 'new elders' were a product of new economic opportunities. The participation of juniors in a non-traditional economy had a number of implications for junior-senior relations. It deprived the seniors of control over the labour power of the juniors and hence their economic surplus. There was also a movement away from communal ordering towards individualized forms of economic social life. The kinship system which had provided a framework for production and economic exchange underwent considerable change. As a result, the mutual economic advantages which this form of social organization provided were progressively reduced.

All these changes forced some elders to seek to maximize whatever limited economic opportunities were available to them. Since seniors could not count on their prospective sons-in-law to continue to provide them economic support after marriage as was the practise in traditional times, they endeavoured to extract from them as much initial bridewealth as was possible before marriage. As Murray has noted concerning the Basuto;

large *bohali* (i.e. bridewealth) transfer in Lesotho redistributes upwards, from the junior (active migrant) generation, to the senior (retired) generation, a proportion of the means of subsistence derived from the earnings in South Africa. Being enforceable

in court, they are a more effective way of ensuring maintenance of the elderly than kinship morality *per se*.³²

Murray's remarks are true not only in situations where traditional bonds of economic reciprocity are dissolving but also where the economic condition of the elders is getting precarious due to economic change. As correctly noted by Kitching, most male household heads faced with static or declining incomes as a result of land shortage and rising prices find their daughter's marriage cattle to be a valuable source of income. Granted that these changes are still taking place, it is very unlikely that bridewealth will fall in the near future.

Conclusion

This paper has examined a subject of which students of colonial legal history are only too familiar, i.e. indigenous resistance to colonial state law. The specific case of the Kuria resistance has shown how the rules prescribing the maximum bridewealth payable were either largely ignored or actively opposed. This paper has argued that the Kuria resisted because bridewealth was central to their social and economic organization. Other factors connected with the rise in the cattle population and the transformation of Kuria economy have been given as accounting for the rise in marriage payments. Moore's concept of the semi-autonomous social field has been used to explain this resistance. In the post independence period, the lineage-neighbourhood complex has not lost its efficacy. Indeed, in times of social and economic insecurity, certain spheres of this social field get more emphasis than others. Thus, the emphasis now is placed more on neighbourhood 'belonging' than on lineage membership even though the two are markedly inseparable. This social field continues to generate its rules internally and to demand compliance from its members. High bridewealth is also partially enforced within this social field.

The semi-autonomous social field of the Kuria is an enduring feature of Kuria life and continues to make demands on its members. Its location in the larger polity and the specific social field of law has and will continue to give rise to what Fitzpatrick has characterized as "combined types of law".³³ This new form of law is not yet fully captured by researchers nor is it clearly comprehended. Its real nature has been a subject of continuing debate and may continue to be so in the coming years.

Footnotes

1. S.F. Moore, *Law as Process: An Anthropological Approach*, Routledge and Kegan Paul, London, 1978.
2. P. Fitzpatrick, *Law and State in Papua New Guinea*, Academic Press, London, 1980.
3. The broad definition of law used in this paper is the one provided by Moore, *op.cit.*, p.54. She describes state law as "a short term for a very complex aggregation of principles, norms, ideas, rules, practices, and the agencies of legislation, administration, adjudication and enforcement, backed by political power and legitimacy".

4. W.E.F. Ward and L.W. White, *East Africa: A Century of Change 1870 - 1970*, George Allen and Unwin, London, 1971.
5. M.J. Ruel, *The Social Organisation of the Kuria*. Fieldwork Report at the University of Nairobi Library.
6. Ruel, *op.cit.* See also H. Cory, *Kuria Law and Custom*. Manuscript re-edited by E.B. Dobson, The Cory Collection, University of Dar es Salaam, 1945; "Land tenure in Bakuria", *Tanganyika Notes and Records*, Vol. 23, pp. 70-79; *East African Royal Commissions Report (1953-1955) (md 9475 Precip by A.D. Cullen, Nakuru Press Ltd.)*
7. D.C. Winnington-Ingram, "Reforming Local Government in a Tanganyika District", *Journal of African Administration*, Vol. II, pp. 10-15.
8. E.C. Baker, *The Bakuria of North Mara Tarime, Tanganyika Territory*. Manuscript in the Library of the East Africa Institute of Social Research, Kampala; and at Rhodes House, Oxford.
9. See for example the statement by Chief Justice Hamilton in the case of *R. v. Amkeyo* (1917) 7 E.A.L.R. 14, where the Chief Justice expressed the view that transfer of bridewealth was similar to an act of men purchasing wives and that, therefore, the process leading to an African customary marriage was more akin to a system of "wife-purchase" than that of marriage as understood in Europe.
10. For example, the East African Royal Commission advised that if the *pastoral tribes* were unwilling to reduce their herds, it might be a good idea to deny their cows veterinary services so that their cattle could die. The Commission argued: "There is equally little value in *pastoral tribes* paying for inoculations if they merely keep stock alive without any proper provision for forage. Sometimes it may be advisable to let nature take its course - not to embark on water development or disease control - rather than provide aid without the assurance of planned management leading to a proper economy." Cmd 9475 at p.48 of Precip. See generally chapters 20-22.
11. The Order was designated as the *Marriage (Dowry) (Kuria) Rules, 1929*.
12. Until 1958, when the Central Court of Appeal declared the practice of forfeiture to be illegal, confiscation of excess cattle was widely practiced and considered to be the law. See *Hamisi Nzonio V. South Mara Native Authority* (1958) 144 D.A.L.C.II.
13. Ruel, *op.cit.*
14. *Ibid.*
15. G.N. Chacha, *Historia ya Abakuria na Sheria Zao* (The History and Laws of the Kuria People), East African Literature Bureau, Dar es Salaam.
16. In Butimbaru for example, one of the bridewealth cattle, called the "cow of the mother's kin", *nyabuihwa*, was traditionally a young heifer and was not expected to calve until after the bride herself had conceived. It does not appear in the table that this traditional rule was observed. This is perhaps an example of how the limitation rule affected this particular rule.
17. Gavin Kitching reports the existence of a similar flow of women to high bridewealth areas within Kenyan groups. He notes that "in the Fort Hall district report it was noted that Kiambu bridewealth levels were notably higher than Fort Hall and as a result a large number of Fort Hall young women are married to Kiambu natives". See G. Kitching, *Class and Economic Change in Kenya: The Making of An African Petit Bourgeoisie 1905 1970*. Yale University Press, New Haven and London, 1980, p.222, and Fort Hall District Annual Report 1934 at p.4.
18. *Native Authority Baraza Inchage V. Wataigo s/o Sinyo and Anor*, Crim. Cas No. 389 of 1949.
19. *Native Authority Baraza Inchage V. Gake*, Crim. Cas No.405 of 1949.
20. Most British colonial officers who worked in Tarime district at the time were convinced

that corruption among the chiefs and headmen was just as much an administrative problem as the 'crimes' they were expected to punish. In 1932, McMahon recorded in the District Book that "half the trouble is that Native Courts are not functioning with justice, but once we abolish corruption I think the present troubles will automatically cease." In 1940, S.R. Tubbs, another colonial official, recorded that "the courts are not greatly respected and are not, in my opinion, worthy of much respect" (because they are corrupt). And finally, in 1944, J.C. Clarke wrote that "as Kuria natives are not above offering bags of money to their administrative officers, it must be assumed that the practice of bribery is so ingrained amongst them as to become a second nature". All above citations taken from N.M. Lugoe, "Customary Law in North Mara", (Report on Law Documentation Project), *Journal of the Denning Law Society*, Vol.1, nr.3, pp.47-60.

21. Cery, 1945, op.cit. See also Lugoe, op.cit. His research in the district also confirms that the rules were not observed by the majority of the Kuria people.
22. Chacha, op.cit., p.36 (transl. BAR).
23. Moore, op.cit., p.56.
24. Id., p.57.
25. A circumcision set consists of usually not less than 350 males drawn from neighbouring villages and who were circumcized as a group. In pre-colonial times, a young man qualified for circumcision at the age between 20 and 30 years and this event took place after every four years. The average age has now fallen to about 17 years and the interval between two circumcision sets has gone to two years. Each circumcision set has its own name and enjoys seniority status over all other sets coming after it. Members of a particular set are united by a bond analogous to a system of blood-brotherhood. As a semi-autonomous social field, the sets generate and enforce internal rules of good conduct and assist each of their members in times of economic need. For example, some mutual work teams are organized on the criterion of sets and they perform various economic activities as a group. There is a parallel organization for females, whose membership is usually terminated on the marriage of its various members. According to Kuria law, on marriage a wife changes her 'initiation set' to that of her husband with which she has to identify herself for the future. See B.A. Rwezaura, *Social and Legal Change in Kuria Family Relations*, Ph.D. Thesis, University of Warwick School of Law, 1982, pp.16-19.
26. B.A. Rwezaura, *Traditional Family Law and Change in Tanzania*, Nomos Verlagsgesellschaft, Band 17, Baden - Baden 1905 p. 11 ff.
27. Ruel, op.cit. p.58.
28. Moore, op.cit. p.74
29. Ruel, op.cit., p.53
30. Id., pp.141-2.
31. Id., p.117.
32. C. Murray, High Bridewealth, "Migrant Labour and the Position of Women in Lesotho", *Journal of African Law*, Vol. 21, No. 1, 1977, p.80
33. Fitzpatrick, op.cit.

The Teaching and Research of Political Economy in Africa with Specific Reference to East Africa*

H. Campbell**

Introduction

Despite its relative poverty Tanzanian society for more than fifteen years was the central point of intense intellectual debate on the political economy of Africa. More progressive scholars have visited, studied and arisen in Tanzania then in most other African states. Judging from the published bibliographical works on political economy, the conditions within the society and at the University seem to have encouraged research on the polity, problems of transformation, class struggle and development policies. The Dar es Salaam School of history emerged as one variant of 'nationalist' ideas in the era of decolonization, but with the added impetus of a society which aspired towards a different path than the route aptly described by Kwame Nkrumah as *Neo-colonialism*. In this aspiration the Dar es Salaam school sought to contribute to the store of human knowledge.

The present debates and intellectual activities within the university and the wider society afford an opportunity to reflect on the teaching and learning processes with respect to the scientific method of political economy. These days, the material poverty of the society is increasingly reflected in the production of knowledge. Thus, the teaching and research of any subject has to be examined against the background of the economic depression of capitalism. Questions must arise on how the teaching of political economy can be grounded in the concrete analyses or concrete processes in African society. Classical political economy which arose in the rosy era of competitive capitalism was retailored in the ideas of 'modernisation' and 'progress', and these ideas have foundered on the rocks of hunger, famine, repression and militarism. In this situation teachers and researchers are either forced to fall back on idealism to seek the help of 'Allah' or 'Jesus', depending on religious inclination, or to sharpen the tools of research in the interest of those classes in Africa who are disregarded and exploited.

In a situation of tottering state institutions where knowledge and creative inquiry is increasingly viewed with suspicion, it would not be too hasty to say that the whole process of political retrogression has affected the production of knowledge. And yet it is in the depth of this crisis that a clear methodology must emerge of how to develop the tools necessary for the process of transformation out of underdevelopment.

This paper seeks to analyse the teaching and research of Political Economy in East Africa within the context of the present world capitalist crisis. It will not analyze

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**Department of Political Science and Public Administration, University of Dar es Salaam.