

Bernard S. Cohn

- Narain, V. A. 1959. *Jonathan Duncan and Varanasi*. Calcutta.
- Orme, Robert. 1805 (1792). "General Idea of the Government and People of Indostan." In *Historical Fragments of the Mogul Empire*. London.
- Rocher, Ludo. 1972. "Schools of Hindu Law." In J. Ensink and P. Gaeffke, *India Maior: Congratulatory Volume Presented to J. Gonda*, pp. 167-176. Leiden.
- Rocher, Rosane. 1983. *Orientalism, Poetry, and the Millennium*. Delhi.
- Sinha, Raghuber, ed. 1972. *Fort William-India House Correspondence*, vol. 10. Delhi.
- Smyth, George L. 1839. *The Monuments and Gemmii of St. Paul's Cathedral and of Westminster Abbey*. London.
- Srinivasachari, C. S., ed. 1962. *Fort William-India House Correspondence*, vol. 4. Delhi.
- Strange, Thomas. 1825. *Elements of Hindu Law*, vol. 1. Madras.
- Tripathi, Amal, ed. 1978. *Fort William-India-India House Correspondence*. Delhi.
- Wurgaft, Lewis D. 1983. *The Imperial Imagination*. Middletown, Conn.

[6]

## Contours of Change: Agrarian Law in Colonial Uganda, 1895-1962

Joan Vincent

Unless we are acquainted with the circumstances which have recommended any set of regulations, we cannot form a just notion of their utility.

—John Millar, *Observations Concerning the Distinction of Ranks in Society* (1771)

The connections between the introduction and passage of law in colonial Uganda and the development of the country's natural and economic resources are often overlooked. A look at the various powerful interests in the colony and metropole engaged in the making of statutory law in early modern Uganda provide us with background for looking at the actual legislation introduced and its heavily agrarian component. The three successively introduced bodies of law—transplanted imperial law, native feudal law, and so-called "customary law"—correspond to phases in the transformation of colonial agriculture and serve to routinize agricultural practice. There also appears to be a relationship between the coexisting but unrecognized folk law of the colonized people and the hegemonic imperial law that created both a new command structure and a new social order in Uganda, but that relationship is not explored here.<sup>1</sup>

<sup>1</sup>Field and archival research for this chapter was conducted in Teso District, Kampala, and Entebbe, Uganda, between 1966 and 1970. Further archival research was carried out in England and at the Colonial Record Office between 1976 and 1986. Research was funded by a grant from the Ministry of Overseas Development of the United Kingdom

### Legal Blueprints: British Imperial Law in the Making

In 1874, it is said, the principal legal officer in the Gold Coast colony asked the Colonial Office in London to send him some textbooks and other legal materials to enable him to draft a statute defining the laws for the courts to apply. The Colonial Office sent him the Gold Coast Reception Statute, so-called because it legitimated the colony's "receipt" of English common law and provided that its courts should apply the common law of England, the doctrine of equity, and with reservations, statutes of general application (Seidman 1969). Out of such legends of "muddling through" was Great Britain's reluctant imperialism made.

The Gold Coast Reception Statute became the prototype for the reception statutes of most of the British African dependencies, including the protectorate of Uganda—but not for all. The Colonial Office mind discerned common or similar circumstances among some dependencies but not among others, and for some aspects of their identities but not for others. The common and statute law of England was indeed received by Uganda, Nyasaland, Northern Rhodesia, and most West African colonies, but in Kenya codified law from British India was introduced, supplemented only by English common-law legislation. In southern Africa, Roman-Dutch law and provincial law (from one South African province only) was put into effect (Allott 1980). What was being expressed, in part, in the application of these various blueprints was a vision of the way different imperial possessions would be encouraged to develop, given the objectives and historical circumstances of their consolidation within the empire.

A certain need for flexibility within each territory was recognized, and "received law" was supplemented or modified by rules allowing local laws to be passed. This was done through the Africa Order in Council (1889), which was replaced by the Uganda Order in Council in 1902. These initially took the form of "orders" or "regulations" and placed considerable power in the hands of the colonial governor, the man on the spot. As the colony began to take shape, its body of law came to include

---

and by faculty grants from Barnard College of Columbia University. I would like to thank Karla Chaucer for preparing the final version of this chapter, and June Starr, the members of the Bellagio conference, and an anonymous reader for their suggestions. The chapter was revised while I was on a fellowship from the National Endowment for the Humanities at the National Humanities Center, 1986–87.

gazetted by-laws, codified "native law and custom," administrative directives, and eventually, as regional representation developed, district council resolutions.

Although all these varieties of law gave off an aura of local initiative, many of them owed their existence and form to a central bank—or clearing house—of imperial legislation. What was "borrowed," sometimes by the secretariat in Uganda and sometimes by the legal draftsmen at the Colonial Office, were *sections* of enactments from other colonial dependencies. The minuting on the reports and dispatches that accompanied the transfer of such legislation set out the Colonial Office view of constitutional and social differences between the Uganda protectorate and other colonial territories and the implications these had (in the official mind) for Uganda's future economic development. For example, in January 1909 a dispatch from the governor of Uganda to the secretary of state for the colonies (C.O. 536/25) enclosed a memorandum drafted by the colony's land officer. It began "Uganda is a planter's and not a settler's colony" and went on to argue that freehold grants and grants of land on a large scale were needed "if capital is to be attracted." The draft reply from the Colonial Office began courteously enough: "I am naturally reluctant to disturb a system of dealing with land which you and your Land Officer believe to be reasonable and well suited to the conditions under which the development of the Protectorate must proceed. Nor do I lose sight of the fact that . . . [etc.]." It then went on to compare the Uganda situation with that of Kenya and northern Nigeria. Five copies of a Northern Nigerian Lands Committee Report were then sent to the governor for his own information and that of his land officer and legal department. Thus, it was made clear—in fact, determined—gently but with all the power of the centralized imperial government, that Uganda was to be developed not along the same lines as Kenya, the neighboring settler colony, but similar to the Northern Nigerian emirates with their cash-crop peasantries.

An integumental body of colonial legislation underpinned Great Britain's expanding imperialism within a global economy. Uganda was simply one "undeveloped colonial estate" among many. Law, governors, administrative officers, technological innovations, agrarian experts, and, above all, armies were allocated and transferred from one dependency to another as the need and advantage arose. Law in colonial Uganda, as it developed, reflected a historical conjuncture of sometimes conflicting local and imperial visions and interests.

### The Lawmaking Process in Colonial Uganda, 1905–1934

“To look at law and records in legal activity is to look at the tracks left by combatants and their allies” (Kidder 1979:300). Imposed law in the colonial territories reflected the articulated interests of the ruling class, but it was at the same time an outcome of fractional struggle within that class. While lawmaking in the hands of members of the ruling class serves their interests, the particular form that the law takes and the impetus that projects it into the societal arena derive from events in the course of their struggles against one another and the compromises finally reached.

General laws, as we have seen, were initiated in London. Further enactments were then initiated within the protectorate itself. Their origin varied according to the interests affected. The general tenor of enactments effecting agrarian change emanated from a branch of government itself, from the governor, from an administrative department such as the Department of Agriculture or the Veterinary or Forestry services, or from district or provincial administrations. The Legal Department of the colony then prepared drafts and routed them through the chief secretary and the governor to the secretary of state for the colonies in London.

This was the formal process, but scope for passage through the back door existed in both the colony and the metropole. A governor might be particularly susceptible to missionary pressure, and international concerns might be expressed or commercial pressures asserted. In the early days, when Colonial Office management was not fully formalized, governors were frequently required to give an account of how proposed enactments had been arrived at. The colonial lawmaking process is thus accessible from the dispatches, minutes, appointment books, and correspondence that ensued.<sup>2</sup> The way policy was translated into an ordinance reflected the real politics of the colonial situation.

For example, it was generally understood by the Colonial Office and the governor that a successful colonial administration took into account the interests not only of natives but also of immigrants. In Uganda the immigrants were mainly “European” (mostly British and South African) and “Asian” (from the Indian subcontinent). Four distinct pressure

<sup>2</sup>As far as Colonial Office documents are concerned, a fifty-year rule is in operation at the Public Record Office, London.

groups operated within the small expatriate community—traders and merchants, planters, cotton-ginners, and cotton-buying middlemen. At first, mutual interests outweighed nationality and race and all belonged to the Uganda Chamber of Commerce (UCC) formed in May 1905 to represent to the government the general interests of the commercial sector. The Uganda Chamber of Congress devoted a major part of its activity to inhibiting the administration from placing too many restrictions on commercial transactions; in fact, a UCC legislative subcommittee was set up expressly for this purpose.

A measure of success was achieved. Between 1902 and 1906, fifty-seven pieces of separate legislation (not counting amendments) had been enacted, controlling goods in transit, customs, road and wharfage dues, ivory, townships, breach of contract, registration of documents, registration of vessels, customs consolidation, poll tax, port regulations, public ferries, Uganda companies, land transfer, and the like. Reaching out to construct a new command structure, Uganda's legal officer, like his colleague earlier in the Gold Coast, had “borrowed” from the imperial repertoire in anticipation of the new colonial society in the making. The UCC felt that he had overreached himself, and their interjection into the legal process was effective—only six new pieces of legislation were introduced in 1907. At the 1907 annual general meeting of the UCC, its president emphasized that they had been “freed from a whole number of new laws and ordinances, creating legal trouble and hampering trade, such as [previously] filtered regularly out of the Secretariat long before they were required” (quoted in Engholm 1968:36).

Engholm (*ibid.*, p. 11) argues that the immigrant lobbies were successful not only in modifying policies put forward by the government but also in preventing such policies from becoming law: “policies have been too often attributed to the Protectorate Government alone which were, in fact, the outcome of concessions to immigrant pressure.” The African voice was completely silent during these years. Officers of the colonial administration were considered to be protectors of African interests, and indeed they often were, challenging and thwarting expatriate commercial enterprise (Vincent 1982, 1987).

By 1911 the Uganda Chamber of Commerce no longer served the needs of the European population adequately. Its numbers had been swelled by an influx of new planters, the economy had diversified, and commercial competition took on ethnic dimensions—for example, the Europeans formed the Uganda Planters Association, and the Asians formed the Indian Association. When the export of cotton began to

dominate the economy after World War I, the Uganda Cotton Growers Association (UCGA) came into existence to operate independently of both the UCC and the ethnic associations. It proved to be a most effective lobby on the colonial government, not least because of its metropolitan connections with the Manchester Chamber of Commerce.

The year 1920, when investment in Uganda amounted to between \$650,000 and \$1 million, was the critical juncture in the struggle between administrative and commercial forces—that is, between colonialism and capitalism. By this time the commercial sector, dominated by the cotton growers association, was substantially influencing the colonial government and affecting legislation. It was not alone, however. Other lobbies, particularly those of the Church Missionary Society and the various interests underlying the International Labour Organization, lobbied in Great Britain for legislation to check the excessive exploitation of African cotton producers in the colonies. Their operations were directed at governors on leave, the secretary of state for the colonies, Colonial Office officials, members of the House of Commons, and that amorphous but sometimes effectively aroused entity, British public opinion.

A focus solely on formal associations oversimplifies the processes involved in the making of colonial legislation. Besides the formal visits and representations made by lobbyists and private interests, a great deal was achieved through what might be called “overlapping directorates.” Members of the Colonial Office staff punctiliously reported at least some of the visits made to them by individuals articulating personal networks (e.g., those who belonged to the same clubs, who had graduated from the same schools and universities, or who were related by kinship and marriage). In matters colonial, as in all else, this was the way gentlemanly business was done in Edwardian England (Hyam 1979; Vincent 1987).

### The Routinization of Agrarian Transformation

Between 1895 and 1902, fifty “Regulations” were enacted under the Africa Order in Council of 1889. Most arose out of the need to establish law and order, but legislation intended to develop the colony’s agricultural potential was introduced almost immediately. Land, game, forests, and labor were the subject of eleven of the fifty regulations. Then, in 1902, “ordinances” were introduced under the Uganda Order in Council. Between 1902 and Uganda’s independence in 1962, there were

1,575 more pieces of legislation. Of these, 807 were amendments and repeals, suggesting the flexibility of the legislative process within the rapidly developing colonial state and its function in routinizing change.

During the sixty-seven years of its existence, colonial Uganda moved through three phases in the development of its agrarian policy. Each reflected sequential response to the way agrarian capitalism was developing. In its formative phase (1895–1922) the colonial state had to transform its noncapitalist African subjects into landowners and wage-earners. Then, as it embarked on a phase of consolidation and retrenchment (1923–46), the nascent class differences that were emerging had to be taken into account, and a payoff found for those who had gained from cooperation with the government and private interests. Finally, as post-war Britain contemplated dismantling its empire (1946–62) and colonial Uganda moved toward the devolution of authority, the social and political unrest beginning to reflect the uneven capitalist development of Uganda’s regions had to be appeased and controlled, in a third phase. Legislation reflected and brought about the fulfillment of each policy in turn.

Locally enacted legislation, in particular, reflected the moments of agrarian crisis that marked the shift from one phase to another. The problems created by the use of forced labor led to the introduction of the Masters and Servants Ordinance (No. 19) of 1913, but it was not until 1922 that “feudal” forms of labor extraction were taken off the statute books. Missionary reporting of local abuses to the Colonial Office, questions in the House of Commons, a labor “scandal” in neighboring Kenya, an influx of settlers to Uganda, and the formation of the International Labor Organization after the war all contributed to the legislative change.

Emergent class differences among the rural population in the second phase, and the shift toward “betting on the strong,” were marked legislatively by a Registration of Titles Ordinance (No. 22) in 1922. A Post Office Savings Bank Ordinance was introduced in 1926, the Uganda Credit and Savings Bank Ordinance in 1930. The ultimate recognition of wealth differentiation—a graduated tax—was contested and introduced only after independence. In the second phase the most significant indicator of an emergent entrepreneurial class was the passage of the Cooperative Societies Ordinance (No. 5) in 1946. Until that time, African agricultural entrepreneurs had been obliged to operate under the Registration of Business Names Ordinance (No. 11) of 1918. In 1932, East Africa’s governors had debated whether governments might them-

selves establish cooperatives among Africans, partly to mute the political success of their indigenous forms of agrarian organization. Draft bills to establish government cooperatives were drawn up in 1935 and 1937, but on both occasions they had to be dropped at the insistence of the Uganda Chamber of Commerce and the Indian Association. The nature of the government's own commitment is open to question, since the chief secretary confidentially reassured those bodies that "the introduction of this legislation is not indicative of any intention on the part of Government of fostering or promoting the development of co-operative societies, but only of controlling them" (Secretariat Record of the Proceedings of the Legislative Council 1937:7, quoted in Engholm 1968:240; see also Vincent 1987:7).

The resettlement crisis of the third phase is less clearly evident from the statutory ordinances but is well reflected in locally drafted law. The ethos of the era is captured in the Town and Country enactments of 1951 and 1954, possibly in the Specified Tribes (Restrictions of Residence and Removal) Ordinance (No. 25) of 1955 and surely in the changes in Crown lands legislation. The critical legislation, however, is No. 1 of 1955, District Administration (District Councils), along with No. 2 of 1955, African Authority (Amendment), which gave local governments the task of codifying "customary law" and establishing resettlement projects in congested regions.

Legislation did more than provide a political mechanism for overcoming the crises of agrarian capitalism in Uganda. It also provided for the reproduction of agrarian development. Law itself, in its procedures, tends to promote a concentration on the dramatic, but as Malinowski (1935) observed, the subtlety and true effectiveness of law lies in its "invisible realities." It is difficult to convey the extent to which colonial agrarian law shaped the day-by-day enterprises and routinized the tasks of Ugandan peasants. A distinguished African courts adviser in Uganda, H. F. Morris, quotes Sir Winston Churchill advocating in 1908 that the resources of the country should be developed by the government itself, even if it involved assuming many new functions. Morris continues, "It is, however, hard to believe that Churchill could have foreseen the degree to which control by the state over the activities of the individual in almost all aspects of economic and social development would be carried out during the next half century. The influence of the state was, however, evident not so much in its actual undertaking of economic and commercial ventures . . . as in the *detailed control exercised through a monumental body of legislation* over the citizens of the country par-

ticularly insofar as the exploitation of the country's natural resources is concerned" (Morris and Read 1966:375; emphasis added).

### The Incorporation of African Customary Law

In the first and last phases of its transformation of agrarian society in Uganda, the colonial state reached out toward indigenous African law. The development of capitalist agriculture required a degree of control over people, and specifically over labor, that English common law did not provide for but that was found in the kingdom of Buganda. Convenient "contract" laws were borrowed from Buganda's vast repertoire of landlord-*bakopi* (peasant) relations. In Buganda the "compulsory contract" (the *Rechtszwang zum Kontrahieren* of Weber) took the form of *kasanvu* and *luwalo*. *Kasanvu* required that every able-bodied man work on public projects unpaid for one month a year. *Luwalo* called for one month's unpaid labor from the same men, but in this case they were required to work for the local chief at any tasks the chief directed them to do. The workers themselves had no control over the timing of their call-up, and it could be (and usually was) peremptory as well as mandatory. Of all the grievances against chiefs recounted to me in Uganda, and there were many, such corvée labor and the beatings that accompanied it were the most strongly felt.

In districts outside the kingdom of Buganda, the retention of the Luganda terms *kasanvu* and *luwalo* hid the degree to which these were colonial innovations. This feudal contract controlling labor reflected the uneven exploitation of African farmers.<sup>3</sup> As Michael Burawoy (1978:31-32) put it in his study of the organization of consent: "The dilemma of the capitalist mode of production is to obscure the existence of surplus and at

<sup>3</sup>"Feudal law" is not a concept currently in use among sociologists and anthropologists of law, but as law becomes treated less as a universal category and more as a historical product (as the editors urge in the introduction to this volume), it seems likely that the concept will become useful. I use the term "feudal" strictly to convey an "exploitative relationship between landowners and subordinate peasants, in which the surplus beyond subsistence of the latter, whether in direct labour or in rent in kind or in money, is transformed under coercive sanctions to the former" (Hilton 1973:30). Colonial administrators in Teso viewed the Buganda kingdom, whence *kasanvu* and *luwalo* were borrowed, as a feudal state. A striking instance occurred during a training course on local government given to Teso chiefs in 1952. Comparisons were also made with the role of sheriffs and magistrates in English local government. (See Teso District Archives, Miscellaneous, 1952, p. 45.)



the same time guarantee its appearance." The Buganda modes, along with the use made of Baganda agents as the enforcers of coercive measures, furthered the camouflage.

If the introduction of coercive feudal law initiated the process of capitalist penetration in the colonial state, the incorporation of "customary law" marked its closing phases. A recognition that "native laws and customs" existed had been there from the start, built into the common law by the Uganda Order in Council of 1902. Received English law was subject to three qualifications (Morris and Read 1966):

1. The law was to be in force "only so far as the circumstances of the country and its inhabitants permitted."
2. In the making of ordinances, the governor was to respect existing native laws and customs unless these conflicted with justice and morality.
3. Courts in all cases in which natives were parties were to be guided by native law and custom where this was (a) applicable, (b) not repugnant to justice and morality, and (c) not inconsistent with general law.

These qualifications clearly recognized potential conflict in operation between English laws and "customary law." The provisos made it certain that the former would win out in the high court of the land.

### The Struggle over Codification

The recognition of "customary law" in Uganda brought about not simply legislative conflict but also expression of different interests among the two sectors of its population most involved. First, administrative officers differed among themselves over the desirability of codifying "native law and customs." Second, and more important, Africans disputed among themselves the content and legitimacy of the "customary law" they were required to formulate. The outcome of their confrontations had a lasting effect on the "distinction of ranks" in rural society. It also had considerable potential for agrarian change because it dealt with such crucial underpinnings of capitalist development as land tenure, marriage, and the inheritance of property.

All "tribes" were thought to have bodies of customary law, and in a "one-tribe district" like Teso, for example, customary law was applied

universally throughout the district. However, its center of manufacture was Teso's three southern counties, where economic development was most advanced. One can name the localities, dates, and people involved. Codified by the administration with the help of chiefs and gatherings of "big men," the aphorism that what is "traditional" or "customary" are things from the past that it is fruitful to recall in the present seems particularly apt in the Teso case. Under the colonial regime, chiefs and "big men" had been well placed to accumulate capital. The voices of the cotton producers—the peasants—were muted in the power-laden grass-roots context in which the administration conducted its inquiry. Only the rural capitalists had the ear of those empowered to codify the "tradition" they had invented. Legislation, it is said, affords "an arena for class struggle, within which alternative notions of law [are] fought out" (Thompson 1975:288). In the Teso arena, the district officers held the ropes, selected the combatants, and then legitimated the outcome of their struggle. "Customary law," then, was the codification of elements of indigenous law by district officers and their native advisers (see also Chapter 11, by Sally Falk Moore, in this volume). As Read has suggested, the prominence that colonial governments gave to customary law should be viewed not as a matter of altruism—that is, of giving the Africans the form of justice they appreciated and understood—but as recognition that "customary law" was "*increasingly more convenient as administrative authority developed*;" in particular, the imprecision and adaptability of rules of customary law made them useful instruments for preserving administrative control and buttressing recognized African authorities" (Read 1972:167–170; emphasis added). Again, Read's view is well supported by the political contest in Teso between the colonial administrators and their appointed chiefs. In changes in the legal sphere, we may recognize the outcome as representing the administrators' victory in the combat; the peasantry would appear to have lost on all sides.

The first published codification of "Iteso Customary Law" appeared in 1957. It attempted to collate and tabulate the body of law administered by the native courts of the district,<sup>4</sup> and it recorded "native law and custom," ancient and modern, district council resolutions, and gazetted bylaws, as well as administrative directions issued by the district com-

<sup>4</sup>In the discussion after this material was presented at the Bellagio conference, Elizabeth Colson noted that the training of chiefs and court clerks in colonial Africa emphasized procedure and standardization rather than substance. This in effect contributed to the reproduction of those aspects of customary law that maintained the status quo.

missioner as supervising magistrate of the native courts (Lawrance 1957). The considerable divergences of opinion on the law were attributed to "the process of change [being] at different stages throughout the district" (*ibid.*, p. 244).

"Customary law," as the term is used here, refers to codification of elements of African law by a colonial power. It is, unwittingly or wittingly, a selective matter, and it represents a compromise between those recognized as leading elements in indigenous societies and the colonial administrators who co-opted them. The processes involved, and their implications, were clearly described by Sir Henry Maine when he observed that the recording and codification of customs "at once altered their character." "They are generally collected from the testimony of the village elders; but when these elders are once called upon to give their evidence, they necessarily lose their position. . . . That which they have affirmed to be custom is henceforward to be sought from the decision of the Courts of Justice, or from official documents which those courts received as evidence. . . . Usage, once recorded upon evidence given, immediately becomes written and fixed law" (Maine 1961:72). The flexibility of unwritten African law has constantly caused comment among anthropologists and jurists, and upon occasion has even become a political issue. In Uganda the codification of customary law was encouraged less than elsewhere in East Africa—perhaps an indication that the country perceived its role as that of a peasant sector in a regional capitalist economy (Vincent 1982).

The first steps toward codification were in response to outside pressure following the 1933 Bushe Report (*Report of the Commission of Inquiry into the Administration of Justice in Kenya, Uganda, and Tanganyika Territory in Criminal Matters*). In 1934, Jack Driberg, a former district officer in Uganda, became a lecturer in anthropology at Cambridge. He proposed that a traveling commissioner be appointed to East Africa for three years to collate district materials on "native law and custom." The governors of the three territories were unanimous in denying unofficial persons access to the district records. The timing of this series of events is yet to be explored (C.O. 874/3/24213), but it must certainly be viewed in the context of concern expressed in Great Britain by the Howard League for Penal Reform. Agitation was rife over the apparent conflict between European and African justice in East Africa.

Questions of codification arose again in the mid-1950s. Those who argued for codification tended to do so on the grounds of the needs of senior courts. Thus, "one reason why the recording of customary law is

so essential is to enable the courts to refer to a generally approved or an 'authorized version' of the law, sanctioned by chiefs and people. Without a written report there can be no certainty in the law, nor is it wise to bring about changes in the law (the necessity of which arises with increasing frequency) without that sure knowledge of it, and of its underlying principles, which only written law can give" (Moffett 1955: ix).

These two lines of argument, the *principle of the rule of law* and the *practical requirements of change*, were particularly timely in the 1950s. In Uganda, returning veterans and educated postwar teachers were beginning to stir their peasant compatriots to thoughts of national independence and self-sufficiency. The cooperative movement and the trade unions were beginning to get off the ground. The formation of nationwide political parties was in the offing. Social and economic discontent, along with political unrest, were forcing change on the protectorate government, even as more development funding flowed into the country as Great Britain sought to invest in the colonies in order to readjust its balance-of-trade payments with the United States. All these developments brought the localized farmer more fully into the political arena. The contradictions of customary law for the African, and common law for the European and Asian, became more marked. A postwar thrust to propel Africans into positions of entrepreneurial responsibility—controlled as it was—brought them to the brink of national consciousness, and over.

Those who argued for codification required that African law would stand up in court. The procedural requirements of cross-examination and the control of expert evidence were uppermost in their minds. There had long been debate over the relative merits of professional magistrates vis-à-vis administrative officers acting as justices of the peace, and the Bushe Commission had come down squarely in favor of the former. In the commissioners' view, familiarity with customary law was less important than formal authoritative textbooks, yet the Uganda government had not encouraged their publication, as had Tanganyika. What usually happened in the senior courts was that "assessors" sat with the judge or magistrate, helping him evaluate the "customary law" evidence presented.

By and large, in Uganda to a greater extent than in the other East African territories, the two systems of courts operated virtually independently of one another (Twining 1964). Yet it was generally agreed, both by those who favored the codification of customary law and those who

opposed it, that it was desirable to move toward one legal system for the entire population—African, European, and Asian alike. Those who argued against codification put the case that the strength of customary law lay in its flexibility, its sensitivity to rapid change in a still developing country. This, they suggested, could be attributed to the very fact that it was unwritten, an argument that was already part of a long English legal tradition that prided itself on the merit of its unwritten British constitution, compared with the unwieldy declarations of the United States and other European powers. Customary law could be assimilated into the general law of Uganda uncoded, they suggested—fervent in their fears of “premature crystallization” or “ossification” of the law. Whether more was at stake in Uganda in the 1950s than debate over the native law and custom requires further study. Clearly, however, those who argued against codification won the day.

### Customary Law and Folk Law

The point has already been made that customary law, as recognized by the colonial government, was not the same as the legal system that might have been reconstructed among indigenous peoples by anthropologists. It is no use seeking in customary law a folk system that contested “the institutionalized procedures of the ruling class” (Thompson 1978:261) or a “jurisprudence of insurgency” (Tigar and Levy 1978:310–330). That folk law such as this existed in the form of a lived law in use at the local level as people managed the imposition of imperial, feudal, and customary law is beyond question, but it is also unfortunately beyond the scope of this chapter, which focuses on the imperial contouring of change. The value of the model of imperial law described here rests “on the extent to which it gives shape to our picture of the process corresponding to the contours which the historical landscape proves to have” (Dobb 1946:8). Recognition of lived folk law and, above all, being able to distinguish it from customary law, is the beginning of reading between the lines.

### REFERENCES

- Allott, Anthony. 1980. *The Limits of Law*. London.  
 Burawoy, Michael. 1979. *Manufacturing Consent: Changes in the Labor Process under Monopoly Capitalism*. Chicago.  
 Dobb, Maurice. 1946. *Studies in the Development of Capitalism*. Rev. ed. London.

- Engholm, G. F. 1968. “Immigrant Influences upon the Development of Policy in the Protectorate of Uganda, 1900–1952, with Particular Reference to the Role of the Legislative Council.” Ph.D.(Econ.) diss. University of London.  
 Hilton, Rodney. 1973. *Bond Man Made Free: Medieval Peasant Movements and the English Rising of 1381*. New York.  
 Hyam, Ronald. 1979. “The Colonial Office Mind, 1900–1914.” *Journal of Imperial and Commonwealth History* 8 (October):30–55.  
 Kidder, Robert L. 1979. “Toward an Integrated Theory of Imposed Law.” In S. E. Burman and B. Harrell-Bond, eds., *The Imposition of Law*, pp. 289–306. New York.  
 Lawrance, J. C. D. 1957. *The Iteso*. Oxford.  
 Maine, Sir Henry. 1861. *Ancient Law*. London.  
 Malinowski, Bronislaw. 1935. *Coral Gardens and Their Magic: A Study of the Methods of Tilling the Soil and of Agricultural Rites in the Trobriand Islands*. London.  
 Moffett, J. P. 1955. *Tanganyika: A Review of Its Resources and Their Development*. London.  
 Morris, H. F., and James S. Read. 1966. *Uganda: The Development of Its Laws and Constitution*. London.  
 Read, James. 1972. *Indirect Rule and the Search for Justice: Essays in East African Legal History*. Oxford.  
 Seidman, Robert B. 1969. “A Note on the Gold Coast Reception Statute.” *Journal of African Law* 13:45–51.  
 Thompson, Edward P. 1975. *Whigs and Hunters*. London.  
 Tigar, Michael, and Madeleine Levy. 1978. *Law and the Rise of Capitalism*. New York.  
 Twining, William. 1964. *The Place of Customary Law in the National Legal Systems of East Africa*. Chicago.  
 Vincent, Joan. 1982. *Teso in Transformation: The Political Economy of Peasant and Class in Eastern Africa*. Berkeley and Los Angeles.  
 ———. 1987. “Sovereignty, Legitimacy, and Power: Prolegomena to the Study of the Colonial State in Early Modern Uganda.” In Ronald Cohen and Judith Drick Toland, eds., *State Formation and Political Legitimacy*, pp. 137–154. New Brunswick, N.J.