

Transient Justice: Colonial Judges on Circuit in Interwar Tanganyika

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Abstract

Colonial legal historiography has tended to focus on customary tribunals rather than “European” courts. This research paper offers a new vantage point from which to view Tanganyika’s legal system by looking at the day-to-day experiences of two colonial judges. The overwhelming number of studies on the Colonial Service are centred on administrative officers, and emphasise the importance of the district commissioner, the “man on the spot”, who served at the interface of the encounter between coloniser and colonised. By using judicial biographies, this research paper suggests a new line of inquiry into the nature of colonial power in order to offer a view from inside the colonial modernising project, and expose its fissiparous nature. Both judges were stationed in Dar es Salaam, but ventured periodically by rail into the interior on circuit in order to “administer justice to the people”. This brought them into contact with a wide range of historical actors including district commissioners, prosecutors, witnesses, assessors and interpreters. This paper demonstrates how this form of transient justice brought these actors together in a unique way that transcended the complex web of delineations that divided them outside the courtroom.

Introduction

Colonial judges were defined by their backgrounds - personal, educational and professional - and by the roles they performed in the colonies.

Crucially, they defined themselves by these same criteria although their perceptions of themselves were coloured and shaped by their memories and, in many cases, their imaginations, of court life in Britain. In an attempt to offer a general impression of what life as a judge was like, this article discusses aspects of the judicial experience in Tanganyika. An examination of their personal experiences provides a perspective of the judges' identities, which includes their perceptions of themselves and their location within colonial society. Judges were aware of their distinctive identity within the Colonial Service and were anxious to maintain a sense of exclusivity in their dress and choice of accommodation, in order to separate themselves from Africans as well as from members of the district administration. They mostly travelled by rail and steamboat, holding criminal and civil sessions for a few days before moving on to the next court. The article seeks to explain this collective frame of mind by exploring the complex issues that arose as a result of attempts to import a professional English legal structure, developed in a country based on racial equality, into Tanganyika, a colonial territory that depended on racial division for its survival.

As regards the nature of the colonial state, this article seeks to provide insights into the fundamental ideological divisions within the Colonial Service. This was most clearly manifested in the fact that administrative officers and judges rarely shared similar ideological conceptions of how to administer law in Tanganyika during the interwar period. Instead, their relationship was often founded on the "old controversy" between the district officer with his knowledge of the Africans and the judge with knowledge of the law. By focusing on a little-known aspect of colonial control, the paper reveals a distinct set of dynamics between Africans, district officers and judges on circuit in Tanganyika, and calls for a re-appraisal of the judiciary's role within the colonial state.

Within the sub-field of colonial legal history, attention has been given to the African interpreters and intermediaries who occupied the vital liminal position between colonial magistrates and African accused persons in the lower courts (Lawrence et al. 2006). Little has been written, however, on the judges and lawyers who worked in the superior courts of East Africa. Charles Jeffries's contemporary accounts of the Colonial Service remain the foremost authority on the subject (Jeffries 1938; 1949) although his work, like most of the literature on the Colonial Service, is focused on the

Administrative Service at the expense of its legal counterpart. Other important studies focusing on the Colonial Service include works by Robert Heussler (1963; 1971), Lewis Gann and Peter Duignan (1978a; 1978b), Henrika Kuklick (1979) and Anthony Kirk-Greene (1980; 2000).

This article seeks to contribute to debates on the nature of the colonial state, in particular those relating to internal fissures within colonial societies and governments. Ann Stoler (1992: 319ff) has pointed to frequent conflation by scholars between the makers of colonial policy and authorities on the ground. She highlighted the dangers of becoming sensitized to divisions between ethnicity, gender and class among the colonized, and of the tendency to take the dichotomy of colonizer and colonized as a given, rather than as a shifting set of social categories. As a result, European communities have received far less attention than their African counterparts and are frequently treated as diverse but not problematic. Similarly, Terence Ranger (1983: 211) did not restrict his research solely to the African side of the colonial encounter, but also focused on the invention of tradition by the British, both among government officials and settlers. The concept of Empire was central to the process of inventing traditions for the colonizers and invented upper middle-class school, professional and regimental traditions in Britain were used for command and control in the colonies. Frederick Cooper (1996: xi) added to this argument by observing that historians cannot probe the complexity of African initiatives and responses to foreign intrusion without examining the colonial side of the encounter in equal depth.

Benedict Anderson's idea that communities are distinguished by the style in which they are imagined, often as a bond of comradeship, can be applied to the group of officials who served throughout the Empire as part of the Colonial Service. His work sheds light on the world of the typical colonial officer that consisted of Britain's territories outside India. The Empire was a political community that was built and sustained by the imaginations of officials in Colonial Office, as well as those who served in the colonies (Anderson 2006: 6f). Many judges believed in the ideals of Empire and in the positive effects of upholding a British conception of the rule of law in Africa. It is also evident from a number of judgments that many judges were altruistic in their approach, especially in their willingness to use customary law. These motivating factors can all justifiably be described as "culturally

determined” as they formed a part of the “fashionable allure of Empire” (Crozier 2007: 46). Colonial judges, in particular, felt a strong sense of belonging within the British legal profession. Some, especially judges of appeal and chief justices, had relatively long and distinguished periods of service at the Bar.¹⁷ Others were called to the Bar but did not have the opportunity, or ability, to practise as barristers before leaving for the colonies. Despite these differences, the majority remained proud members of the barristers’ profession throughout their colonial careers. This profession, however, had no place within a colonial state based on racial division. In other words, the nature of the colonial state did not permit the replication of a similar legal environment to that existing in Britain.

The Sources

Turning to methodological concerns, the immediate attraction of biography is twofold. First, it appeals to one’s curiosity about human personality; second, it aims to satisfy the search for factual knowledge (Shelson 1977: 3). It is the wider historical moment - the social history - that explains individual points in time of a person’s life. Biography, therefore, offers the balance of the individual with society and culture. The biographer who aims at completeness seeks to find actions and patterns of behaviour that will contribute to a consistent explanation of the overall life of his subject. He does not simply narrate but also interprets. In order to do so, he is required to select evidence in order to interpret (Shelson 1977: 13ff). Importantly, historians are not methodological purists: given a problem they seize on any evidence available and make the best of it. This often means working with “patchy and biased” evidence (Thompson 1981: 290). In his study of two colonial clerks in French West Africa, Ralph Austen (2006: 159) acknowledged that however unrepresentative their

¹⁷ Legal practitioners in Britain and some Commonwealth countries are divided into two groups, generally known as solicitors and barristers. The latter are referred to collectively as the Bar. The solicitor can best be described as a general practitioner of law, and the barrister a consultant who has specialised in an aspect of the law. It is only in the drafting of documents that the functions of both kinds of lawyers overlap. Most importantly, barristers have an exclusive right to appear in the superior courts.

autobiographies may have been, they at least give expression to the otherwise silent voices of clerks in colonial documentation.

Anthony Kirk-Greene (2000: 130-149) has collated an impressive list of biographies, autobiographies, memoirs, colonial service documents and secondary works relating to the Colonial Service. Tellingly, however, he listed 111 biographies concerning the Administrative Service, but only five works relating to the judiciary. Only two of these relate to East Africa. Similarly, of the 81 secondary sources listed, none dealt specifically with the Legal Service. The memoirs of one of the judges in this study, Gilchrist Alexander, are in four volumes: the first (1938) details his training in London, his call to the Bar and his early years in legal practice; the second (1927) recounts his early legal career as a magistrate, attorney-general and judge in the Pacific; the third (1936) describes the six years he spent in Tanganyika; and the fourth volume (1950) discusses his life after he had left the Colonial Legal Service. These volumes are more accurately described as a series of memoirs rather than a single autobiography, as they focus on distinct stages of his career rather than his personal life thereby charting the development of his professional identity.

Mark Wilson left no published memoirs but a collection of papers relating to his period of service in Tanganyika and the Gold Coast is housed in Rhodes House, Oxford. These principally comprise notes detailing his experiences while on circuit as well as court judgments accompanied by handwritten commentaries.

Curricula Vitae

Gilchrist Alexander was born in Glasgow in 1871 and died in 1958. He attended the Glasgow Academy before reading philosophy at the University of Glasgow. He excelled at university, not only graduating with first class honours in 1893, but was the most distinguished graduate in arts in his year. He then moved to London and joined the Middle Temple as a student barrister, and was called to the Bar in 1896. He then completed pupillage and remained in practice until 1907.¹⁸ Between 1907 and 1920, apart from a two year period of war service, he served in Fiji as a colonial legal officer and was progressively promoted from the position of chief

¹⁸ Who was Who. <http://www.whoswho.com> (01.03.2010).

police magistrate to attorney-general and finally to chief justice. He then served as a puisne¹⁹ judge in Tanganyika from 1920 until his retirement in 1925 (Alexander 1936: 8).

Mark Wilson was born in 1896 in County Kilkenny, Ireland. He was educated at Kilkenny College, an independent school where the majority of students were Protestant, mainly from the Church of Ireland. He then attended Mountjoy School, a Protestant boarding school in Dublin before reading history and political science at Trinity College Dublin. Like Alexander, Wilson excelled at university and was a gold medalist in his honours examinations in history. He proceeded to read law, graduating with an LLB in 1922. After graduation he was called to the Irish Bar with first class honours in 1924. Surprisingly, Wilson chose to join the Administrative Service immediately after Call. He was posted to Tanganyika and arrived in the territory in 1924. He was transferred to the Legal Service two years later and (was) sent to Uganda to take up an appointment as a resident magistrate. In 1936 he was posted to Tanganyika as a judge, where he remained until 1948. He was 40 years old at the time of his appointment, which earned him the distinction of being the youngest judge in the entire Legal Service at the time.²⁰ Towards the end of his time in East Africa, he chaired the Arusha-Moshi Lands Commission between 1946 and 1947 (Spear 1997). Thereafter, he was transferred to the Gold Coast as chief justice in 1948, where he served until his death in 1956. He was knighted in 1950.²¹

Dar es Salaam

In Alexander's third autobiography, *Tanganyika Memories: A Judge in the Red Kanzu* (1936), he describes his first impressions of the newly-created High Court, which opened on 3 January 1921, and was staffed by himself and the chief justice, Sir William Morris Carter. The High Court was an existing building near the harbour that had been adapted for use by the Public Works Department. It consisted of a courtroom with an elevated bench and

¹⁹ A judge who is inferior in rank to a chief justice.

²⁰ Telephone interview, Anthony Wilson, son of Sir Mark Wilson, 28 April 2010.

²¹ Who was Who and Tanganyika Staff Lists.

electric fans; an upper floor with separate chambers for each judge; rooms for the law officers, who included the attorney-general, solicitor-general and crown counsel; and, importantly for the judges, a library (Alexander 1936: 25).

Sessions were held year-round in Dar es Salaam except for the Easter and Christmas vacations, which lasted approximately a month and two weeks respectively. Each morning a rickshaw arrived at Alexander's front door, the "brasswork shining and the wheels clean and free from dust". Although the courthouse was only a few hundred yards from his house, walking the short distance in the heat was enough to cause him to perspire. As it was "undesirable to sit under a fan [in court] in a heated state" he always travelled by rickshaw (Alexander 1936: 170).

His first task was to assist the chief justice in drafting court rules, a task he resented. He felt the Colonial Office were not in search of men likely to make capable and independent judges. Rather, their first aim was to recruit efficient draftsmen to draft ordinances, rules and regulations that would need little revision by the legal department at the Colonial Office. From this perspective, the successful judge was not one who was necessarily familiar with court work who would try cases fairly, but the "helpful" man who could use his drafting skills for many different purposes. During his time in Fiji, most of the chief justice's attention was taken up with drafting King's regulations for the Western Pacific Commission or advising the high commissioner on points of law. He referred to a similar situation in Britain, where a bill proposed that the government would be given power to obtain opinions from judges on hypothetical questions of law. The law lords strongly opposed the bill and it was withdrawn. As a result, Alexander believed that lawyers in Britain gained an insight, possibly for the first time, into how colonial judges were viewed by their respective administrations (Alexander 1936: 19f).

Judicial Dress

Adjoining the courtrooms in the Dar es Salaam High Court were the judges' robing rooms, the Bar robing room, and offices for the registrar and his deputy. Both the judges and the advocates adhered to the custom of robing in wig and gown. Alexander maintained that in spite of the intense heat,

“there was little discomfort about the practice, which added to the impressiveness and dignity of the court.” In his view, with doors and windows wide open and fans overhead, conditions were reasonably comfortable. Judges in Tanganyika wore scarlet robes when hearing criminal cases and black robes when they presided over civil matters. The robes were identical to those worn in England except that the ermine was replaced by dark brown silk. A judge carried a black cap in his hand on ceremonial occasions, which he wore on his head when handing down a death sentence. Its purpose was to demonstrate the majesty of the law in its most “impressive and ceremonial form” (Alexander 1936: 26f).

Wigs were a fashion in headdress that was once universal for gentlemen in Britain. Towards the end of the eighteenth century it was eventually given up by all of them except judges, barristers and bishops, the latter giving them up in 1832. The wearing of wigs and gowns often has the effect of isolating judges from litigants and accused persons by suggesting, falsely, that the law is a mystical process that cannot possibly be understood by those not trained in the law. Judicial dress also makes witnesses ill at ease in the “theatrical” and alien atmosphere of the court, thus hampering the effectiveness of the judicial process. Wigs and gowns and other aspects of legal ceremony encourage “legal pomposity” and imply that judges are not subject to normal standards of assessment and criticism. One of the virtues of judicial dress is that it symbolizes the anonymity of both the judge and the barristers, highlighting the importance of the impartiality of the Bench and of equality between lawyers. Ultimately, however, the wearing of wigs and gowns “epitomize[d] all the defects of English law, its remoteness, its uncritical reverence for tradition, its absence of rationality, and its inability to see obstacles in the way of the understanding of the legal system by laymen” (Pannick 1987: 143, 146f).

In the colonies, judicial dress was often far more important to judges than to their British counterparts. Robes and wigs became an integral part of their identity as representatives of British justice. There were even occasions when judges, unsure of the correct attire for particular events, wrote to the Colonial Office requesting advice on sartorial matters. One example is a request from John Whyatt, Singapore’s chief justice in the 1930s who later became Kenya’s attorney-general, who wished to know how a judge “acquire[d] his knowledge of which robes to wear in the many pageants of

which he is the central figure".²² He noted that he "was always trying to inculcate into my In-patriate brethren the customs and traditions of the English Judiciary".²³ He wondered whether there were any official publications on the matter, such as a small volume entitled: "What every Judge Should Know" that was given to junior judges.²⁴ The Colonial Office had no record of the book he referred to, and simply sent him a robing list published by Ede and Ravenscroft.²⁵

Similarly, over 20 years later, Sir Herbert Cox, Tanganyika's chief justice between 1952 and 1956, wrote to the Colonial Office requesting advice on the proper dress to be worn by colonial judges on six different official occasions: the Queen's Birthday Parade; the presentation of insignia following decorations awarded by the Queen; Armistice Day celebrations; the opening of the Annual Sessions of the Legislative Council; the swearing-in of the governor; and the swearing-in of the chief justice.²⁶ Sir Sidney Abrahams, a legal assistant at the Colonial Office who had served as Tanganyika's chief justice himself, was unsure of how to handle the request. After some enquiries it was confirmed there was nothing in the Colonial Office's archives to indicate that there were any guidelines setting out what robes were suitable at functions held outside court in the colonies. The advice of Abrahams was simply to follow judicial practice in Britain.²⁷ Accordingly, he enclosed a copy of the Judges' Robing List, as well as extracts from a pamphlet published in 1937 entitled "Dress and Insignia Worn at Court".²⁸

²² John Whyatt to Sir Kenneth Roberts-Wray, 13 April 1937, The National Archives: Public Record Office, Lord Chamberlain's Office series 2/6697 [Hereafter TNA: PRO LCO].

²³ John Whyatt to Sir Kenneth Roberts-Wray, 13 April 1937, TNA: PRO LCO 2/6697.

²⁴ John Whyatt to Sir Kenneth Roberts-Wray, 13 April 1937, TNA: PRO LCO 2/6697.

²⁵ R.C.L. Gregory to A.R. Rushford, 30 April 1957, TNA: PRO LCO 2/6697.

²⁶ Herbert Cox to Secretary, Lord Chamberlain's Office, Dispatch, 20 May 1954, TNA: PRO LCO 2/6697.

²⁷ Sir Sidney Abrahams to George T. Coldstream, 26 May 1954, TNA: PRO LCO 2/6697.

²⁸ George T. Coldstream to Sir Sidney Abrahams, Memorandum, 6 June 1954, TNA: PRO LCO 2/6697.

Interpreters

Alexander was responsible for supervising a staff of clerks and interpreters, mostly Goans, who were described by him as “painstaking and industrious”, to handle the large number of documents necessitated by the revision system. In court, he made special mention of a “first-class” interpreter from Zanzibar known as Samuel Chiponde:

“I can still see Samuel Chiponde, clad in a spotless white *kanzu*, gazing benevolently over his gold spectacles on the timid witness, reassuring him in a fatherly way, and then in faultless English putting before the Court a faithful rendering of the witness’s evidence. A reliable interpreter like him, known and trusted over the whole East coast, was a ‘god-send’ to the judges. They could concentrate on the points of evidence as they came before them and give their undivided attention to the issues they had to try.”

(Alexander 1936: 22)

Alexander strongly believed that the judge or magistrate who prided himself on his knowledge of local languages was more likely to cause injustice than monoglots like himself. He complained that in the course of his revision work, he repeatedly found that magistrates had misstated the evidence. In his view, district commissioners were sometimes so intent on obtaining a true rendering of the evidence in the local vernacular or Swahili, that the weighing of evidence itself became secondary (Alexander 1936: 23). Unlike Alexander, Wilson had chosen to write a Swahili examination during his period in Tanganyika as an administrative officer between 1924 and 1926. In the annual *Tanganyika Staff Lists* published by the respective colonial governments, the qualifications of colonial officers were stated alongside their names. Along with their degrees and professional qualifications, the lists indicated whether or not officers had passed the higher standard or lower standard Swahili examinations. In Wilson’s case, the 1937 list indicates that he had passed the lower standard examination; he was the only one out of five judges in Tanganyika who had written the paper. Bertram Roberts, who joined Wilson on the Bench in 1939, had also passed the lower standard course. Lancelot Lloyd-Blood, who had previously passed the lower standard course in Kenya, was appointed as a judge in Tanganyika in 1940. This meant that three out of the five judges in Tanganyika had passed the examination. Of the seven resident magistrates

in 1937, three had written the paper, two of them at the higher level. By 1945, however, of the six resident magistrates, only Gerald Mahon, who went on to serve as a judge between 1949 and 1959, had passed the lower standard Swahili examination.²⁹ The different attitudes of judges towards learning Swahili are indicators of how various judges viewed their role within the Legal Service in Tanganyika. Some, like Wilson, had spent most of their career in the region and saw the value of being able to communicate in Swahili. Others saw no merit in learning the local language and viewed their time in East Africa as a stepping stone to a more prestigious appointment elsewhere or, like Alexander, a final posting before retirement.

Circuit Courts: The Central Railway

Circuit courts in Tanganyika were staged in the same provincial centres where German district judges had presided over tribunals, as they lay on the same railway routes. While on tour, or circuit, judges from Dar es Salaam were required to attend sessions at four or five places over periods lasting up to a month. Accordingly, criminal sessions were held “at regular intervals” at Morogoro, Dodoma, Tabora, Kigoma and Mwanza on the Central Railway; at Tanga, Lushoto, Moshi and Arusha on the Northern Railway; and at Iringa in the southern part of the territory “when required” (Alexander 1936: 51). In 1930, district registries of the High Court were established at Arusha, Tanga and Mwanza. Initially, there was a single High Court registry for the entire territory. As caseloads increased, it became necessary to station deputy registrars on a permanent basis in the larger centres. District registrars and resident magistrates shared certain functions. For example, the resident magistrates of Arusha and Moshi wrote to each other in 1938 discussing issues such as the complexity of cases, how long they were likely to take to resolve in court, and how many prosecution witnesses would be involved.³⁰ Efficiency was of paramount concern and, accordingly, they were instructed by the chief justice to adhere as closely to

²⁹ Who was Who and Tanganyika Staff Lists.

³⁰ Who was Who and Tanganyika Staff Lists; Resident Magistrate, Arusha to Resident Magistrate, Moshi, Telegram, 4 May 1938, MSS.Afr.s.592/1/1, Rhodes House Library, Oxford [Hereafter RHL].

their published itineraries. Cases committed for trial after the opening date of a circuit were re-directed to Dar es Salaam.³¹

After about three months Alexander went, as acting chief justice, on the first British judicial circuit in Tanganyika. He visited the towns of Morogoro, Dodoma, Tabora and Kigoma on the Central Railway. He recorded a detailed description of life aboard the train:

“[t]he Judge’s coach was soon loaded with all the impedimenta required for the three weeks’ absence. His coach was to be his home, and in it were piled his beds, blankets, pillows, mosquito nets, pots, pans, dishes, dusters, towels, hurricane lamps, candles, with eatables and drinkables, boxes of groceries and personal belongings. It contained a saloon with two couches, available for beds, folding tables and shelves and underneath a cage in which live fowls could be carried. Between the kitchen and saloon was a bathroom with shower bath complete. At each end of the coach railed platforms permitted the passengers in the cool of the evening to sit in the open, except when smuts from the engine made such a procedure inadvisable. This little home on wheels could be attached to any train – mail train, water-train, or mixed train proceeding along the line – and be detached and placed in any siding.” (Alexander 1936: 37)

Alexander’s first circuit was markedly different: during his time in the Pacific he described a circuit in the South Seas when legal officers moved around the various islands by government yacht. Advocates accompanied the chief justice, the attorney-general, the registrar, and interpreters. As part of their preparation, lawn tennis was played ashore before the trials began (Alexander 1927: 126). Throughout his account of the Central Railway Circuit, he placed great emphasis on the importance of judicial dress and ceremony. He contrasted this with the fact that the Germans had dispensed justice as part of the ordinary administration of government, with judges dressed in the ordinary uniforms of German officers (Alexander 1936: 35). As a result, the whole conception of the pomp and majesty of the law was absent. Judges on circuit often lived in greater comfort in their purpose-built railway coaches than the district commissioners they visited. For instance,

³¹ G.M. Mahon, Resident Magistrate, to District Officer, Korogwe, 3 May 1938, MSS.Afr.s.592/1, 59, RHL.

the railway company provided meals for the judges at most stations. If the district station was some distance from the rail station, the district commissioner would often arrange for a car to collect the judge.³²

The maintenance of decorum was important to judges in both Kenya and Tanganyika throughout the colonial period. For example, a circular issued by the Kenyan secretariat in 1947 set out the procedure for opening court sessions at “out-stations”.³³ In one instance, a customary guard of honour mustered outside the courthouse a few minutes before the sessions were set to begin. The judge, fully clothed, saluted and inspected the guard before proceeding into the courthouse. Together with the judge and two assessors, the district commissioner was given a seat on the Bench. The circuit was officially opened once the first case had been called and the plea recorded. The court then adjourned and the judge “took leave” of the administrative officer in his chambers before returning to court.³⁴

Occasionally, however, the correct protocol was not followed, much to the consternation of judges. For example, Ransley Thacker reported from Kisii, Kenya, in 1947 that the district commissioner did not take part in the guard of honour in accordance with instructions from the chief justice. He also complained that there had been no official call from any administrative officer even though the rooms he occupied in the court building were adjacent to the administrative officers’ quarters. The next day a district commissioner invited him for a drink. He felt that he was unable to accept the invitation, however, as up to that moment no official had deemed it necessary to call upon him.³⁵

Returning to Alexander’s account of his first circuit, he recorded that at Dodoma

“[c]hiefs and people were agog to witness the advent of the High Court. Never before had they seen in their midst a British judge...All stood to their feet at once, and there on the topmost steps leading down to the yard stood the ‘Red Judge’, the bwana

³² Telephone interview, Anthony Wilson, 28 April 2010; The railway company was known as the East African Railways and Harbours Corporation.

³³ Secretariat Circular, 8 August 1947, AP/1/1636/III, Kenya National Archives [Hereafter KNA].

³⁴ Secretariat Circular, 8 August 1947, AP/1/1636/III, KNA.

³⁵ Barclay Nihill to Colonial Secretary, 8 August 1947, AP/1/1636/III, KNA.

judge in the red kanzu as he came to be called, his scarlet robes striking a powerful note of colour in the blazing sunshine, his white wig and bands adding the touch of the mediaeval which the British courts alone preserve. To say that the native community were impressed would be to understate the case. Not a whisper was to be heard as the judge slowly descended the steps and made his way into the court, and it was with looks of awe that the simple native followed his progress.” (Alexander 1936: 49f)³⁶

He even claimed that a prisoner in England complained when his case was tried by a judge dressed in black instead of red (Alexander 1936: 50). In another account of one of his appearances he wrote that

“[t]o their delight and approval the judge appeared en grande tenue, his scarlet robes dominating the landscape with vivid splashes of colour, his full-bottomed wig, lace ruffles, silk stockings, and silver buckles completing a picture as they had never seen before. ‘Bwana mkubwa sana’, shouted the little boys – ‘a big chief indeed’ - while their elders, in the fashion of the district, made the air ring with prolonged clapping of hands, in unison and with hollowed palms.” (Alexander 1936: 59)

In Dodoma, between 20 and 30 cases were usually set down for trial. Alexander wrote that day after day “simple tales” were told to him. These would typically involve beer drinking, fighting, and deaths as a result of spear wounds. He lamented the relative absence of the kinds of cases he had been accustomed to handling in London, such as “...firm swindles, company-promoting cases [and] stock exchange frauds”. Instead, the bulk of his time on circuit was taken up with “primitive and elemental offences” – mainly murder, culpable homicide and robbery – as well as rape and perjury (Alexander 1936: 51).

Like Alexander, Wilson had to contend with many alcohol-related cases. These were so common in colonial Tanganyika that many judges automatically assumed that alcohol had played a role in the commission of various offences. In Bukoba in 1945, for instance, prosecution witnesses claimed that the only person who had drunk alcohol was the deceased. Wilson wryly stated, however, that he found it “quite impossible to credit

³⁶ *Kanzu* is the Swahili term for a long, usually white, men’s garment with long sleeves.

the inhabitants of this corner of the Territory with such angelic restraint"³⁷. Administrative officers' notions of what constituted a fair trial were far removed from judicial notions; in particular, judges expected administrative officers to maintain English procedural and evidentiary law. This had evolved with the purpose of protecting the rights of the accused person, without which it was impossible to hold a fair trial as understood by lawyers (Ghai/McAuslan 1970: 143).

Alexander claimed that nothing surprised Africans more than the elaborate examination of evidence that took place in the High Court. By contrast, he got the impression that in courts under German rule as well as in contemporary native courts, justice was short and summary. Apart from seeing how seriously the High Court regarded certain crimes, Africans also learned, in his view, to know that the High Court was prepared to listen to them freely. It was not an autocratic body to whose decrees they should submit blindly and in silence without opening their mouths. In his opinion, oppression was a feature so strange to British mentality that, too often, judges failed to realise how familiar it was to Africans. As a consequence, he believed it incumbent on judges to teach Africans that it played no part in the British conception of civilisation (Alexander 1936: 51).

"The Old Controversy"

The judicial conception of modernity was to introduce and apply English law to Africans; this idea was, however, anathema to administrative officers. Ultimately, there were two opposed views during this period, both contemptuous and patronising. One was that Africans must be "civilised" and integrated into a system of "British courts". The other held the view that Africans must be protected by the harmful consequences of contact with foreign law. The history of the courts and law during the interwar period is the history of the struggle between these two ideas, which was not limited to an ideological struggle between judges and administrative officers but characterised the judiciary itself (Allott 1976: 368).

During the 1920s and 1930s there was growing dissatisfaction in administrative circles in Kenya and Tanganyika that supervision of

³⁷ R v Ntahokagiye bin Tombwa, No. 109 of 1945, cited in MSS.Afr.s.592/1/1, 50, RHL.

customary courts was technically under the control of the judiciary, even though in practice supervision was carried out by district officers. The administration also claimed that the High Court did not have knowledge of, or interest in, customary law. Accordingly, the administration wished to gain exclusive and direct control over customary courts in order to develop them according to the principles of indirect rule. The fact that they were laymen was considered to be an advantage, as they were able to guide the cases without the intrusion of legal complexities and English-trained lawyers (Morris/Read 1972; Ghai/McAuslan 1970).

Perhaps the most striking aspect of Alexander's memoirs is the amount of time he devoted to this theme of conflict between the judiciary and the administration with regard to the administration of justice. It is also apparent from his notes that Wilson shared many of these sentiments. Many of the district commissioners in the formative period of British rule in Tanganyika had been posted to the territory during the First World War as soldiers. After Britain assumed control of large areas of the territory in 1916, soldiers were appointed as political officers in rural areas for the remainder of the war (Alexander 1936: 9). For this reason, he expressed little but contempt for their professed legal prowess. Furthermore, the first governor of the territory, Sir Horace Byatt, had previously served in Somaliland, a territory where

"[...] the legal fraternity did not appear to have penetrated. In that favoured region justice seems to have been administered without any of that tiresome regard for precedent, rule or authority which is the bane of more advanced communities. The true bureaucrat, though fertile in the formulation of rules and regulations for executive action, is intolerant of any interpretation of the rules which may conflict with the purposes of the executive. Judges and lawyers have an unhappy knack of construing rules according to their proper intent and meaning, and of seeing that effect is given to that meaning irrespective of consequences [...]. In its rudimentary form administration in our remote possessions gives the executive wide powers. As it becomes more advanced and more complex, administration becomes more stable and less fluid and the power of amendment less easy. Laws become more rigid. Interpretation becomes less easy and conflicts of powers more

possible and frequent.” (Alexander 1936: 16f)

Evidently, Alexander considered the average governor to have a very narrow interpretation of the administration of justice. Although he conceded that most district commissioners had a “working knowledge” of criminal law and practice and statutory law, he wrote that

“[...] it hardly enters their heads that a knowledge of criminal or statutory law forms but a small part of the equipment required by the successful judge or magistrate. The profession of the law, like that of medicine, is a highly technical one. No Governor would think of consulting, as a medical man, a practitioner who had passed some theoretical examinations in medicine, but had never handled any actual cases in practice. Yet over and over again a Governor will recommend for a legal appointment, some youth who, having never handled a case in court in his life, has succeeded, merely by passing an examination, in tacking the mystic words ‘barrister-at-law’ to his name.” (Alexander 1936: 18)

He was grateful that the legal department at the Colonial Office supported the judges against the “popular ‘new despotism’ favoured by most colonial governors”. The two aspects of indirect rule that were most disagreeable to Alexander were that capital offences were justiciable by native and untrained courts, and that accused persons were often not entitled to a legal defence (Alexander 1936: 18, 200). He expressed his frustration in the following terms:

“[w]hy should the natives in a mandated territory for which we are responsible be cut from recourse to the courts of the experienced judges who have been appointed with the sole end of assisting them by their experience? [...] We are told that the object of the Government is to make the natives ‘Good Africans’. They are to have the best medical attention: they are to be trained in the best methods of agriculture. But when it comes to justice, they are to be left to the mercy of nominal chiefs. It is idle to say that the supervision of the administrative officers will be completely effective.” (Alexander 1936: 204)

His aim was to safeguard the rights of the Africans, and he claimed that administrative officers did not have the temperament, time, or judicial knowledge to review cases. He also referred to the advanced methods of

British justice, in particular the rules of evidence, which he believed was the most effective means of ascertaining the truth as opposed to the “barbarous, irrational and prejudiced methods of raw native races”. By contrast, methods of justice in Britain were “humanised” and judges brought with them the “humane and advanced practices of the courts at home”. Finally, he recognised that from the administration’s perspective, it was easier not to have a separation of powers, but in compromising the judiciary’s authority, the rights of individuals were sacrificed (Alexander 1936: 204f). Alexander’s views on how justice was to be administered in the colonies reflect his intolerance of the administration’s policies. At the same time his frequent references to the superiority of English legal structures reveal deeply held paternalistic and patronising attitudes.

Wilson expressed similar views in a review of Donald Cameron’s autobiography, *My Tanganyika Service and Some Nigeria* (1939).³⁸ Like Alexander, he was a strong supporter of the British constitution, and the rule of law. He stressed the “evil effects” of any attempted subordination of the judiciary to the executive. In his view, the two fundamental benefits of British administration were the

“[...] protection of [Africans’] rights under a known code of law, administered in open courts without fear or favour, affection or ill-will, by judges and magistrates interpreting the law as they find it, in accordance with well-known and settled legal principles and without regard, in deciding cases between the governors and the governed, for what is called ‘administrative convenience’.”³⁹

He also sought to justify the judiciary’s role in the legal system, particularly with regard to circuits. He placed on record the fact that every officer he had spoken to had “welcomed the regular incursion of the High Court into that part of the country, which in the past it has visited only sporadically and infrequently.”⁴⁰ In his papers he included a letter from a district commissioner in Lindi, G.A. Mitchell, who described himself as an “amateur magistrate endeavouring to administer justice” and had been previously been offered legal advice by Wilson. Mitchell had recently moved from Kilwa, on Lake Tanganyika, and referred to a case where an

³⁸ MSS.Afr.s.592/8/1, 43-48, RHL.

³⁹ MSS.Afr.s.592, 8/1, 46, RHL.

⁴⁰ Memorandum to Registrar, 20 July 1938, MSS.Afr.s.592/1/1, 59, RHL.

Indian had been charged with murder. He had conducted the preliminary inquiry, had visited the accused person and was aware of local popular opinion on the matter. A recent circular from the chief justice, however, stated that district commissioners were obliged to submit a written report to the High Court on the character of the accused, his possible motives and local popular opinion after the preliminary enquiry, but before trial. He felt these issues ought to be raised during the trial itself. He expected a reprimand from headquarters but he found it difficult to “obey an order as an Administrative Officer which one feels is unjust as a Magistrate”.⁴¹ On the one hand, Mitchell’s understanding of the law led him to believe that the specified information should remain confidential until the accused person had been tried. On the other, he was instructed by a circular from the chief justice to disclose that information before trial. Unfortunately, Wilson’s reply is not recorded but the letter illustrates the kinds of legal problems district commissioners faced. It also confirms that some of them approached High Court judges for legal advice.

Living Conditions on Circuit

As with judicial dress, judges placed particular importance on the standard of their accommodation while on circuit as this was an indication of their status. Importantly, their lodgings were generally separate to those of the district commissioners who hosted them, which demonstrated their desire to be seen as impartial outsiders, detached from petty local affairs.

In Tanga, Alexander was accommodated in a disused house in poor repair:

“[w]ithin the bare walls of this dwelling-place [a judge] had to make himself as comfortable as circumstances would permit. I cannot say the outlook was at all cheerful when, probably in pouring rain, one climbed a mouldy staircase and was ushered along a dark passage into dusty rooms containing not a stick of furniture. At Moshi station I remember being given rooms reminiscent of the back ‘lands’ of Edinburgh or Glasgow. At Tabora, on one occasion, my boys, under the direction of my wife,

⁴¹ G.A. Mitchell to Wilson, 10 May 1938, MSS.Afr.s.592/1/1, 2-3, RHL.

had to clean out, not only the rooms, but the filth left by the previous occupants. Such, however, were the trials of the judicial department – a body which the executive seemed to delight in belittling. The oft-quoted dictum that the white man must maintain his prestige in the eyes of the native did not seem to apply in the opinion of East African governors.” (Alexander 1936: 76)

In this quotation, Alexander blames the administration for failing to ensure that the dignity of judges was preserved by forcing him to use inferior accommodation, yet another illustration of the divide between the administration and the judiciary.

Like Alexander, Wilson expected courthouses to be equipped with robing rooms as well as places to write his judgments. On one occasion he complained about the robing room at the Musoma courthouse:

“[s]mall robing room attached to court has no ceiling and no furniture except a camp table and one chair. Ordinary amenities of a robing room like pegs to hang robes on, a washstand and mirror are entirely absent. Any writing has to be done in Court owing to lack of furniture and ceiling in robing room.”⁴²

He also complained that the Musoma Club accommodation was unsuitable for the judge owing to the “crowdedness” of the Club especially at weekends. On the same circuit in 1936, he described the accommodation at Bukoba as “small but adequate”, as the assistant district commissioner’s office adjoining the room could be used as a robing room and judicial chambers.⁴³

An earlier account by Sir Samuel Thomas, who served in Kenya between 1929 and 1933, is notable for its reference to his memories of his time as a young barrister on the Midlands and Oxford circuit in 1914:

“The hotels when available are not always quiet and sometimes the Judge has to endure a restless night to the accompaniment of the noise associated with a dance as a fitting preparation for an important murder trial. This is in marked contrast to the stopping of the bells ringing in a town like Stafford in England, during the circuit of the

⁴² Wilson, Circuit Notes, Musoma, November 1936. MSS.Afr.s.592/1/1, 1, RHL.

⁴³ Wilson, Circuit Notes, Musoma, November 1936. MSS.Afr.s.592/1/1, 1, RHL.

Judges.”⁴⁴

Judges were also concerned about preserving the maxim that justice must not only be done but must seem to be done. In 1944, Wilson endorsed the views of his fellow judges, Bertram McRoberts, Lancelot Lloyd-Blood and William Stuart, that it was unsuitable to lodge the circuit judge and prosecuting counsel in the same building: “[i]t is likely to give an entirely false impression to laymen as to how justice is administered. The African, especially, is already far too prone to get the erroneous idea that the Judiciary is part of the ‘Serikali’.”⁴⁵

The Northern Circuit

On the Central Railway, almost all the cases heard by Alexander were criminal in nature. On the Northern Circuit, however, there were a large number of civil cases. For example, in the port of Tanga, Indian traders sued on promissory notes; Greeks, who had taken over German sisal farms, brought complicated financial matters for resolution; and local banks that had financed coffee plantations in the Kilimanjaro district sought to enforce their rights. There was also the occasional Swahili land case (Alexander 1936: 74). More than 12 years after his arrival in Tanganyika, Wilson reported that Tanga had retained its reputation as the circuit town with the most civil matters.⁴⁶

An example of a typical circuit he undertook began on 31 August 1937, when he travelled by steamer from Dar es Salaam to Tanga.⁴⁷ In Tanga, he heard a single criminal trial; three civil matters; two probate and administration matters; one bankruptcy case; and one criminal revision case. In Arusha, he heard five criminal trials, one criminal appeal, and one civil matter. In Moshi, he heard three criminal trials, two civil matters and

⁴⁴ Cmd. 4623, Report of the Commission of Inquiry into the Administration of Justice, Samuel J. Thomas, Memorandum, Nairobi, 5 April 1933.

⁴⁵ Wilson, Circuit Notes, Musoma, 15 February 1944, MSS.Afr.s.592/1/5, 94, RHL; “Serikali” is a reference to the colonial government.

⁴⁶ Wilson, Circuit Notes, MSS.Afr.s.592/1/1, 33, RHL.

⁴⁷ Wilson, Circuit Notes, Musoma, September 1939. MSS.Afr.s.592/1/1, 37, RHL.

one criminal appeal. Finally, in Korogwe, he heard five criminal trials before returning to Dar es Salaam on 22 September.⁴⁸

For Alexander, the real test of a judge's knowledge and skill lay in civil law and he was convinced the proper route to the Bench was through the Bar, stating that "[o]nly those who have been through the mill should be chosen" (Alexander 1936: 20). In keeping with Benedict Anderson's idea of imagined communities, Alexander wrote with reference to the experiences of other colonial judges in distant parts of the Empire (Anderson 2006: 6). Although the environments in which they dispensed justice were vastly different, they were united by their professionalism and use of English law. He noted that in some of Britain's Asian territories, such as Singapore and Hong Kong, commercial traders were anxious to have judges with sound professional experience and training in civil law. He also observed that the government of Western Australia had begun a policy of appointing judges directly from the English Bar, in order to address the large backlog of complicated civil matters that colonial judges were struggling to deal with. Within the Legal Service, however, he regretted that throughout the Empire and contrary to stated policy, promotions were generally made on the basis of general legal experience in the colonies, rather than aptitude for civil law. In his view, this negatively impacted on commerce (Alexander 1936: 20).

Many colonial judges claimed to have considerable professional and practical experience of law, but few had served in commercial centres. Alexander also complained about the distribution of judges around the Empire. For example, an acquaintance whom he considered to be the best lawyer in the Legal Service at the time, was posted to a minor post in the West Indies rather than to a major commercial centre. Furthermore, his appointment was made at a time when territories in the East were in great need of judges with experience of civil cases (Alexander 1936: 20).

Case Notes

One of the principal aims of the Bushe Commission was to improve the circuit system by reducing the period of time accused persons and witnesses were detained at local centres. A letter from the district commissioner at

⁴⁸ Wilson, Circuit Notes, MSS.Afr.s.592/1/1, 33, RHL.

Musoma to the provincial commissioner in Mwanza in 1942 reveals that the situation in some districts was still unacceptable. The letter stated that in one case, the accused and 12 witnesses had been held for a period of approximately five months. In another case, 17 witnesses had been bound for the same period. Eight prisoners had been incarcerated for between four and nine months, and one had attempted suicide.⁴⁹

Caseloads steadily increased from the late 1930s onwards, and by 1946 Tanganyika's judges heard between 300 and 400 cases on circuit each year.⁵⁰ For example, in an average year approximately 25 cases were heard on the Lake Circuit. In 1945, however, Wilson recorded that he had heard 51 cases, a record for any circuit in Tanganyika: 32 of those cases were homicides, 20 of them arising directly or indirectly out of the excessive consumption of alcohol. Witchcraft cases were fewer than normal, and three cases were concerned with the unlawful possession of diamonds. In Bukoba, five of the 13 cases concerned arson. At the conclusion of the circuit, Wilson and his crown counsel proceeded directly to Tabora to begin the Central Railway Circuit, without returning to Dar es Salaam. This proved to be a short circuit with only 14 cases being heard.⁵¹

Wilson displayed sensitivity regarding problems facing assessors and witnesses who were summoned to court. In his papers he recalled his attempts to obtain information about what times of the year would be most suitable and least disturbing for witnesses and assessors. He recognized that the majority of Africans in rural districts were occupied with sowing and harvesting operations for most of the seven months of the year when travel by road was most feasible.⁵²

Wilson's typed notes of a typical case from Bukoba on Lake Victoria record that in 1945 two men attacked a hawker in town and stole his basket containing about 150 dried fish.⁵³ At the trial, medical evidence was tendered that violence was used to steal the fish although there was

⁴⁹ District Commission, Musoma to Provincial Commissioner, Mwanza, 2 October, 1942, Mss.Afr.s.592, 1/1, 42, RHL.

⁵⁰ Wilson to Registrar, Dar es Salaam, 28 March 1946, MSS.Afr.s.592/2, RHL.

⁵¹ Registrar, Dar es Salaam, "Circuit Jottings", 13 April 1945. MSS.Afr.s.592/2, RHL.

⁵² Wilson, Memorandum, 29 July 1938. MSS.Afr.s.592/1/1, 53-59, RHL.

⁵³ R. v Bartholomayo alias Kyakazire and Another (Criminal Sessions No. 250 of 1945), cited in MSS.Afr.s.592/2, RHL.

conflicting evidence with regard to the facts. Wilson ironically noted that “disregard for the truth” had become the rule rather than the exception in the Bukoba district, despite the fact that most of the population professed to be Christians. He concluded that one thing was certain: all the parties (including the prosecution witnesses) were “well on in liquor” on the night of the crime.⁵⁴

He also drafted death reports, which were sent to the governor after an appellant’s appeal against the death penalty had failed. They were intended to assist the governor in making the decision to recommend that the sentence be reduced. In one instance, the appellant had killed his father in the genuine belief that his father had, through the invocation of evil spirits, caused the death of two of his children and was about to cause the death of the third. In dismissing the appeal, the Court of Appeal held that his reaction was unreasonable and he had no recourse to the defence of provocation, which might have reduced the offence to manslaughter. In his report, however, Wilson referred to the widespread belief in witchcraft, and the manner and characteristics of the condemned man.⁵⁵

Some files consist of personal notes plus typed judgments. In his handwritten notes, Wilson wrote a short paragraph of about 80 words or so for each case; each page contained three or four cases.⁵⁶ The facts of each case were written in black ink and references to the law were written in red ink.⁵⁷ The outcome of cases were marked by letters written in red or blue crayon. For example, if a verdict of guilt was handed down, he wrote a large circled “G” over the facts of the case. “NG” denoted “not guilty”, “A” indicated an acquittal, “M” signified a murder conviction, “MS” represented a conviction of manslaughter and “NP” denoted “*nolle prosequi*”.⁵⁸ Often, especially in simple murder cases, the only law he referred to in his written judgments was the Tanganyika Penal Code, with no mention of case law, East African or otherwise. In more complex matters he cited English cases and also made references to legal texts, which he

⁵⁴ R v Bartholomayo alias Kyakazire and Another (Criminal Sessions No. 250 of 1945), cited in MSS.Afr.s.592/2, RHL.

⁵⁵ R v Kajuna s/o Mbake (Criminal Sessions case No. 201 of 1945), cited in MSS.Afr.s.592/2, RHL.

⁵⁶ Wilson, Circuit Notes, Mss.Afr.s.592/1/1, 9, RHL.

⁵⁷ Wilson to Acting Governor, 11 October 1937. MSS.Afr.s.592/1/1, 40-41, RHL.

⁵⁸ A formal notice of the abandonment of a case by a prosecutor.

carried on circuit.⁵⁹

Conclusion

Alexander was the model recruit for the Legal Service: an outstanding student who had relatively long experience at the Bar in London. The manner of his recruitment was also typical of the years preceding the First World War, when legal qualifications and professional experience were paramount and interviews were merely a formality. He had very little knowledge of the Empire and was selected purely on the basis of his credentials. Wilson, on the other hand, was an unusual candidate for the Legal Service. Despite excelling as a law student, he chose not to pursue a career in law and joined the Administrative Service in order to begin a colonial career as soon as he could. He would have had a far greater awareness of the Empire and wished to play a part in its civilising mission. He was also a religious man, serving as chancellor of the Uganda diocese. Like most judges, Alexander arrived in Tanganyika on transfer from another territory outside Africa. Wilson, by contrast, spent his entire career in Africa, gradually working his way from administrative cadet in Tanganyika to chief justice of the Gold Coast. Further differences became apparent on circuit. When interacting with Africans, Wilson displayed the experience, empathy and wisdom of his years in Africa, while Alexander struggled to adapt to African conditions. An example of this can be seen in Wilson's attitudes towards African languages that contrasted sharply with those of Alexander who relied exclusively on the skills of interpreters. There was much that united them, however, and both placed great importance on their judicial status. This was maintained through wearing court dress, observing proper decorum at outstations and being accommodated in lodgings deemed fit for judges. This was confirmation of a common judicial identity that set them apart from colonial society, both black and white. The most significant similarity between the two accounts, however, is the emphasis placed on ideological conflict over the administration of justice, a theme that dominated the interwar period.

⁵⁹ Wilson, Circuit Notes, MSS.Afr.s.592, 1/1, 4-7, RHL.

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