

ZANZIBAR YEARBOOK OF LAW



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ZANZIBAR LEGAL SERVICES CENTRE (ZLSC)
House No. 37 Migombani (Opposite Migoz Supermarket)
P.O Box 3360 Zanzibar, Tanzania
Tel.: +255 24 2233784 Fax: +255 24 2234495
E-Mail: E-Mail: info@zlsc.or.tz
Website: www.zlsc.or.tz

Sub-Office: Chake Chake, Pemba
P.O. Box 18 Chake Chake, Pemba
Tel.: +255 24 2452936 Fax: +255 24 2452916

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TEACHING LAW AT THE UNIVERSITY OF DAR ES SALAAM IN THE SIXTIES

*William C. Whitford**

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- II. The Expulsion of Students
- III. Teaching the Very Best Students
- IV. The Faculty in the Faculty and Beyond
- V. Working Conditions at the Faculty
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I. Introduction

My wife - Lynn and I arrived at the Faculty of Law, University of Dar es Salaam, about the first of July 1967, in time to start teaching in the first term (which began in July in those days). I was 27 years old at the time, my wife 24, and except for Canada neither of us had previously been outside the United States. Lynn and I were both left-of-centre in the context of American politics, had been active in progressive political causes in our hometown (Madison, Wisconsin), were excited by the independence movements in Sub-Saharan African and had eagerly sought out the position in Dar es Salaam (DSM). But neither of us had studied much about Africa before we arrived and we certainly had much to learn.

I had been hired to teach the Contracts course, where I was to succeed another American, Professor Ian Macneil, who had just completed a two year tour in DSM and was returning to his home law school in the USA. I had taught the Contracts course for two years at my home law school, the University of Wisconsin, and this, I guess, qualified me for the position in the eyes of those who appointed me. The United States and the East African countries were all common law jurisdictions, after all.

II. The Expulsion of Students

The Faculty of Law was about to start its sixth year of teaching students, having already graduated three classes. It occupied its nearly new building on

* Emeritus Professor of Law, University of Wisconsin, Wisconsin, United States of America. I am grateful for helpful comments on an earlier draft from Yash Pal Ghai, Sol Picciotto and Stephen Huber. Contacts: whitford@mailplus.wisc.edu

the Hill, having moved from its original location on Lumumba Street. The previous year had been a tumultuous one. In October, 1966, most of the Tanzanian students had been sent home by President Nyerere, the apparent consequence of having participated in a demonstration protesting mandatory National Service for University graduates. Then a few months later the Arusha Declaration was promulgated. Others have written about the many consequences of these events on the University and the Faculty of Law. I was not a direct observer of actions taken before 1st July 1967, and so I will leave the accounts of this period to others.¹

The effects on the Faculty of Law of the dismissal of most Tanzanian students had been less than on other departments in the University. At the time there was only one Law School in East Africa, the consequence of a compact among the three East African countries to cooperate in professional education,² and about 60 per cent of the students were from Kenya and Uganda. Those students continued their studies uninterrupted. Further, a full contingent of Tanzanian students matriculated for the 1967–68 academic year. I was assigned, as my teaching load, the introductory course in contracts, a first year offering; so, I had the normal number of students for my class in the 1967–68 academic year. About 40 per cent of the students were Tanzanian, with the balance being divided roughly equally between Uganda and Kenya.

III. Teaching the Very Best Students

The students I taught in the Contracts course during my two years at the Faculty of Law were among the best I have ever had the privilege to teach. Law was among the most desired placements among students matriculating into the University, and there were only 100 slots for all East Africa. So there was great competition for each slot and the qualifications for each successful applicant were excellent. Further, the students would become among the first East African lawyers in their respective countries. Jobs, mostly in government, were waiting for them and we all knew it. Teaching these students seemed like an important responsibility because many of the students

¹ E.g. PICCIOTTO, S., “Law, Life and Politics,” in SHIVJI, Issa G. (ed.). *Limits of Legal Radicalism*, Dar es Salaam: Faculty of Law, University of Dar es Salaam, 1986, pp. 36-47; PETER, Chris Maina & Mvungi, S., “The State and the Student Struggles,” in SHIVJI, Issa G., (ed.). *The State and The Working People in Tanzania*, Dakar: Codesria, 1985, pp. 157–198, especially 167–176, concerning the expulsion of students in 1966.

² Under the compact Tanzania got the law school, Kenya the engineering school and Uganda the medical school. As is well known the compact quickly broke down. By the time I left Tanzania in 1969 a law school had already opened in Uganda and one would soon open in Kenya.

were destined to become important leaders. Among the many excellent students I had the privilege of teaching, and who I still remember well, were future academics Issa Shivji, H.W.O. Okoth-Ogendo, Willy Mutunga and Charles Kallu Kalumiya.³

Virtually all students resided in residence halls at Ubungo, the campus on the hill. The faculty also resided in residences owned by the University and located on the campus. The campus itself was separated by rural land from the city, then quite a bit smaller than it is today. The result was an existence that was somewhat isolated from general Tanzanian community, and even the city's entertainment centres. This made for the camaraderie between faculty and students to a greater extent than is often the case at Universities. My wife and I often attended student dances, for example, as did other faculty, and we felt quite comfortable doing so. We got to know in a personal way a number of students with whom we continued to communicate for years, and in a few instances still today. On the other hand, we got to know only a few Tanzanians who were not part of the University community. This was a consequence of the campus' isolation.

Though separated from the city, the campus was far from ignored by President Nyerere. He had sent down the Tanzanian students only the year before and one might have expected that he would be unpopular on campus. Yet he made several public appearances on campus during our two years living there. He always arrived without extensive security – I remember several occasions when his entourage consisted of only two vehicles, one of them carrying the President. And he made himself available for unscripted questions from students on any topic, with the press present. This is something that an American President would never have done, certainly then when there was so much anger on American campuses about the war in Southeast Asia, and so witnessing these encounters was pretty amazing to this American. I felt that President Nyerere showed great respect for the students, as they did him, and that he enjoyed intellectual repartee. Students were not required or expected to be deferential and were free to challenge his policies, albeit in a respectful manner.⁴

³ The competition between Shivji and Okoth-Ogendo, both of the class of 1970, for the number 1 ranking in the class (won by Shivji) was legendary even in its day. Both rank as among the best students who I have ever had the privilege of teaching, and either would have ranked number 1 in almost any other class. Each went on to become a lifetime academic in Tanzania and Kenya, respectively. Mutunga is now Chief Justice of Kenya, after an outstanding career as a human rights lawyer as well as an academic. Kallu Kalumiya, after a brief academic career, had a long and highly successful career as a UN civil servant. He is now a successful practitioner in Kampala.

⁴ In one encounter I remember, H.W.O. Okoth-Ogendo challenged the President about a government policy requiring male Maasai to wear pants under their blanket while in urban

IV. The Faculty in the Faculty and Beyond

While discussing campus atmosphere, and before I turn to a description of happenings at the Faculty of Law, a word should be said about faculty from other departments. They were generally young. Though the majority of the faculty were expatriate, there were a large number of very interesting, left-of-centre people, many attracted to Tanzania by the international reputation of President Nyerere, who was perceived as both intellectual and a committed democratic socialist. Several went on in later life to worldwide fame as academics and activists and they were working out ideas that would become the basis of their life's work in Dar es Salaam. This included Walter Rodney, now credited with developing a theory of underdevelopment as a description of the relationship between the first and third worlds. There were certainly differences in political outlook among faculty and lively debates, but the whole campus was an exciting, intellectual place to be, and I was exposed to many ideas and perspectives that were new to me and challenging to some of my previously held views.

In its first few years, the staff at the Faculty of Law came primarily from the UK. Important exceptions included the founding Dean, A. B. Weston, an Australian whose previous academic career had been in Canada, and Yash Pal Ghai, a Kenyan, who was to become the first East African Dean of the Faculty of Law. The original curriculum for the Faculty was primarily adopted from UK traditions and it was heavily positivist in its jurisprudential orientation. By the latter, I mean that the primary focus was on learning the legal rules that had been largely inherited from the common law throughout East Africa, together with a number of judicial interpretations of those rules, again largely made in the UK. The Dar es Salaam Law Faculty benefitted from attracting some outstanding young UK academics among its founding staff, including William Twining, Patrick McAuslan and James Read. Three years later, in 1964, they were joined by Sol Picciotto, also from the UK, and G.F.A. Sawyerr, a young Ghanaian.⁵ All these academics recognized that neither a primarily British curriculum nor a positivist orientation was appropriate to the conditions of East Africa at the time or the likely careers of the Faculty's graduates. It made little sense to give a great deal of emphasis to some nuance of tort or company law developed in response to the conditions in the UK but having little relevance to the conditions in East Africa (albeit part of East African law, which generally inherited all the common law of the

areas. To my mind, Okoth-Ogendo had the better of the intellectual argument, but it seemed clear to me that the President enjoyed the exchange and even took some pride in having students present him with arguments that he was challenged to refute.

⁵ Later in his career, Sawyerr became Vice-Chancellor of the University of Ghana.

UK).⁶ But the Faculty struggled and would for years to come, with what changes to make in the substance and orientation of the traditional curriculum. Among the difficulties, of course, were how to create teaching materials relevant to East African conditions.

When I arrived in 1967, the faculty had become more diverse than it had originally been, both racially and by nationality. Quite a few East Africans had been appointed. Most were in their first or second year of teaching. They included, in addition to Ghai, D.M.K. Bishota (Tanzanian), Josephat Kanywanyi (Tanzanian), Luto Kato (Tanzanian), Abraham Kiapi (Ugandan) and Lal Patel (Kenyan). In the following academic year two other East Africans joined the staff – Firoz Kassam (Tanzanian) and H.R. Nsekela (Tanzanian). A recent graduate, O.K. Mutungi (Kenyan, later to become Dean of the Faculty of Law at the University of Nairobi) was a research assistant/teaching assistant. Another African from elsewhere in Africa, Peter Mutharika of Malawi,⁷ had joined the faculty, as had Rudy James, a Guyanan then married to a Nigerian.

There were still a substantial number of UK residents on the staff. The founding giants had mostly returned to the UK, where they went on to notable careers, but they had been replaced by experienced UK academics, Ian Brownlie and A.W. Bradley, and by beginning UK academics, Phil Thomas and Andrew Lyall. And beginning two years before I came, Americans and Canadians began to join the staff in substantial numbers, all on one or two year contracts and most or all financed by external funds. Preceding my arrival there had been a few Americans on the faculty. Charles Quick and Gilbert Verbit each taught for about one year, leaving before I arrived. Ian Macneil, a distinguished American academic, though Scottish by birth, was just completing a two year tour as I arrived. Jack Hiller, a tax law expert, arrived one year before me and remained for another year. In the two years that I was on the faculty other North Americans who joined the staff, in addition to me, were Robert Seidman, Gilbert Boehringer, Steven Mann, Brian Slattery (Canadian) and five (3 American, 2 Canadian) Peace Corps Volunteers. The latter⁸ were recent law school graduates who were appointed as teaching assistants, legal writing instructors and research associates. We were joined by the first staff member from a communist country, Professor Gyula Eörsi, from Hungary. Eörsi had not received a traditional common law

⁶ Ghai, among others, has written about this. See GHAI, Y.P., “Legal Radicalism, Professionalism, and Social Action: Reflections on Teaching Law in Dar es Salaam,” in SHIVJI, Issa G. (ed.). *Limits of Legal Radicalism*, op. cit., pp. 26–35.

⁷ Peter Mutharika was recently elected the 5th President of the Republic of Malawi.

⁸ Americans: William Black, Kevin Carey, Stephen Huber. Canadians: Don Barker and Robert Martin.

education, but he could provide direct experience with legal traditions from socialist countries, a topic of increasing interest because of political developments in Tanzania.

One consequence of all these staff additions was a very large faculty. Teaching loads were light. I was assigned to teach only the first year Contracts course. A large proportion of the faculty was young and had little teaching experience (including me), and this relatively light teaching load enabled us to give more time to classroom preparation, marking essays, and the like. I believe this extra time was productive in terms of the quality of the education received by the students. Good teaching was emphasized and valued in the culture of the Faculty at that time and virtually all members of the Faculty put real effort into their teaching. The light teaching loads also enabled the faculty to spend a good deal of time both developing teaching materials with an East African orientation and to write scholarly articles. The latter in particular helped the Faculty develop an international reputation. DSM was often described as the “top” law faculty in independent, Sub-Saharan Africa during this period. And the faculty started and edited its own scholarly publication, the *Eastern Africa Law Review*.

V. Working Conditions at the Faculty

Working conditions at the Faculty of Law were good but quite different from what might be expected today. It was before the day of computers and cell phones, of course. When we prepared teaching materials for use in class, in 1967 they needed to be typed on stencil and cyclostyled. Approximately one year into my period at DSM the faculty obtained a primitive copier, which helped speed the production of teaching materials. Phone service was also limited. The faculty maintained a few landlines for calls into the city, but they did not always work well. It was common to drive into town just to deliver a message, or alternatively to do business by post. Certainly, the latter was my pattern with family and professional contacts in America. My one attempt (in 2 years) at an international phone call (which went by overseas cable in those days) proved impossible because of interference on the line.

A word should be said about how so many Americans were on the faculty during this period. The United States government took a great interest in the newly independent African states in the 1960s, because of the “cold war” between the capitalist and socialist world. This led to a considerable amount of development aid, some of it from the government and other from private (but very wealthy) foundations. The Ford Foundation was particularly active and took a special interest in legal developments in independent Africa, especially in the development of legal education institutions. Ford endowed a

foundation, originally called SAILER,⁹ formed by a number of American legal academics and others interested in legal education in Sub-Saharan Africa. SAILER was an acronym for “Staffing African Institutions of Legal Education and Research”. In the mid-1960s SAILER was very active in recruiting American staff members, most with some teaching experience, wanting to teach in Anglophonic African law schools. SAILOR would supplement (called “topping up”) local salaries to American standards and provide travel expenses for families, making the positions financially attractive to many American legal educators. A wide range of African law schools accepted expatriate American staff recruited and financed by SAILER.¹⁰ I applied for my position through SAILER and reported to them throughout my 21 months at the Faculty of Law.¹¹

The Ford Foundation programme stood for more than providing staff to law schools. The Ford Foundation was very interested in what was known at the time as “law and development”. This phrase has meant different things at different times over the past 50 years. In the 1960s it reflected a belief that law could be a valuable tool in an economic development programme that emphasized government control over economic direction.¹² Most importantly, economic development strategies then under discussion commonly sought to change important behaviours by citizens (e.g. which crops to plant). Law was seen as a potentially important tool in inducing behaviour change, by sanctioning undesirable and rewarding desirable behaviour. There was much less emphasis than today on law as a check on state power, whether to protect

⁹ Later, the name was changed to the International Legal Centre.

¹⁰ For a full accounting of the formation and activities of SAILER, see BAINBRIDGE, J.S., *The Study and Teaching of Law in Africa*, Hackensack, NJ: Fred B. Rothman & Co., 1972. In Appendix B (pp. 178–79), Bainbridge lists the number of SAILER funded faculty sent to each African law school from 1962–72. Dar es Salaam had 9 SAILER supported faculty during this period, the third highest number (after Addis Ababa and Ghana). SAILOR did not recruit for law schools located in southern Africa countries then still under colonial or white rule, number for law schools located north of the Sahara.

¹¹ In my particular case, SAILER was able to persuade the US State Department to fund a position at the Faculty of Law in Dar es Salaam, through their Fulbright teaching exchange programme. SAILER arranged for me to get the Fulbright position. I did not compete or interview for it. All my interactions were with SAILER. In the end I was paid by the US State Department, but I did not report to them. I reported directly to the dean of the Faculty of Law at UDSM, who was my boss. I also sent periodic reports on my activities to SAILER, but they did not instruct me what to do.

¹² In the 1990s, after the collapse of the Soviet Union, “law and development” often came to refer to provision of the legal infrastructure needed to facilitate a laissez faire market economy (private ownership of the means of production, enforcement of contracts, etc.). That definitely was not the connotation of the phrase in the 1960s.

individual rights or deter corruption or other official malfeasance.¹³ Government was generally seen as well motivated and law as one tool with which to achieve desirable social change, which we called “development”.¹⁴ And because the law and development perspective was focused not just on what law was or had been but on what difference law had made, or could make, in the lives of people and institutions, there was a natural tendency to draw on the social sciences, particularly economics, sociology and psychology, for information that could help learn the effects of legal rules and predict the effects of potential new rules. Law and development as conceived in the 1960s was sometimes described as taking a sociological approach to law. Today, at my home law school at the University of Wisconsin, it would be described as emphasizing the “law in action”.

SAILER had a second objective peculiar to its African mission, which was to expose the new African law schools to American approaches to legal education. In its approaches to legal education, America has deviated from the UK, even though from its independence America, like the former British colonies in Africa, had adopted the common law as the basis for its non-statutory legal system. Most importantly as it pertains to my experiences in Dar es Salaam, the primary materials that students study in America are the raw materials of legal analysis in a common law system - judicial opinions, statutes and administrative rules - rather than secondary texts interpreting those basic materials. The goal is to train students to formulate new and innovative arguments about what law is or should be, rather than just repeating what some scholar has written. SAILER was deeply committed to the idea that this American case method approach was vastly superior to the traditional English approach.¹⁵ When I arrived in Dar es Salaam, at age 27, I

¹³ For a discussion of how ideas about the essential role of law have changed over time, see WHITFORD, W.C., “Changing Ambitions for Law in East Africa,” Volume 25 *Wisconsin International Law Journal*, 2007, p. 261.

¹⁴ For further explication of these ideas about the role of law in economic development, see TRUBEK, D., “Toward a Social Theory of Law: An Essay on the Study of Law and Development,” Volume 82 *Yale Law Journal*, 1972, p. 1.

¹⁵ There was a methodological difference between the American and English teaching traditions as well. In the English tradition teachers mostly lectured in the classroom, but then assigned students essays, which were marked, designed to illustrate a student’s understanding of the assigned materials and the lectures. In the American tradition, there has been little use of essays. In what is called the “socratic” method, in the classroom teachers ask students (selected randomly, not just those who volunteer) questions about the assigned materials and students are expected to respond in front of the class. The teacher then often engages the student in a conversation about his/her answer. Evaluation is based exclusively, or largely, on the final exam. Many Americans, including me, attempted to use the socratic approach in Africa, but quickly modified it in the face of student resistance to responding before the entire class to questions to which they could

was deeply committed to this message. I lacked appropriate self-doubt about the universal wisdom of ideas that had been formulated solely on the basis of my experiences in America. It is one of many moments in a long life, about which I now express remorse.¹⁶

In this essay about what DSM was like during my time there, I have diverged into an account of some American institutions responsible for placing a number of expatriate staff at the Faculty. I have done so because in the events which I am about to describe, the Americans played an important role and our behaviour was consistent with the overall objectives of the Ford Foundation and SAILER in placing most of us there. I mentioned above that among the faculty there was general disquiet with the inherited curriculum and this had been true from the very beginning of the law school. Discussions about how to change the curriculum long preceded my arrival. These discussions became more intense in the year preceding my arrival; they were justified specially as an effort to respond to demands that the University become more relevant to the Tanzanian government's programmes emanating from the Arusha Declaration.¹⁷ As a consequence, a decision had been taken to add a required first year course in the law curriculum on the Social and Economic Problems of East Africa. There were many more meetings during my time at the Faculty of Law, 1967-69, looking towards creating more dramatic curriculum changes. Finally a new curriculum for all three years was approved by the Faculty Board in February 1969. It needed approval by the University Senate before implementation, but the expectation after the Faculty Board approval was that it would be put in place the next academic year.

VI. The Reaction to the New Curriculum

The proposed new curriculum reflected an effort to make the study of law more relevant to legal problems that East African law or lawyers might encounter than did the inherited English curriculum. It included courses on law and economic development in developing countries, cooperatives, public

not prepare a response in advance (because they did not know what the question would be). Most Americans did attempt to have some discussion in their classes, and not just lecture, but relied mostly or entirely on volunteers and often based on questions distributed in advance. In Africa, Americans also assigned and marked essays, as was expected of all teachers.

¹⁶ Though I still believe that the American case method approach to legal education has great merit. Students should be encouraged to craft innovative arguments based on the raw materials of law and provided the opportunity to practice doing so during their legal education.

¹⁷ Picciotto writes about the many meetings that took place across the University in the aftermath of sending home the Tanzanian students in 1966. Picciotto, *op. cit.*

enterprises, legal aspects of international trade and investment and (very controversially) military law. The new curriculum included a requirement, for third year students, of a research paper. Though the paper was not required to involve field research, the topic needed to be approved by faculty and it was reasonable to assume that students would be encouraged to conduct a study about how law was affecting people or institutions in fact – the “law in action”. Many of the course syllabi took what was later described as the “sociological” approach to law.¹⁸ The new first year course, Social and Economic Problems of East Africa, already included a large amount of social science materials and it was expected that other courses would move in that direction as well.

The new curriculum was never implemented. Before the University Senate could consider it, student protests broke out centred on the new curriculum and more generally on the excessive influence of Americans on the law faculty. The protesting students included students throughout the University, under the umbrella of the African Revolutionary Front, but they were led particularly by second year law students.¹⁹ The students complained that they had not been adequately consulted during the many meetings preceding the adopting of the new curriculum by the Faculty Board. This charge was only partly true at best, as there were always student representatives on the relevant committees, who had been invited to report to their fellow students and return with any suggestions they would like. But it is probably true that most students did not focus on what had been discussed until it seemed ripe for adoption. More importantly, the students complained bitterly about the excessive influence of Americans on the law faculty and particularly on the decisions made in formulating the new curriculum. Some of my American colleagues (though not me, to my relief) were identified as possible or probable spies. These charges are, to the best of my knowledge, untrue and no specific evidence of spying by these individuals have ever been produced. The students pointed to the possibility that Americans could use contact with students, and the research papers, to learn things about what is happening on the ground (e.g. in the military) and pass this information on to American spy agencies. This concern was understandable, as it had been revealed shortly before my arrival in Tanzania in 1967 that for years the CIA had recruited American student leaders and some academics to report on the personalities

¹⁸ MAHALU, C.R., “Three Decades of Law in Context Approach,” in SHIVJI, Issa G. (ed.). *Limits of Legal Radicalism*, op. cit., pp. 83–94.

¹⁹ See PETER, Chris Maina & Mvungi, Sengondo E.A., “The State and the Student Struggles,” op. cit., pp. 179–181, for a discussion of these student demonstrations.

of future leaders in developing countries, including African countries.²⁰ The exposure of the practice had reportedly greatly curtailed the practice and as far as I know none of the Americans in Dar es Salaam had anything other than aversion to the activities of the CIA during this period. But in the eyes of others a veil of suspicion fell on all Americans in academic pursuits during this period. I understood and still understand that.

After the student protests, the Faculty Board appointed a fact finding committee to meet with the student leaders and evaluate their concerns. The fact finding was constituted by one expatriate, not an American, and four East African members of staff. The committee reported back that the primary concerns were the presence of too many Americans on staff as well as a strong dislike for the American method of teaching. The fact finding committee concluded:

Very little of the (proposed) curriculum would have been objected to if the staffing of the Faculty was different. There was, however, some fear that the new curriculum was less ‘professional’ than the old one, and so might involve problems of admission, especially for Kenya graduates.

The Faculty Board decided to withdraw the proposed new curriculum, for further study and deliberation, and in the end it was never adopted. After a few years, after I had left the faculty, a totally new curriculum reform effort was initiated and adopted. While this new curriculum also moved away from the inherited UK curriculum, it was informed much more by theory, particularly Marxist theory, than by the sociological orientation that informed the 1969 proposed curriculum.²¹

VII. Conclusion

I left Dar es Salaam in April 1969, shortly after the incidents just described. I was disappointed that the proposed curriculum, on which I had worked hard, had not been adopted, but my overall attitude about my nearly two-year experience was very positive. I had made many friends, several of whom remain very good friends today, and I had acquired a love for East Africa, which I have continued to visit throughout my life, including a one-year teaching assignment at the University of Nairobi in 1975–76 and a 6-week teaching assignment at Makerere University in 1999. As would be said by

²⁰ See DE VRIES, T., “The 1967 Central Intelligence Agency Scandal: Catalyst in a Transforming Relationship between State and People,” Volume 98 *Journal of American History*, 2012, pp. 1075–92 for an account of these revelations and their effects, written by a non-American with a historical perspective.

²¹ See MAHALU, C.R., “Three Decades of Law in Context Approach,” *op. cit.*, pp. 87–90.

nearly all American academics who worked in Sub-Saharan Africa during this period, I learned a great deal about myself. I had not been outside North America before I arrived in Dar es Salaam in 1967 and I learned that my views and impressions about the world had been largely shaped by that limited background. The experience in Dar es Salaam has been transformative for me, shaping my current views of both my own country and the rest of the world.

I also learned a great deal about the role of an expatriate on a law faculty in another country. When I returned to the law faculty in Nairobi in 1975–76, I played a much more passive role in the formulation of policy. While I was a member of the Faculty Board, for the most part I did not express opinions forcefully, though I did make observations, particularly when asked. It would have been much more difficult to take this relatively passive role at Dar es Salaam in 1967–69, however. In Nairobi, by 1975 the majority of the faculty was already East African. This was not true in Dar es Salaam and particularly it was not true of senior faculty. To have not taken a position advocating for change at that time would have meant acceptance of the status quo, at least until there were enough experienced East African members of staff to make the decisions about the curriculum. I still think that I did the right thing in advocating curriculum change while in Dar es Salaam, though in the end fundamental change of the curriculum did not happen until East Africans were in full control of the Faculty Board.

ZANZIBAR LEGAL SERVICES CENTRE (ZLSC)
House No. 37 Migombani (Opposite Migoz Supermarket)
P.O Box 3360 Zanzibar, Tanzania
Tel.: +255 24 2233784 Fax: +255 24 2234495
E-Mail: info@zlsc.or.tz
Website: www.zlsc.or.tz

Sub-Office: Chake Chake, Pemba
P.O. Box 18 Chake Chake, Pemba
Tel.: +255 24 2452936 Fax: +255 24 2452916

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