TANGANYIKA: THE DEVELOPMENT OF ITS LAWS AND CONSTITUTION. By J. S. R. Cole, Q.C. and W. N. Denison, B.C.L., LL.B. [London: Stevens. 1964. XI + 339 pp. £3. 10s. 0d.]

In the Preface to this, the twelfth volume in the British Commonwealth series, the authors state that the purpose of their book is to describe in a general way the constitutional structure of Tanganyika and to give some account of the various laws which she has adopted for the proper regulation of her internal affairs.

The first part of the book deals with the constitutional structure. The proposals for a republic made by the government of Tanganyika and published in a White Paper in June 1962 were, according to the Prime Minister,

> intended to provide an entirely new Constitutional structure. . . We have been particularly concerned to ensure that the new Constitution will be of such a kind which can be easily understood by our people against the background of their political experience and traditional way of thinking about Government, (quoted at p. 25)

The aim of the architects of the Republic Constitution, to quote from the White Paper, was

> to devise a new Constitutional form, more appropriate for an independent African state and more capable of inspiring a sense of loyalty in the people of Tanganyika, (quoted at p. viii).

The authors point out that "a number of constitutional and legal features which are unique in the Commonwealth" (p. v) have been introduced in Tanganyika. It is important to notice the quite exceptional position of the President of the Republic who has "far-reaching and virtually unfettered powers in almost all fields of government." (p. vi) The first President of the Republic [1] is also the head of the Tanganyika African National Union (TANU), the political organisation which completely controls the National Assembly. The TANU leadership is in favour of making Tanganyika a one-party state.[2] The African National Congress, the only opposition party, has been declared unlawful and its former President sentenced to three years' imprisonment for managing an unlawful society. The whole machinery of the provincial administration has been handed over to TANU nominees.

When dealing with the various laws which Tanganyika has *adopted,* the authors had to grapple with certain difficulties. They say that the book is directed not so much towards the professional as towards the general reader. But in the treatment of some branches of law, they seem to assume that the general reader is familiar not only with the English law on the subject, but also with Indian law. In dealing with the law of contract, they indicate the differences in substance between the applied Indian Contract Act and the Law of Contract Ordinance, 1961, which replaced the Indian statute and call attention to the fact that a short summary of the Indian Act was given in the Commonwealth series by Professor Gledhill in *The Republic of India.* Even one who has read Professor Gledhill's summary is not much helped in understanding the law when the authors write:

> (g.) Section 232 of the Indian Act has been omitted, and the rights of the parties to a contract with an agent for an undisclosed principal are left to be as defined in section 231.[3]

1. The Republic has been recently renamed the United Republic of Tanzania — to indicate the union of Tanganyika and Zanzibar effected last April.

2. On January 28, 1964, the President announced the constitution of a thirteen-member commission to consider constitutional changes necessary to establish a democratic one-party state in Tanganyika.

3. In his summary, Professor Gledhill does not make specific references to the various sections of the Indian Act.

When modifications made in the English law as 'received' in a Commonwealth country may be pointed out on the assumption[4] that the general reader is not unfamiliar with the general principles of English law, it would be too much to except of him to be conversant with the various statutes passed in some country or other of the Commonwealth. If he knew them all, he would not be reading the volumes in this series. Most readers may be satisfied, to some extent at least, if more attention is paid to indigenous laws, while indicating the modifications made in English law when 'received' in the country concerned. It will not be advisable to deal with all the rules of English law which may have been adopted in the various countries of the Commonwealth in volume after volume of the series. It is the expert who may be interested in a detailed study of the modifications made in English law. The general reader will be content with getting an overall picture of the system of laws in the particular country. He may also be interested in knowing what the rules of indigenous law are in relation to a particular subject and whether these have been modified in their application by the introduction of English law. One would assume that a study of the indigenous laws and the modifications made in them is more important in understanding the legal system of a Commonwealth country than the perusal of a list of modifications made in English law. If in any branch of law there were no provisions in the indigenous system, modifications effected in English law when made applicable to a particular country may be relevant and can be stated with benefit. It is necessary to bear in mind that the study of African law should be Africa-oriented rather than Anglo-centric. English law, — to be more precise, the common law system — like the Queen of England, may serve as a symbol of unity in the Commonwealth, but should not claim for itself all the attention of the reader of this series. In most of the independent countries of the Commonwealth indigenous laws and institutions exist (and, at times prevail) not by sufferance, but by right. As long ago as 1789, Gordon, Governor of Fiji, wrote:

> It is of the utmost importance to seize, if possible, the spirit in which native institutions have been framed, and endeavour so to work them as to develop to the utmost possible extent the latent capacities of the people for the management of their own affairs...[5]

Even when the authors mention indigenous law, as for instance, in the chapter on Domestic Relations, it is more in connection with an ordinance than in its own right. Section 35 of the Marriage Ordinance, (cap. 109) it is pointed out, declares that any person married under the Ordinance shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law. (p. 203) And the authors comment that this would

> rule out any possibility of a customary law marriage supervening on a marriage under the Ordinance even if between the same spouses. This is a wholesome provision, if only because it obviates the complications which might easily occur if, the law being in a contrary sense, one only of the two marriages were to be in the future dissolved, (pp. 203-204)

It is also mentioned that "marriages under customary law which in this context includes Islamic law (including claims arising out of other marriages, but in respect of bride-wealth or adultery, founded on customary law)" are within the exclusive jurisdiction of the local courts (p. 204). Under section 25 of the Marriage Ordinance, a husband may claim damages from any person on the ground of adultery with his wife. "In the case of an African *(sic)* marriage" (p. 207) such damages are computed in accordance with customary law. When petitioner and respondent are of different tribes the proper (customary) law is that of the tribe to which the petitioner belongs, (p. 207) When speaking of divorce in customary law, what is said is about the exclusive jurisdiction of the local courts to deal with such causes rather than about the substantive customary law on the subject. One might like to know about bride-wealth, the damages a husband may claim under customary law from the seducer of his wife and the grounds for divorce in customary law. All that the authors say about the last topic is:

4. This may not always prove a well-founded assumption.

5. Quoted in T.O. Elias, *British Colonial Law,* (London, 1962) at p. 81.

> Where the customary law is Islamic, the Shafi'i rules regarding divorce are generally followed by *sheria* and, to a lesser degree, by "bush" courts. (p. 210)

and refers the reader, in a footnote, to Professor Anderson's *Islamic Law in Africa.*

In Tanganyika where, as in many other countries, judicial notice cannot be taken of the rules of customary law, even by a judge with long African experience (p. 137) the new section (53A, quoted in full by the authors at pp. 137-38) in the Local Government Ordinance (Amendment) Act, 1962 (No. 4 of 1962) providing for the declaration and modification of customary should be welcome. Pieces of information such as this would be of great interest to the general reader.

Much of what has been said above concerns what, in the reviewer's opinion, a writer on African law should emphasise in his work. It is true that judicial decisions and statutes based on English law order the material affairs of the Africans of the Republic to a large extent, but in their daily lives, their indigenous laws are no less important, and a book on their laws cannot afford to ignore these indigenous laws, nor can it afford to dismiss them with a casual mention.

The statutory provisions concerning most branches of law are, however, set out well, and in some detail, in the book. See, for instance, the chapter on Land, with the section headings, land legislation, land registration and other legislation.

The authors undoubtedly have done a good job of what they considered to be their task in writing this volume of the Commonwealth series. The reviewer's views of what they should have done are not to be interpreted to mean any criticism of what they have done. He is greatly appreciative of the useful book they have produced in a field where there is a deplorable scarcity of reading materials.

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