Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte
Journal of the Max Planck Institute for European Legal History

Rechts Rg geschichte

Rechtsgeschichte
Legal History

www.rg.mpg.de

http://www.rg-rechtsgeschichte.de/rg28
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 28 (2020)
http://dx.doi.org/10.12946/rg28/351-353

Rg 28 2020 351 – 353

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A New Epoch for African Courts

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rose Eigenständigkeit« besaß wie Schmidhäuser), Manfred Maiwald, Michael Köhler, vor allem aber Rudolf Sieverts. Stark im Hintergrund bleibt demgegenüber das allgemeine Zivilrecht: Im Grunde werden hier nur die Beiträge von Norbert Reich zur Entwicklung des Verbraucherrechts und von Eduard Bötticher zu Gestaltungsklagerechten gewürdigt. Die Pflege internationaler Fächer kommt als Schwerpunkt der Rechtswissenschaft in Hamburg gut heraus, ebenso Chancen und Probleme der Existenz zweier getrennter juristischer Fachbereiche einer Universität über fast ein Vierteljahrhundert hinweg sowie das vor allem mit dem zweiten Fachbereich verbundene Bemühen um Interdisziplinarität, das dessen wohl wichtigstes »Erbstück« (Repgen) für die heute bestehende Fakultät darstellt. Wesentliche Elemente einer Fakultätsgeschichte sind somit in dem vorliegenden Band zusammengetragen, doch bleibt noch Vieles zu tun. Das dürfte auch den Herausgebern bewusst sein, die offenbar zunächst einmal nach dem Motto verfahren mussten: *multa, non multum*.

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A New Epoch for African Courts*

Amongst other various descriptions, one may deem law and its courts instruments of social change, but in the context and sphere of colonial polities they were also agencies of colonial control. Recent writings on African legal and judicial institutions have adjusted perspectives from merely documenting the establishment of legal institutions to exploring the role of law and the courts in both judicial and colonial administration. In a similar vein, Ellen Feingold presents the High Court of Tanganyika as a feasible window through which one can perceive the impact of the Colonial Legal Service on the administration of justice in a British colony in Africa. In this book, while she regards the dissemination of the common law system to the colonies as purposive, she also considers it to be an organ of imperial ideology and an ideological justification for imperialism. This viewpoint corresponds with the studies of Martin Chanock, Kristin Mann and Bonny Ibhawoh, which characterized the common law as a mechanism that facilitated the influence of British imperialism in the social political and economic structures in the British colonies.

The introduction sets the stage and acquaints the reader with the notion that the courts created for the policy of indirect rule also served as an administrative agency of colonialism. The central questions this book poses are what the role of the colonial courts and their judges in the British colonial rule was, why the colonial courts survived the end of the British rule, and how post-independence government modified them into national institutions.

To approach these issues, the author traces the history of a single colonial high court; the High Court of Tanganyika, from its establishment in 1920 to the end of the institutional process of decolonization in 1971. It examines this court alongside the establishment and growth of the colonial state and indirect rule system in relation to the political changes that preceded and followed Tanganyika's national independence in 1961. Feingold proposes to use this court as a lens through which the formation of colonial state structures and the process of decolonization can be examined.

Amongst other good features, what is quite notable in this book is the style of writing which she brings into play; the history of this court and its actors are unfolded, explored, and presented unambiguously. It is a comprehensible and engaging

* Ellen Feingold, Colonial Justice and Decolonization in the High Court of Tanzania, 1920–1971, London: Palgrave Macmillan 2018, 278 p., ISBN 978-3-319-69690-4

book, whose chapters are formulated chronologically, which is plausible as the author aims to take the reader through a transitional and developmental period. The book is written in two parts. In the first part (chapters 2 to 4), Feingold examines the High Court of Tanganyika during British rule from 1920 to 1958. In part two (chapters 5 to 7), she traverses and probes into the process of the decolonization of this high court between 1959 and 1971.

As chapter 2 presents the practical operation of the Colonial Legal Service in its administration of personnel, the efforts of the Colonial Office in establishing a judiciary for the colonial empire which both affected the judges and the judged are brought to light. In the third chapter the reader is familiarized with the High Court of Tanganyika between 1920, when British rule commenced, and the start of World War II. Here, Feingold further argues that there was a marginalization of the colonial judges and magistrates in the domain of colonial justice by the British colonial administration.

Chapter 4 portrays structural changes to the judiciary and an attempt of the post-colonial judges to re-frame the legacy of British colonial rule in the territory, and chapter 5 shows how these changes, which lead to the unification of the dual court systems, rendered the High Court available to Africans, who had been denied access during British rule. They also enhanced the status of the courts and diffused judicial powers from administration officers. Chapter 6 argues that, paradoxically, the colonial judges who remained on the bench after the end of British rule were crucial actors in the process of decolonization, because their continued presence allowed for time to train African citizens to become judges and thus enabled the government to maintain the standards set out in the constitution for appointments to the bench.

In chapter 7, the reader is presented with an outlook on the salient role which these foreign judges played in the decolonization of the bench. Feingold acknowledges that, even as features of the court's British heritage were done away with, between 1964 and 1970 these colonial or foreign commonwealth judges provided a bridge between the pre-independence period and the time when the bench became dominated by Tanzanian judges.

Colonial and post-colonial racial categorizations inside and outside the courtroom are also a central theme in this book. By examining court personnel, the book accentuates the importance of analysing the roles of individuals in the transition of state institutions. It shows how the process of institutional decolonization saw judges operate as independent actors and not agents of the empire. It is noticeable that this is, paradoxically, similar to the attitude of colonial officers in the administration of the law; in the bid to use law to define their relationships with one another, the colonial authorities reinforced personal interests and convictions, as Martin Weiner's study of interracial homicide trials in the British Empire shows (5).[1] The common law system, though upheld as a beacon of British liberalism and a justification for British expansion, was a tool which was used to underpin racial inequality. Feingold thus asserts that the decolonization of the high court involved extricating it from the colonial state structures and imperial systems that were built on racial inequality and administrative dominance, while enhancing the independence of the judiciary and the application of the British judicial principles and details.

Rather than using a traditional legal approach to the history of the High Court of Tanganyika to provide a crucial perspective of the work of the court, Feingold focuses on court structures, relationships and personnel, and the political and social forces that shape them. She also employs a limited number of judiciously selected cases and key changes to the law to trace the court's development. Themes of judicial independence, separation of power and the rule of law guide the book's analysis of the court and its role in the colonial and post-colonial state over a period of 50 years.

Since the book is outlined in a chronological fashion, Feingold builds on two studies of the Tanganyika court. The first is that of H. F. Morris and J. S. Read, *Indirect Rule and the Search for Justice* (Oxford 1972), which examines the mechanics of indirect rule in this polity, as well as the development of the territory's laws and the colonial sys-

1 Martin J. Weiner, An Empire on Trial: Race, Murder, and Justice under British Rule, Cambridge 2009, 1.

tem's structure. The second is Jennifer Widner's *Building the Rule of Law: Francis Nyanli and the Road to Judicial independence in Africa* (New York 2001). This book presents an alternative perspective of the High Court in the search for justice under British rule and the set-up of judicial independence in the post-colonial state.

Central to Feingold's study are data derived from the use of oral sources which may be unusual but also unique and do not appear to have been used substantially by other researchers, in addition to public and private archives, state department files written by American diplomats and informants, traditional legal sources, case files, ordinances, the Tanzanian constitution, oral history interviews, and testimonies from colonial Asian and African judges who served on the bench in the 1960s. Feingold's methodology and sources enable a thorough inquiry into the multifaceted colonial encounter in the courts of law and of the subsequent disentanglement which aimed to refashion African juridical structures in a way which did not mirror that of the imperial state. ■

Leonard Wolckenhaar

Die knarrende Stimme des Korporatismus*

Der im April 2020 verstorbene und sogleich zum »soziale[n] Gewissen der Republik« erklärte Norbert Blüm »konnte«, so Rainer Hank im Nachruf der FAZ, »so täuschend echt wie kaum ein anderer die knarrende Stimme von Pater von Nell-Breuning nachmachen«. Bei ihm, »dem großen Jesuiten aus Frankfurt«, habe (nicht allein) Blüm seine sozialpolitischen Leitmotive vermittelt bekommen, darunter »Selbstverwaltung [...], Subsidiarität, Solidarität« sowie die Mahnung, »dass man das Soziale nicht den Sozialisten und Sozialdemokraten überlassen sollte«.

Die Bedeutung des lange Jahrzehnte an der Ordenshochschule St. Georgen tätigen Oswald von Nell-Breuning (im Folgenden: NB) erschöpft sich jedoch nicht in seiner damit wieder in Erinnerung gerufenen Rolle als parteiübergreifender Pate des bundesrepublikanischen Sozialstaats. In seinem Buch nennt Jonas Hagedorn ihn »Wegbegleiter und Wegbereiter« gleich »zweier deutscher Republiken« (19) und beschränkt sich auf die Jahre 1924 bis 1933. Denn weitreichende Wirksamkeit entfaltete NB bereits in der Weimarer Republik. Er lebte ein Jahrhundertleben (1890–1991); (wohl nur) darin Carl Schmitt (1888–1985) nicht unähnlich, den Hagedorn seinem Protagonisten unter dem Typus des genuin katholischen öffentlichen Intellektuellen gleich eingangs beigesellt (22).

Dieser, kaum weiterverfolgte, Bezug auf den notorischen Schmitt ist es indes auch gar nicht in erster Linie, der die nominell politikwissenschaftliche Dissertationsschrift auch für Rechtshistoriker beachtenswert macht. Ersichtlich wird an Hagedorns Schilderungen, wie zentral die Kategorie des Rechtlichen im Denken NBs war und wie stark dessen sozialpolitische Konzeptionen sich am Rechtsbegriff ausrichteten. Darin äußerte sich offenbar nicht nur tiefe Verwurzelung in einem (im Buch allerdings wenig umrissenen) Naturrechtsverständnis, sondern auch ein ausgeprägtes Sensorium für das positive Recht – Reflexionen über beider Verhältnis inbegriffen (etwa 214, 291). Bereits an NBs Doktorarbeit wurden »rechtswissenschaftliche Gestaltung und Methode« und »geschickt gehandhabtes juristisches Rüstzeug« gewürdigt (270), später veröffentlichte er auch in rechtswissenschaftlichen Periodika (279) und erar-

* Jonas Hagedorn, Oswald von Nell-Breuning SJ. Aufbrüche der katholischen Soziallehre in der Weimarer Republik, Paderborn: Verlag Ferdinand Schöningh 2018, 532 S., ISBN 978-3-506-78795-8