

FIFTY YEARS OF LEGAL EDUCATION IN TANZANIA

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CHAPTER V

IDEOLOGICAL INCLINATIONS IN POST-GRADUATE DISSERTATIONS: TRENDS IN FIVE DECADES AT THE FACULTY OF LAW

By

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1. INTRODUCTION

A number of authorities have explored issues relating to the relationship between supervisors and students in the course of supervision of dissertations at the undergraduate and graduate levels in institutions of higher learning generally. The exploration has covered diverse and topical issues ranging from transforming the quality of research supervision to the challenges encountered in interpreting the roles, responsibilities and limits in the supervisor-supervisee relationship.¹

A thorough review of the available literature on the subject under review reveals that there has been comparatively little, if not obscure, focus on the nature of the dissertation and the supervisor's ideological orientation in the

¹ See for example Quan-Baffour (1998) "*Critical Issues in Supervision of Post-Graduate Dissertations in Distant Education Environments*," Open Education - The Journal for Open and Distance Education and Educational Technology Volume 4, Number 1, 2008; Cullen S, (2009) "*Resource Guide to Dissertation Supervision on Taught Undergraduate and Postgraduate Programmes*," (www.heacademy.ac.uk/assets/hlst/documents/.../dissertation_supervision - accessed 24th July 2011), Wisker, G (2004) The Good Supervisor: Supervising Postgraduate and Undergraduate Research for Doctoral Thesis and Dissertations, Palgrave Macmillan, UK and Porter, S. (2002) Doing Postgraduate Research, Sage Publications, London

course of the supervision of postgraduate dissertations at the University of Dar-es-Salaam in general and the Faculty of Law in particular. Manderson has noted that the relationship between conducting research in law and supervision of the thesis or dissertation has not been an area of concern for many authors.² Although this observation was made with regard to the postgraduate research in law in the American system it is submitted that it also has a bearing on the postgraduate teaching at other Universities teaching law worldwide. This includes the Faculty of Law of the University of Dar-es-Salaam. It should be acknowledged, however, that the influence of the ideological outlook of some of the members of staff of the Faculty of Law at the University of Dar-es-Salaam has been discussed. A review of available literature reveals that the analysis has generally been in passing.³ There has not been a specific focus on the relationship between the ideological outlook of the supervisors and the approaches adopted by the supervisees in the course of writing postgraduate dissertations.

This article provides some insights in an attempt to fill this conspicuous gap and hopefully open up new frontiers of research. It provides a candid analysis of some of the factors that have influenced and shaped the teaching of law in general and the research that has been carried out by postgraduate students. The focus, except in isolated cases, has been on students who were either earmarked to join the Faculty of Law as academics or already in employment since its establishment fifty years ago, in particular. The article provides some insights obtained primarily from purposefully selected LL.M. and Ph.D. dissertations of the targeted alumni on diverse topics, in different time-frames. The information acquired from the dissertations has been supplemented by data obtained by way of interviews with members of staff at the Faculty.

2 See Manderson, D (1996) "Asking Better Questions: Approaching the Process of Thesis Supervision", in Volume 46, No. 3 Journal of Legal Education (September 1996)

3 See for example Mahalu, C.R (1986) *Three Decades of Law in Context Approach*, p. 87 in Shivji, I.G (Ed.) (1986) Limits of Legal Radicalism, Reflections of Teaching Law at the University of Dar-es-Salaam, Faculty of Law University of Dar-es-Salaam and Tenga, R.W (1986), *The Historical and Social Economic Approaches in Learning the Law: Dar-es-Salaam and Third World Perspectives in Jurisprudence* in Shivji, I.G (Ed.) *ibid.* p. 108

Some of these have the institutional memory of among other things, the conduct of research activities in general and writing of dissertations at the postgraduate level in particular, at this institution from inception at their finger-tips. Some of the members of staff interviewed included those whose dissertations have been sampled or who supervised the dissertations. The deliberations during the Staff Seminar on Postgraduate Supervision at London and Warwick Universities held on 26th August 2011 and some tête-à-tête thereafter at a luncheon with the speaker, provided more insights on this article.⁴ The underlying and recurring theme of this article is that during its fifty years of its existence, the supervision of dissertations at postgraduate level at the Faculty of Law has focused on a number of emerging paradigms. These have ranged from topical issues such as environmental law, the penal system and related rights and law and development related discourses and international law. Other areas which have been focused upon are on general issues on human rights, constitutionalism and constitutional development under one-party rule and after the multi-party era. Issues related to marginalized groups transcending gender and children's' rights have also been accorded special treatment, as rather distinct areas under the tag of human rights. Also, a lot of ink has been poured by the targeted postgraduate students at the Faculty reflecting a diversity of issues concerning the plight of refugees, labor relations and regional integration, among many others.

During the early period of the establishment of the Faculty of Law of the University of Dar-es-Salaam assumed a role of churning lawyers for the newly emerging independent States in the Eastern African region. At this stage, although the curriculum was basically tailored along the English common law, an attempt was made to impart legal knowledge to students in a manner that sought to adapt local conditions and the social, political and economic path charted out by the government. The underlying aim was to prepare African students (future legal practitioners in the region) to take over from colonial officers manning legal departments in the

⁴ The Seminar was organized by the Staff Seminars and Conferences Committee of the University of Dar-es-Salaam School of Law (Formerly Faculty of Law). The author of this article was the discussant of the lecture delivered by the Speaker, Prof. Abdul Hussein Paliwala who taught at the Faculty in the early '70's and whose approach in the context of the theme of this article is also discussed. Some of the members of staff he supervised also attended the lecture.

public sector. That is to say, to train them and impart the necessary tools to enable them to act as agents of change in developing a socialist path and the political planning process which was also tailored to tag along the socialist path. It should also be noted that during the time when Tanzania got independence, other countries in the region were also struggling to rid themselves of the colonial chains. The Tanganyika government was at the forefront in the liberation struggles of these countries and had to ponder a number of strategies in determining the path it should take during the cold war political phase.

It was therefore not a coincidence that the kinds of research conducted by the targeted postgraduate students, under the vigilant guidance of their supervisors, some of who influenced theoretical perceptions, reflected the existing environment that reflected the political struggles. This reality, coupled with the expatriate staff drawn from across the globe, from the United States, England, Australia, Ghana, Canada, Trinidad and East Germany, added an impetus to the dynamics of the conduct of the theoretical inclination in research at postgraduate level.

With time, during the different epochs of social, economic and cultural development leading to paradigm shifts in at both the local and international levels, the areas of research, including the theoretical foundations that such research were premised on writing dissertations, reflected these developments.

On the basis of the foregoing foundation, the focus of the university academia and postgraduate students in terms of articulating legal issues inevitably had to address the socio-economic and politic trends in the country and the region. It is submitted that this trend was tactfully adapted by both the teachers and students and was evident at inception of postgraduate research at the Faculty fifty years ago and that its bare bones have still persisted to date, albeit at a relatively milder form and for different reasons. With the change in the political and economic outlook, the research paradigms have also taken a fundamental change, the interests of supervisors have undergone a major transformation and supervision of research today has increasingly placed little emphasis on the dynamics of the socio-economic

relations inherent in the modes and relations of production. The analysis is preceded by an overview of postgraduate studies generally with an inclination on the factors that may have influenced the supervisory process and resultant ideologies, or lack of it, in postgraduate dissertations.

2. GENESIS OF POSTGRADUATE STUDIES: AN OVERVIEW

There is a wealth of literature that traces the history of university education generally and postgraduate research in particular dating back a number of years to China, Ancient Greece, Egypt and the Indian sub-continent. This history suggests that there had been similar trends in imparting research skills at the postgraduate level.⁵ However, in some jurisdictions there was, for quite some time, no fine distinction between the bachelors and postgraduate level qualifications. For example, in Germany, the education programs were mainly geared towards the Master's degree. With the passage of time, postgraduate education has undergone fundamental reforms as institutions of higher learning in different jurisdictions developed curriculum to cater for their peculiar circumstances and development priorities. Efforts have nevertheless since been made to get rid of such systems, in the whole of Europe with the emergence of the Bologna Process since 1999.⁶

Despite such diversities in development and reforms, the basic aims of most postgraduate studies in tertiary and higher learning institutions have basically remained constant over time. Generally the objective of studying at the postgraduate level is meant to provide one with qualifications over and above the qualification obtained at the first degree level. One of the main objectives is to inculcate a sense of independence to the postgraduate student, with a view to enabling one to contribute to the development of theory. Ideally this also implies enabling the candidate to conduct research independently, with basically no interference from the supervisor.⁷

5 See Lawi, Y.Q (2008), *The idea of 'University'* in Kimambo, I.N *et al*, (2008) *In Search of Relevance: A History of the University of Dar-es-Salaam*, Dar-es-Salaam University Press,

6 See <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/about> for more on the Bologna initiatives.

7 See generally, Cullen S, (2009) *op. cit* and Desmond Manderson, *op.cit*

Upon completion of postgraduate study generally, the candidate would be awarded a degree. The phrase "degree" has its origin in French (*degré*) and Latin (*d* - + *gradus*), essentially referring to moving from one level to another. The higher postgraduate qualifications would ordinarily lead to the award of a Masters or Doctorate Degree. The Masters Degree also traces its genesis to the Latin phrase "*magister*" or "magistrate." The word "doctor," also derives its origin from the Latin word "*docere*" meaning "teach." Other postgraduate non-degree qualifications such as postgraduate certificates and diplomas are lower than the degree. These are not within the scope of this article, but suffice to point out that they are often used as a stepping stone to a degree or as part of a specific career advancement. The main significance of the higher, postgraduate degrees (Master and Doctorate) at inception was that they licensed the holder to teach. As teachers, they are more likely to influence those they teach, after having been influenced, in one way or another, by their teachers themselves. The power of the teacher, including his or her influence on students, has been aptly summarized by Nyerere when he observed that: "...the assumption that teachers are not powerful is one of the biggest fallacies of our society...their power is not the power of a man with a gun, it is not a power which can be seen by a fool..."⁸ The power of the supervisor of postgraduate students, it is submitted is not very different. It is against this backdrop that the theme of this article has focused on select dissertations and thesis of candidates who were enrolled as teachers or earmarked to teach at the Faculty of Law and members of staff who supervised them.⁹

As noted above, literature that has focused on the role of the supervisor in influencing postgraduate research in law is difficult to come by. More specifically the likelihood of influence of the supervisor's ideological foundation on dissertations of candidates who have been earmarked to join the ranks of faculty as members of the teaching staff or already as members of staff has not been addressed. An overview of the genesis of the Faculty of Law is necessary to understand the foundation upon which theme of this article is based.

8 Nyerere, J.K. (1968) *The Power of Teachers*, in *Freedom and Socialism/Uhuru na Ujamaa: A Selection From Writings and Speeches 1965-1967*, Oxford University Press, Nairobi at pp. 227-228

9 The specific focus on these and the subsequent analysis, reasoning and conclusions drawn should not in any way whatsoever be construed as demeaning or undermining the supervisors' ability to supervise or the supervisees' intellect.

3. HISTORY OF THE FACULTY OF LAW: A RE-CAP

The Faculty of Law is the oldest law training institution in East Africa, having been established on Wednesday, 25th October 1961, two months before independence of Tanganyika. It was established to cater for the new emerging independent States of East Africa, comprising of Kenya, Uganda, Tanganyika and Zanzibar. By virtue of its establishing Instrument, the Faculty of Law was affiliated to the University of London awarding degrees of that University through external programs. In principle the Faculty of Law's curriculum, including its bearing on research, at inception, was premised along the law curriculum of the University of London.

Despite the Faculty being affiliated to the University of London upon inception, the focus of its curriculum was also designed to cater for local situations that were in line with the aspiration of the emerging new States of the region. From inception, therefore, the Faculty of Law was compelled to embark on applied research out of necessity. The research, primarily conducted by staff with occasional assistance from students initially, focused at providing guidance to the government in the codification of customary law, integration of court systems and matters of constitution making.

The first batch of students was admitted at the office of then main political party struggling for the independence of Tanganyika, the Tanganyika African National Union (TANU) building along Lumumba Street in Dar-es-Salaam.¹⁰ The Party was then typical socialist with the youth at that time pledging allegiance to its socialist aspirations. The offer by the Party for the Faculty to use its premises had some significance in the ideological outlook of the pioneering students which may not have connected well with the young dynamic expatriate members of staff. The pioneer staff included A.B Weston an Australian recruited from Canada who served as Dean, William Twinning from the United Kingdom recruited from the Sudan and Patrick McAulsan, also from the United Kingdom. Others were Sol Piccioto from the United Kingdom but trained in Chicago, Mr. Wick, an African American legal scholar from the United States of America, Cranford Platt a

¹⁰ The building is now popularly referred to as SUKITA Building

Canadian who was the Principal and Mr. Snaith the planning officer from the United Kingdom.

The Faculty of Law's curriculum was premised along the law curriculum of the University of London. The establishment of the Faculty at the eve of independence provided an opportunity for the creation, innovation and introduction into the syllabus local case materials, which were sensitive to the aspirations of new independent States of East Africa, despite its attachment to the University of London.

While struggling to attain independence, TANU was also tactfully aligning itself to deal with issues relating to cold war politics and provide assistance to countries in the regions with their liberation struggles, among other commitments. The would-be independence government had also to come to grips with promoting nationalism and social cohesion by devising an approach conducive to the environment in the East African region.

The environment under which the Faculty was established reflected the realism that the independence government in the making had to deal with. The Faculty therefore was influenced to develop a socialist legal education with the inherent contradictory developments. This entailed making every effort to meet the elements of socialist reform and ensuring that there was a determined attempt to move away from imperialist approaches.

As noted above, the expatriate staff that was brought in to kick-start the establishment of the Faculty of Law comprised of persons with various outlooks and trained in different jurisdictions with different ideological schools of thought. These factors, coupled with the fact that the first batch of students at the Faculty was groomed from a nationalist perspective, set the foundation that influenced the topical issues that were considered for postgraduate research at the Faculty. The research process was reflected in the dissertations, which were partly influenced by the government policy with its socialist's inclination, manipulated in part by developing trends at the international and local levels.

4. IDEOLOGICAL APPROACHES AND SUPERVISION

Having evolved from a predominately capitalists ideological grounding, most of the pioneering expatriate staff at the University of Dar-es-Salam were sceptical of the move to teach courses from a socialist perspective and the intensification of socialist norms into the teaching curriculum.¹¹ Although these observations have generally been confined to teaching at the undergraduate level across the University, it is submitted that the ripples also found their way into teaching law students in general and eventually into supervision of postgraduate research at the Faculty of Law, in particular. In fact some of the expatriate staff decided to leave partly as a result of ideological differences. Paliwala notes that most of the expatriate members of staff at that time stayed for shorter periods than they had anticipated. He points out that the staff encountered opposition from radical students who were against imperial approaches in explaining legal principles and the interpretation of law in a manner that did not seek to defend the interests of workers and peasants in the newly emerged State.¹² He notes further that Ph.D. research, ostensibly for expatriate staff, became “*an alienated lonely business*” and that it was a difficult job to tailor courses in line with the dominant ideological outlook at the time. He aptly sums of the feeling of most of the expatriate staff when he laments that the different ideological differences sometimes took personal overtones.¹³ Kanywanyi also seems to hold a similar view when he notes that the friction and ensuing exodus of expatriate staff at that time was mainly due to disagreements in the design and content of the teaching curriculum.¹⁴ Paradoxically, almost forty decades later, Paliwala admits that developments that took place at the Faculty of Law then affected and influenced developments in the UK and other jurisdictions as expatriate staff from the Faculty adopted a similar approach, taking the “excitement” with them there.¹⁵ However, this

11 See Luhanga, M.L. *et al*, (2003) (Ed), Higher Education Reform in Africa: The University of Dar-es-Salaam, Dar-es-Salaam University Press at p. 74)

12 Paliwala, A. H (1986), *Personal and Political Influence in Legal Education in 1971 and 1972*, in Shivji, I. G (Ed) *op cit*, p. 58

13 *Ibid.*, p. 59

14 Kanywanyi, J.L (1989), *The Struggles to Decolonize and Demystify University Education: Dar's 25 Years Experience Focused on the Faculty of Law (October 1961-1986)*, Eastern African Law Review, Vol. 16 1 (June 1989) at p. 46

15 Prof. Paliwala made this observation in the course of the lecture on the Staff Seminar on Post-

excitement is not reflected in most of the Ph.D. dissertations of members of staff of the Faculty that these expatriates supervised from the foreign lands.

During the early years of the establishment of the Faculty of Law, the curriculum focused on the development for students to be churned to the public sector. This focus was predominantly on undergraduate studies and not postgraduate studies.¹⁶ It was not until sometime between 1975 and 1976 that an attempt was made to focus on postgraduate studies in curriculum development with a view to addressing postgraduate research. At this time, the teaching of courses and supervision of postgraduate research was also structured with an aim of producing a society conscious lawyer.¹⁷ In fact the tracer studies that have been carried out by the Faculty have focused more at the undergraduate level, occasionally with an inconsequential trickle effect on the main content of postgraduate studies.¹⁸ It will be proper to add that there has been no specific focus on the postgraduate studies in general and the supervision component in particular, in the last tracer study.¹⁹

Restructuring in order to address postgraduate studies between 1975 and 1976 came along with the appointment of a member of staff who had a passion for radical Marxist ideology, as the Chair of the Graduate Studies Committee. It has been noted that the Chair's approach to teaching law was premised on a rigid Marxist approach with little legal component.²⁰ The appointment of the Chair to the Graduate Studies Committee may explain the observation that the Faculty started to have a socialist orientation in its approach to teaching law from the 1970's. Tenga notes that the appointment certainly had an effect on the kind of research that was being conducted by students as "*graduate students dissertations*

graduate Supervision on London and Warwick Universities referred to above.

16 See Mahalu, C.R *op.cit* at p. 87

17 *Ibid.*, Page 89

18 Mahalu suggests that the first tracer study in the late 1960's focused on undergraduates. Mahalu, *Ibid*, p. 86

19 See Mkude, D.J and A. G. M Ishumi (Ed.) (2004) Tracer Studies in a Quest for Academic Improvement: The Process and Results of a University-Wide Tracer Study Project Conducted in 2002-2003, Dar-es-Salaam University Press Ltd. The author of this article coordinated the Tracer Study process of the Faculty and wrote the Report of the Faculty which formed the first chapter in Mkude *et, al* (2004). He was also actively involved in the subsequent curriculum review exercise that considered the Study's findings in reviewing the Faculty's courses.

20 Mahalu, *op.cit*.

increasingly took the Marxist outlook²¹ The emphasis on the social economic and historical approach in guiding postgraduate students only provided a general guideline but the contents of the various legal subjects essentially remained a matter of individual lecturers to decide.²² Mahalu notes that some of the supervisors who were charged with supervising postgraduate students were so adamant in ensuring that their outlooks were always on the frontline and that they hardly tolerated any opposing view during debates.²³ A meticulous review of some of the postgraduate dissertations that were under the supervision of the pioneer Chairman of Graduate Studies Committee shows a great inclination of students to toe some particular line of ideology in the dissertations. This is not only evident from the titles of the dissertations, but the content and analysis.

One of the earliest dissertations that reflect this approach in the conduct of research in law is that which was supervised by the Chair and heavily influenced by his ideological viewpoint is titled "*The Rent Acts and the Housing Problems in Kenya.*" The LL.M. dissertation, written in 1974, traces the development of the legislation regulating rent in Kenya from a historical socio-economic paradigm. A narration of the history of property relations on housing in Kenya from colonial to post colonial era is made by the author. The author maintains that it is the metropolitan bourgeoisie and the colonial State which transferred the body of rent laws to Kenya which were designed to enhance the difference in classes among the newly emerged independence bourgeoisie. The author categorizes these as the European, Asian commercial and African petty bourgeoisie. The analysis of class conflicts made is characteristic of the argument by Marxists and propounded by the supervisor in many of his publications.²⁴

21 Tenga, R.W (1986), *The Historical and Social Economic Approaches in Learning the Law: Dar-es-Salaam and Third World Perspectives in Jurisprudence*, in Shivji, I.G (Ed.) (1986) Limits of Legal Radicalism, Reflections of Teaching Law at the University of Dar-es-Salaam, Faculty of Law University of Dar-es-Salaam). p. 108

22 Mahalu, *op.cit.* This point was also corroborated by Prof. Fimbo in an interview.

23 Mahalu, *op.cit* p. 90

24 A cursory review of the 25 publications of the Chair found at the University of Dar-es-Salaam Library website (Online Public Access Catalogue: ([http://www.libis.udsm.ac.tz/opac/\(kk4tl1eugaad4ue5f3fiqiqv\)/brief.aspx](http://www.libis.udsm.ac.tz/opac/(kk4tl1eugaad4ue5f3fiqiqv)/brief.aspx)) confirms this assertion. See for example:- Nabudere, D.W (1975), The Political Economy of Imperialism, University of Dar-es-Salaam; Nabudere, D. W (1974) The Political Economy of World Trade and Finance, University of Dar-es-Salaam; and Nabudere, D. W (1982) Imperialism in East Africa, Zed Books, London

The argument advanced in the dissertation is that the introduction of such laws intensified the rise of capitalist relations which favoured the settler economy. The dissertation provides a cogent analysis of the class formation and relations in colonial and post-independence Kenya and its relation with the legislation in general, and that which regulates rent in particular. The recommendation the dissertation puts forward is for the need for a State that is controlled by workers and peasants to address the inherited problem by overhauling the entire superstructure upon which the law is based. The Chair's influence can also be seen in yet another LL.M dissertation he supervised two years later titled "*Copy Right Law and Public Change in Kenya.*"²⁵

Another LL.M dissertation written in 1977 also supervised by the pioneer Chair of the Graduate Studies Committee titled "*Law and Development – the Philosophy of Legislation in Tanzania (Mainland) 1962-1976*" seems to support the observations by Mahalu and Tenga above. This author of the dissertation clearly states that the dissertation was influenced by a statement made in 1961 by Mwalimu Nyerere on the need for an African orientation to education directed at the needs of Africa. The dissertation traces the origin, nature and function of the State and law vis-à-vis social change and argues that State and law are not supernatural institutions. The author argues that the two entities arose from society at a certain stage of development when the concept of private property emerged, leading to the emergence of classes with conflicting interests within society. The theme that runs through the dissertation, to its conclusion, is that the State and law are instruments of the economically dominant class over the labouring masses, the proletariat, an ideology typical of those who toe the Marxist line of thought.

In Chapter three, the author of the dissertation makes an unflattering appraisal of capitalism and its negative effect on the development of the law. He argues that the colonialists made deliberate attempts to create

25 The authors of the two dissertations were neither earmarked to teach nor were they members of staff of the Faculty. (The earlier author later joined the academia at the Faculty of Law at the University of Nairobi). The dissertations have been selected here to show the ideological trends in supervision of dissertations at the Faculty from the earliest days. Discussions on dissertations that follow are based on candidates who were identified to teach or those who were already in employment at the Faculty of Law at the University of Dar-es-Salaam.

imperialist's institutions to oversee the socio-economic relations in their colonies and have made every effort to ensure that they continue dominating even after the colonies attained independence. In concluding this chapter, the author states that there is a need to move away from this set-up and adopt Mwalimu Nyerere's vision of "*an African oriented education and a legal profession of great integrity.*" The author seems to imply that the imperialist legal education does not have these characteristics. In concluding, the author observes that the continued domination of Tanzania after independence by former colonial masters through inherited socio-economic institutions, including the laws, does not set a suitable foundation for improving livelihoods.

It is not surprising that the author acknowledges that the works of Mwalimu Nyerere greatly influenced his orientation in the course of writing the dissertation. He also states that his supervisor "*provided the initial stimulation through his teaching of Jurisprudence at Postgraduate level.*" He points out that it was through his supervisor's encouragement that he opted for a Masters Degree Course in Jurisprudence. The author's influence by the supervisor can also be inferred from the list of references cited in the dissertation. The reference is dominated by Marxist literature and in reflecting Mahalu's observation; the reference does not have any entry on literature reflecting an analysis of the law. Even after his departure in 1979, the pioneering Chairman, characteristic of the teacher observed above, left a mark. This is partly due to the fact that since the students he had supervised and "indoctrinated" were recruited as academic members of staff at the Faculty, who later supervised other academics.

Dissertations supervised by other members of staff also had an inclination of some ideological underpinnings of the supervisor, reflected into them. For example, the dissertation titled "*Urban Land Tenure and the Acquisition of Buildings Act,*" written in 1978 addresses the ideology of payments and the rise of petty bourgeoisie in relation to land ownership. Most of the members of staff of the Faculty were premised on a revolutionary and an ideological approach to teaching law from a socio-economic perspective, reflecting the Marxists ideology and the flame of anti-imperialism that was at its peak at the University of Dar-es-Salaam at this time. The supervisor

of the dissertation was not left behind by the revolutionary tide during this era. His ideological outlook is reflected in the analysis of land law within the context of socialism. He is on record to have argued that in order to attain the goal of socialism it was necessary to have a revolution of the petty bourgeoisie and inculcate in it a proletarian ideology.²⁶

Dissertations that were also supervised by another senior member of staff reflect a similar trend.²⁷ This assertion finds support in the LL.M. dissertation written in 1979, titled "*The Law of Evidence in Historical Socio-Economic Context.*" In the acknowledgements part, the author thanks "peasants who enlightened him on their historical traditional tribal institutions." In adopting the Marxist approach the author argues for the case that the law of evidence is, just like other laws, an aspect of the whole superstructure. He maintains that this law developed and continues to develop in order to cater for the interests of definite socio-economic conditions reflecting the social relations of production in a given society. The author observes that the law of evidence became more important with the emergence of capitalism which led to the rise of individual property rights and aimed at protecting capitalist private capital. He notes that the rules of evidence replaced the traditional dispute settlement systems, disrupting, destroying and eventually transferring the traditional systems to suit the needs of finance capital. The author's recommendation is that the law of evidence, as the superstructure, should be overhauled by independent States to reflect the prevailing economic conditions of the downtrodden. It will not escape the reader that the bibliography is full of authorities who toe the dialectical materialism school of thought. The LL.M. dissertation focusing on the law regulating securities in the context of banking, written in 1977 by a long serving member of the Faculty, reflects a similar trend. The dissertation was

26 See Fimbo, G.M (1974), *Land, Socialism and the Law in Tanzania*, in Ruhumbika, G, (1974) *Towards Ujamaa: Twenty Years of TANU Leadership*, East African Literature Bureau, Nairobi

27 This supervisor's philosophical orientation also reflected the Marxists approach during this era. See for example, Kanywanyi, J.L. (1976) *The Struggles against Imperialism: A Popular Outline*, (Short weekly talks on Radio Tanzania, External Service: July 1975- end of March 1976), Faculty of Law, Dar-es-Salaam and twelve years later in Kanywanyi, J.L. *Post-World War II Nationalism, Neo-colonialism and International Cooperation*, SOCIALISM IN THE WORLD vol.64 (1988), Cavtat, Yugoslavia, pp.47-64.

written under the supervision of the same supervisor. It basically argues that the introduction of the banking law in Tanzania was to concretize the importation of imperialism and capital from Europe to Tanzania.²⁸ Other LL.M. dissertations that re-echo the inclination under the supervision of this supervisor are the ones titled “*A Historical General Assessment of the Role of the World Bank Globally with Special Reference to Brazil and Tanzania*,” written in 1979 and “*Legal Aspects of Tanzania Export Trade: A Historical Survey*,” written in 1989 - a decade later. The former makes an analysis of the role of the World Bank and observes that it is an imperialist multilateral lending agency which cannot address the financial requirements of developing countries such as Brazil and Tanzania. The author concludes that it is not possible for oppressed members of the Bank to achieve meaningful economic development by relying on loans and credits from this institution. Although devoid of much legal analysis, the dissertation serves to illustrate the similarity in the influence of ideological trends during that epoch. The latter dissertation adopts a historical materialistic approach to explain the use of colonial legislation in the neo-colonies with emphasis on export trade. The account in chapter one of this dissertation is characteristically Marxist, laying a solid foundation for the recurring theme and the conclusions.

The trend in adopting the Marxist ideological outlook is also notable in dissertations supervised by another renowned and active anti-imperialist militant during the wave of anti-imperialist movement at the University of Dar-es-Salaam during the period under review. Most of his publications reflected his outlook then. Indeed his outlook even today still has some bearing on the ideological tide of that era.²⁹ The LL.M. dissertations supervised by him during this era also replicate the trend.³⁰ This was equally true for some of the Ph.D. dissertations written under his guidance. A case in point is the one written in 1985, titled “*Explaining Crime and Social Control in Tanzania Mainland: A Historical Social Economic Perspective*.”

28 The dissertation is titled *Securities for Bank (and other credit institutions) Advances and their Realization: historical origin and socio-economic basis thereof and how they relate to Tanzania*.

29 See for example Shivji, I. (2011) *The Struggle to Convert Nationalism to Pan-Africanism: Taking Stock of 50 years of African Independence*, Keynote Address to the 4th European Conference on African Studies, Uppsala June 15 to 18, 2011

30 See for example the LL.M. dissertations titled *Labour Law and Class Struggles in Tanzania Since Independence*, University of Dar-es-Salaam (1975) and *Civil Procedure – Historical and Social Economic Context*, University of Dar-es-Salaam (1978)

The author acknowledges his supervisor, for among other things, "from whose writing and conversations" he has gained enormously. Chapters one and two of the dissertation provides explanations of crime from a Marxist perspective, providing for the ideological forms of social control grounded on the State's exploitation and control of the lumpen proletariat by penal statutes. The references section contains ten publications by Engels, seven by Marx and five of the supervisor. Another dissertation under the same supervisor dealing with labour legislation reflects a similar trend.³¹

By way of comparison, most of the dissertations which were supervised by expatriate staff at the Faculty during the same period show little, if any influence of the radical Marxist approach. The dissertation titled "*Compensation for Road Accidents: An Assessment of the Situation in Tanzania*," written in 1979 is a case in point. The dissertation provides an illuminating analysis of the criminal justice system in the context of social insurance. The author provides a critique of the legal system of the theme under study but avoids discussing the system in the light of the Marxist approach. The legal shortcomings are also not discussed in the light of the relationship between the State and the superstructure, where laws have been seen to enhance class interests, exploiting the proletariat. There is no single reference in the dissertation on the scholars propounding the Marxist approach.

The LL.M. dissertation titled "*The Law of Defamation in Tanzania: The Evolutionary Trends*," written in 1984, is another example. This dissertation provides an analysis of the development of the law of defamation, tracing it to the ancient times in England. It makes some attempt to discuss the development of the law on defamation by making some reference to the application of law to the socio-economic conditions and revolutionary trends in Tanzania but tactfully avoids linking this with the Marxist approach. In fact, there is no reference on the issue of class struggles, except for remote reference to Marx in the bibliography. In comparison, the LL.M. dissertation on a somewhat comparable subject titled "*Tort Liability of the Government in Tanzania: The Impact of the Government Proceedings Act, 1967 on the Rights of the Individual Claimants*," written a year later reflects the persistent ideological inclination. The whole of chapter one of the

31 See for example the dissertation titled *Labour Prospective Systems in Post Colonial Tanzania: A Study of the Relevant Legislation*, written in 1985.

dissertation revolves around the relationship between the law of tort and the State contextualized in class struggles. The recurring theme throughout the dissertation is that the law of tort is manifestly an instrument of coercion in the hands of the ruling elite seeking to maintain the status quo and suppress individual liberty.

In some cases, members of staff who had a solid grounding in the anti-imperialist ideology travelled overseas to pursue their Ph.D. studies. The Faculty had maintained links with some of the expatriate staff who had taught at the Faculty and this created an avenue for some of the members of staff to pursue studies at institutions where some of the expatriates were based. The dissertations written by some of these members of staff reflect a shift in the ideological outlook.

A review of the Ph.D. dissertation titled "*Parliamentary Control and the Accountability of Public Enterprises in Tanzania*," written in 1987 underscores this point. The dissertation was partly supervised by staff from the Faculty of Law and those at Warwick. At Warwick, the supervision was under some of the expatriate staff that had left the Faculty after failing to withstand the "heat" during the wave of the Marxists ideology. The supervisors were four. The dissertation discusses the relationship between the State and public enterprises. The government policies at this time was shifting towards privatization and this probably explains why the dissertation side-steps the ideological inclination advocated by Marxists. All the same, public enterprises have an inherent link with socialism and the reader would have expected this to come out clearly in the dissertation. The other possible explanation is the dissertation's reflection on the supervisors' dislike of the Marxist elements discussed earlier. It is also obvious, even from a quick glance of the list of references that the dissertation borrows heavily from one of the supervisor's publications.

Another example is the Ph.D. dissertation written in the same year at Warwick under the guidance of some of the same supervisors titled "*Legal Regulation of Prices in Tanzania*." The three expatriate supervisors guided the writing of the dissertation in separate phases. They had all also taught at the Faculty, although during different periods, and some of them were

not comfortable with the radical Marxist ideological approach in the studying and teaching of law at that time.³² The dissertation provides a good analysis of the imperfections of the free market economy mechanisms focusing mainly on inequalities in income and unequal distribution of resources. The author of the dissertation makes an analysis the control of the banking sector in the then USSR in the context of the theme and provides an evaluation of the Marxist theory on pricing but dismisses it as not being wholly encompassing.³³ He then provides examples of socialist States (Hungary and Yugoslavia) and makes a case arguing that despite their Socialist orientation, these economies have left the market forces to determine their direction of development. It is clear that the dissertation tactfully avoids adopting a Marxist approach in its analysis. The absence of literature that advocates for such an approach, despite some rather evasive discussion on it, is also evident in the list of references.

The trend in sidelining the Marxists ideological perspectives is also traceable in dissertations written by members of staff who went to other countries and were supervised by those who did not teach at the Faculty. The dissertation written by a member of staff, who went to Germany, for example, is illustrative. The dissertation titled "*Constitutionalism and the Status of the Legislature in a One Party Constitutional System: A Case of Tanzania*," and written in 1991, makes some reference to the legal system during the colonial era during the struggles and the subsequent class contradictions. However, the author does not address this reality, which by comparison, is addressed by other dissertations written under the supervision of staff at the Faculty around the same time.³⁴

Apparently, the lack of reflecting upon the Marxist ideological framework by the author of the dissertation may be traced to the remarks found in the acknowledgement part where the author thanks his supervisor for

32 See for example, Sol Picciotto's views on the approach in, Picciotto, S (1986), *Law, Life and Politics*, in Shivji, (Ed.) *Limits of the Law* and Yash Ghai's views in Ghai, Y (1986) *Legal Radicalism, Professionalism and Social Action: Reflections on Teaching Law in Dar-es-Salaam* in Shivji, (Ed) (1986) *Limits of Legal Radicalism*.

33 See pages 39-40 of the dissertation.

34 A similar trend is noticeable in the dissertation titled *Towards Responsible Democratic Government: Executive Power and Constitutional Practice in Tanzania, 1962-1992*, supervised at the University of London in 1995.

introducing him to the "theory and practice of codification systems." He categorically states that this eventually convinced him that the system could provide "good lessons to emerging States in their endeavours to perfect their legal systems." Another member of staff, writing in Canada a year before provides clear scenarios in the conflict of the interest between capital and labour and the ideological underpinnings of the trade union movement in Tanzania.³⁵ However, he also tactfully avoids discussing these developments within the framework of the Marxist ideology in explaining how the struggles shaped industrial relations in labour law movement in Tanzania. There is no reference to literature on the theme from the radical scholars, save for sporadic and inconsequential reference to Shivji's main publication on the topic. It is interesting to note that some of the members of staff whose LL.M dissertations had a leaning towards Marxism under supervision at the Faculty, made an about turn in the course of writing their Ph.D. on similar themes in other jurisdictions. A classical example is the author of dissertations titled, "Labour Prospective Systems in Post Colonial Tanzania: A Study of the Relevant Legislation," written in 1985 at Dar-es-Salaam and that titled "The Role of Law and Public Policy in Workers' Participation in Tanzania," written by the same author a decade later at Northeastern University in Boston, US.

The evasive trend in adopting the radical Marxist approach in analyzing legal systems can also be seen in dissertations written in the late 1990. The dissertations titled "The Law of the Sea in Tanzania: An Assessment of the Implementation of the 1982 UN Convention on the Law of the Sea," and that titled "Protection of the Marine Environment from Land Based Sources of Pollution: Matching Tanzania Domestic Law to the United Nations Convention on the Law of the Sea," both written under the supervision of staff at the University of Ghent, Belgium in 1999 fall in this category. In the former, the part of the dissertation that traces the development of international law and the resultant development of territorial sea resources, the author steers clear of addressing the burning issue of sovereignty and ownership of international resources from the anti-imperialist perspective. The latter dissertation also avoids to contextualize the discussion on the evolution of natural resources laws at the domestic level in the light of the

35 The dissertation is titled, *Management and Settlement of Industrial Disputes in Tanzania* written under the guidance of supervisors at Queen's University, Ontario, Canada in 1990

Marxist theory of the contradictions inherent in the adoption of such laws by independent States in developing countries. It is submitted that it was not by design that these dissertations did not capture the official position of Tanzania on issues of the law sea. The official government position had been pointed out in 1988 by a member of the Faculty of Law writing his LL.M. dissertation on matters related to the law of the sea. He re-echoed the government position which to a some extent re-echoes the Marxists approach, that:

*... Freedom of the Seas has ceased to serve the interests of international justice and had become a catchment word and an excuse for a few countries to exploit the resources of the sea, to terrorize the world and to destroy the marine environment.*³⁶

The flame of ideological underpinnings that was evident in dissertations written by staff and detonated during the early days of the establishment of the Faculty and evidenced for a number of decades started fading towards the late 1990's. The trends in the writing of dissertations by members of staff during this period attest to this reality. It is interesting to note that this trend is evidenced in dissertations written under the supervision of members of the Faculty who had previously maintained the Marxist ideological approach and also those supervised abroad.

The LL.M. dissertation dubbed "*The Right to a Clean and Healthy Environment for Local Communities in Mining areas of Tanzania: the Case Study of Geita Gold Mining Area*," written in 2003 at the Faculty is one example. Another example is the Ph.D. dissertation titled "*Impact of Tanzania's New Land Laws on Customary Land Rights of Pastoralists: A Case Study of the Simanjiro and Bariadi Districts*," written in 2007 at the University of Bayreuth, Germany. The Ph.D. dissertation contains some background discussion on the concerns on how customary law land rights have been addressed in the liberalized economy and the emerging land markets in Tanzania. The background also makes a moderately fragile attempt to reflect upon the forces that led to the abandonment of the command based economy which relied on socialist principles and the

36 See Mhina, V.M, (1988) *Implications of Coastal States of the Establishment of the Exclusive Economic Zones: A Case Study of Tanzania*, Queen's University, Kingston, Ontario Canada at p. 87

adoption of an open capitalist economy. The author avoids treading on the radical elements who advocated maintaining the principles on ownership of resources propounded in the Arusha Declaration of 1967. Ironically, the list of bibliography has fourteen separate items by Shivji, whom we have noted has maintained a distinctive anti-imperialist position.

The Ph.D. dissertation written in 2008 titled "*Intellectual Property Rights and the Regulation of Access to Genetic Resources and Benefit Sharing in Mainland Tanzania*," is another example of the move away from ideological inclinations. This dissertation was under the supervision of members of staff of the Faculty who are known to have had some dose of the Marxist outlook at one point in time. The dissertation generally analyses the legal framework governing ownership and management of genetic resources. It argues that the resources have been pirated under the guise of international legal arrangements at the detriment of developing countries who own such resources by way of bio-piracy. No attempt is made to analyze the inherent and contradictory conflicts under the legal frameworks in the context of the Marxist approach on the use of international law to control masses and maintain the status quo in developing countries.

Similar trends can be found in the LL.M dissertations titled "*The Application of the Doctrine of Uberrimae Fidei in Compulsory Third Party Motor Vehicle Insurance in Tanzania: Law and Practice*," and "*The Uneasy Case for Copy Right Protection in Computer Programs: A Challenge to the Copy Right and Neighbouring Rights Act, 1999*," written in 2003 and 2005, respectively. The latter dissertation contains a part detailing the origin and development of copyright law but does not make any attempt to address the evolution from the Marxist outlook. The former, under the supervision of a renowned Marxist at one time, also avoids discussion of the Marxist approach which is premised on contradictions in classes and the struggles of the masses against State control in laying out the foundation upon which insurance law is premised.

1.5 Conclusion

The approach in conducting research generally and in law in particular at the Faculty of Law has primarily been to reflect upon the operation of

law and its principles in the context of the realities of the social economic relations. This partly explains the reasons why from mid early 1970's until the mid 1980's, the topical themes of most postgraduate dissertations revolved around an analysis of legislation from the point of view of nationalization and State control of public entities. The movement from the era of public ownership of the means and relations of production to that of encouraging private (foreign) sector in the relations of production also came along with a paradigm shift in the ideological approach to writing dissertations and supervision at the Faculty. Some of the ideological trends in dissertations during this era have been highlighted above. The era between the mid 1990's and early 2000 witnessed a number of members of staff who had written their LL.M dissertations under the guidance of supervisors with the Marxist orientation travelling overseas for the Ph.D. studies. At this time, the Faculty had established links with law faculties in countries such as Germany, Canada, the UK (Warwick), Belgium, Sweden (Malmo) and South Africa and Ireland. Although rudiments of the Marxist approaches can be detected in some of the Ph.D. dissertations written in these jurisdictions during this time, the rigidity is relatively mild compared to the dissertations written by those who were supervised at the Faculty.

The late 1990's to mid 2000, witnessed fewer dissertations reflecting any ideological trends. What one can decipher is some trends of ideological orientation in the part of the dissertations dealing with theoretical frameworks. Again these were written in a much milder form. The approach in most of these dissertations have focused more on explaining the various schools of thought that the authors have aligned themselves to in the course of undertaking studies.³⁷ Some of these dissertations were supervised by members of staff whose dissertations, were loaded with Marxist influences under the same themes at different times.³⁸ There is relatively little, if any discussion of the superstructure and the State in the analysis of the law in some of these. The trend in most dissertations during this era suggests a

37 See for example the LL.M. dissertation titled *Compensation for Expropriation of Foreign Private Investments: The Problem of Standards* written in 1993.

38 See for example, the LL.M. dissertations titled *The Law Relating to the Prevention and Combating of Corruption in Tanzania: The Case Study of the Prevention and Combating of Corruption Act, 2007* written in 2009 and *Constitution without Constitutionalism or Constitutionalism in Evolution? A Critical Study of the First Forty Years of Constitutional Law and Practice in Independent Tanzania (1961-2005) and Kenya (1963-2008)* written in 2010.

shift to the legal implications on areas related to ICT, intellectual property, capital markets and ownership and management of genetic resources. Traces of ideological orientation that is found in dissertations written in the 1970s are still detectable, albeit with fewer rigors in dissertations on the rights of individuals to take part and engage in the political processes, reforms in labor relations, the role of the courts, Parliament in multi-party set up and media freedom, to mention but a few.

The trend between 1970's and early 1980's witnessed some influence of the supervisor's ideological inclination to the student. The dissertations then were heavily influenced, either by design or default, by the supervisor's ideological orientation. In the period between 1970's until the late 1980's, the Graduate Studies Committee at the Faculty did not provide any directive or guidance on research priorities nor guidelines on the relationship students and supervisors in the course of writing dissertations. The practice has since been for students to select areas of research with the assistance and guidance of their supervisors. The University has since then issued some guidance on supervision of postgraduate students, laying emphasis on the need for supervisors to ensure that the dissertation does not become a reflection of the supervisor's orientation.³⁹

Today, there has been some change in the approach at the Faculty. The practice has been for postgraduate students to come up with research areas of their interests and submit a proposal. They are then allocated supervisors by the Graduate Studies Committee of the Faculty and endorsed by the Board of the Directorate of Postgraduate Studies of the University. The supervisors still have some leeway to direct the theoretical orientations. They have in some cases "revised" or "fine-tuned" the research areas. However, unlike the 1970s' the ideological discourses of the supervisors does not influence or over-ride that of the student. A number of factors may provide some explanation for this trend. On the one hand, the realization of human rights and academic freedom in institutions of higher learning has led to most students' areas of research being free from direct "interference" from supervisors, especially in terms of ideological inclination. On the other hand, the emergence of a free market economy came along with

³⁹ See Regulation 12.3.1 of the University of Dar-es-Salaam General Regulations and Guidelines for Postgraduate Study Programmes, June 2006

consultancies predominately funded by donors from the jurisdictions which toe the capitalist's path. These consultancies' have predetermined terms of reference and have since attracted members of staff the faculty of law. Other members of staff have since opened up private business providing legal services to businesses and the government on legal matters in the context of the open economy market with its capitalistic features. These members also teach and supervise young lecturers, some of whom have also opened up similar establishments in the City. It is submitted that among other factors, the shift in development paradigms, and the general environment of the market oriented economy, has come along with indifference in taking any ideological outlook, particularly one that is not favourable to the dominant ideology founded on a free market economy.

5. CONCLUSION

As noted above, the theme of this article has not been adequately addressed in the literature chronicling the history of postgraduate supervision at the Faculty of Law of the University of Dar-es-Salaam. It is hoped that this article will open up new frontiers for further research on the institution's approaches in legal research in general and the supervision process in particular. Due to the limited time to conduct a more thorough research, the research conducted in preparation of this article basically entailed reliance on institutional memories of some of the old guards at the Faculty and a random sampling of postgraduate dissertations available at the libraries at the University of Dar-es-Salaam. Particular attention was paid on selected dissertations for Ph.D. and LL.M members of academic staff spread across different time-frames. It is recommended that further research on this theme could select a wider sample to permit a more comparative analysis. Interviewing a larger sample of the alumni and current students undertaking postgraduate studies at the Faculty would also enrich such research.

From the developments in the trend of 1970's until today, it appears that there is little hope of the rigors of the flame of the 1970's being rekindled in the writing and supervision of dissertations at postgraduate level. However, members of the Faculty must continue to be a part and parcel of

the evolutionary changes in providing the necessary guidance in the course of supervising postgraduate dissertations. This will entail directing the conduct of postgraduate research and the interpretation of the legal system in changing paradigms reflected in the economic and political environment. In undertaking this task, it is the primary duty of supervisors at postgraduate level of university training to guide and encourage students to widen their powers to think constructively and write intelligently and independently in the course of generating knowledge. This is an obligation that supervisors of postgraduate students at the Faculty of Law should maintain and encourage academics in the making to ardently pursue and safeguard in the course of imparting legal knowledge at the Faculty or elsewhere.